**IN THE HIGH COURT OF ALLAHABAD**

Special Appeal No. 371 of 2011

Decided On: 27.05.2011

Appellants: **Har Pal Singh and Ors.**
**Vs.**
Respondent: **State of U.P. and Ors.**
[Alongwith Special Appeal Nos. 376, 378 and 379 of 2011]

**Hon'ble Judges/Coram:**
R.K. Agrawal and Bharati Sapru, JJ.

**JUDGMENT**

**R.K. Agrawal, J.**

1. From time immemorial in our Indian culture and society a teacher has been the most revered person, which would be seen from the following verse:

Gurur brahma Gurur vishnu Gurur devo maheshwara

Guru sakshat parabrahma tasmai shri gurave namaha

akhanda mandalakaram vyaptam yena characharam

tat padam darshitam yena tasmai shri gurave namaha

2. When translated in English it means:

Guru is Brahma. Guru is Vishnu. Guru is Shiva. The true Guru is the Highest, formless God. I prostrate before the holy Guru. The unbounded is the endless canopy of the sky, the omnipresent in all creation, both animate and inanimate. I bow to Sri Guru who reveals to us the ultimate reality.

3. The famous saint Kabir in the 15th Century eulogised the teacher in the following couplet:

Guru Govind dou khade, kaake laagoon paye

Balihari guru aapki, Govind diyo milaye.

4. When translated in English it means:

I face both God and my guru. Whom should I bow to first?

I first bow to my guru because he's the one who showed me the path to God.

5. However, the question that arise in these appeals is whether the teachers who have been placed in such an exalted position justify the faith entrusted in them even in the current century or whether they have fallen prey to selfish individual interests and seek personal gains through administrative jobs which are no part of their teaching assignments.

6. From the aforesaid, it would be seen that in our society teachers are placed on a higher pedestal than even God. However, in this 21st Century, some of the teachers, who occupy an exalted position in our society, have forgotten their duties as a teacher and instead want to hold and continue the administrative post while retaining their position as a teacher. The present appeals are a glaring example of the downfall of the standard professed by teachers in our country. We hasten to add that by this we do not mean that all teachers are indulging in such activities, majority of them do not.

7. Special Appeal No. 371 of 2011 has been filed by 44 persons, Special Appeal No. 376 of 2011 has been filed by 20 persons, Special Appeal No. 378 of 2011 has been filed by 8 persons and Special Appeal No. 379 of 2011 has been filed by 7 persons. In all these appeal the challenge has been made to the judgment and orders dated 17th February, 2011 and 21st February, 2011 passed by the learned Single Judge whereby the writ petitions challenging the Government Order dated 2.2.2011 issued by the State Government and the order dated 10.2.2011 issued by the Director, State Council of Research and Training, U.P. Lucknow have been dismissed.

8. As all these appeals raise common questions of law and facts, with the consent of the learned Counsel for the parties they have been heard together and are being disposed of by a common judgment and order. Special Appeal No. 371 of 2011 is being treated as the leading case and facts of this appeal are being given for deciding the issues raised in all the appeals.

Facts of the Case:

