HIGH COURT OF JUDICATURE MADHYA PRADESH, JABALPUR

WRIT PETITION NO.2594 OF 2016

Chakresh Patel

Vs.

State of M.P. and others

Present :
Shri Praveen Dubey, Advocate for the petitioner.
Shri Piyush Jain, Panel Lawyer for the respondents/State.
Shri Sanjay K. Agrawal, Advocate with Shri Piyush Bhatnagar, Advocate for the respondent No.4.

Whether Approved for Reporting : Yes

Law Laid Down: **Power of review and effect of interim order** – **(i)** writ petition disposed of simply using the word "**consider**" without adverting to the merits of the case – interpretation of the word 'consider' – reliance is placed on ***A.P. SRTC and others v. G. Srinivas Reddy and others, (2006) 3 SCC 674 . (ii)*** The circumstances in which the departmental authorities can and cannot review their own order when directed by the High Court to consider the case of the petitioner - reliance is placed on ***A.P. SRTC and others v. G. Srinivas Reddy and others, (2006) 3 SCC 674. (iii)*** Effect & dismissal/withdrawal of writ petition on the interim order passed therein – reliance is placed on **Kalabharati Advertising vs Hemant Vimalnath Narichania and others, (2010) 9 SCC 437**

Significant Paragraph Nos.15, 16, 17, 18, 22 & 23

ORDER

(Passed on this the 30th day of August, 2017)

The petitioner before this Court was appointed on the post of District Manager (Public Services) on contract basis, he is aggrieved by the order dated 20.1.2016 passed by the respondent No.3/Collector whereby his services have been terminated and in his place respondent No.4/Smt. Sharda Saraf who was earlier posted in place of the petitioner has been reinstated.

2. In brief the facts of the case are that the petitioner is a

graduate in Computer Application (BCA) and has also done Masters in Business Administration (MBA) and was until now working as the District Manager (Public Services) Damoh on contract basis under Public Service Management Department.

3. The case of the petitioner is that earlier the respondent No.4/Smt. Sharda Saraf was appointed on the aforesaid post of District Manager but her services were terminated vide order dated 30.7.2014 (Annexure P/14) and on the said vacant post, the petitioner was appointed on 21.5.2015 after following due selection process wherein an advertisement was issued in the month of March, 2015 in the leading newspapers and the official website of respondents No.1 to 3. And, since the petitioner fulfilled the educational qualification required for the aforesaid post, he also submitted his application and subsequently got selected having topped the merit list, and on the basis of the academic records and the interview amongst first 10 candidates.

4. The petitioner's submission is that initially the contract appointment was for one year only, which was extendable by four terms i.e. maximum period of five years with the stipulation that even after 5 years as per the performance of the appointee the term shall be extended. After the petitioner's appointment, an agreement Annexure - P/11 dated 03.06.2015 was also executed between the petitioner and respondent No.3. The petitioner's further submission is that prior to his appointment as District Manager he was already serving in the same department on the post of Office Assistant (Public

Services) Damoh through direct appointment dated 27.8.2011. It is further submitted that the respondent No.4 was appointed on the aforesaid post vide order dated 27.8.2011 and as already stated above initially the contract period was for one year and lastly it was extended by order dated 2.9.2013 issued by the respondent No.3 and was to last till 31.8.2014 but during this period many complaints were made against the respondent No.4 and she was also served with many show cause notices by the respondent No.3 to mend her work and behaviour but as contended by the petitioner instead of mending her work, she started making allegations against her superiors and even threatened to commit suicide. On the show cause notice issued by the respondent No.3, a reply was also filed by the respondent No.4 and a detailed order was passed by the respondent No.3 terminating the services of the respondent No.4 on 30.7.2014 vide Annexure P/14. Due to her threats to commit suicide, a complaint was also lodged on 31.7.2014 and was also forwarded by the predecessor of respondent No.3 to the Local Police Heads seeking necessary action against the respondent No.4. Copies of complaint and the report lodged with the police authority are also placed on record by the petitioner as Annexure P/15.

