

Arya Vidya Sabha, Kashi and Another

Vs

Krishna Kumar Srivastava and Another

Civil Appeal No. 95 of 1976

(V.R. Krishna Iyer, N.L. Untwalia JJ)

26.02.1976

JUDGMENT

KRISHNA IYER, J. -

1. The appellant who has come up to this Court by special leave challenges the judgment of the High Court whereby the first respondent's dismissal which had been set aside by the trial Court, has been restored. The first respondent was a head clerk in Dayanand Mahavidyalaya Degree College, Varansai, an institution affiliated to the Banaras Hindu University. The controversy raged round the question as to whether reinstatement could be ordered of a servant who has been dismissed by the college authorities on the footing that the institution is a statutory body. Whatever might have been the prior state of the precedents, in the light of the decision in Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain ((1976) 2 SCC 58 : 1976 SCC (L&S) 176), we are satisfied that the institution which is the appellant before us is not a creature of statute but an entity like a company or a co-operative society or other body which has been created under the operation of a statute. This makes all the difference as has been pointed out by the majority decision in Lakshmi Narain's case. May be, there is much to be said in favour of the opposite view set out by Shri Justice Bhagwati, but we are bound by the decision of the Court as expounded by the majority view. The distinction sought to be made by Counsel to the effect that the statutes and ordinances with which we are concerned stand on a different footing from the ones considered by this Court in Lakshmi Narain's case does not impress us. In this view, the appeal has to be allowed and we do so.

2. The parties will bear their costs in all the courts; but, having regard to the circumstance that the first respondent has put in long years of service and having an overall view of the facts of the case, Counsel for the appellant, at our suggestion, has undertaken to pay a sum of Rs. 5,000 to the first respondent and a sum of Rs. 1,500 towards costs of Counsel for the first respondent. These payments are made ex gratia and Counsel for the appellant wanted us to take note of the circumstance that according to his instructions the first respondent has been gainfully employed otherwise, the truth of which need not be investigated here. The payments will be made within two weeks from today.

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