9. All the Appellants were initially appointed as Assistant Teachers in the Primary Institution in Junior High School where they were working. The Central Government took a policy decision to provide elementary education to all the children between the age of six years and fourteen years in terms of Articles 21A, 39(f), 41, 45 and 46 of the Constitution of India. The scheme announced by the Central Government was popularly known as "Sarva Shiksha Abhiyan". The State Governments were also involved in the implementation of the scheme as according to the Appellants elementary education is in the concurrent list. The Government of Uttar Pradesh issued an order dated 1st September, 2001 as amended on 29th June, 2002 providing for the upliftment of elementary education and to improve the standard of education in the primary schools of the rural areas as in the rural areas the primary education was most neglected and the resultant percentage of literacy in the State of Uttar Pradesh was much below as compared to the other states like Kerala, Maharashtra, Karnataka, Gujarat, etc. In the aforesaid scheme three tier system was evolved. The smallest unit was the Nyay Panchayat level, thereafter Block level and at the District level the District Institute for Education and Training (DIET) are involved. At the level of Nyay Panchayat and Block level the Coordinators and Co-Coordinators were required to be appointed. It was provided in the said Government Order that the appointment of Coordinator at the Nyay Panchayat level and Block level would be for a period of two years and thereafter fresh appointments would be made. The minimum teaching experience for appointment as Coordinator and Co-Coordinator at Block level required was for 8 years and 3 years respectively whereas at Nyay Panchayat level for appointment as Coordinator it was five years. The Ministry of Human Resource and Development, Government of India, organized training programmes wherein officers of the State Council of Research and Training of each state are given training at Delhi. These officers in their turn train the concerned teachers of the District Institute for Education and Training and who in turn train Coordinators and Co-coordinators at Block level and Nyay Panchayat level. The training is imparted in different subjects with a total duration of about one month. The main nature and responsibility of duty of the Coordinators contemplated are to provide learning material, computer science, book distribution and training educative support or to organize education fairs, school grooming, school supervision and vision workshop. The applications were invited for the appointment of Coordinators. The selection was to be made from among the eligible teachers and they had to undergo selection process which consisted of a written examination of 45 marks and an interview of 5 marks. The District Basic Education Officer is the appointing authority.

10. It is the case of the Appellants that advertisement was issued on 5th July, 2010 by the District Education Officer Budaun wherein in terms of the Government Order dated 29.6.2002 applications were invited for appointment of Block Resource Centre Coordinator, Assistant Block Resource Centre Coordinator, Urban Resource Centre Coordinator, Nyay Panchayat Resource Centre in the district Budaun.

11. The Appellants applied and after facing the Selection Committee were appointed. The Appellant Nos. 1 to 18 were appointed as Block Resource Centre Coordinator whereas Appellants 19 to 44 were appointed as Nyay Panchayat Resource Coordinator. They joined and started functioning as Coordinator and Co-Coordinator at the respective Centers.

12. It may be mentioned here that all the Appellants are being paid the same emoluments which they were getting as teachers and they are not paid any extra amount for the work which they are doing as Coordinator/Co-Coordinator. However, after being appointed as Coordinator and Co-Coordinator they have stopped doing teaching work in their respective schools.

13. The State Government issued another Government Order on 2nd February, 2011 in which major changes regarding appointment of Coordinator and Co-Coordinators have been made. By the aforesaid Government Order the Assistant Basic Shiksha Adhikari of the concerned block has been given additional charge of a Coordinator. Instead of having two Assistant Coordinators at Block level a provision has been made for appointment of 7 Assistant Coordinators out of which 5 Assistant Coordinators are to be appointed from the Assistant Teachers of different subjects and two Assistant Coordinators are to be appointed from outside on the basis of written test and interview. Pursuant to the Government Order dated 2nd February, 2011 the Director of State Council of Research and Training, U.P. Lucknow issued a general circular on 10th February, 2011 to all the Principals of the District Institutes for Education and Training and the District Basic Education Officers in the State of U.P. to reconstitute Block Resource Centre and Nyay Panchayat Resource Centres by appointing Co-Coordinators. The Government Order dated 2nd February, 2011 and the Circular dated 10th February, 2011 have been challenged unsuccessfully by all the Appellants before the learned Single Judge.

14. The learned Single Judge has dismissed the writ petition on the ground that admittedly no extra allowance or extra salary is payable to such Coordinators or Co-Coordinators and they were receiving the same salary which they were receiving when working as Assistant Teachers and even after reporting back they will be receiving the same salary. Neither they have any legal enforceable right to work as Coordinators or Co-Coordinators nor the change in policy and the scheme visits them with any civil consequences. Further, the Courts sitting under Article226 of the Constitution of India are very loath to interfere in such policy decision of the Government which is taken on consideration of myriads of inputs and merely because they will lose their clout and according to them the scheme may not be better one than the earlier one, cannot invite the Court to interfere in such matters. It was held that it is not arbitrary and consequently the challenge to the two orders failed.

