

THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH,
AT JABALPUR

(DIVISION BENCH)

MP-3494-2020

Atul Kumar Ben and another Petitioners

Vs.

Union of India and others Respondents

Coram :

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice

Hon'ble Mr. Justice Vijay Kumar Shukla, Judge

Presence :

Mrs. Shobha Menon, Senior Advocate assisted by Mr. Rahul Choubey, Advocate for the petitioners.

Mr. Narinder Pal Singh Ruprah, Advocate for the respondents No.1 to 4/Railways.

Mr. Ajay Pratap Singh, Advocate for the respondent No.5.

Mr. Satendra Singh Tiwari, Advocate for the respondent No.8.

Whether approved for reporting: Yes.

Law Laid Down:

➔ Any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court, in the facts of the case, must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. 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. 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.

- ➔ As a consequence of withdrawal of petition after obtaining interim order, the said interim order stands cancelled/vacated. Moreso, when the litigants do not know this legal position, they should be informed by the Court of the consequences so that they may take an informed decision about withdrawal or abandoning the petition as not pressed. The consequences of the dismissal of the petition must expressly spell out. 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. 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. 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.
- ➔ 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.
- ➔ *The Court referred:*
 - ***Kalabharati Advertising vs. Hemant Vimalnath Narichania and other*** reported in (2010) 9 SCC 437;

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- *Ram Krishna Verma & Ors. v. State of U.P. & Ors.* reported in 1992 (2) SCC 620 : AIR 1992 SC 1888;
- *Mahadeo Savlaram Shelke & Ors. v. Pune Municipal Corporation & Anr.* reported in (1995) 3 SCC 33;
- *Abhimanyoo Ram vs. State of Uttar Pradesh and another* reported in (2008) 17 SCC 73;
- *Union of India and others vs. Ram Kumar Thakur* reported in (2009) 1 SCC 122;
- *Nagar Mahapalika vs. State of U.P. and others* reported in (2006) 5 SCC 127;
- *Union of India vs. G.R. Prabhavalkar and others* reported in (1973) 4 SCC 183;
- *Nagesh Datta Sheti and others vs. State of Karnataka and other* reported in (2005) 10 SCC 383.

Significant paragraphs: 11 to 18.

Heard on : **06.08.2021** (*Hearing Convened through Video Conferencing*)

ORDER

(Passed on this 13th day of August, 2021)

Per: Mohammad Rafiq, Chief Justice

This miscellaneous petition filed under Article 227 of the Constitution of India by Atul Kumar Ben and Dilip Kumar Jahariya, both Senior Assistant Loco Pilot, West Central Railway, Jabalpur seeks to challenge the order dated 04.09.2020 passed by the Central Administrative Tribunal (for short the “Tribunal”) in Original Application

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No.200/381/2020 (Mukesh Kumar and others vs. Union of India and others), by which the original application filed by the private respondents No.5 to 8 herein, all Senior Assistant Loco Pilots, was disposed of as infructuous. The petitioners by way of present petition have also challenged the order dated 30.09.2020 passed by the Tribunal dismissing Review Application No.200/06/2020 (Kunjbihari Meena and others vs. Union of India and others) filed by present petitioners and private respondents No. 9 to 12 herein against the interim order dated 30.07.2020 and final order dated 04.09.2020 passed in the aforesaid original application.

2. The private respondents No.5 to 8 herein (original applicants before the Tribunal) in their original application have challenged the panel dated 27.07.2020 on the premise that the petitioners and the private respondents No.9 to 12 herein being junior to them in the feeder cadre of Senior Assistant Loco Pilot, have wrongly been empanelled for promotion to Loco Pilot Shunter/Loco Pilot Goods-II in Grade Pay of Rs.4200/- and are sought to be sent for promotion course to ZRTI, Central Railway, Bhusawal. The case of the private respondents No.5 to 8 herein (original applicants) before the Tribunal was that the order dated 27.07.2020 so far it relates to Serial No.1, 3, 5, 7, 8, 9, 10, 11, 12, 13, 16, 17, 20, 23, 24, 32, 33 & 34 and so on till Serial No.73 reserved category employees having been considered for promotion on the post of general category is contrary to RBE No.117/2016 dated 30.09.2016. Similarly, the candidates at Serial No.74 to 100 in the panel are also junior to them. They are being considered for promotion, violating seniority position inasmuch as straight away providing reservation

