

SUPREME COURT OF INDIA

Union of India

Vs.

Ram Kumar Thakur

SLP(C) No.9433 of 2007

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

15.10.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Jammu and Kashmir High Court dismissing the appeal filed by the present appellants on the ground that the respondent had been reinstated in service pursuant to the judgment of the learned single Judge which was impugned in the writ appeal filed before the Division Bench. The High Court held that the appeal had therefore become infructuous.

3. Learned counsel for the appellant submitted that the impugned order of the High Court has no legal basis. Merely because the impugned order before the High Court was implemented to avoid possible contempt proceedings that did not take away the right of the appellants to prefer an appeal and question correctness of the impugned order.

4. Learned counsel for the respondent on the other hand supported the judgment.

5. It has been noted by this Court that if even in cases where interim relief is not granted in favour of the applicant and the order is implemented that does not furnish a ground for not entertaining the appeal to be heard on merits. (See : *Nagar Mahapalika v. State of U.P.*¹. Similar view was also take in *Nagesh Datta Shetti v. State of Karnataka*² .

6. In *Union of India v. G.R. Prabhavalkar & Ors.*³ it was observed at para 23 as follows:

“Mr Singhvi, learned counsel, then referred us to the fact that after the judgment of the High Court the State Government has passed an order on March 19, 1971, the effect of which is to equate the Sales Tax Officers of the erstwhile Madhya Pradesh State with the Sales Tax Officers, Grade III of Bombay. This order, in our opinion,

has been passed by the State Government only to comply with the directions given by the High Court. It was made during a period when the appeal against the judgment was pending in this Court. The fact that the State Government took steps to comply with the directions of the High Court cannot lead to the inference that the appeal by the Union of India has become infructuous.”

7. Above position was also noted in *Union of India v. Narender Singh*⁴.

8. Above being the position the impugned order of the High Court cannot be maintained and is set aside. The writ appeal shall be heard by the High Court on merits about which we express no opinion. The appeal is allowed to the aforesaid extent. No costs.

¹[2006(5) SCC 127]

²[2005(10) SCC 383]

³[1973(4) SCC 183]

⁴[2005(6) SCC 106]