Rival Submissions

15. We have heard Sri Ashok Khare and Sri P.S. Baghel, learned Senior Counsels assisted by Sri Siddharth Khare and Sri Gautam Baghel, Advocates on behalf of the Appellants and Sri R.N. Singh and Sri P.N. Saxena, learned Senior Counsels assisted by Sri K.S. Kushwaha and Sri K.S. Shukla, Advocates on behalf of the contesting Respondents and have perused the impugned judgment and orders dated 7th February, 2011 and 21st February, 2011 passed by the learned Single Judge giving rise to the present appeals, the grounds taken in the memo of appeals and the documents filed along them.

16. Learned Senior Counsels appearing on behalf of the Appellants submitted that all the Appellants were selected and appointed as Coordinator/Co-Coordinator on the basis of the written examination and interview and after facing the Selection Committee. Their appointment was for a period of two years which cannot be cut short by changing the terms and conditions unilaterally and that two in the mid of their tenure. According to them, the Government Order dated 2nd February, 2011 would operate prospectively and would not affect their appointment. In the alternative they submitted that the reasons given for issuance of Government Order dated 2nd February, 2011 does not hold much water as under the new Government Order one Coordinator and 7 Co-Coordinators have to be appointed. The Basic Shiksha Adhikari and Assistant Basic Shiksha Adhikari have been appointed as ex officio Coordinator who are already burdened with heavy administrative duties and would not be in a position to discharge the additional responsibility. Thus the very purpose for which Sarva Shiksha Abhiyan Scheme has been launched would be frustrated. The nature and duties which a Coordinator has to perform is very arduous as it requires more than 8 hours of duty for discharging the work of Coordinator including visit of the rural areas for making surprise inspection of the schools to verify the presence of the teachers and the quality of the education, which may not be possible for the officers i.e. Basic Shiksha Adhikari or the Assistant Basic Shiksha Adhikari. Further, the process of selection and appointment of Basic Shiksha Adhikari and Assistant Basic Shiksha Adhikari is made by U.P. Public service Commission through a written examination in which teaching experience is not required whereas the job of a Coordinator and Assistant Coordinator is to ensure successful implementation of Sarv Shiksha Abhiyan which requires strengthening of teaching work also. They further submitted that if in each block five teachers are appointed as Coordinators then the total requirement of teachers would be 4518 and at least these teachers will not be available for regular teaching. Thus, there will be shortage of teachers which cannot be met by changing the norms. According to them, in any case it is the case of replacing one teacher by another teacher which is not permissible under law.

17. Learned Counsel for the Appellant also submitted that the Luck now Bench of this Court in the similar matter has been pleased to pass an interim order in favor of the Petitioners therein, therefore, the learned Single was not justified in ignoring the said interim order and dismissing the writ petitions.

18. The learned Senior Counsel appearing for the Respondents on the other hand submitted that the State Government reviewed the entire method of appointment of Coordinators and Assistant Coordinators at Block Resource Centre and Nyaya Panchayat Resource Centre and came to the conclusion that the Scheme has failed to achieve the target in the field of providing Primary Education up to the mark. The Scheme required drastic amendments, particularly when by Article 21A of the Constitution of India, the State has been enjoined to provide free and compulsory education to all children of the age of six to fourteen years. According to them there are 8249 Nyay Panchayat Resource Centre and 821 Block Resource Centre and accordingly 8249 teachers were required for Nyay Panchayat Resource Centre and 2463 teachers were required as Coordinator and Assistant Coordinator at Block Resource Centre in the ratio of one Coordinator and two Assistant Coordinators thus taking the total number of teachers engaged in the entire State of U.P. as Coordinators/Assistant Coordinators to 10771. Under the new system only 4518 teachers are required as Assistant Coordinators who will also do the teaching work, leaving 6253 teachers for doing regular teaching work. According to them, the Coordinators and Co-Coordinators were only doing the administrative work and were not doing the teaching work. They were being paid the same remuneration and teaching work in the State of U.P. had suffered. They, thus, submitted that the Government Order dated 2nd February, 2011 having been issued as a result of conscious decision of the State Government after evaluating all the pros and cons of the Scheme and anxiety of providing education to the children between the age of 6years and 14 years had rightly not been interfered with by the learned Single Judge.