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in promotion is contrary to the ratio of the judgment of the Supreme Court in *M. Nagraj vs. Union of India* reported in (2006) 8 SCC 212. The private respondents No. 5 to 8 herein (original applicants) contended before the Tribunal that panel dated 27.07.2020 being contrary to RBE No.117/2016 dated 30.09.2016, so far it relates to reserved category candidate is *non est* and is liable to be set aside being violative of long standing practice prevailing in the Railways and that they being senior to those respondents (before the Tribunal) are entitled for promotion over and above such junior strictly in accordance with the seniority.

3. The Tribunal vide order dated 30.07.2020 while issuing notices in the original application to the official respondents as well as to the private respondents (including petitioners herein) directed the Railways to consider the case of the respondents No.5 to 8 (original applicants before the Tribunal) for promotional posts of Loco Pilot Shunting-II (Level – 4)/Loco Pilot Goods (Level – 6) with reference to Annexure A-1, on the basis of seniority list, if otherwise found suitable. The Railways in compliance of the aforesaid interim order of the Tribunal dated 30.07.2020 cancelled the earlier panel dated 27.07.2020 and has issued a revised panel of 100 candidates on 06.08.2020. The Railways, at the same time, contested the original application before the Tribunal by filing reply thereto contending that it has assessed the vacancies for promotion on the post of Loco Pilot Shunting-II (Level-4) from Senior Assistant Loco Pilot (Level-4) and worked out vacancy assessment. The vacancy assessment has been done as per roster. Total 111 vacancies for the post of Senior Assistant Loco Pilot

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(Level-4) were assessed out of which 79 vacancies were earmarked for Unreserved candidates, 21 for Scheduled Caste candidates and 11 for Scheduled Tribe candidates. The employees who have completed 2 years of working on the post of Senior Assistant Loco Pilot (Level-4) and fall under the zone of consideration are eligible for promotion to the post of Loco Pilot Shunting-II (Level-4). There were 27 Senior Assistant Loco Pilots as per seniority list who have passed the prescribed promotional course and fall under unreserved category. Therefore, in order to give promotion to the remaining 52 Unreserved candidates, 21 Scheduled Caste candidates and 11 Scheduled Tribe candidates, an online promotional course has been arranged to accommodate 100 candidates and a list consisting unreserved candidates from Serial No.1 to 73 and Scheduled Caste/Scheduled Tribe candidates from Serial No.74 to 100 was prepared. These vacancies were required to be filled by the employees who are in the zone of consideration for promotion as per the extant guidelines and directions issued in Paras-2 to 5 of OMF No.36012/11/2016-Estt. (Res-I) {Pt-II} dated 15.06.2018 issued by DoPT and circulated for compliance through RBE No.91/2018 dated 19.06.2018, which refers to an interim order passed by the Supreme Court “that pendency of this special leave petition shall not stand in the way of the Union of India taking steps for the purpose of promotion from “reserved to reserved” and “unreserved to unreserved” and also in the matter of promotion on merits”.

4. It would be pertinent to note that the Railways in their counter affidavit filed before the Tribunal defended their action. In Paras- 2.11 and

2.12 of the reply to the original application, it was pleaded by the Railways as under:

“**2.11** That, the employees who have completed 2 years of working on the post of Sr ALP (level 2) and fall under the zone of consideration as per above guidelines are required to undergo the prescribed promotional course before their promotion. This is as per Para 214(c)(i) of IREM Vol. I **Annexure -R/4** and Railway Boards L.No. E(MPP)/2012/3/19 dated 02.04.2013 (RBE 29/2013) **Annexure R/5**.”

