

**SUPREME COURT OF INDIA**

State of U.P.

Vs.

Diwakar Khare

C.A.No.6049 of 2008

(Tarun Chatterjee J.)

03.10.2008

**ORDER**

1. Delay condoned.

2. Leave granted.

3. This appeal is directed against the interim orders dated 20th of June, 2008 and 29th of August, 2008 passed by a Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, by which an interim relief was granted to the Writ Petitioner/Respondent to the extent that Respondent was permitted to continue on the post of Media Prabhari.

4. Having heard the learned counsel for the parties and after going through the impugned order, we are of the view that in the facts and circumstances of the case, the interim relief granted ought not to have been passed by the High Court during the pendency of the writ petition.

5. Mr. Gopal Subramaniam, learned Additional Solicitor General, appearing on behalf of the appellant-State, has drawn our attention to an order of the State Government, which is annexed as Annexure P-4 to this paper book, from which it is evident that the post of Media Prabhari has already been abolished from 18th of June, 2008. Since the post itself has been abolished by the State Government before the interim order was granted, we are of the view that the interim relief to writ petitioner/respondent at this stage could at all be given i.e. after abolition of the said post. If the post has already been abolished, question of continuance by the writ petitioner/respondent in the said post already abolished cannot arise at all.

That being the position, we set aside the interim orders granted by the High Court.

6. We are informed that the original writ petition now pending before the High Court is fixed for final hearing on 20th of October, 2008. In this connection, we make it clear that we have not gone into the merits of the writ petition and by vacating the interim orders by us, it shall not be meant that the High Court would not be entitled to decide the writ petition on merits.

Therefore, it will be open to the High Court to decide the writ petition on merits without being influenced by the grant of interim orders by the High Court and vacation of the same by this Court.

7. Learned Addl. Solicitor General also submits on instruction that the disciplinary proceedings, if any, started against the respondent, shall stand withdrawn if the writ petitioner/respondent joins the service as Addl. District Information Officer in the State of Uttar Pradesh within two weeks from this date. The Contempt Proceedings, if any, shall remain stayed till final disposal of the writ petition.

8. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.