

---

**(2010) 01 AHC CK 0190**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 14630 of 2009

Madan Gopal

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

---

**Date of Decision :** 13-01-2010

**Acts Referred:**

Constitution of India, 1950 — Article 16, 16(4A)

**Citation :** (2010) 01 AHC CK 0190

**Hon'ble Judges :** S.P.Mehrotra, J and Kashi Nath Pandey, J

**Final Decision :** Dismissed

---

## Judgement

1. Affidavits have been exchanged between the parties. The writ petition is being disposed of at this stage with the consent of the learned counsel for the parties.
2. The present writ petition has been filed by the petitioner, inter alia, praying for quashing the order dated 29.12.2008 (Annexure8 to the writ petition) passed by the respondent No.1, and further for directing the respondent No.1 to promote the petitioner on the post of Executive Engineer by considering the case of the petitioner by constituting Special Departmental Promotion Committee.
3. It appears from the averments made in the writ petition that the petitioner was appointed as Assistant Engineer by the Appointment Letter dated 15.9.1983 in the Public Works Department. Copy of the Appointment Letter has been filed as Annexure1 to the writ petition.
4. A perusal of the Appointment Letter shows that the petitioner was described as belonging to the Other Backward Classes in the Appointment Letter.
5. It further appears that the petitioner, subsequently, made a claim that he belongs to "Majhwar" caste, which came in the Scheduled Caste Category, and, therefore, he be treated as belonging to the Scheduled Caste, and the service record of the petitioner be corrected accordingly.
6. When the authorities concerned did not take any action in regard to the claim

of the petitioner, he filed a writ petition before this Court being Civil Misc. Writ Petition No. 41330 of 2005. The said writ petition was disposed of by this Court by the order dated 14.3.2008 (Annexure5 to the writ petition), interalia, permitting the petitioner to make representation before the respondent No.1 in the said writ petition, and directing the said respondent to decide the said representation by a speaking order within the period mentioned in the said order dated 14.3.2008.

7. Pursuant to the said order dated 14.3.2008, the representation made by the petitioner was rejected by the respondent No. 1.

8. Thereafter, the petitioner filed another writ petition before this Court being Civil Misc. Writ Petition No. 48955 of 2008. The said writ petition was disposed of by this Court by the order dated 25.9.2008 (Annexure7 to the Writ Petition). Relevant portion of the said order is reproduced below:

".....According to us this advantage cannot be given to him at this stage when initially he described himself under the O.B.C. i.e. Mallah.

He contended before us that at some places the appropriate authority describes the caste under O.B.C. and some where they describes as under scheduled caste. We are of the view that such dispute is entirely different. We have to go by the initial declaration. The petitioner cannot change his Entry. Therefore, he is not entitled to any relief to that extent.

However, he further contended that in irrespective of such correction of Entry, he is entitled for promotion even as per the Entry under O.B.C. i.e. Mallah.

We are of the view that the case of the petitioner will be considered by the appropriate authority preferably within a period of three months from the date of the communication of this order before him upon giving fullest opportunity of hearing and by passing a reasoned order thereon. The writ petition is, thus, disposed of however without imposing any cost."

9. This Court, thus, held that the petitioner having initially described himself as belonging to O.B.C. i.e. Mallah, could not be permitted to change his stand and make an application for being treated as belonging to Scheduled Caste. However, this Court directed the appropriate authority to consider the question of promotion of the petitioner treating the petitioner as O.B.C. (Mallah).

10. Pursuant to the said order dated 29.5.2008, the claim of the petitioner for promotion was considered treating him as belonging to Other Backward Classes i.e., Mallah, thus, considering the petitioner at par with the candidates belonging to the General Category. By the order dated 29.12.2008 (Annexure8 to the writ petition), the claim of the petitioner for promotion was rejected. It was, interalia, held that the provision for reservation in promotion was not applicable to the Other Backward Classes; and that the petitioner was, thus, considered for promotion as a candidate belonging to the General Category; and that for promotion in respect of the vacancies occurring in the year 2008-09, the meeting

of the Departmental Promotion Committee was called on 8.12.2008; and that after including the petitioner in the Eligibility List at the appropriate place, the Selection Committee considered the claim of the petitioner for promotion on the basis of the relevant service records; and that the Selection Committee found the petitioner as "unsuitable", and, therefore, did not recommend the petitioner for promotion to the post of Executive Engineer.

11. We have heard Shri Naushad Ali Siddiqui, learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents, and perused the record.

12. As regards the admissibility of the provision for reservation in promotion for Other Backward Classes, it is submitted by Shri Naushad Ali Siddiqui that the view expressed in the impugned order is not correct.

13. Having considered the submission made by Shri Siddiqui, we are of the opinion that the submission cannot be accepted. In our view, the impugned order has rightly held that the provision for reservation in promotion is not admissible in respect of Other Backward Classes. Clause (4A) inserted in Article 16 of the Constitution of India by 77th Constitutional Amendment Act, 1995 permits the State for making provision for reservation in matters of promotion in favour of the Scheduled Castes and the Scheduled Tribes, which, in the opinion of the State, are not adequately represented in the services under the State. The said provision is, thus, not applicable to the Other Backward Classes.

