

(2004) 05 AHC CK 0160

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16929 of 2001

Ashok Pratap Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 7
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(3), 35A, 89
Constitution of India, 1950 — Article 226
Allahabad High Court Rules, 1952 — Rule 7
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(3), 35A, 89
Constitution of India, 1950 — Article 226
Allahabad High Court Rules, 1952 — Rule 7
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(3), 35A, 89
Constitution of India, 1950 — Article 226

Citation : (2004) 2 UPLBEC 1909

Hon'ble Judges : D.P. Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Sant Saran Upadhaya and Sadhna Upadhaya, for the Appellant; S.C. Budhwar, Ranjeet Saxena, R.D. Khare, Rajeev Mishra, Santosh Tripathi and Rajesh Kumar and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the order dated 5.4.2004 (Annexure-14) passed by the respondent No. 3, and further to issue mandamus directing the respondent Nos. 2 and 3 to give charge to the petitioner on the post of Executive Engineer, Electricity Workshop Division, Allahabad (hereinafter called Workshop).

2. Facts and circumstances giving rise to this case are that petitioner, an Executive Engineer, stood transferred from Electricity Distribution Division, Allahabad vide order dated 15.7.2003 (Annexure-1), to the Office of the General Manager (Distribution), Allahabad Division, Allahabad. Petitioner challenged the said order mainly on the ground that he had been posted there only a few

months ago, by filing Writ Petition No. 31275 of 2003, and this Court vide order dated 24th July, 2003 (Annexure-2) stayed the operation of the said transfer order, and the said petition is still pending. In the meanwhile, petitioner stood transferred from Electricity Distribution Division I, Allahabad to Electricity Workshop Division, Allahabad vide order dated 22.12.2003 and he was relieved of the charge on the said post in absentia. Respondent No. 4 Shri Ram Milan Verma was transferred from Electricity Workshop Division to Electricity Distribution (Revenue), Division I, Allahabad vide order of the same date and he was also relieved from there. But the said respondent did not join at the transferred place. A fresh order dated 9th January, 2004 (Annexure-5) was passed transferring the said respondent on a newly created post of Executive Engineer, Electricity (Distribution), Salempur (Deoria). Respondent No. 4 did not join there also. One Shri Chandra Deo Goswami was posted on that post in Salempur (Deoria) vide order dated 30.1.2004, and respondent No. 4 was transferred to Distribution Division III, Ram Bagh, Allahabad, One Shri Tej Bahadur Ram, in turn, was attached to the Office of General Manager (Distribution) Zone, Allahabad. Said Shri Tej Bahadur Ram filed Writ Petition No. 4232 of 2004 challenging that order only, as the Court was of the prima facie view that there had been an arbitrary attitude of the said authority towards petitioner therein, and transfer order was passed only to accommodate the said respondent, i.e., Ram Milan Verma. It was mentioned in the interim order that respondent be allowed to join at the place of his earlier posting. Subsequently, an application for correction of the said order dated 6.2.2004 was filed by the said respondent and correction sought was made on 23.2.2004. The present petitioner filed an application for impleadment and modification of the order dated 23.2.2004, pointing out that the correction made in the order had adversely affected him as the said respondent stood relieved from the workshop and the petitioner/applicant had joined there and correction had been obtained by misrepresentation. Another application was filed by the respondent-Corporation for seeking modification of the order as corrected on 23.02.2004. When the matter came up for hearing before the Court on 2nd April, 2004, learned Counsel for the Corporation, Shri Ranjit Saxena, made a statement at the bar that the order dated 30th January, 2004 had been withdrawn by passing an order dated 31st March, 2004. Thus, the petition had become infructuous. The Court was appraised of the fact that vide order dated 31st March, 2004, respondent-Authority considering the order dated 23.2.2004, passed on the correction application made by the respondent No. 4, present petitioner had been transferred from the workshop.

3. Taking into consideration the statement made by the learned Counsel for the Corporation and also of the petitioner-applicant, the Court dismissed the petition as having become infructuous. However, to clarify the position further it was also mentioned in the order that "interim order passed by this Court from time to time do not survive. Any order consequential to the orders passed by this Court also stands vacated". Present petitioner immediately after passing the order on

2.4.2004 filed a representation dated 3.4.2004 before the competent authority to give effect to the said order, submitting that the interim orders passed by the Court or any consequential order in view thereof stood nullified, and therefore, the petitioner's posting to Workshop should not be disturbed.