5. After respondent No.4's termination, she preferred an application on 2.8.2014 before the respondent No.3 and sought review/recall of termination order dated 30.7.2014. The aforesaid application was rejected vide order Annexure P/17 dated 14.8.2014 by the respondent No.3 on the ground that there

is no provision in the recruitment Rules to review or recall an order of termination.. The aforesaid order has not been challenged by the respondent No.4 in any Court and, as submitted by the petitioner, the same has attained finality and is binding on the respondent No.4. The respondent No.4 also preferred a Writ Petition No.12125/2014 before this Court challenging her order of termination dated 30.7.2014. In the aforesaid writ, on 24.4.2015 as an interim measure it was directed by this Court that any appointment made on the post left by the respondent No.4 shall be subject to the outcome of the aforesaid petition and because of this reason in the appointment order of the petitioner as clause 25 it is also mentioned that the appointment shall be subject to the final outcome of the aforesaid petition.

6. Petitioner's further contention is that the respondent No.4 had also filed a complaint before the Human Rights Commission in which the respondent No.3 submitted his detailed reply denying the allegations made by the respondent No.4. In Writ Petition No.12125/2014 filed by the respondent No.4, a return was filed by the State denying all the allegations made therein justifying the termination order dated 30.7.2014. The copy of the aforesaid return is also filed by the petitioner as Annexure P/20.

7. In the circumstances, when W.P. No.12125/2014 came up for hearing before this Court, the petition was disposed of with the following observations :

"Even if the order of termination of the

> petitioner is set aside, the petitioner would not get the benefit of reinstatement because the contract period of the petitioner was extended upto 31.8.2014.
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> In this view of the matter, in my opinion, the relief in regard to reinstatement of service in favour of the petitioner cannot be granted even if this Court held that the order impugned Annexure P-17 is contrary to law.
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> Learned counsel for the petitioner has contended that the other persons have been granted extension of Contract appointment. However, looking to the fact that the services of the petitioner were terminated earlier, this Court cannot issue direction in regard to extension of Contract appointment.
>
> It is for the employer to consider the case of the petitioner whether his Contract appointment can be extended or not, in view of the fact that there are allegations against the petitioner."
>
> (emphasis supplied)

8. The petitioner's contention is that this Court had categorically dismissed the petition preferred by the petitioner, however in the last para a discretion was allowed to the respondents to consider the case of the respondent No.4 that whether her contract appointment can be extended or not. The case of the petitioner is that in the garb of the aforesaid final order passed by this Court in W.P. No.12125/2014, the respondents No.3 and 4, in connivance with each other have been able to dilute the entire proceeding which was initiated against the respondent No.4, which was disciplinary in nature and in which the respondent No.4 was found unfit for further

service. The petitioner's contention is that despite dismissal of writ petition, the respondent No.3 has passed the order of appointment dated 20.1.2016 of respondent No.4 without considering the fact that the order which was earlier passed by this Court that any appointment made on the post of respondent No.4 shall be subject to final outcome of the petition got merged in the final order and no such further relief was granted to the respondent No.4 in her petition, in fact, the same was dismissed with the aforesaid direction to the respondent No.3 to consider the case of the respondent No.4 whether her contract appointment can be extended or not in view of the fact that there are allegations against the petitioner.

9. It is further contended by the petitioner that before passing the impugned order Annexure P/1 dated 20.01.2016 no notice or any opportunity of hearing was extended to the petitioner, hence the same is liable to be quashed on this basis only for having passed in violation of the principles of natural justice. It is further contended by the petitioner that he was appointed on the said post during the pendency of the petition after following due procedure and he could not have been removed from service to accommodate the respondent No.4 against whom in the earlier round of litigation serious allegations were made. It is further submitted that the respondent No.3 has literally reviewed the order passed by his predecessor which authority did not vest with the respondent No.3 as no review can be made in the absence of any specific provision specially when the same reason was also adopted by

the predecessor of respondent No.3 in the order dated 14.8.2014 holding that the review is not maintainable which was passed on an application filed by respondent No.4 for review of the order of termination. The petitioner has submitted that the authority has acted as a quasi judicial authority despite it being an administrative authority and has also relied upon the following judgments in this behalf to buttress his arguments :

(i) **Indian National Congress (I) vs. Institute of Social Welfare and others, (2002) 5 SCC 685** (para 20, 21, 22, 25 & 27).