14. As regards the ground mentioned in the impugned order dated 29.12.2008 regarding treating the petitioner as unsuitable, and consequently denying promotion to the petitioner, Shri Siddiqui refers to the Communication dated 10.11.2008 (Annexure 10 to the writ petition) sent by the Chief Engineer, U.P., Public Works Department, Lucknow to the Superintending Engineer (Establishment), Lucknow giving details regarding disciplinary proceedings and prosecution against various Assistant Engineers. In respect of the petitioner, it is mentioned in column (6) that disciplinary proceeding was pending against the petitioner. In column (7), it was further mentioned that prosecution was pending against the petitioner.

15. It is submitted by Shri Siddiqui that the said details were not correct and therefore, the petitioner was wrongly treated as unsuitable on the basis of the said details.

16. We have considered the submission made by Shri Siddiqui, and we find ourselves unable to accept the same.

17. As regards the pendency of the prosecution against the petitioner, it is pertinent to refer to paragraph 13 of the writ petition. A perusal of the said paragraph shows that a Case Crime No. 330 of 2004, under Sections 420, 468, 471 I.P.C., was registered against the petitioner on the ground of having furnished forged Caste Certificate. It further appears from a perusal of the said

paragraph of the writ petition that the petitioner has filed Criminal Misc. Writ Petition No. 9490 of 2004 wherein, by the order dated 9.5.2006, the arrest of the petitioner has been stayed till the submission of the chargesheet/final report, if any. The said order dated 9.5.2006 permits the Investigating Officer to complete the investigation.

18. It further transpires from a perusal of paragraph 14 of the writ petition that chargesheet was submitted against the petitioner in the aforesaid Criminal Case whereupon the petitioner filed Criminal Misc. Application No. 16902 of 2006. By the order dated 19.12.2006 (Annexure 6 to the writ petition), further proceedings in Criminal Case No. 2213 of 2006 pursuant to the submission of the chargesheet were stayed.

19. It is, thus, evident that the chargesheet was submitted against the petitioner and the criminal proceedings were initiated against the petitioner. However, the said proceedings have been stayed by this Court by the order dated 19.12.2006. In our view, the factum of the existence/pendency of the criminal proceedings/prosecution against the petitioner is not wiped out on account of the said stay order dated 19.12.2006. The effect of the said stay order is that further proceedings in such criminal proceedings/prosecution cannot continue. The factum of the existence/pendency of the criminal proceedings/prosecution is not affected by the stay order. Only continuance of such existing/pending criminal proceedings/prosecution is suspended.

20. Reference in this regard may be made to certain judicial decisions:

21. In *M/s. Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras*, AIR 1992 SC 1439, their Lordships of the Supreme Court held as under (paragraph 10 of the said AIR):

"10. In the instant case the proceedings before the Board under Ss. 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant company had become economically and commercially nonviable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant company under S. 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay

of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant company against the order of the learned single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant company. The said appeal, therefore, fails and is liable to be dismissed."

(Emphasis supplied)

22. This decision, thus, lays down that there is a distinction between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order, which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order, which has been stayed, would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.

23. In *Ouseph Mathai and others v. M. Abdul Kahadir*, AIR 2002 SC 110 their Lordships of the Supreme Court held as under (paragraph 12 of the said AIR):

"12. Learned counsel appearing for the respondent-tenants submitted that as there was a stay regarding dispossession of the tenants, the tenants were justified in depositing the rent within one month after the dismissal of their petition under Article 227 of the Constitution of India. It is settled position of law

that stay granted by the Court does not confer a right upon a party and it is granted always subject to the final result of the matter in the Court and at the risks and costs of the party obtaining the stay. After the dismissal, of the lis the party concerned is relegated to the position which existed prior to the Filing of the petition in the Court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection."

(Emphasis supplied)

24. This decision, thus, lays down that stay granted by the Court does not confer a right upon a party and it is granted always subject to the final result of the matter in the Court and at the risks and costs of the party obtaining the stay. After the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the Court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.

25. In *Kanoria Chemicals and Industries Ltd. and others v. U.P. State Electricity Board and others*, (1997) 5 SCC 772, their Lordships of the Supreme Court laid down as under (paragraphs 11 and 12 of the said SCC):

"11. The learned counsel for the appellants in the appeals before us rely upon the portions underlined in the above passage as a decision supporting their contention that where the operation of Government order is stayed, no surcharge can be demanded upon the amount withheld. We find it difficult to agree. In our respectful opinion, the underlined portions do not constitute the decision of the Court. They merely refer to the fact that the Board itself did not make a demand for surcharge amount in respect of the period covered by the stay under its own understanding of the effect of the stay order granted by the High Court and that it was justified in its opinion. The demand was, the Court pointed out, in respect of the period covered by the order of injunction granted by this Court. This Court held expressly that the grant of an injunction does not relieve the consumers of their obligation to pay the charges at the enhanced rates and, therefore, the demand for surcharge/interest for such period is not illegal. The portions underlined cannot be understood as laying down the proposition that in respect of the period covered by the stay, no demand can be made. No such proposition can be deduced from the said passage for the reason that the liability for the said (sic period) was not at all in issue in the said decision. Unless put in issue and pronounced upon, it cannot be said that there was a decision on the said issue. There was no lis between the parties with respect to the period covered by the stay order of the High Court. If so, it cannot be said that any decision was rendered by this Court on the said issue or aspect, as it may be called. We, therefore, agree with the High Court that *Adoni Ginning* (1979)4 SCC 560]: (AIR 1979 SC 1511) cannot be read as laying down the proposition that the grant of stay of a notification revising the electricity charges has the effect of relieving the consumers/petitioners of their obligation to pay late payment surcharge/interest on the amount withheld by them even when their writ petitions are dismissed

