

ITEM NO.59

COURT NO.2

SECTION XI

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**Petition(s) for Special Leave to Appeal (C) No(s). 2713/2025**

**[Arising out of impugned final judgment and order dated 07-01-2025 in CAC No. 3079/2024 passed by the High Court of Judicature at Allahabad, Lucknow Bench]**

MAHENDRA DEV

**Petitioner(s)**

**VERSUS**

RADHE SHYAM PANDEY

**Respondent(s)****FOR ADMISSION and I.R.****IA No. 26552/2025 - EXEMPTION FROM FILING O.T.**

**Date : 03-02-2025 This matter was called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE K. VINOD CHANDRAN**

**For Petitioner(s) :**

**Ms. Aishwarya Bhati, ASG  
Ms. Sakshi Kakkar, AOR**

**For Respondent(s) :**

**UPON hearing the counsel the Court made the following  
O R D E R**

1. The petitioner, who is the Director of Secondary Education of the State of Uttar Pradesh, is before this Court challenging the order which directed his presence; if an affidavit of compliance is not filed or an interim order is not granted in the Special Appeal filed from the judgment, from which arose the Contempt Application. The petitioner-therein who was appointed on *ad hoc* basis as Assistant Teacher (LT Grade) by the Committee of the Management of the school on 29.11.1992 was regularized much later in the year

2018 with retrospective effect from 2016. The petitioner retired on 31.03.2019 and claimed pension; claiming also the *ad hoc* service he had in the school. In the Writ Application by Annexure P-11, relying on the judgment of a coordinate Bench (Annexure P-10), the claim of the petitioner was allowed, directing computation of the *ad hoc* period as pensionable service. Annexure P-11 directed the respondent-State to consider the grant of benefit of pension in accordance with Annexure P-10 judgment.

2. The respondent-State having not acted on the directions issued, the Writ Petitioner was before the High Court with a Contempt Application. Notice being issued by Annexure P-14, the Writ Petitioner was granted provisional pension, subject to the decision in the Special Leave Petition (Civil) @Diary No.3299/2022; wherein the issue raised, by the State, was reckoning of *ad hoc* service for the purpose of computing pensionable service.

3. The learned Single Judge by Annexure P-16 took note of the grant of provisional pension; but insisted on regular pension being granted and directed the presence of the petitioner-herein before Court; if the directions were not complied with.

4. The impugned order chastised the petitioner-herein for having sought for deferment of personal appearance on the ground of consent being required from the State Government for complying with the judgment of the learned Single Judge and also noticed the submission that an appeal against the judgment is pending, in which interim order of stay is also prayed for.

5. We fully agree with the High Court that, no consent from the Government is required to comply with the orders of the Writ Court.

However, in the deferment application filed, it was specifically pointed out that an appeal was pending from the judgment from which the Contempt Application arose. As we noticed, the issue is also pending in a Special Leave Petition before this Court which was specifically spoken of in the application submitted for deferment before the High Court.

6. We specifically refer to *Modern Food Industries (India) Ltd. & Anr. Vs. Sachidanand Dass & Anr.*<sup>1</sup> from which paragraphs 4 and 5 are extracted below:

*4. Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High Court does not commend itself as proper. If, without considering the prayer for stay, obedience to the Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned Single Judge's order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will*

*be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay standby and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in State of J & K v. Mohd. Yaqoob Khan [(1992) 4 SCC 167].*

*5. In the present case, under the threat of proceedings of contempt, the appellants had to comply with the order of the learned Single Judge notwithstanding the pendency of their appeal and the application for stay. The petitioners are confronted with a position where their stay application is virtually rendered infructuous by the steps they had to take on threat of contempt."*

7. **The litigant's remedy of appeal cannot be allowed to be frustrated under threat of contempt proceedings. The direction of the learned Single Judge to produce a stay order or comply with the directions, would indirectly result in directing the Division Bench to peremptorily take up the stay application in the appeal.** It is admitted case of the writ petitioner that he had been continuing on *ad hoc* service till 2016; regularization having been occasioned only due to an amendment brought into the Uttar Pradesh Secondary Education Service Selection Board Act, 1982; in 2016, by virtue of an amendment of that year. In the totality of the circumstances, especially since the respondent has been granted provisional pension, we direct that the **contempt proceedings be kept in abeyance till the appeal is disposed of.**

8. The Special Leave Petition stands disposed of with the above direction.

9. Pending application(s), if any, shall stand disposed of.

(DEEPAK SINGH)  
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)  
COURT MASTER (NSH)