2.12 That, while doing the promotions, the above mentioned orders of Supreme Court as circulated under OM F.No.36012/11/2016-Estt (Res-I) {Pt-II} dated 15.06.2018 have been followed. The promotions from unreserved to unreserved, promotions from reserved to reserved and in the matter of promotion on merits Para 2 of RBE 103/2003 dated 20.06.2003 has been followed. In Para 2 of RBE 103/2003 dated 20.06.2003 the Railway Board has clearly instructed that in case of non-selection promotions, SC/ST candidates who are senior enough to be within the number of unreserved vacancies and are included in the panel/selection list without getting any relaxation/concession will be treated as own merit candidates.”

But in Para-2.13, the Railways has further pleaded as under:

“**2.13** That, it is respectfully submitted here considering the interim order passed by this honourable Tribunal in OA No.351/20 and OA No.386/20 the competent authority has decided to cancel the list of nominated employees for promotional course/ MLD for the post of Loco Pilot Shunting-II/Loco pilot goods(Level-6) and issued fresh list of 100 employees for promotional course/MLD by order

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dated 06.08.2020 **Annexure R/6** as per the seniority list. In this view of the matter, the Original Application filed by the applicant has become infructuous now there is no substance therefore; the same deserve to be dismissed.”

However, subsequent to the aforesaid Para-2.13 and Para-3 onwards, the Railways again sought to defend its stand on merits. In fact, in sub-para of Para 2.13 the Railways justified its stand by pleading as under:

“However without prejudice to the above, the answering respondents are submits para wise reply to the Original Application.”

5. Mrs. Shobha Menon, learned Senior Counsel appearing for the petitioners has argued that under the facts of this case the Tribunal was wholly unjustified in disposing of the original application as having been rendered infructuous without adjudicating the controversy involved in the present case particularly when the Railways in its counter affidavit had defended its action. It is argued that the order dated 06.08.2020 on the basis of which the Tribunal has disposed of the original application as infructuous itself in its subject mentions that the new revised list is being issued in compliance of the interim order passed by the Tribunal. The Tribunal therefore failed to discharge its responsibility of deciding the original application on merits and has treaded an easy route to dispose of the matter. Relying on the judgment of Supreme Court in ***Kalabharati Advertising vs. Hemant Vimalnath Narichania and other*** reported in **(2010) 9 SCC 437** learned Senior Counsel argued that the Tribunal while

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deciding original application ought to have neutralized the effect of the interim order and consequential action taken by the Railways in compliance thereof. The Tribunal has therefore also committed a serious error of law in dismissing the review application without appreciating all these errors which were apparent on the face of the record.

6. Learned Senior Counsel further argued that as per Section 2 of IREM, titled as “Rules Governing the Promotion of Group C Staff”, two modes of promotion are prescribed i.e. “Selection Posts” and “Non-Selection Posts”. The post of Loco Pilot Shunting-II (Level-4) and Loco Pilot Goods (Level-6) falls under “Non-Selection” category. In order to be eligible for promotion, it is mandatory to undertake promotional course of Main Line Driver (MLD). The private respondents No.5 to 8 herein (original applicants before the Tribunal) had filed the original application challenging the validity of order dated 27.07.2020, whereby Railways had prepared a list of 100 employees for the course of Main Line Driver (MLD), which is a promotional course for promotion to the post of Loco Pilot Shunting-II (Level-4) and for promotion to the post of Loco Pilot Goods (Level-6), on the ground that such panel could have been prepared only on the basis of seniority. Reliance was placed on the judgment of the Supreme Court in the case of *M. Nagraj (supra)*. It is argued that the Tribunal by its interim order dated 30.07.2020 at the *ex-parte* stage granted the final relief to the private respondents No.5 to 8 herein (original applicants before the Tribunal) by directing the Railways to consider their case for promotion on the basis of the seniority list, if they otherwise found

suitable. When the “interim prayer” and the “main relief” are read in juxtaposition with the interim order, it is manifest that the Tribunal without affording any opportunity of hearing to the petitioners had virtually allowed the original application, which has caused grave prejudice to them. Learned Senior Counsel in support of her arguments, apart from the judgment of *Kalabharati Advertising (supra)* has also relied on *Abhimanyoo Ram vs. State of Uttar Pradesh and another* reported in (2008) 17 SCC 73 and on *Union of India and others vs. Ram Kumar Thakur* reported in (2009) 1 SCC 122.