4. Petitioner filed a Writ Petition No. 14159 of 2004 challenging the order dated 31.3.2004 on the ground that this Court vide order dated 2.4.2004 had already nullified all interim orders and any order passed by the Corporation in consequence thereof, and therefore, there was no occasion for the respondent to pass the order dated 31st March, 2004 posting the respondent No. 4 in place of the petitioner in pursuance of the order passed on correction application dated 23.2.2004, while recalling the transfer order of Shri Tej Bahadur Rama. That writ petition was dismissed as withdrawn vide order dated 7.4.2004. In consequence of the order dated 31st March, 2004, an order dated 5.4.2004 was passed permitting the respondent No. 4 to take charge in absentia of the petitioner in the Workshop. Hence this petition.

5. Smt. Sadhna Upadhyay, learned Counsel for the petitioner has submitted that the petitioner has been transferred place to place within a short span of time. The transfer order dated 31.3.2004 had been passed only to accommodate the respondent No. 4, who did not join at the transferred place in spite of several transfer orders. The competent authority is in collusion with him. Correction order dated 23.2.2004 was obtained by misrepresentation by the respondent No. 4 and once the matter came to an end by virtue of the order of this Court dated 2.4.2004 and the interim order/correction order passed by the Court had been vacated and it was further clarified that any order passed by this Court in pursuance of the order of this Court stood nullified, the question of posting the respondent No. 4 in the Workshop, shunting out the petitioner to another office, is unwarranted and uncalled for. Petitioner filed a representation before the Corporation to pass an order giving effect to the order of this Court dated 2.4.2004. Petitioner filed the representation on 3.4.2004 and was given assurance by the Corporation that it would be decided within 24 hours but has not been decided at all. Hence petitioner is not seeking the direction to the Corporation to decide his representation. The order dated 5.4.2004 is in flagrant violation of the order dated 2.4.2004, thus, liable to be quashed.

6. On the contrary, Shri Ranjeet Saxena, learned Counsel for the Corporation has vehemently opposed the petition contending that the order dated 5.4.2004 is a consequential order of the order dated 31.3.2004, for which the petitioner had earlier filed Writ Petition No. 14159 of 2004 which was dismissed as withdrawn vide order dated 7.4.2004. Thus, the present writ petition cannot be entertained as it is not permissible to file the successive writ petition for the same cause of action. So far as the petitioner is concerned even if the order dated 31.3.2004 is in consequence of correction order dated 23.2.2004, this controversy has been subject matter of the said Writ Petition No. 14159 of 2004. Thus, the petition is not maintainable as at the time of withdrawing the petition, no liberty to file a

fresh petition was sought. Allegations of mala fides have been made throughout the petition without impleading any person by name, therefore, the same cannot be read as no authority of the Corporation can come forward to deny the same. No name has been disclosed; who is the person favouring respondent No. 4, Shri Ram Milan Verma. Allegations of mala fides cannot be taken note of for want of impleadment of the person favouring him. Petitioner, who filed the writ petition challenging his transfer order dated 15.7.2003, obtained the interim order only on the ground that he had been transferred within a short span of time of his posting from Electricity Distribution Division to the Office of the General Manager, though in Allahabad, did not raise voice against his further transfer order to the Workshop vide order dated 22.12.2003. Petitioner has not been transferred outside the city of Allahabad. His cause has never been prejudiced by any means; it is merely a case of adjustment and not of transfer at all; neither the education of his children is disturbed. Petitioner did not require to change his establishment, including the residence. His case requires also to be tested on the touchstone of doctrine of prejudice. All these Engineers tried to get prize posting and want not only to live in these cities but to get particular office for the reasons best known to them and to retain the same they are sitting in the Courts or in the chambers of the lawyers; they are not available in their offices. In such a fact situation, the Corporation is actually aggrieved party and is not able to manage its affairs. Petition is liable to be dismissed.

