

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT APPEAL Nos. 3 and 5 of 2017

COMMON JUDGMENT: (*Per VRS,J*)

Both these writ appeals arise out of two interim orders passed by the learned Judge in a writ petition filed by the 1st respondent herein.

2. Heard Mr. C.V.Mohan Reddy, learned senior counsel appearing for the appellant-Institution, and Mr. K.S. Murthy, learned counsel appearing for the 1st respondent/writ petitioner.

3. Challenging the issue of a charge memo, the 1st respondent in these writ appeals filed a writ petition. When the writ petition came up for orders as to admission, the Court was informed by the learned counsel appearing for the appellant-Institution that an order of removal from service had been passed.

4. Shocked at such a revelation, the 1st respondent filed a writ petition in W.P.No.44495 of 2016 challenging the order of removal, on the ground that the same was passed without affording an opportunity to him to peruse the documents that he sought for, and without allowing him sufficient time to put-forth his defence.

5. The learned single Judge, after ordering notice to the appellant-Institution, granted two interim orders on 23.12.2016 in two miscellaneous petitions filed by the 1st respondent. By the order passed in one miscellaneous petition, W.P.M.P.No.54886 of 2016, the learned Judge granted an interim direction as prayed for. The interim direction prayed for by the 1st respondent was to direct the appellant-Institution herein to pay the arrears of salary and continue to pay the monthly salary to the 1st respondent, while permitting him to sign the attendance register without any hindrance. The second interim order granted in W.P.M.P.No.54887 of 2016 was to suspend the order of removal from service, on the ground that the order of removal from service was passed in gross violation of the principles of natural justice without furnishing the material sought for by the 1st respondent and without conducting any enquiry.

6. Aggrieved by those two interim orders, the Institution is before us.

7. The main grievance of the appellant-Institution is that it is a Society registered under the Societies Registration Act, and that despite the fact that it may be financed by the Union of India, the same is not amenable to the jurisdiction of this Court under Article 226.

8. But, we do not wish to go into the said question now, since it has to be gone into in the writ petition. But, the issue is that whenever an order of removal or dismissal from service is challenged, the normal rule is that the same cannot be suspended pending the writ petition. The reason is not that the writ petitioner may not have a *prima facie* case. The existence of *prima facie* case alone is not sufficient for the grant of an interim order.

9. If an order of dismissal or removal from service is suspended pending a writ petition and ultimately the writ petition is dismissed for some reason, the salary paid to the employee cannot be recovered, as he would have earned the salary by working in the Institution. On the contrary, if no interim order is granted and the writ petitioner succeeds in the writ petition, the entire amount of pay and allowances payable during the period could be granted to him. Therefore, the real question is whether the writ petitioner or the respondent could be compensated in terms of money, in the ultimate event of either one of them succeeding in the writ petition.

10. Admittedly, the 1st respondent/writ petitioner was under suspension up to the date of his removal from service. Therefore, in any case, there could not have been a direction to pay the arrears of salary and directing the appellant-Institution to continue to pay the

monthly salary and to permit the writ petitioner to sign the attendance register.

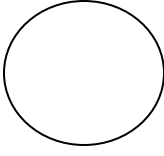
11. Therefore, the Writ Petitions are allowed, the interim orders granted by the learned single Judge are set aside. However, if there are arrears of salary payable to the 1st respondent/writ petitioner up to the date of suspension and if there are arrears of subsistence allowance payable to him from the date of suspension up to the date of removal from service, the same shall be paid to him within four (4) weeks. The appellant-Institution shall also file a counter to the writ petition within two weeks. Once a counter is filed, the writ petition shall be listed for final hearing and disposal before the appropriate Bench.

Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

4th January, 2017
cbs



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(allowed)

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