(ii) **State of H.P. vs. Raja Mahendra Pal and others, (1999) 4 SCC 43** (para 8).

(iv) **Kalabharati Advertising vs Hemant Vimalnath Narichania and others, (2010) 9 SCC 437** (paras 12, 29 and 36).

10. It is further contended that in W.P. No.12125/2014 no efforts were made by the respondent No.4 to implead the petitioner as one of the parties even subsequently also no notice of hearing was given to the petitioner. It is further submitted that even otherwise respondent No.4 did not merit her reinstatement specially in the light of the threat extended by her to commit suicide and on account of her poor performance. Thus in these circumstances, the petitioner has sought to quash the impugned order Annexure P/1 dated 20.1.2016 passed by the respondent No.3.

11. In return, the respondents No.1 to 3 have submitted that no illegality has been committed by the respondent No.3 in passing the impugned order in the light of the order passed by this Court in W.P. No.12125/2014 wherein this Court had

allowed the respondents to consider the case of the petitioner and since the respondent No.3 has reinstated the respondent No.4, hence as a natural corollary the appointment of the petitioner also stood cancelled. It is further submitted by the respondents that the petitioner had enough knowledge that his appointment is conditional and would be subject to the final decision of W.P. No.12125/2014 and despite knowing all these facts without even seeking to intervene in W.P. No.12125/2014 the petitioner cannot now be allowed to raise any objection as he has accepted his appointment with open eyes and having full knowledge regarding the dispute which was going on. The respondents No.1 to 3 have acted upon the direction issued by this Court, which provides that "It is for the employer to consider the case of the petitioner whether his Contract appointment can be extended or not, in view of the fact that there are allegations against the petitioner." It is further contended by the respondents that in pursuance of the aforesaid order dated 26.6.2015 the respondent No.4 filed a detailed representation on 14.8.2015 supported with documents for extension of contractual appointment which have been found to be favourable to the respondent No.4 for the reason that the earlier termination of respondent No.4 was in violation of the terms and conditions stipulated in the initial order of appointment and it was further submitted that the fine was imposed in violation of the terms and conditions of the contract appointment.

12. It is further submitted that vide order dated 20.1.2016

the respondent No.3 has also concluded that had there been any irregularities and illegalities committed by respondent No.4 while she was in service, then her services could not have been extended as per terms and conditions of the appointment order. It is further submitted that extension of contractual services of respondent No.4 was evaluated as per clause 1 of appointment order dated 7.9.2011 and thus no illegality has been committed by the respondent No.3 in passing the impugned order. It is further submitted that the impugned order cannot be said to be passed in review jurisdiction but the same has been passed in pursuance to the direction issued by this Court in W.P. No.12125/2014 vide order dated 26.6.2015. It is further submitted that the petitioner has also accepted the order passed by this Court whereby it is directed to the respondent No.3 to consider the extension of contractual service of respondent No.4 and hence no challenge can be made to the order dated 20.1.2016. It is further submitted that the order dated 20.1.2016 is not an order of review or recall, in fact, it is an order of extending the contractual service of the respondent No.4 while exercising the administrative powers in pursuance of the directions issued by this Court in W.P. No.12125/2014.