7. Shri S.C. Budhwar, learned Senior Counsel appearing for respondent No. 4 has reiterated the objections taken by Shri Ranjit Saxena, and in addition, submitted that the respondent No. 4 when transferred vide order dated 22.12.2003 from Workshop, Allahabad to Revenue Section, he was not relieved nor he could join, as he had been posted below his junior, which was not permissible in accordance with the Circulars/Guidelines issued by the Corporation, i.e., as per Office Memorandum dated 26.9.1996, under no circumstances in 30 Divisions, Divisional Engineers posted will be junior to Executive Engineer (Revenue). Further, Executive Engineer (Revenue) will work under the Divisional Engineer. As the first order transferring Ram Milan Verma, respondent No. 4, from Electricity Division was having this anomaly that he was posted under his junior. Subsequently, order dated 9th January, 2004 was passed modifying the order passed on 22.12.2003, transferring the said respondent to Salempur (Deoria), as he could not be relieved upto 24th January, 2004, and a further order of transfer had been passed on 30th January, 2004 modifying the earlier order, by posting one Shri Chandra Deo Goswami at his place. Order dated 22.12.2003 transferring petitioner Ashok Pratap Singh showing him Executive Engineer (Revenue), Electricity Distribution Division Ist, Allahabad was corrected by order dated 28.1.2004 issued by the Corporation. Therefore, the allegations that the said respondent was not willing to comply with the transfer orders is not correct. Nor the said respondent misguided the Court and obtained correction dated 23.2.2004 by misrepresentation. After correction issued by the respondents in order dated 9.1.2004 by its order dated 28.1.2004 referred to above, the said

respondent was posted at Vidyut Karyashala Khand, Allahabad. Therefore, this Court rightly clarified and corrected the order showing his earlier place of posting as Vidyut Karyashala Khand, Allahabad. The said respondent did not join nor was given posting anywhere else during the interregnum period. The sheet-anchor argument has been that the present petitioner has not been transferred outside Allahabad city; it is only an arrangement of shifting the person from one office to another. Petitioner does not have any legal/vested right to be posted in the Workshop. Therefore, as no prejudice has been caused to the petitioner and transfer order is not held to be contrary to the rules and allegation of mala fide cannot be read for want of impleadment of the necessary party, this Court should not interfere in the matter.

8. We have considered the rival submission made by the learned Counsel for the parties and perused the record and written submissions filed on behalf of the petitioner as well as respondent-Corporation and Shri Ram Milan Verma.

9. Both sides have raised the substantial questions of law required to be determined in the case. On behalf of the petitioner, Smt. Sadhna Upadhyay has raised the question as to whether an order which stands nullified by the Court itself, can be enforced? On the contrary, respondents have submitted that if petitioner had withdrawn his writ petition earlier, filed against the principal order, without having liberty of the Court to file afresh, whether successive petition challenging a consequential order is maintainable.

10. At the earliest as well as now petitioner made it clear that he did not want the Corporation to decide his representation as it failed to pass an appropriate order on his representation dated 3.4.2004, for which assurance was given that would be decided within 24 hours. This Court as to decide his fate and he has not approached the Court for issuing the direction of decide the representation filed by him on 3.4.2004.

11. Whatever may be the legal and factual position, it is certain that order dated 5.4.2004, which is sought to be quashed, is an order passed in consequence of the order dated 31st March, 2004. A consequential order cannot be challenged without challenging the basic order, nor its quashing will bear the fruits unless the principal order dated 31.3.2004 is quashed. In *P. Chitharanja Menon and Others Vs. A. Balakrishnan and Others*, , the Apex Court while dealing with the controversy of determining the seniority, held that "the promotion of the respondents in the writ petition having been ordered as early as 13th February, 1962, without challenging that order a subsequent order which determined the date of their commencement of service cannot be challenged".

12. Similar view has been reiterated by the Apex Court in *Roshan Lal and Others Vs. International Airport Authority of India and Others*, ; and *H.V. Pardasani and Others Vs. Union of India (UOI) and Others*, .

13. In *Government of Maharashtra and Others Vs. Deokar's Distillery*, , the Hon'ble Supreme Court while dealing with the orders passed under the Bombay

Prohibition Act, 1949, held that as the notification/circular issued under the Act, 1949 and Article 162 of the Constitution "had not been challenged, they were not entitled to challenge the demand notice which were merely a consequential communication".

14. Petitioner has not asked for quashing of the order dated 31.3.2004, so far it adversely affected him. For that purpose, he filed the Writ Petition No. 14159 of 2004, on the ground that this Court vide order dated 2.4.2004 had clarified that any order passed by Authority-Corporation in consequence of the interim orders passed by this Court, stood nullified, and that writ petition was dismissed, as withdrawn vide order dated 7.4.2004. Thus, we have to consider as to whether the petition is maintainable for the reason that a writ does not lie to enforce the order passed in a writ petition. Therefore, whatever order we have passed or clarified explaining the legal/factual position vide order dated 2.4.2004, cannot be enforced through a writ jurisdiction. While withdrawing the petition earlier writ petition on 7.4.2004, no liberty was sought by the petitioner to file afresh.

