

Kiran Mishra Vs State of Uttar Pradesh and others.

Court: Allahabad High Court

Date of Decision: Dec. 18, 2008

Hon'ble Judges: Pradeep Kant, J and Shabihul Hasnain, J

Final Decision: Allowed

Judgement

Shabihul Hasnain, J.

Though there is a delay of four months and 16 days but since the appellant was not impleaded in the writ petition and the order effects her right

adversely to continue on the post of Shiksha Mitra and, therefore, she has filed the special appeal the moment she acquired knowledge of the said

order, we are satisfied that there is no delay in filing the appeal. The limitation for filing special appeal against an order in which appellant has not

been impleaded as a party would run from the date of knowledge of the order and not from the date of passing of the order.

Even otherwise, counsel for the respondents says that he has no objection in case the delay is condoned.

The delay is, therefore, condoned.

Admittedly, the appellant was not impleaded as an opposite party in the writ petition, though the effect of the relief granted is that the appellant,

who was having to her credit renewed term as Shiksha Mitra, is being sought to be removed from office and the private respondent is to be

appointed on the said post.

No order which effects the right of a party, can be passed, unless such a person has been impleaded in the writ petition, nor the order in his/her

absence would be binding upon him/her.

Though the learned counsel for the appellant has made an attempt to argue the matter on merits but we are of the considered opinion that since the

order impugned cannot be sustained for the simple reason that the same has been passed without necessary party being impleaded, the order

deserves to be set aside on this ground alone.

We, therefore, quash the order dated 1.7.08 passed by the learned Single Judge.

The matter is remitted to the learned Single Judge for being decided afresh. The present appellant shall be impleaded as opposite party no. 5 in the

writ petition and she shall file counter affidavit within three weeks.

The special appeal is allowed.