7. Mr. Narinder Pal Singh Ruphra, learned counsel for the Railways has submitted that the Tribunal in the impugned order dated 04.09.2020, while disposing of the original application as infructuous, has categorically observed that if the petitioners consider themselves aggrieved by such order, they would have a new cause of action to challenge the new order of the Railways dated 06.08.2020 in an independent proceeding and they are free to challenge the same before the Tribunal again.

8. Mr. Ajay Pratap Singh and Mr. Satendra Singh Tiwari, learned counsels for the respondents No.5 & 8 respectively also opposed the petition and submitted that once the Railways passed order dated 06.08.2020 and categorically mentioned in their reply to the original application that in view of that the original application was rendered infructuous, there was no occasion for the Tribunal to decide the matter on

merits. If the petitioners are aggrieved by the new order passed by the Railways, they can challenge the same before the Tribunal itself.

9. We have given our anxious consideration to the rival submissions made by the parties, studied the cited precedents and perused the material available on record.

10. A perusal of the original application filed by the private respondents No.5 to 8 herein, in the present case, before the Tribunal, would indicate that the following was the final relief and the interim relief sought by them:

“8. Relief(s) Sought:

In view of aforesaid facts and circumstances it is humbly prayed that the Hon’ble Tribunal may graciously be pleased to:-

8.1 Issue appropriate direction/order directing the respondents authorities to modify the impugned order dated 27.07.2020 (Annexure A/1) by including and placing name of the applicants over and above the private respondents and other identically situated employees belong to reserved category and sending applicant for promotional course/MLD as per seniority and effecting further promotion to the post of LPS/LPG on the basis of criteria with consequential benefits including catch up rule benefits.

8.2 Issue appropriate direction/order directing the respondents authorities that the order dated 27.07.2020 so far relates to from serial No.74 to 100 may not be made the basis of further promotions and applicants be considered over and above junior private respondents.

8.3 Any other relief, order or orders, direction or directions which this Hon’ble Court deems fit and proper

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under the present facts and circumstances of this case may kindly be granted in favour of the applicants and this application be allowed with costs.

9. Interim Order, if any, prayed for:

It is, therefore, most humbly prayed that this Hon'ble Tribunal graciously be pleased to stay the operation and effect of impugned order dated 27.07.2020 (Annexure A/1) so far directing SC/ST candidates from serial No.74 to 100 for promotional course being admittedly juniors to the applicants and direct respondents authorities to send the applicants for promotional course/MLD as per seniority list after following the principles laid down in the case of M. Nagaraj (supra). The applicants be sent for promotional course/MLD alongwith candidates as per seniority during pendency of the present original application, in the interest of justice.”

The Tribunal while issuing notices at *ex-parte* stage passed the following interim order in favour of respondents No.5 to 8 (original applicants):

“In view of the above, we are of the opinion that the applicants have made out the prima-facie case in their favour. Accordingly, respondents are directed to consider the case of the applicants for promotional posts of Loco Pilot Shunting-II (Level – 4)/Loco Pilot Goods (Level – 6) with reference to Annexure A-1, on the basis of seniority list, if otherwise found suitable.”

When the aforesaid interim order is read in juxtaposition with the main relief and the interim relief, it is manifest that the Tribunal virtually granted the final relief to the original applicants at *ex-parte* stage even