15. The issue involved herein had been considered time and again by the Hon"ble Apex Court and practice of filing successive writ petitions has not only been deprecated but the writ petitions also held to be not maintainable.

16. The Hon"ble Supreme Court time and again held that even if the earlier writ petition has been dismissed as withdrawn, Public Policy, which is reflected in the principle enshrined in Order XXIII, Rule 1 CPC, mandates that successive writ petition be not entertained for the same relief.

17. In *Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.*, , the Apex Court considering the provision of Order XXIII, Rule 1 of CPC, and particularly, Sub-rule (3) thereof in crystal clear words held that where plaintiff withdraws from a suit without the permission of the Court, he is precluded from instituting a fresh suit in same subject matter against the same parties.

18. In *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, , the Hon"ble Apex Court held as under :

".....The principle underlying Rule 1 of Order XXIII of the Code, is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. *Invito beneficium non datur*. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of *res judicata* contained in Section 11 of

the Code which provides that no Court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the code provides, as stated earlier, that a second suit will not lie in Sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in Sub-rule (3) in order to prevent the abuse of the process of the Court.....

.....It is common knowledge that every often after a writ petition is heard for some time when the petitioner or his Counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his Counsel, to permit the petitioner to withdraw the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file, a fresh petition while it may just agree to permit the withdrawal of the petition....."

19. In *M/s. Upadhyay and Co. Vs. State of U.P. and Others*, , the Apex Court has emphasized to apply the principle enshrined under Order XXIII, Rule 1, CPC, being based on public policy, in all the Court's proceedings. The Apex Court held that the principle was applicable also in case of filing the SLP before the Apex Court under Article 136 of the Constitution. It was further clarified by the Court that liberty to file a fresh can be granted only in certain contingencies as provided under the said provision.

20. Similar view has been reiterated by Hon"ble Apex Court in *State Bank of India Staff Association and another Vs. State Bank of India and others*, ; and *Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others*, .

21. This Court in the catena of decisions, i.e., in *Swatantra Kumar Agrawal v. Managing Director, U.P. Financial Corporation, Kanpur and Anr.* 1993 (3) AWC 1497; *L.S. Tripathi v. Banaras Hindu University and Ors.* (1993) 1 UPLBEC 448; *West U.P. Sugar Mills Association, 39 Nehru Place, New Delhi and Ors. v. State of U.P. and Ors.* 1994 (1) AWC 50 ; *Khacher Singh Vs. State of Uttar Pradesh and others*, ; *Saheb Lal v. Assistant Registrar (Administration), Banaras Hindu University, Varanasi and Ors.* (1995) 1 UPLBEC 31 ; *State Bank of India Staff Association and another Vs. State Bank of India and others*, ; *Chandra Pal Singh Vs. State of U.P. and others*, ; *Rakesh Kumar Verma Vs. State of U.P. and others*, ; *Mool Shanker Singh v. Regional Manager, Punjab National Bank, Varanasi and Anr.* 2002 (5) AWC 4057 ; and *Rajesh Khanna Vs. Collector and Others*, , considered the issue at length and also interpreted the provisions of Rule 7 of Chapter XXII of the Allahabad High Court Rules, 1952 which bars the

filing of the second writ petition on the same cause of action and held that the second petition for the same cause of action not to be maintainable and filing successive writ petitions for the same cause of action is not only against the public policy, but also amounts to abuse of process of the Court.

22. Similar view has been reiterated by the Division Bench of the Delhi High Court in *S. Jaswant Singh (deceased by L. Rs.) Vs. S. Darshan Singh (deceased by L. R.) and others*,

23. A Division Bench of Rajasthan High Court in *Radha Krishna and Another Vs. The State of Rajasthan and Others*, observed that undoubtedly, the CPC does not apply to the writ jurisdiction, but the principles enshrined in its provision can be made applicable so far as they are in consonance with the rules framed by the High Court or where the rules are silent and applying the provisions of Order XXIII, Rule 1 in writ jurisdiction as similar provisions existed in the Rajasthan High Court Rules putting an embargo to file a successive writ petition for the same cause of action, observed that the Court can permit a party to withdraw the petition with liberty to file a fresh one, but that power is subjected to the conditions prescribed in the provisions of Order XXIII, Rule 1 of the Code and not beyond it.

24. In *Beniram and Others Vs. Gaiind and Others*, , the Apex Court held that permission to withdraw a case with liberty to file afresh on the same cause of action can be granted provided it is in the interest of Justice or advances the cause of Justice.

