

SUPREME COURT OF INDIA

Radheshyam Dube

Vs.

District Inspector of Schools

C.A.No.3499 of 1986

(M. P. Thakkar and S. Natarajan, JJ.)

16.09.1986

ORDER:-

1. Special leave granted. Heard counsel for the parties.

2. The High Court has committed a serious error in dismissing the writ petition instituted by the Appellant, though the real contesting party, Respondent No. 2, had not even controverted the averments and allegations made in the Writ Petition, and not even appeared to resist the petition. The real dispute was between the appellant on the one hand and Respondent No. 2 on the other and even so Respondent No. 2 did not care to file an affidavit and even did not care to resist the petition. It is difficult to comprehend how the High Court could have dismissed the Writ Petition of the appellant in these circumstances. As notice was issued on the Special Leave Petition Respondent No. 2 appeared through its counsel and stated that under certain circumstances it could not appear before the High Court and could not file an affidavit and resist the writ petition. We think, for the ends of justice, Respondent No. 2 should be permitted to file an affidavit and to resist the petition if so desired, though as the matter stands the Appellant would be entitled to succeed in view of the fact that there is no affidavit in reply by Respondent No. 2 in the High Court. Accordingly, we set aside the order of the High Court and remit the matter back to the High Court with a direction to permit Respondent No. 2 to file its affidavit in reply and permit the appellant to file his counter in the

context of the said affidavit, if so desired. So also Respondent No. 4 may also be permitted to file further affidavit, if so desired. Thereafter the High Court will proceed to hear the Writ Petition in accordance with law, with expedition. The appellant will be entitled to payment of salary as he was being paid during the pendency of the Writ Petition in the High Court as per our interim order. And the interim order granted by the High Court during the pendency of the Writ Petition in the High Court will hold the field till the disposal of the Writ Petition by the High Court.

3. The appeal is disposed of accordingly. There will be no order as to costs.

Order accordingly.