

SUPREME COURT OF INDIA

Education Officer (Primary

Vs.

Mohammed & Ors.

C.A.No.1243 of 2008

(Tarun Chatterjee and H.S.Bedi,JJ.)

12.02.2008

ORDER

(@ S.L.P.(C)No.6241/2006)

1. Leave granted.
2. Heard learned counsel for the parties.
3. This appeal is directed against the final judgment and order dated 30th September, 2005, passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No.1188 of 2004. In the impugned order ultimately the Division Bench of the High Court passed the following order: "In the result, the writ petition is allowed. The impugned order dated 30.9.2002 passed by the Respondent No.2 is quashed and set aside. We direct the Respondent No.4 to absorb the Petitioner as an excess employee under Rule 26 of the M.E.P.S. Act in any other recognized and aided private school. The absorption shall be granted within a period of three months from today, failing which, on expiry of three months, the Education Officer shall start releasing salary in favour of the Petitioner." We have carefully examined this order of the High Court. It appears from the records that the order of the School Tribunal was an ex-parte order in which the present appellant was not a party. It is also an admitted position that an application for recall of that ex-parte order passed by the School Tribunal has already been filed at the instance of the appellant, which has not yet been decided.
4. If that application is allowed and the order is recalled, there cannot be any dispute that the right that has been accrued to the present respondent shall automatically come to an end. On the other hand, if the application is rejected the respondent would be entitled to all benefits arising out of the said order. That being the position, we dispose of this appeal by directing the School Tribunal to decide the said application for recall positively within three months from the date of supply of a copy of this order before the School Tribunal, without being influenced by any of the observations made by the High Court or any observation made by us in this order, and without granting unnecessary adjournment to either of the parties.

5. The appeal is disposed of accordingly with no order as to costs.