25. The right to withdraw a suit or abandonment of the whole or a part of claim is not absolute. Such right cannot be exercised to abuse the process of the Court or play fraud upon the party as well as upon the Court. Therefore, it is necessary that if a person wants to approach the Court again, he must seek liberty of the Court to file a fresh petition. Even the Court cannot grant a permission to withdraw a petition straightway, as it has to consider and examine as to whether any right has been accrued in favour of any other person.

26. While considering the oral prayer or application for withdrawal of a petition the Court has to bear in mind that the act of the party should not be to defeat a right accrued in favour of any other person or the prayer was to over reach the Court. However, the prayer may be granted in order to remove the public inconvenience or when the petitioner does not want to press the petition. (Vide *Shaik Hussain and Sons Vs. M.G. Kannaiah and Another*, ; and *Smt. Madhu Jajoo Vs. State of Rajasthan and Others*,

27. Order XXIII, Rule 1 of the Code does not confer an unbridled power upon the Court to grant permission to withdraw the petition, with liberty to file afresh, on the same cause of action; it can do so only on the limited grounds mentioned in the provision of Order XXIII, Rule 1 of the Code, and they are, when the Court is satisfied that the suit must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the same

subject matter, and that too, on such term as the Court thinks fit. The grounds for granting a party permission to file a fresh suit, including a formal defect, i.e., in the form or procedure not affecting the merit of the case, such as also of statutory notice, u/s 80 of the Code, mis-joinder of the parties or cause of action, non-payment of proper Court-fee or stamp fee, failure to disclose cause of action, mistake in not seeking proper relief, improper or erroneous valuation of the subject matter of the suit, absence of territorial jurisdiction of the Code of defect in prayer clause etc. Non-joinder of a necessary party, omission to substitute heirs etc. may also be considered in this respect, or where the suit was found to be premature, or it had become infructuous, or where relief could not be, and where the relief even if granted, could not be executed, may fall within the ambit of sufficient ground mentioned in that provision. [Vide *Konkan Trading Company Vs. Suresh Govind Kamat Tarkar and Others*, ; *Muktanath Tewari and Another Vs. Vidyashanker Dube and Others*, ; and *Ramrao Bhagwantrao Inamdar Vs. Babu Appanna Samage*,

28. The Court can grant such permission even suo motu without any application. The granting of permission to withdraw a suit with liberty to file a fresh suit removes the bar of *res judicata*; it restores the plaintiff to the position, which he would have occupied had he brought no suit at all.

29. Legal maxim "*Juri Ex Injuria Non Oritur*" means that a right cannot arise out of wrong doing, and it becomes applicable in case like this.

30. Therefore, in view of the above referred judgments, it is abundantly clear that even if the provisions of the CPC are not applicable in writ jurisdiction, the principle enshrined therein can be resorted to for the reason that the principles, on which the CPC is based, are founded on public policy and, therefore, require to be extended in the interest of administration of Justice. Any relief not claimed in the earlier writ petition should be deemed to have been abandoned by the petitioner to the extent of the cause of action claimed in the subsequent writ petition and in order to restrain the person from abusing the process of the Court, such an order/course requires not only to be resorted to but to be enforced.

31. It is settled proposition of law that what cannot be done "*per directum* is not permissible to be done *per obliquum*", meaning thereby, whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "*quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud*."

32. In *Jagir Singh Vs. Ranbir Singh and Another*, , the Apex Court has observed that an authority cannot be permitted to evade a law by "*shift or contrivance*." While deciding the said case, the Hon'ble Supreme Court placed reliance on the judgment in *Fox v. Bishop of Chester* (1824) 2 B & C 635, wherein it has been observed as under :

"To carry out effectually the object of a statute, it must be considered as to

defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined."

33. Law prohibits to do something indirectly which is prohibited to be done directly. Similar view has been reiterated by the Apex Court in *M.C. Mehta v. Kamal Nath and Ors.* AIR 2000 SC 1997, wherein it has been held that even the Supreme Court cannot achieve something indirectly which cannot be achieved directly by resorting to the provisions of Article 142 of the Constitution, which empowers the Court to pass any order in a case in order to do "complete Justice".