13. Shri Sanjay K. Agrawal, learned counsel for the respondent No.4 has also supported the view expressed by the counsel for the respondent No.3 and it is further submitted that a conspiracy was hatched by the petitioner himself right from the beginning to ensure the ouster of respondent No.4 by one way or the other and after succeeding in ousting the respondent

No.4, the petitioner got himself appointed by exercising his influence over other respondents. It is further submitted by the counsel for the respondent No.4 that although initially a fine of Rs.250/- was imposed by the respondent No.3 but on evaluation of representation dated 23.8.2015 submitted by respondent No.4, the order of imposition of fine was recalled vide order dated 20.9.2013 (Annexure R/4-3). It is further submitted that no further action was initiated against the respondent No.4 under clause 21 of the contract which provided for the imposition of fine of Rs.250/- and that if the fine is imposed for more than two times on the employee then on the third occasion his or her services may be terminated, and since clause 21 was not invoked in the respondent No.4's case, no fault can be found when her services have been extended vide order dated 1.9.2012 and 2.9.2013 issued by the respondent No.3. It is further submitted that the respondent No.4 was never given one month's prior notice before terminating her service in terms of clause 13 of the contract appointment order dated 7.9.2011 and thus the termination order in itself was arbitrary and illegal. It is further submitted that in the petitioner's appointment order it is clearly provided in clause 25 that his appointment shall be subject to the final order passed by this Court in W.P. No.12125/2014 and thus despite having the knowledge of all the proceedings, the petitioner has made a lame attempt to assail the impugned order dated 20.1.2016. It is further submitted that the order dated 26.6.2015 passed in W.P. No.12125/2014 was also not challenged by the petitioner in any proceeding of review or

appeal and as such he has also accepted the same and he cannot be allowed to open a new chapter of dispute and the order dated 20.1.2016 cannot be said to be an order passed in exercise of the review jurisdiction, in fact the same has been passed in pursuance to the order passed by this Court in W.P. No.12125/2014. Thus, it is submitted by the respondent no.4 that the respondent No.3 was well within his jurisdiction to pass the impugned order. It is further submitted that the respondent No.4 has already given her joining and is discharging on the post of District Manager and as such no interference is required in the impugned order passed by the respondent No.3. The respondent No.4 has also relied upon the decision of Apex Court in the case of **R.R. Verma and others vs Union of India and others (1980) 3 SCC 402** (para 5) **and Vinod Kumar vs State of Haryana and others (2013) 16 SCC 293** (para 26).

14. Heard, the learned counsels for the parties and perused the record.

15. From the record, one point that emerges from the pleadings of each of the parties is the interpretation of the order passed by this Court in W.P. No.12125/2014, the same reads as under:-

> "Even if the order of termination of the petitioner is set aside, the petitioner would not get the benefit of reinstatement because the contract period of the petitioner was extended upto 31.8.2014.
>
> In this view of the matter, in my opinion, the relief in regard to reinstatement of service in favour of the petitioner cannot be

> granted even if this Court held that the order impugned Annexure P-17 is contrary to law.
>
> Learned counsel for the petitioner has contended that the other persons have been granted extension of Contract appointment. However, looking to the fact that the services of the petitioner were terminated earlier, this Court cannot issue direction in regard to extension of Contract appointment.
>
> It is for the employer to **consider** the case of the petitioner whether his Contract appointment can be extended or not, in view of the fact that there are allegations against the petitioner."
>
> (emphasis supplied)

As is apparent from the aforesaid order, the bone of contention is the word "consider" which has been used by this court without passing any order on the merits of the case. Although, this court has taken note of the fact that the petitioner's (the respondent No.4 in the present petition) services were terminated on account of certain allegations. Thus, unless this court deciphers the true meaning of the word 'consider', no effective order can be passed on the rival contentions of the parties.

16. In this regard, reference may be made to the judgment of the Apex court in the case of ***A.P. SRTC and others v. G. Srinivas Reddy and others, (2006) 3 SCC 674*** wherein, while discussing the scope of the word 'consider', the following observations have been made by the Apex Court:-

> "**13.** Learned counsel for the respondents made an alternative submission that the relief

granted to the respondents may be sustained on the reasoning adopted by the learned Single Judge. He submitted that having regard to the order in WP No. 30220 of 1997 which had attained finality, the Corporation had no choice but to consider the cases of the respondents for absorption by treating them as casual labour employed by the Corporation. This takes us to the effect of the orders dated 5-11-1991 and 17-3-1998 made in the earlier writ petitions, directing the Corporation to **"consider"** the cases of the respondents.

14. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to "consider", it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner(s) in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of the prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to **"consider"** and decide the matter again. The power of judicial review under Article 226 concentrates and lays

emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct the authorities to **"consider"**, in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to "consider" and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs **"consideration"** without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to **"consider" afresh**, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to "consider" the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to "consider" the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

18. We may also note that sometimes the High Courts dispose of the matter merely

with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to "consider" the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, **the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief.** Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority

> deciding it. Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".
>
> **20.** Therefore, while disposing of the writ petitions with a direction to "consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter.**"**
>
> (emphasis supplied)

17. Now, in the light of the afroresaid analysis of the word 'consider', we may now examine the facts of the present case and the import of the word, 'consider'. Admittedly, this court in WP No.12125/2014 has passed the order dated 26.06.2015 without adverting to the merits of the case and has simply directed the respondents to consider the case of the respondent no.4 in the light of her order of termination. Although, this court could have directed the respondents to 'consider the case of the petitioner afresh' or to 'reconsider the case of the petitioner' but instead the only dircction which was made was:-

> "It is for the employer to **consider** the

> case of the petitioner whether his Contract appointment can be extended or not, in view of the fact that there are allegations against the petitioner."

Thus, it was not an unqualified order merely directing the authority to consider the matter but it was an order with an expression "in view of the fact that there are allegations against the petitioner" as is described in para 17 of ***A.P. SRTC (supra)*** case.

18. In the considered opinion of this court, on the basis of the aforesaid order the only order which could be passed by the respondent no.3 was that if the respondent no.4's termination is set aside by this court, in that case they can consider the extension of the services of the petitioner and nothing more, specially when this court did not reflect on the merits of the case, did not quash the order of termination of the services of the respondent no.4 and did not pass any order directing the respondents to consider the case of the respondent no.4 afresh, in such case it was not open to the respondents to pass the impugned order in such a fashion by wiping out all the earlier orders passed by them only and also contrary to their own stand in the writ petition No.12125 of 2014 wherein it is submitted by the respondents that the order of termination of the respondent no.4 does not call for any interference. It is apparent that in the garb of the order passed by this court, the authorities had gone a bit too far in interpreting the order passed by this court as has been observed by the Apex court in the case of ***G. Srinivas***

***Reddy* (supra)**. In the considered opinion of this court it was for the counsel for the respondent no.4 to seek the appropriate order from this court when her petition was being disposed of.

19. So far as the contention of the learned counsel for the petitioner regarding power of the respondent No.3 to review its own order and whether it was a judicial or a quasi-judicial authority is concerned, in the considered opinion of this Court the same is not relevant after the order was passed by this Court in W.P. No.12125/2014.

20. This Court has heard Shri Sanjay K Agrawal, learned counsel for the respondent no.4 at length wherein he has tried to justify the passing of the impugned order dated 20.01.2016 by the respondent no.3 on merits but in the opinion of this court it is not the order but the process which is adopted to pass the said order is in issue. Having said so, this court cannot allow the respondents to proceed with the matter by interpreting the order passed by this court in a manner which suits them the best to the disadvantage of the petitioner who was appointed after following the due procedure. In order to do justice with the respondent no.4, this court cannot do injustice with the petitioner.

21. If the contentions of respondent no.4 are accepted that armed with the order passed by this Court in W.P. No.12125 of 2014 the respondent No.3 had the authority to pass the order afresh or review their own order, then I am afraid that it would be at the cost of setting up a bad precedent. It is true that in WP No.12125/2014 there was an interim direction in favour of the

respondent no.4 which reads as under:-

> "Having heard learned counsel for the parties, it is directed that any appointment made to the post in question shall be subject to the result of this petition."

