ABHIMANYOO RAM

v.

STATE OF U.P. & ANR.

(Civil Appeal No. 7211 of 2008)

NOVEMBER 21, 2008

[R.V. RAVEENDRAN AND J.M. PANCHAL, JJ.]

Interim order:

Selection – To post of Medical Officer – Plea by appellant-writ petitioner for dismissal of writ petition as not pressed, after getting relief under interim order – High Court while dismissing the writ petition as not pressed, vacated the interim order and directed the State Authority to revoke selection of appellant, in case he had been selected/ appointed because of participation in the process of selection under the interim order – Direction challenged – Held: Courts should bestow caution while dismissing cases where interim relief had been granted, as not pressed or as withdrawn – Any attempt by a litigant to retain benefit of interim order by avoiding final adjudication, requires to be deprecated – However, Court cannot assume, that in every case where a request for withdrawal is made, the request is a dishonest attempt to avoid adjudication after securing benefit of interim order – If Court fails to inform the petitioner about the consequential directions proposed while dismissing the petition as not pressed, before making the order, there is every likelihood of the petitioner being denied the choice of proceeding with the case – On facts, appellant was not put on notice about the consequential direction to be issued on acceptance of his request for withdrawal, nor given the option of continuing with the case, if he did not want dismissal of his petition with any added directions – To that extent there was violation of a facet of principles of natural justice – Hence, writ petition filed by appellant restored to file of High Court,

with permission to appellant to pursue it in accordance with law – Constitution of India, 1950 – Art.226 – Principle of natural justice – Requirement of fairness to litigant.

Appellant was enrolled/registered with the Board of Indian Medicine, Uttar Pradesh. He got his name deleted from the State Register of Indian Medicine so as to enroll himself in another State but later again sought re-enrolment in Uttar Pradesh which was granted with prospective effect. Since appellant was denied interview for selection by the respondents to the post of Medical Officer, as his re-enrolment did not fulfil the eligibility requirements, he wanted his registration to be restored with retrospective effect from the date of original enrolment and filed a writ petition before the High Court seeking a direction to respondents to call him for interview for the post of Medical Officer. In the said writ petition, an interim order was granted permitting appellant to appear in such interview. By making use of the said interim order, appellant secured an order from the Board of Indian Medicine, UP, restoring his enrolment from the date of initial registration. Consequently, appellant was called for the interview whereafter, he moved the Court for dismissal of the writ petition as not pressed.

The High Court while dismissing the writ petition as not pressed, vacated its interim order and directed the State Authority to revoke selection of appellant, in case he had been selected/appointed because of participation in the process of selection under the interim order.

In appeal to this Court, the appellant contended that when he made a submission that he did not wish to press the writ petition, he *bonafide* thought that the Court would merely pass an order *simplicitor* dismissing the petition as not pressed. He contended that had he known that any conditions or directions detrimental to his interest would be added to the order, while dismissing his

petition as not pressed, he would not have sought dismissal of the writ petition. A

Allowing the appeal, the Court

HELD:1.1. The assumption of the appellant that the High Court made unwanted or unwarranted observation or issued any direction which was uncalled for, while dismissing his petition as not pressed, is not correct. [Para 4] [7-H] B

1.2. The High Court merely spelt out expressly, the consequences of the dismissal of the writ petition. Such explicit directions have become necessary to check a raising trend among litigants to secure the relief as an interim measure, and then avoid adjudication on merits, particularly in matters relating to examinations and recruitment. [Para 4] [8-A-B] C D

1.3. Any attempt by a litigant to retain the benefit of the interim order by avoiding final adjudication, requires to be deprecated. In fact, it requires to be dealt with sternly. Courts should bestow caution while dismissing cases where interim relief had been granted, as not pressed or as withdrawn. The courts cannot proceed on the assumption that all concerned would know about the legal consequences of dismissal and therefore, it is not necessary to make any order in regard to the interim relief already granted. Even though the legal effect of dismissal on withdrawal, is vacation of the interim order, the concerned respondents not being aware of the legal consequences, will not take consequential action but continue the benefit extended to the petitioner by the interim order, unless there is a specific direction spelling out the consequences. Sometimes, the concerned departmental officials, on account of collusion with the petitioners who had obtained the interim relief, will not withdraw or reverse the benefit granted to the petitioner E F G H

A in pursuance of the interim order, when the petition is withdrawn or dismissed as not pressed. Therefore, appropriate consequential directions cancelling or vacating the interim order should be passed so as to restore *status quo* ante. In cases where the prayer for B dismissal (as not pressed or withdrawn) is made even before the respondent is served, then the order vacating the interim order should be communicated to the authority against whom the interim order was issued, so that any benefit extended as a consequence of the interim C order, can be withdrawn or reversed. The only exception is where the respondents agree for the continuance of the interim order as a final relief, or agree that the benefit of the interim order already granted need not be disturbed, in which event, the court should record such D submission and pass appropriate consequential orders. [Para 5] [8-F-H; 9-A-D]