34. The order dated 5.4.2004 is an order consequential to the order passed on 31.3.2004, which was a subject matter of the challenge earlier. Thus, it cannot be held that the cause of action is different in this writ petition for the reason that if a person not permitted to do something directly, it is not permissible for him to achieve the same goal indirectly. In this backdrop, the petition is held to be not maintainable. It has been submitted on behalf of the petitioner that the order dated 6.2.2004 as well as correction made in it on 23.2.2004 stands nullified vide order dated 2.4.2004.

35. There can be no quarrel to the legal proposition that no party can suffer by the action of the Court and when the High Court in exercising of its powers under Article 226 of the Constitution of India grants interim relief; the interest of Justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized. The institution of litigation by a party should not be permitted to confer an unfair advantage on the party responsible for it. (Vide *Grindlays Bank Limited Vs. Income Tax Officer, Calcutta and Others*, ; *Ram Krishna Verma and Others Vs. State of U.P. and Others*, ; AIR 1997 993 (SC) ; and *Smt. Rampati Jaiswal Vs. State of U.P. and others*,

36. No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, 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 institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. [Vide *A.R. Sircar (Dr) v. State of U.P.*, 1993 Supp.(2) SCC 734; *Shiv Shankar and Others Vs. Board of Directors, U.P.S.R.T.C. and Another, Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another*, ; and *M/S. GTC Industries Limited Vs. Union*

of India and Others,

37. In Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, , the Hon"ble Apex Court approved and followed its earlier judgment in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, , and observed as under:

"It is equally well settled that an order of stay granted pending disposal of writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court."

38. The same view has been taken by the Hon"ble Supreme Court in the case of N. Mohanan Vs. State of Kerala and Others, ; and Bileshwar Khan Udyog Khedut Shahakari Mandali Ltd. etc. v. Union of India and Anr. AIR 1999 SC 1198 , wherein it has been held that the appointment/continuation in service by interim order, does not create any legal right in favour of the appointee. In State of U.P. and Others Vs. Raj Karan Singh, , the Hon"ble Apex Court has categorically held that interim order cannot disturb the position in law and if a person is in service by virtue of the interim order of the Court, he cannot agitate the issue that his continuation in service in such a condition has improved his claim to regularisation.

39. Similar view has been reiterated in South Eastern Coalfields Ltd. Vs. State of M.P. and Others, ; and Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another, .

40. The order dated 31.3.2004, so far as adversely affecting the petitioner could not have been passed on the basis of correction order dated 23.2.2004. The issue as to whether an order which stands nullified by the order of the Court can be enforced, does not require to be answered as the same cannot be answered in the affirmative. But the issue involved herein is regarding maintainability of the petition. We are in full agreement with this submission. But, petitioner should not forget that he has approached this Court earlier for quashing of the principal order dated 31.3.2004, so far it adversely affected him. That petition stood dismissed as withdrawn. Issue remained limited, i.e., maintainability of successive writ petition for the same cause of action, which has already been decided against the petitioner.

41. In Noorduiddin Vs. Dr K.L. Anand, , the Hon"ble Supreme Court observed as under :

".....Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert Justice."

42. Similarly, in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, , the Hon"ble Apex Court observed as under :

"The power under Article 226 is discretionary. It will be exercised only in furtherance of Justice and not merely on the making out of the legal point..... the interest of Justice and public interest coalesce. They are very often one and the same. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226indeed any of their discretionary powers."

43. Principle enshrined in Section 35-A of the CPC should be applied in such a case as the said provisions provide for compensatory costs in respect of fake or vexatious claim or defence in addition to criminal liability in respect of such a false claim or defence. This principle can also be made applicable in case of suppressions of facts. In *T. Arivandandam Vs. T.V. Satyapal and Another*, the Apex Court held that the Court should remind itself Section 35A CPC and take deterrent action if it is satisfied that the litigation was inspired by vexation motives. In such a case the lawyer also owes a duty not to present such a case observing as under :

"We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstances that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of Justice if Counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an Advocate is an officer of Justice he owes it to society not to collaborate in shady actions. A Judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process....."

44. In *Dr. Buddhi Kota Subbarao Vs. K.Parasaran and others*, the Hon'ble Supreme Court has observed as under :

"No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to Justice should not be misused as a licence to file misconceived and frivolous petitions."

45. Similar view has been reiterated by the Supreme Court in *Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another*, ; *Sabia Khan and Others Vs. State of U.P. and Others*, ; *Abdul Rahman v. Prasoni Bai and Anr.* AIR 2003 SCW 14 ; and *K.K. Modi Vs. K.N. Modi and Others*, .