The aforesaid order is also reflected in the order dated 21.05.2015 of the appointment of the petitioner wherein at condition No.25 it is specifically mentioned that the appointment is subject to the final decision of the pending W.P. No.12125 of 2014. But, as the luck would have had it, the said writ petition was decided without quashing the impugned order on merits, without assigning any reasons and by simply giving directions to the respondents to consider the case of the petitioner in the light of the allegations made against the respondent No.4. Since the aforesaid writ petition was disposed of without any order on merits, it cannot be said that the interim order still continued and did not merge in the final order as there was no final order on merits of the case. Otherwise also at the time of finally disposing of the writ petition, this court could also have directed that the appointment of the petitioner shall be subject to any order passed by the Authorities who were allowed to consider the case of the respondent no.4 but in the absence of the same, it cannot be presumed that the interim order passed by this court in W.P. No.12125/2014 would still continue to hold the field despite disposal of the petition without adverting to the merits of the case.

22. In the case of ***Kalabharati Advertising (supra),*** the

Hon'ble Apex court had the occasion to deal with the question of power of review as also the effect of an interim order if the petition has been dismissed or withdrawn. The relevant para of the same reads under:-

> "**Review in absence of statutory provisions**
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> **12.** It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide *Patel Chunibhai Dajibha* v. *Narayanrao Khanderao Jambekar* and *Harbhajan Singh* v. *Karam Singh*.)
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> **13.** In *Patel Narshi Thakershi* v. *Pradyuman Singhji Arjunsinghji*, *Major Chandra Bhan Singh* v. *Latafat Ullah Khan*, *Kuntesh Gupta (Dr.)* v. *Hindu Kanya Mahavidyalaya*, *State of Orissa* v. *Commr. of Land Records and Settlement* and *Sunita Jain* v. *Pawan Kumar Jain* this Court held that the power to *review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication* and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.
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> **14.** Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/ modification/ correction is not permissible.

Case dismissed/withdrawn — Effect on interim relief

15. No litigant can derive any benefit from the mere pendency of a case in a court of law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the court. [Vide *A.R. Sircar (Dr.)* v. *State of U.P.*, *Shiv Shankar* v. *U.P. SRTC*, *Arya Nagar Inter College* v. *Sree Kumar Tiwary*, *GTC Industries Ltd.* v. *Union of India* and *Jaipur Municipal Corpn.* v. *C.L. Mishra*.]

29. The High Court could not have allowed the Corporation to recall its earlier order and pass a fresh order, that too, without giving an opportunity of hearing to the appellant and the Society. Review is a statutory remedy. In spite of several queries put by us to the learned counsel for the respondents, no provision for review under the statute could be brought to our notice. The court cannot confer a jurisdiction upon any authority. Conferring jurisdiction upon a court/tribunal/authority is a legislative function and the same cannot be conferred either by the court or by the consent of the parties. Such an order passed

> by the High Court is without jurisdiction and, therefore, a nullity. Any order passed in pursuance thereof, also remains unenforceable and inexecutable. More so, the High Court could not have permitted the Corporation to pass an order without giving an opportunity of hearing to the appellant and the Society.
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> **36.** After obtaining interim relief, a party cannot avoid final adjudication of the dispute on merit and claim that he would enjoy the fruits of interim relief even after withdrawal/dismissal of the case. Law certainly would not permit such a course. Respondent 1 is a practising advocate. He is not a layman, nor can it be assumed that he could not understand the consequences of withdrawal of the writ petition. Therefore, all orders passed by the High Court and the statutory authority stood washed away on withdrawal of the said writ petition and the said writ petitioners cannot claim any benefit of either of the same."
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> (emphasis supplied)

23. Thus, by the aforesaid pronouncement, the Hon'ble Apex Court has elucidated the course of action to be followed in a petition where the interim relief is granted and the petition is subsequently withdrawn or dismissed. Applying the aforesaid principles to the facts of the present case where also an interim relief was passed in favour of the respondent no.4 in an earlier round of litigation in WP No.12125/2014 and subsequently, without there being any order on the merits of the case, it was simply disposed of with a direction to the respondents to consider the case of the petitioner (the respondent no.4 herein) in the light of the allegations made against her, it cannot be said that the interim order granted earlier on 24.04.2015 shall have

an extended life extending to the decision which was to be taken by the respondent No.3 after 'considering' the case of the respondent No.4. This court, in a routine manner passes such orders wherein a representation is directed to be decided by the departmental authorities and till the pendency of such decision an interim order is passed in order to give a breathing space to the petitioner. But this court never passes such orders which would amount to abdicate its own powers to any administrative authority and as already observed, the respondents have stretched the order passed by this court on 26.06.2015 too far by twisting and interpreting it to their own comfort.