2.1. Though the High Court took care to issue appropriate consequential directions by vacating the interim order and the directions are not unwarranted E additions and in the usual course such an order would not have called for interference, but there is need to interfere with the order in the present case. [Para 6] [9-E]

2.2. Fairness to the litigant requires that the court, F when a request for dismissal is made, should inform or indicate to the petitioner or his counsel that as a consequence of such dismissal, the benefit of the interim relief already granted will be revoked or withdrawn. It is possible that a litigant may make a prayer for withdrawal without any ulterior design or motive, and that he would G not have sought dismissal of the petition at all, if he had known that the benefit of the interim order will be withdrawn as a consequence of the dismissal. The Court cannot assume, that in every case where a request for withdrawal is made, the request is a dishonest attempt H

to avoid adjudication after securing the benefit of an interim order. If the court fails to inform the petitioner about the consequential directions proposed while dismissing the petition as not pressed, before making the order, there is every likelihood of the petitioner being denied the choice of proceeding with the case. In law, no doubt, a party withdrawing or not pressing a petition, is presumed to know the legal consequences thereof. His counsel is also expected to advise him. But it does not follow that the court need not inform the petitioner about the consequential directions which it proposes to issue, when dismissing a case on his request. [Para 6] [9-F-H; 10-A-B]

2.3. The appellant was not put on notice about the consequential direction to be issued on acceptance of the request for withdrawal, nor given the option of continuing with the case, if he did not want dismissal of his petition with any added directions. To that extent it can be said that there has been violation of a facet of principles of natural justice. [Para 7] [10-C-D]

2.4. The order of the High Court is accordingly set aside and the writ petition is restored to the file of the High Court, with permission to the Appellant to pursue the writ petition in accordance with law. [Para 8] [10-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7211 of 2008.

From the final Judgment and Order dated 25.2.2008 of the High Court of Judicature in Civil Writ Petition No. 53286 of 2007.

Aftab Ali Khan, Anjum Ahmed and Zaki Ahmed Khan for the Appellant.

The Order of the Court was delivered by

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ORDER

R.V. RAVEENDRAN J. 1. Leave granted. The respondents though served, remain unrepresented.

2. The appellant was enrolled/registered with the Board
B of Indian Medicine, Uttar Pradesh on 23.7.2003. He got his name deleted from the State Register of Indian Medicine so as to enroll himself in another State. He again sought re-enrolment in Uttar Pradesh which was granted with prospective effect from 23.8.2007. He was denied interview for selection
C by the respondents to the post of Medical Officer, as his re-enrolment did not fulfil the eligibility requirements. He therefore wanted his registration to be restored with retrospective effect from the date of original enrolment. He filed a writ petition before the Allahabad High Court seeking a direction to
D respondents to call him for interview for the post of Medical Officer (Ayurved/Unani). In the said petition, an interim order was granted on 31.10.2007, permitting him to appear in such interview. By making use of the said interim order, he secured an order from the Board of Indian Medicine, UP, restoring his
E enrolment from the date of initial registration. Consequently, he was called for the interview. Thereafter, he moved the court for dismissal of the writ petition as not pressed. The High Court, on 25.2.2008, accordingly dismissed the writ petition by the following order:

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> "Learned counsel for the petitioner states that petitioner is not interested in pursuing this writ petition and the same may be dismissed as not pressed.
>
> In view of the statement so made by the learned counsel
G for the petitioner, this writ petition is dismissed as not pressed. Interim Order, granted by this Court dated 31st October, 2007 stands discharged.
>
> If the petitioner has participated in the process of selection because of the said interim order granted in his favour by

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this Court in this writ petition and ultimately he has been selected, it goes without saying that such participation in the process of selection by the petitioner would be rendered illegal, inasmuch as the interim order of this Court dated 31st October, 2007 stands merged in the final order of this Court, where under this writ petition has been dismissed. *Petitioner cannot be permitted to draw the benefit from the interim order granted by this Court dated 31st October, 2007.*

State authority is directed to take appropriate action in the matter and to ensure that in case the petitioner had been selected/appointed because of participation in the process of selection under the interim order of this Court dated 31st October, 2007, suitable orders revoking the selection/appointment of the petitioner shall be issued.

This order may be communicated to respondent no.1 i.e. Secretary, Karmik, Government of UP, Lucknow by the learned Statnding Counsel within one week."