46. Thus in view of the above, we are of the considered opinion that in a case where petitioner has earlier challenged the principal order and withdrew the writ petition without seeking liberty to file afresh and challenging the consequential order only is not permissible as it may amount to challenging the principal order indirectly, and further more petitioner is adamant that he is not seeking the relief asking the Corporation to decide his representation, the present petition cannot be held to be maintainable, and filing this kind of petition amounts to abuse of the process of the Court. Petitioner has considered it as a matter of right to use,

abuse and misuse this forum only because he can afford to engage a set of lawyers and waste the time of Court as the desires.

47. In Paragraph 13 it has been stated that the Court for reasons not known to the petitioner, modified the stay order dated 6.2.2004, inserting the previous place of posting of respondent No. 4. In Paragraph No. 16 it has been submitted that the Bench summoned the Counsel for the parties and the respondent-Corporation in chambers during lunch hours, and asked the Counsel of the Corporation to get the order dated 30.1.2004 withdrawn so as to put an end the controversy created by the order of correction. In Paragraph 17, it has been averred that the Court did not pass orders on the applications filed by the present petitioner for recalling the correction order dated 23.2.2004 and impleadment. In Paragraph 20, it has been alleged that the Court directed the Counsel for the petitioner to withdraw the Writ Petition No. 14159 of 2004 with assurance that "if no orders were passed, he could approach the Court for redressal again." Upon such observation of the Court, the Counsel for the petitioner agreed to withdraw the writ petition as not pressed.

48. However, before parting with the case, it may be pertinent to mention here that the petition is not only to achieve the goal adopting the oblique method, but to scandalize the Court also, and it may be relevant, for the purpose, refer to the contents of some of the Paragraphs of the writ petition.

49. All allegations seem to be an afterthought in order to achieve an ulterior purpose, for the reason that the petitioner has not made any allegation whatsoever worth the name while filing the application for modification of the order dated 23.2.2004, or filing the earlier Writ Petition No. 14159 of 2004 for the same cause of action, which was dismissed as withdrawn on 7.4.2004, and no explanation has been furnished by the petitioner anywhere in the petition as to why he did not take such pleadings either in the application for impleadment and recalling of the order dated 23.2.2004 or in his earlier Writ Petition No. 14159 of 2004.

50. The contents of Paragraphs 13, 16, 17 and 20 the petitioner casted aspersions against the Court without any reservation. The contents of Paragraph 16 have been sworn in on the basis of personal knowledge and the contents of Paragraph Nos. 13, 17 and 20 have been sworn in on the basis of knowledge derived from the record. However, were fail to understand how the record could reveal that the order dated 6.2.2004 had been modified by the Court while entertaining a correction application on 23.4.2004 to give the benefit to respondent No. 4 and what was the motive and interest of the Court to help him. Similarly, contents of Paragraph 16 have been sworn in on the basis of personal knowledge. Petitioner does not state that he was present in the chamber when the lawyers were called and they were persuaded to end the controversy. More so, even otherwise Court can make observation and ask the parties to bring the litigation to an end, and for that purpose, can suggest some fair deal and on that basis, compromise can also be made between the parties by intervention of the

Court; even Section 89 of the CPC provides for it, The Court can suggest a formula to bring the controversy to an end, as there can be no bar to make a suggestion; it is for the party to accept it or not. However, Court can certainly not force a party to accept the suggestion made by the Court. Nor a Judge can claim to be infallible and if a mistake occurs in Court's order, it requires rectification.

51. In Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., , the Hon''ble Supreme Court held as under :

".....To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience."

52. Further, the Hon''ble Court placed reliance upon the judgment in Pierce v. Delameter, (A.M.Y. at page 18), wherein it has been observed as under :

"a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn; great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead; and courageous enough to acknowledge his errors."

53. In Re: Sanjiv Datta and Others, , the Hon''ble Apex Court held as under:

".....None is free from errors, and the judiciary does not claim infallibility. It is truly said that a Judge who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the Courts and provides for both internal and external checks to correct the errors. The law, the jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the Courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors. Abuses, attribution of motives, vituperative terrorism and defiance are no methods to correct the errors of the Courts....."