24. The learned counsel for the respondent no.4 has relied upon the decision of the Apex Court in the case of ***Vinod Kumar (supra)***, wherein while dealing with the power of review by an administrative authority, the Apex court has held as under:-

> "**26.** Thus, if wrong and illegal acts, applying the aforesaid parameters of judicial review can be set aside by the courts, obviously the same mischief can be undone by the administrative authorities themselves by reviewing such an order if found to be ultra vires. Of course, it is to be done after following the principles of natural justice. This is precisely the position in the instant case and we are of the considered opinion that it was open to the respondents to take corrective measures by annulling the palpably illegal order of the earlier DGP, Haryana."

In the considered opinion of this court, the aforesaid proposition would not be applicable in the facts and

circumstances of the present case. In the present case, the respondents had already taken a stand vide their order dated 14.08.2014 that they do not have any power to review their own order. So far as their stand that this Court vide its order dated 26.06.2015 had granted them all the powers to decide the entire case de-novo by reviewing their earlier order is concerned, this court has already held that the order dated 26.06.2015 cannot be given such interpretation. What is most surprising is that the respondent no.3, before passing the impugned order did not even consider it fit to also give an opportunity of hearing to the petitioner who was already posted on the post of District Manager which also speaks volume about the arbitrary approach of the respondent no.3. The ratio as laid down in the case of ***Kalabharati Advertising (supra)*** would be applicable in the present case in full force.

25. Counsel for the respondent No.4 has also relied upon the decision of the Apex Court in the case of **R.R.Verma (supra)** in which, while dealing with the power of review, the following observations have been made in para 5, which reads as under:-

> **5.** The last point raised by Shri Garg was that the Central Government had no power to review its earlier orders as the rules do not vest the government with any such power. Shri Garg relied on certain decisions of this Court in support of his submission: *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji*; *D.N. Roy* v. *State of Bihar* and *State of Assam* v. *J.N. Roy Biswas*. All the cases cited by Shri Garg are cases where the government was exercising quasi-judicial power

> vested in them by statute. We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure **though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected.** Here again, we emphasise that if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a court. We see no force in this submission of the learned Counsel. The appeal is, therefore, dismissed.
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> (emphasis supplied)

Indeed, there is no denying the fact the Government is entitled to review its own decisions or policy but as held by the Apex court, they are bound to observe the principles of natural justice where rights of the parties are affected as in the present case where it is an admitted position that the impugned order has been passed without giving any opportunity of hearing to the petitioner whose substantial rights are affected. Even assuming for the sake of argument that this Court, vide its order dated 26.06.2015 meant to direct the respondents to decide the matter afresh, the respondents were bound to give an

opportunity of hearing before passing any adverse order against him. On this count also the impugned order is liable to be set aside.

26. On the aforesaid discussion, this court finds that the impugned order Annexure P/1 dated 20.01.2016 passed by the respondent no.3 cannot be sustained and the same is hereby **quashed**. As a consequence, the petitioner who is continuing in service by virtue of interim order dated 10.2.2016 passed by this Court, is entitled to be continued in service with all the consequential benefits attached to his post. The petition stands **allowed**.

27. Equally, this court is also not oblivious of the fact that the order dated 30.07.2014 of the termination of the respondent no.4 was stigmatic in nature and in the light of the present order passed by this court whereby the order dated 20.01.2016 has been quashed, the same would again be revived, in such circumstances, the respondent no.4 is also at liberty to seek review of the order passed by this court in W.P. No.12125/2014 dated 26.06.2015 if so advised. Ordered accordingly.

28. No order as to costs.

(Subodh Abhyankar)
Judge
30/08/2017

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