[emphasis supplied]

3. The appellant is aggrieved by the observation in the said order that he cannot draw benefit from the interim order and the direction for revocation of the selection, if any, made in pursuant of the interim order. The appellant claims that when he made a submission that he did not wish to press the writ petition, he *bona fide* thought that the court would merely pass an order simplicitor dismissing the petition as not pressed. The appellant submits that had he known that any conditions or directions detrimental to his interest would be added to the order, while dismissing the petition as not pressed, he would not have sought dismissal of the writ petition.

4. The assumption of the appellant that the High Court has made any unwanted or unwarranted observation or issued any direction which is uncalled for, while dismissing his petition as

not pressed, is not correct. The High Court has merely spelt out expressly, the consequences of the dismissal of the writ petition. Such explicit directions have become necessary to check a raising trend among litigants to secure the relief as an interim measure, and then avoid adjudication on merits, particularly in matters relating to examinations and recruitment. The *modus operandi* adopted in such matters is as follows: The litigant approaches the court in the last minute for relief with an interim prayer. He persuades the court to grant the interim relief by highlighting the urgency, irreparable loss and balance of convenience. He obtains interim relief and secures the desired benefit with the help of such interim order. Once the purpose of securing the interim order is achieved (particularly where the interim order granted is the same as the final relief prayed), he makes an innocuous submission to the court that he does not want to press the petition and gets the matter disposed of, thereby achieving the goal of securing relief without adjudication. He takes advantage of the fact that invariably courts do not spell out the consequences, when dismissing the petitions as not pressed. The result is that in many cases, a litigant who would not get the relief on detailed scrutiny of his claim during a contested final hearing, gets away with undeserved relief secured by way of an interim order.

5. Any attempt by a litigant to retain the benefit of the interim order by avoiding final adjudication, requires to be deprecated. In fact, it requires to be dealt with sternly. Courts should bestow caution while dismissing cases where interim relief had been granted, as not pressed or as withdrawn. The courts cannot proceed on the assumption that all concerned would know about the legal consequences of dismissal and therefore, it is not necessary to make any order in regard to the interim relief already granted. Even though the legal effect of dismissal on withdrawal, is vacation of the interim order, the concerned respondents not being aware of the legal consequences, will not take consequential action but continue the benefit extended to the petitioner by the interim order, unless

there is a specific direction spelling out the consequences. Sometimes, the concerned departmental officials, on account of collusion with the petitioners who had obtained the interim relief, will not withdraw or reverse the benefit granted to the petitioner in pursuance of the interim order, when the petition is withdrawn or dismissed as not pressed. Therefore, appropriate consequential directions cancelling or vacating the interim order should be passed so as to restore *status quo ante.* In cases where the prayer for dismissal (as not pressed or withdrawn) is made even before the respondent is served, then the order vacating the interim order should be communicated to the authority against whom the interim order was issued, so that any benefit extended as a consequence of the interim order, can be withdrawn or reversed. The only exception is where the respondents agree for the continuance of the interim order as a final relief, or agree that the benefit of the interim order already granted need not be disturbed, in which event, the court should record such submission and pass appropriate consequential orders.

6. In this case, the High Court has taken care to issue appropriate consequential directions by vacating the interim order. The directions are not unwarranted additions. In the usual course such an order would not have called for interference. But there is need to interfere with the order. Fairness to the litigant requires that the court, when a request for dismissal is made, should inform or indicate to the petitioner or his counsel that as a consequence of such dismissal, the benefit of the interim relief already granted will be revoked or withdrawn. It is possible that a litigant may make a prayer for withdrawal without any ulterior *design or motive,* and that he would not have sought dismissal of the petition at all, if he had known that the benefit of the interim order will be withdrawn as a consequence of the dismissal. The Court cannot assume, that in every case where a request for withdrawal is made, the request is a dishonest attempt to avoid adjudication after securing the benefit of an interim order. If the court fails to inform the petitioner about the

A consequential directions proposed while dismissing the petition as not pressed, *before making the order,* there is every likelihood of the petitioner being denied the choice of *proceeding with* the case. In law, no doubt, a party withdrawing or not pressing a petition, is presumed to know the legal B consequences thereof. His counsel is also expected to advice him. But it does not follow that the court need not inform the petitioner about the consequential directions which it proposes to issue, when dismissing a case on his request.

7. In this case, the appellant was not put on notice about C the consequential direction to be issued on acceptance of the request for withdrawal, nor given the option of continuing with the case, if he did not want dismissal of his petition with any added directions. To that extent it can be said that there has been violation of a facet of principles of natural justice.

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8. We therefore allow this appeal and set aside the order dated 25.2.2008 of the High Court and restore the writ petition to the file of the High Court, with permission to the Appellant to pursue the writ petition in accordance with law.

E B.B.B. Appeal allowed.