19. Sri R.N. Singh learned Senior Counsel appearing on behalf of the Respondents submitted that the Luck now Bench has passed the interim order only whereas the learned Single Judge had decided the writ petition finally and therefore, the interim order passed by the Luck now Bench is of no consequence. Even otherwise it is for the Court to pass the interim order in the same terms and conditions or deviate from it.

20. Sri R.N. Singh has relied upon the following decisions in support of his submissions.

1. Babu Ram Ashok Kumar and Anr. v. Antarim Zila Parishad   : AIR 1964 All 534 (FB)

2. Empire Industries Ltd. and Ors. v. Union of India and Ors.   : AIR 1986 SC 662. (wrongly mentioned by the learned Counsel as AIR 1980 SC 679)

3. Ram Kumar v. State of U.P. and Ors.   : 2004 (1) AWC 696.

4. Satish Chandra Shukla v. Mr. Ganga Bux Singh   : 1989 (2) AWC 958 (FB)

21. In reply the learned Counsel for the Appellants submitted that the Government Order dated 2nd February, 2011 changing the norms of the appointment of Coordinators and Co-Coordinators is wholly arbitrary and does not achieve the purpose for which it has been issued. Sri Ashok Khare relied upon the decision of the Apex Court in the case of Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors.   : (1991) 1 SCC 212.

Points Arising For Consideration

22. The following points arise for consideration in this case:

(1) Under what circumstances this Court can interfere in policy decisions taken by the State Government.

(2) Whether the change in policy by issuance of Government Order dated 2nd February, 2011 is arbitrary and unreasonable.

(3) Whether the Appellants have any vested right to continue as Coordinator/Co-Coordinator after the Government dated 2nd February, 2011 is given effect to.

(4) Whether the learned Single Judge was bound to follow the interim order passed in a similar matter by another Single Judge of the Luck now Bench of this Court.

Discussion and Findings

Point No. 1.

23. We have given our thoughtful consideration to the various plea raised by the learned Counsel for the parties. The extent and jurisdiction of a Court to interfere in policy decisions framed either by the Parliament/State Legislators or by the Executive Government is no longer res integra.

24. In the case of Km. Shrilekha Vidyarthi (supra) the Apex Court has held that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the government, even in contractual matters, fails to satisfy the test of reasonableness it would be unconstitutional.

25. In the case of Ugar Sugar Wroks Ltd. v. Delhi Administrative and Ors.   : (2001) 3 SCC 635 the Apex Court has held as follows:

18. ...It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy....

26. In the aforesaid paragraph the Apex Court has further held that the Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

27. In the case of Ms. Aruna Roy and Ors. v. Union of India and Ors. (2002) 7 SCC 368, the Apex Court has held as follows:

96. ...It is ultimately for Parliament to take a decision on the National Education Policy one way or the other. It is not the province of the Court to decide on the good or bad points of an education policy. The Court's limited jurisdiction to intervene in implementation of a policy is only if it is found to be against any statute or the Constitution...

It has further held in paragraph 97 of said Report as follows:

It cannot, however, compel that a particular practice or tradition followed in framing and implementing the policy, must be adhered to. The Court has to keep in mind the above limitations on its jurisdiction and power. It is true that if a policy framed in the field of education or other fields runs counter to the constitutional provisions or the philosophy behind those provisions, this Court must, as part of its constitution duty, interdict such policy.

28. In the case of Union of India and Anr. v. International Trading Co. and Anr.   : (2003) 5 SCC 437 the Apex Court has held as follows:

15. While the discretion to change the policy in exercise of the executive power, when not trammeled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily on by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

29. In the case of Delhi Development Authority and Anr. v. Joint Action Committee, Allottee of SFS Flats and Ors.  : (2008) 2 SCC 672, the Apex Court has held as follows:

64. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty gritties of the policy, or substitute one by the other but it will not be correct to contend that the court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

65. Broadly, a policy decision is subject to judicial review on the following grounds:

(a) if it is unconstitutional;

(b) if it is dehors the provisions of the Act and the Regulations; (c) if the delegate has acted beyond its power of delegation; (d) if the executive policy is contrary to the statutory or a larger policy.

