

**A.F.R.**

**Judgement reserved on:- 17.5.2022**

**Judgement delivered on:- 12.7.2022**

**Court No. - 29**

**Case :-** SPECIAL APPEAL No. - 306 of 2022

**Appellant :-** Vice Chairman Abss Institute Of Technology

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Appellant :-** Vibhu Rai, Abhinav Gaur

**Counsel for Respondent :-** C.S.C., Ajal Krishna, Rohit Pandey, Vijay Tripathi

**Hon'ble Pritinker Diwaker, J.**

**Hon'ble Ashutosh Srivastava, J.**

1. This Intra Court Appeal has been filed questioning the interlocutory order dated 23.3.2022 passed by the learned Single Judge in Writ-A No. 2695 of 2022 (*Dr. Sanjay Kumar Sharma vs. State of U.P. and 4 others*) whereby and whereunder entertaining the writ petition against the termination order dated 6.4.2021 passed by the Vice Chairman Abbs Institute of Technology, Meerut a private educational institution and inviting a response to the writ petition has stayed the termination order dated 6.4.2021 and permitted the writ petitioner/respondent to perform his duty as he was discharging earlier and shall be paid his salary which shall be subject to final outcome.

2. A perusal of the impugned order of the learned Single Judge reveals that while the writ petition has been kept pending by inviting counter and rejoinder affidavits the termination order dated 6.4.2021 passed by the appellant who was arrayed as respondent No.2 in the writ petition has been stayed with further direction permitting the petitioner/respondent to perform his duties and paid salary, the learned Single Judge has virtually granted the final relief to the writ petitioner/respondent.

3. An interim order can be passed by a Court of law only in aid of a final relief prayed for. An interim order ought not to be passed by a Court

which is in the nature of a final relief itself. if such an order is passed virtually nothing will remain to be adjudicated at the final hearing stage. In the case at hand the learned Single Judge by staying the termination order and directing for payment of salary to the writ petitioner/respondent has virtually granted the reliefs prayed for in the writ petition which could not have been done at the initial stage. We also find that the termination order is dated 6.4.2021. The writ petition was filed on 20.12.2021 and the interim order staying the termination order was passed on 23.3.2022.

4. The Apex Court in the case of ***State of U.P. and others vs. Sandeep Kumar Balmiki and others***, reported in **2009 (17) SCC 555**, while considering the property of granting final relief at the interim stage, made the following observations which is being quoted hereunder:-

*"In our view, the interim order granted by the High Court staying the order of termination could not be passed at this stage in view of the fact that if such relief is granted at this stage, the writ petition shall stand automatically allowed without permitting the parties to place their respective cases at the time of final hearing of the writ petition. In this case also, the appellants have not yet filed counter affidavit to the writ petition of the respondents.*

*That being the position and in view of the fact that the final relief could not be granted at the interim stage, we set aside the impugned order and vacate the interim order passed by the High Court."*

5. In ***Delhi Cloth & General Mills Co. Ltd. vs. Rameshwar Dayal***, **AIR 1961 SC 689**, this Court examined the point as to whether a workman could be ordered to be reinstated as an interim measure pending final adjudication by the Tribunal under the Industrial Disputes Act. In the said case the employer dismissed the workman for disobeying the orders of the managing authority. The workman filed an application before the Industrial Tribunal under Section 33-A of the Industrial Disputes Act, 1947 contesting his dismissal on various grounds, whereupon the Tribunal passed an order to the effect that as an interim measure the workman be permitted to work and if the management failed to take him back his full wages be paid from the date he reported for duty. The employer

challenged the order of the Tribunal by filing a writ petition before the High Court which was dismissed. On appeal by a certificate of the High Court it was held that the order of reinstatement could not be given as an interim relief because that would be giving the employee the very relief which he would get if order of dismissal is not found to be justified. Order passed by the Tribunal was held to be manifestly erroneous and set aside. It was observed:

*"We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings under s. 33-A. As was pointed out in Hotel Imperial's case (1960(1) SCR 476, ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order therefore of the Tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside."*

**6.** In *U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. vs. Sanjiv Rajan*, 1993 Supp (3) SCC 483, it was held by this Court that it was desirable that an order of suspension passed by a competent authority should not be ordinarily interfered by an interlocutory order pending the proceeding. It was observed:

*"Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question."*

**7.** In *State of Haryana vs. Suman Dutta*, (2000) 10 SCC 311, this Court set aside the order passed by the High Court staying the order of termination as an interim measure in the pending proceeding. It was observed:

*"We are clearly of the opinion that the High Court erred in law in staying the order of termination as an interim measure in the pending writ petition. By such interim order if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same."*

**8.** From the abovenoted decisions, it is evident that the Apex Court has consistently been of the view that by way of an interim order the order of suspension termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in Court.

**9.** In view of the above, we are of the considered opinion that the impugned order to the extent it stays the termination order dated 6.4.2021 and permits the writ petitioner to perform his duty as he was discharging earlier and shall be paid his salary which shall be subject to final outcome cannot be sustained and is accordingly set aside. The appeal is **allowed** to the extent indicated above.

**10.** The writ petition shall be heard on its merit upon exchange of the pleadings as directed by the learned Single Judge. We leave it open for the parties to request the learned Single Judge to decide the writ petition at an early date.

**Order Date :- 12.7.2022**

Vandana

(Ashutosh Srivastava,J.) (Pritinker Diwaker,J.)