without affording any opportunity of hearing to the petitioners. The Railways has also blown hot and cold at the same time in its counter affidavit filed before the Tribunal. While in Para-2.13 of its reply, it has mentioned that considering the interim order passed by the Tribunal the competent authority has decided to cancel the list of nominated employees for promotional course and has issued fresh list and, therefore, the original application has become infructuous, but at the same time it has in sub-para of the very same para stated that “however without prejudice to the above, the answering respondents are submitting para wise reply to the Original Application”. It is evident from Paras- 2.11, 2.12 and thereafter subsequently from Para-3 onward that the Railways has contested the matter on merits by citing Office Memorandum dated 15.06.2018 with reference to the interim order dated 17.05.2018 passed by the *Supreme Court in Petition (s) for Special Leave to Appeal (C) No.30621/2011 (Jarnail Singh and other vs. Lachhmi Narain Gupta and others)* [arising out of impugned final judgment and order dated 15.07.2011 in CWP No.13218/2009 passed by the High Court of Punjab and Haryana at Chandigarh] and other connected matters, wherein it was observed that the pendency of special leave petition shall not stand in the way of the Union of India taking steps for the purpose of promotion from ‘reserved to reserved’ and ‘unreserved to unreserved’ and also in the matter of promotion on merits. The very fact that the Railways in its order dated 06.08.2020 has mentioned that the aforesaid order was being issued in compliance of the interim order passed by the Tribunal and also in the reply to the original application it has contested the matter on merits while specifically stating in

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sub-para to Para-2.13 that without prejudice to its statement that the original application has rendered infructuous, it was submitting parawise reply to the original application on merits. The Tribunal, in our considered view, was not justified in requiring the original applicants to challenge the order dated 06.08.2018 in independent proceeding rather than deciding the matter of merits.

11. The Supreme Court in *Kalabharati Advertising (supra)* was dealing with a case where certain advertiser erected hoarding in the premises of cooperative society with its permission. The Municipal Corporation by its order approved the same. In writ petition filed by certain members of the society against the society and the said advertiser, the High Court permitted the Municipal Corporation to withdraw its order and passed a fresh order. The Supreme Court held that in absence of statutory provision for review, such order of the High Court was without jurisdiction and therefore nullity and the fresh order passed by the Municipal Corporation in pursuance thereof, not enforceable. The Supreme Court also held that the High Court has permitted fresh order to be made without giving an opportunity of hearing to the advertiser and the society. The Municipal Corporation could not, without assigning any reason, recall its earlier order and review the same. Such omission on the part of Municipal Corporation is violative of principles of natural justice and indicative of legal malice. It was further held that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court, in the facts of the case, must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a

party by the delayed action of the Court. It was held that 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 Supreme Court observed that 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.

12. In *Ram Krishna Verma & Ors. v. State of U.P. & Ors.* reported in 1992 (2) SCC 620 : AIR 1992 SC 1888, the Supreme Court relying on its earlier judgment in *Grindlays Bank Limited v. Income Tax Officer, Calcutta & Ors.* reported in (1980) 2 SCC 191 : AIR 1980 SC 656 held that no person can suffer from the act of the Court and in case an interim order has been passed and the petitioner takes advantage thereof, and ultimately the petition stands dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized. Similar view has been reiterated by the Supreme Court in *Mahadeo Savlaram Shelke & Ors. v. Pune Municipal Corporation & Anr.* reported in (1995) 3 SCC 33.

13. The Supreme Court in the cited judgment of *Ram Kumar Thakur (supra)* set aside the judgment of the Division Bench of the High Court,

which had dismissed the appeal against the judgment of the Single Bench as infructuous because the appellant had reinstated the respondent/writ petitioner pursuant to the judgment of the Single Bench of the High Court. The Supreme Court held that mere fact that the State Government complied the order of the Single Bench need not render the appeal before the Division Bench as infructuous. While setting aside the judgment of the Division Bench of the High Court, the Supreme Court remitted the matter back before the Division Bench of the High Court for consideration of writ appeal on merits.

14. The Supreme Court in *Union of India vs. G.R. Prabhavalkar and others* reported in (1973) 4 SCC 183 while repelling the argument of the respondents held that merely because the State Government has passed an order equating the Sales Tax Officer of the State of Madhya Pradesh with the Sales Tax Officer Grade III of the State of Bombay, in compliance of the judgment of the High Court, the appeal filed by Union of India against that judgment would not be rendered infructuous.