30. In the case of Villianur Iyarkkai Padukappu Maiyam v. Union of India and Ors.   : (2009) 7 SCC 561, the Apex Court has held as follows:

168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or malafide, a decision bringing about change cannot per se be interfered with by the court.

169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

From the aforesaid decisions of the Apex Court, it is clear that a Court can interfere in a policy decision of the Parliament/State Legislatures/Governments if any of the following conditions exist:

(I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.

(II) The change in policy must be made fairly and should not give impression that it was so done arbitrarily on any ulterior intention.

(III) The policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.

(IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.

(V) It is dehors the provisions of the Act or Legislations.

(VI) If the delegatee has acted beyond its power of delegation.

Point No. 2

31. We find that it is not in dispute that each of the Appellants have been appointed as a Coordinator/Co-Coordinator, as the case may be, in terms of the Government Order dated 1st September, 2001 as amended on 29th June, 2002 after appearing in the written examination and interview and facing a Selection Committee. Their term of appointment is of two years which not yet been expired. However, the State Government vide Government Order dated 2nd February, 2011 had made drastic changes in the manner of appointment of Coordinators/Co-Coordinators at various levels. The change has been effected on a review having made of the working of the Coordinators/Co-Coordinators. The State Government found that under Sarva Shiksha Abhiyan, the Resource Centers, especially, Nyay Panchayat Resource Centers are not providing sufficient impetus in education and requires strengthening by way of its reconstitution so that the desired result may be achieved. One of the reasons found by the State Government was that the Head Master/Assistant Teachers of Prathmik Vidyalaya have been appointed as Coordinators at Nyay Panchayat Resource Centre who have also been made Building Incharge in several districts. Moreover, with appointment of the large number of 8249 teachers at Nyay Panchayat Resource Centre there is a shortage of teachers in the institutions is felt, therefore, these teachers may be sent back to their respective institutions. The State Government also found that vide order dated 3rd February, 2009 it has been provided that the Head Master of Uchcha Prathmik Vidyalaya at Nayay Panchayat level run by the Parishad have been made Incharge of all school running in their respective Nyay Panchayat and, therefore, they should be made ex officio Coordinators of Nyay Panchayat Resource Centre which will avoid the dual arrangement. Further, to strengthen the educational work more Co-Coordinators for teaching be appointed and for administrative purpose the Assistant Basic Shiksha Adhikari/Nagar Shiksha Adhikari be made ex officio Coordinators. This new arrangement will result in sparing 4518 teachers who will be available for regular teaching.

32. From the perusal of the Government Order dated 2nd February, 2011, we are of the considered opinion that the change in the policy effected by the State Government is based on relevant considerations and cannot be said to be arbitrary so as to entitle this Court to interfere. It is for the State Government to see that the teaching does not suffer. It is the constitutional obligation to provide free education to the children between the age of 6years and 14 years. This is specially in aid of achieving the avowed object. Therefore, it cannot be said that the policy framed by the Government is arbitrary. The submission of the learned Counsel for the Appellants that one set of teachers are being replaced by another set of teachers is wholly misplaced. The existing Coordinators/Assistant Coordinators were not doing any regular teaching work. They were involved in supervision of teaching work and various other activities as a result of which teaching work in the school suffered. In the new scheme Co-Coordinators are also required to do teaching work which will be a welcome step towards fulfilling the constitutional obligation.

33. The plea that the Government Order dated 2nd February, 2011 would operate prospectively and would not cover the cases of existing Coordinators/Co-Coordinators is not correct. It is to be taken note of that all the Appellants have been appointed as Coordinators/Assistant Coordinators, as the case may be, on a fixed term of two years on deputation basis and they are still holding their lien on their original post. They are not being paid any extra remuneration what they were getting as teachers. Their primary duty is to teach students. If for some reason they have been appointed under a policy and on a review of their working the Government comes to the conclusion that it is not achieving the desired result it is fully entitled to change the policy. The Appellants have no vested rights to say that their appointment as Coordinators/Co-Coordinators cannot be terminated midway. We find from the letter of appointment that a specific condition has been mentioned there that their appointment can be cancelled at any time. That being the position we are of the considered opinion that with the change of policy the Appellants cannot claim any right to continue to complete their full tenure.

