

SUPREME COURT OF INDIA

Diwakar Prakash Mishra

Vs.

Shree Kant Mishra

C.A.No.....of 2009

(Tarun Chatterjee and H.L.Dattu JJ)

16.02.2009

ORDER

1. Leave granted.

2. This appeal is directed against an order dated 3rd of January, 2007 passed by a Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench in Special Appeal No.489 of 2003 by which the appeal was dismissed with the following directions:-

We, therefore, while dismissing the writ petition as having lost its significance, after the retirement of the appellant, direct that since the appellant had throughout discharged the duties of Principal as official Principal, he shall be paid the salary of the given pay scale, after adjusting the amount already paid. Such arrears shall be paid within a maximum period of three months from the date of receipt of a certified copy of this order. The petitioner shall also be given all consequential benefits accordingly, as per rules.”

3. From a reading of the order including the directions made in the impugned order as noted herein above, it would be clear that the High Court had dismissed the appeal only on the ground that since the appellant had retired as an ad hoc principal, the appeal had become infructuous. In our view, it is true that the High Court had granted relief to the appellant to which he otherwise could not get, by directing payment of salary for the period he continued as an ad hoc principal on the strength of the interim order. In our view, the appeal, in the facts and circumstances of the present case, ought to have been decided on merits after giving proper hearing to the parties. That being the position, we set aside the impugned order and restore the special appeal, which shall be decided by the Division Bench of the High Court at an early date preferably within three months from the date of supply of a copy of this order to it and after passing a reasoned order.

4. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.