54. Petitioner had tried to make a mountain out of the mole. Though we still fail to understand for what purpose he wants to malign the Court casting aspersions against the Bench. Petitioner's grievance in Para 17 has been that no order was passed by the Court on his application dated 26.2.2004 for impleadment and recall of the order. We have also examined the record of the said case. It is found that the said application was listed before the Court on 1.3.2004, on that day the main case had not been on the Board. Hence, the order was passed to "list with previous papers". It had been filed by Mr. Ravi Prakash Srivastava with a note that Mr. V.B. Singh, the learned Senior Counsel who was also appearing for the petitioner therein. Mr. Tej Bahadur Ram will appear for the applicant. Mr. V.B. Singh or Mr. Srivastava did not press the said application, whenever the case was listed. More so, there was no occasion for the Court to pass any order on the said application as the petition stood dismissed and all orders including the order,

modification of which was sought merged into the final order and stood nullified.

55. Paragraph 20 of the petition speaks out that the Counsel for the petitioner was directed to withdraw the writ petition and an assurance was given that if no relief was granted by the Corporation, petitioner could approach the Court. In such an eventuality, where a representation is pending before the statutory authority, and it is rejected, the party can always approach the Court filing a writ petition, but that would be challenging the order of rejection of his representation. Thus, it would be on a separate cause of action, and an assurance if there was any, was only in respect of that. But no Court could give an assurance that it would act in contravention of the law and entertain the petition which is barred by law. This Paragraph has been sworn in on the basis of the knowledge derived from the record of the case. There is nothing on record to suggest any such thing.

56. It is a case where petitioner, who had challenged his transfer order dated 15.7.2003 on the ground of transfer after having been posted therein for a short span of time, did not challenge the order when he was further transferred vide order dated 22.12.2003, for the reason best known to him, but he did not hesitate in making scandalous and wild allegations casting aspersions against the Court. Shri V.B. Singh, learned Senior Advocate who had appeared in the earlier petition could not be directed by the Court to withdraw the petition, nor oral assurance could be given that in case a party does not get the relief from the State, the Court will entertain a second petition. Every person has a right to approach the Court if he has any grievance, and the Court has to decide the same in accordance with law. But the Court has no competence to entertain a petition if barred by law. The averments made in the petition in this regard are unwarranted and uncalled for.

57. Petitioner's earlier writ petition challenging the transfer order dated 15.7.2003 is still pending, though it might have become infructuous, as petitioner has subsequently been transferred vide order dated 22.12.2003 to different place. Petitioner did not consider it proper to withdraw the said petition as having become infructuous, he can afford the luxury of having litigation according to his own wish and in his own manner which he chooses, he has considered himself to have a right to abuse the process of the Court.

58. As in the instant petition no liberty to file the petition again was sought, the petitioner had the audacity to browbeat the Court making baseless allegations. Conduct of the petitioner has been reprehensible and such a practice requires to be deprecated.

59. We fail to understand that if petitioner had been aggrieved of his transfer order 15.7.2003 from one office to another at Allahabad, on the ground that he had joined there only short while ago and obtained stay order from this Court, what was the occasion for the Corporation to transfer him after a short interval to the Workshop. If the Authority concerned of the Corporation has no will power

to force its employees to join at the transferred place, or it succumbs to their pressure, it should not pass the orders at all.

60. Instead of taking any effective action or passing appropriate order or making transfer posing in correct perspective by the Corporation, its learned Counsel Shri Ranjit Saxena submitted that most of the officers do not attend their respective office; all the times they are found walking in the corridors of the Courts or sitting inside the chambers of the lawyers; the work of the Corporation suffers because of their absence from office; they are interested to get a prize post, and once they get it, retaining the same by any means. The Corporation is not in a position to serve the society properly because of their attitude and non-availability in the office.

61. We fail to understand for what purpose Mr. Saxena has made these submissions? It is the duty of the officers of the Corporation to manage their own house in a proper manner. Nobody can prevent them from taking any disciplinary action in accordance with law against any erring officer/employee who is absent from the office without leave or does not join in pursuance of the transfer order. The Corporation cannot shift the burden to the Court to run its affairs nor the Court can be held responsible for its mis-management. Nor the Court can refuse to entertain them, if they have a genuine claim. It is for the authority concerned to examine the issues and pass appropriate order if required in appropriate case. Court can only express its anguish in respect of the sorry state of affairs expressed by the learned Counsel of the Corporation itself in the Court and request the authorities concerned to manage their affairs in the best interest of the society.

62. Be that as it may, it is beyond our understanding as why the Corporation can even today not decide the representation filed by the petitioner on 3.4.2004, after examining its record. Petitioner may have apprehension of not getting Justice from the Corporation, but in the fairness the employer must pass an order on his representation in accordance with law.

63. With these observations, the petition stands dismissed.