34. Applying the test laid down by the Apex Court in the aforesaid cases regarding interference in a policy decision, we are of the considered opinion that above policy framed by the State Government cannot be said to be arbitrary, unreasonable and it is the result of conscious decision on a review of the working of the existing system of Coordinators and Co-Coordinators and State is well within the jurisdiction to change the same in order to achieve the desired result. We may mention here that there is not allegation of mala fied raised against the State Government or the Authorities in framing the said policy. We further find that the change in the policy is of the State Government is well informed by reasons and it is to ensure that the education of the children does not suffer. Therefore, it cannot be said to be arbitrary and unreasonable so as to violate Article 14 of the Constitution of India or other parameters deduced under Point No. 1.

Point No. 3

35. While dealing with Point No. 2 hereinbefore we have already held that the appointment of the Appellant as Coordinators/Co-Coordinators was for a fixed term of 2 years. They were not paid any extra remuneration for that work. We also find that their lien on the original post of teacher has been maintained. Thus their appointment on the post of Coordinator/Co-Coordinator is only by way of deputation even if the appointment has been made by facing a selection process. It can be terminated at any time either by a special or general order as held by this Court in the case of Ram Kumar (supra) that an officiating employee has no right to post and his appointment can be cancelled at any time.

36. In the case of Babu Ram Ashok Kumar and Anr. v. Antarim Zila Parishad   : AIR 1964 All 534, the Full Bench of this Court has held as follows:

(9) A Court of appeal would not interfere with the exercise of discretion by the Court below, if the discretion has been exercised in good faith, after giving due weight to relevant matters and without being swayed by irrelevant matters. If two views are possible on the question, then also the Court of appeal would not interfere, even though it may exercise discretion differently, were the case to come initially before it. The exercise of discretion should manifestly be wrong.

37. Respectfully following the law laid down in the aforesaid case to the facts of the present case, we are of the view that the discretion exercised by the learned Single Judge does not call for any interference as it is in accordance with law.

Point No. 4

38. So far as the question that the learned Single Judge ought to have followed the interim order passed in similar matter by another Single Judge of the Lucknow Bench of this Court is concerned, suffice is to mention that in the present case the learned Single Judge has decided the matter on merits instead of keeping the matter pending and passing an interim order to protect the interest of the parties during the interregnum period.

39. In the case of Empire Industries Ltd. (supra) The apex Court has held as follows:

58. Good deal of arguments were canvassed before us for variation or vacation of the interim orders passed in these cases. Different Courts sometimes pass different interim orders as the Courts think fit. It is a matter of common knowledge that the interim orders passed by particular Courts on certain considerations are not precedents for other cases which may be on similar facts. An argument is being built up now-a-days that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matters on more or less similar facts, there should not be a different order passed nor should there by any variation with that kind of interim order passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have the right to vary or alter such interim orders. We venture to suggest, however, that a consensus should be developed in the matter of interim orders.

40. In the case of S.C. Shukla (supra) in paragraph 7 of the Report the Full Bench has held as follows:

...Argument of applicant further stands answered by Hon'ble Supreme Court in Empire Industries Ltd. v. Union of India AIR 1980 SC 679. It was held:

An argument is being built up now-a-days that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matter on more or less similar fact, there should not be a different order passed nor should there by any variation with that kind of interim order passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have the right to vary or alter such interim orders.

41. In view of the principles laid down in the aforesaid cases, we are of the considered opinion that it is not obligatory for the learned Single Judge to always pass the interim order in the same terms as has already been passed earlier by a coordinate Bench.

Conclusion

42. In view of the foregoing discussions we do find any legal infirmity in the judgment and order passed by the learned Single Judge. All the appeals fail and are hereby dismissed. However, the parties are left to bear their own costs.