15. In *Nagar Mahapalika vs. State of U.P. and others* reported in (2006) 5 SCC 127, the Labour Court held termination of service of employees as legal. The employees filed writ petition challenging the award of the Labour Court. The High Court stayed operation of the award subject to the condition that employees are reinstated and paid salary from the date of award. The employer complied with the directions of the High Court. In such circumstances, the employees continued in service for 14 long years.

The High Court disposed of the writ petition on the assumption that in view of the reinstatement granted by the interim order, it would not be appropriate to deny the relief of reinstatement. The Supreme Court held that respondents might have continued in service for more than 14 years only because the High Court did not pass an interim order, but the same should not have formed the basis for making the interim order absolute or for not considering the matter on merits. Appointment of the employee was made for carrying out the work of assessment, which was done periodically and, therefore, their services, cannot be directed to be continued despite the requirements therefor having come to an end. The Supreme Court substituted the direction of reinstatement with payment of lump sum compensation.

16. In *Nagesh Datta Sheti and others vs. State of Karnataka and other* reported in **(2005) 10 SCC 383** an appeal was preferred before the Division Bench of the High Court by the appellants against the order of Single Judge which had remanded the matter to the Land Tribunal with a direction to grant occupancy rights in favour of respondents/writ petitioners. In absence of any prayer for grant of interim relief, the Division Bench did not pass any order of stay of further proceedings before the Tribunal or stay of operation of the order of Single Judge. Tribunal after hearing the parties granted occupancy rights to the respondents in compliance of the order passed by the Single Judge. The Division Bench dismissed the appeal as infructuous in view of the subsequent decision of the Tribunal holding that though Single Judge had directed grant of occupancy rights and Tribunal

had followed the directions, it was open to the appellants to question the correctness of decision of Tribunal before Single Judge. The Supreme Court held that the Division Bench erred in not considering the appeal on merits and remitted the matter to the High Court for fresh consideration.

17. In *Abhimanyoo Ram (supra)* it was held by the Supreme Court that as a consequence of withdrawal of petition after obtaining interim order, the said interim order stands cancelled/vacated. Moreso, when the litigants do not know this legal position, they should be informed by the Court of the consequences so that they may take an informed decision about withdrawal or abandoning the petition as not pressed. The writ petition filed by the appellant was restored before the High Court as he was not informed about the consequences. The Supreme Court observed that the High Court must expressly spell out 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. 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. 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,

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so that any benefit extended as a consequence of the interim order, can be withdrawn or reversed. The Supreme Court observed that 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.

18. In the present case, the order dated 06.08.2020, by relying on which the Tribunal has required the petitioners to challenge the same in independent proceedings itself states that it has been passed in compliance of the interim order dated 30.07.2020, passed in the original application. In Para-2.13 of the reply filed to the original application by the Railways, it has, in a very strange manner, mentioned that the original application should be dismissed as infructuous but it has simultaneously in a categorical manner stated that this order dated 06.08.2020 was passed in compliance of the interim order passed by the Tribunal and further qualified this Para-2.13 in sub-para thereto, by specifically stating that “without prejudice to the above”, i.e., its statement about the application being rendered infructuous, it was submitting parawise reply to the original application. Curiously the Railways in its reply in all the preceding and succeeding paragraphs to Para-2.13 contested the matter on merits by detailed pleadings with reference to various documents. The interim order dated 30.07.2020, in the facts of the present case, therefore should be taken to have been passed, subject to final outcome of the original application. The Tribunal, in our considered view, has abdicated its duty of deciding the

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original application on merits and was not justified in disposing of the original application as infructuous vide order dated 04.09.2020 and also was not justified in dismissing the review petition vide order dated 30.09.2020. In the result, the present petition deserves to succeed and is hereby **allowed**. Consequently both the orders dated 04.09.2020 and 30.09.2020 are set aside. The matter is remitted back to the Tribunal. Parties shall appear before the Tribunal on 25th August, 2021. The Tribunal is directed to decide the original application within three months thereafter.

19. The present petition is accordingly disposed of. There shall be no order as to costs.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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