ultimately. Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply which terms and conditions indeed form part of the contract of unfair and inequitable proposition can be sustained in law. No such proposition flows from Adoni Ginning. It is a matter of common knowledge that several petitioners (their counsel) word the stay petition differently. One petitioner may ask for injunction, another may ask for stay of demand notice, the third one may ask for stay of collection of the amount demanded and the fourth one may ask for the stay of the very notification. Such distinctions are bound to occur where a large number of writ petitions are filed challenging the same notification. The interim orders made by the Court may also vary in their phraseology in such a situation. Take this very case: While the consumers had asked for stay of operation of the Government order revising the rates, those very consumers asked for an injunction when they came to the Supreme Court. Furthermore, as pointed out rightly by the High Court, the orders of stay granted by the High Court in writ petitions questioning the validity of the Notification dated 21/4/1990 were not uniform. In the case of writ petition filed by the Eastern U.P. Chamber of Commerce and Industry, Allahabad, the operation of the notification was stayed while in the case of the writ petition filed by the Employers' Association of Northern India, it was directed that "effect shall not be given to the Notification dated 21st April, 1990 as against the petitioner", while clarifying at the same time that "in the event of failure of the writ petition, the petitioner shall deposit with the relevant authority within a period of one month from the date of dismissal of the writ petition the difference between the amount of electricity dues to be paid hereinafter by the petitioners under our orders and the sum which may be calculated on the basis of the impugned notification". "The words "sum which may be calculated on the basis of the impugned notification" in the later order clearly mean and include the late payment surcharge as well. The acceptance of the appellants' argument would thus bring about a discrimination between a petitioner and a petitioner just because of the variation of the language employed by the court while granting the interim order though in substance and in all relevant aspect, they are similarly situated. It is equally well settled that an order of stay granted pending disposal of a 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. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would

also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same notification the operation of which was stayed."

"12. As has been pointed out by S.C. Agrawal, J., speaking for a three Judge Bench in *Shree Chamundi Mopeds Ltd.v. Church of South India Trust Assn.*(AIR 1992 SC 1439) SCC p.9, para, 10)

"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence".

(Emphasis supplied)

26. This decision, thus, lays down that stay of operation of order or notification only means the order or notification which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the order or notification has been wiped out from existence. An order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and 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.

27. In *State of West Bengal and others v. Banibrata Ghosh and others*, (2009)3 SCC 250: (AIR 2009 SC 1845) their Lordships of the Supreme Court held as under (paragraph 28 of the said SCC):

"28. We also do not understand as to how the Division Bench could be impressed by the fact that the interim order was not appealed against by the State Government. It is to be understood that an interim order does not decide the fate of the parties to the litigation finally, it is always subject to and merges with the final order passed in the proceedings. The nonfiling of the appeal, which seems to have impressed the Division Bench, according to us. is of no consequence."

(Emphasis supplied)

28. This decision, thus, lays down that an interim order does not decide the fate of the parties to the litigation finally. It is always subject to and merges with the final order passed in the proceedings. The nonfiling of the appeal against the interim order is, therefore, of no consequence.

29. The above decisions, thus, support the conclusion that the stay order dated 19.12.2006 would not amount to wiping out the factum of the existence/pendency of prosecution against the petitioner.

30. In the circumstances, we are of the opinion that the fact regarding pendency of prosecution against the petitioner, as mentioned in the details submitted with the Communication dated 10.11.2008, was rightly taken into consideration by the concerned authority for considering the suitability of the petitioner.

31. Again, as regards the reference to the pendency of the departmental proceedings against the petitioner in the details furnished with the said communication dated 10.11.2008, it is relevant to note that the departmental proceedings ultimately resulted in the award of punishment to the petitioner by the order dated 8.1.2007 (Annexure 11 to the writ petition). Therefore, the said fact was rightly taken into consideration by the concerned authority in considering the suitability of the petitioner for promotion.

It may be mentioned that against the said order dated 8.1.2007 (Annexure 11 to the writ petition), the petitioner filed a writ petition being Civil Misc. Writ Petition No. 35407 of 2007. By the judgment and order dated 12.1.2010, the said writ petition has been dismissed by this Court.

In view of the above discussion, we are of the opinion that the impugned order dated 29.12.2008 does not suffer from any illegality. The writ petition filed by the petitioner lacks merits, and the same is liable to be dismissed.

The writ petition is accordingly dismissed.

However, on the facts and in the circumstances of the case, there will be no order as to costs.