

Gopal & Ors. For Vacation Of Stay Dated ... vs Union Of India And Ors on 22 June, 2020

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Asha Menon

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 12052/2019, CM No.49365/2019 (for stay), CM No.593/2020 (of Indian Police Service Central Association (IPSCA) for vacation of stay dated 18th November, 2019), CM No.600/2020 (of Ram Gopal & Ors. for impleadment), CM No.601/2020 (of Ram Gopal & Ors. for vacation of stay dated 18th November, 2019) & 12887/2020 (for early hearing).
TARUN KUMAR BANJAREE AND ORS. Petitioners

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun Bhardwaj & Mr. Abhishek Sharma, Advs. for UOI.
Mr. Darpan Wadhwa, Sr. Adv. with Mr. Arun Khatri, Adv.
Mr. Gaurav Sarin, Mr. Aditya Singla, Ms. Supriya Juneja & Ms. Cheshta Jetly, Advs. for the applicant IPS Association.
Mr. Amit Anand Tiwari & Ms. Mary Mitzy, Advs.

AND

+ W.P.(C) 12751/2019, CM No.52106/2019 (for interim direction), CM No.604/2020, CM No.604/2020 (of IPSCA for impleadment), CM No.605/2020 (of IPSCA for vacation of stay dated 18th November, 2019), CM No.3264/2020 (of Sachin Badshah & Ors. for impleadment), CM No.3265/2020 (of Sachin Badshah & Ors. for vacation of stay dated 18th November, 2019) & 12885/2020 (for early hearing).
SANJAY PRAKASH AND ORS. Petitioners

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun Bhardwaj & Mr. Abhishek Sharma, Advs. for UOI.

WP(C) Nos.12052/2019, 12751/2019, 12875/2019, 13014/2019, 13588/2019 & 3443/2020 Page
Mr. Gaurav Sarin, Mr. Aditya Singla,
Ms. Supriya Juneja & Ms. Cheshta
Jetly, Advs. for the applicant IPS

Association.

AND

+ W.P.(C) 12875/2019, CM No.52617/2019 (for stay), CM No.595/2020 (of IPSCA for impleadment), CM No.596/2020 (of IPSCA for vacation of stay dated 6th December, 2019), CM No.599/2020 (of Kiran S. & Ors. for impleadment), CM No.1387/2020 (of respondents for vacation of stay dated 6th December, 2019), CM No.3607/2020 (of respondents for interim directions) & 12900/2020 (for early hearing).
MAHENDRA SINGH DEO Petitioner

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun Bhardwaj & Mr. Abhishek Sharma, Adv. for UOI.
Mr. Gaurav Sarin, Mr. Aditya Singla, Ms. Supriya Juneja & Ms. Cheshta Jetly, Adv. for the applicant IPS Association.

AND

+ W.P.(C) 13014/2019, CM No.53052/2019 (for stay), CM No.607/2020 (of respondents for vacation of stay dated 10th December, 2019), CM No.608/2020 (of IPSCA for impleadment), CM No.609/2020 (of IPSCA for vacation of stay), CM No.611/2020 (of Ashwani Kumar Chand & Ors. for impleadment), CM No.612/2020 (of Ashwani Kumar Chand & Ors. for vacation of stay), CMs No.3612/2020 & 4412/2020 (both of respondents for interim directions) & CM No.12706/2020 (of respondents for clarification of interim order dated 10th December, 2019).
RADHA MOHAN MEENA AND ORS. Petitioners

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun

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Bhardwaj & Mr. Abhishek Sharma, Adv. for UOI.
Mr. Gaurav Sarin, Mr. Aditya Singla, Ms. Supriya Juneja & Ms. Cheshta Jetly, Adv. for the applicant IPS Association.

Mr. Amit Anand Tiwari & Ms. Mary Mitzy, Adv.
Mr. Anupam S. Sharma & Mr. Prakash Airan, Adv.

AND

+ W.P.(C) 13588/2019, CM No.54944/2019 (for interim directions), CM No.587/2020 (of IPSCA for impleadment), CM No.588/2020 (of IPSCA for vacation of stay dated 23rd December, 2019) & CM No.591/2020 (of Jitender Rana & Ors. for impleadment)
SUDHIR KUMAR SINGH AND ORS. Petitioners

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun
Bhardwaj & Mr. Abhishek Sharma,
Advs. for UOI.

Mr. Gaurav Sarin, Mr. Aditya Singla,
Ms. Supriya Juneja & Ms. Cheshta
Jetly, Advs. for the applicant IPS
Association.

AND

+ W.P.(C) 3443/2020

SUNIT VARSHNEY & ORS

..... Petitioners

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun
Bhardwaj, Ms. Aakanksha Kaur &
Mr. Manek Singh, Advs. for UOI.

Mr. Gaurav Sarin, Mr. Aditya Singla, Ms.
Supriya Juneja & Ms. Cheshta Jetly, Advs.
for the applicant IPS Association.

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CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 22.06.2020 CM No.13026/2020 (for exemption from filing duly affirmed affidavits and requisite court fees) in W.P.(C) 13014/2019.

1. Allowed, subject to just exceptions and as per the extant rules.

2. The application is disposed of.

W.P.(C) 12052/2019, W.P.(C) 12751/2019, W.P.(C) 12875/2019, W.P.(C) 13014/2019, W.P.(C) 13588/2019 and W.P.(C) 3443/2020.

3. We have heard the counsel for the petitioners in all these matters.

4. The learned Additional Solicitor General (ASG) appearing for the respondents Union of India (UOI) has also been heard for over one hour.

5. Finding that the counter affidavits filed to the petitions are only on behalf of Ministry of Home Affairs (MHA) and the contention of the counsel for the petitioners being that inspite of the Office Memorandums of the Department of Personnel & Training (DOPT), Ministry of Personnel, Public Grievances and Pensions, the MHA is not doing the needful, we have enquired whether there is any separate counter affidavit on behalf of DOPT. The answer is in the negative. We have next enquired

from the ASG whether his instructions are from the MHA only or also from DOPT. He has fairly stated that his instructions are primarily from MHA and that he will before the next date of hearing, also take instructions expressly from DOPT.

6. If there is any need for DOPT to file a separate affidavit, even if in short, the said counter affidavit be also filed before the next date of hearing.

7. The question for consideration appears to have arisen in the following circumstances.

8. Vide Office Memorandum dated 24th April, 2009, DOPT provided for Non Functional Financial Upgradation (NFFU) to be granted to certain officers of certain services. The services in which the officers were entitled to claim NFFU were described as Organized Group 'A' Services (OGAS). According to the counsel for the petitioners, prior to 24th April, 2009 there was no such terminology as this. A question arose, whether a particular service fell in the category of OGAS or not. To clarify the same, another Office Memorandum dated 20th November, 2009 was brought, listing the attributes on the anvil of which it was to be determined whether a particular service fell in the category of OGAS.

9. The petitioners earlier filed a petition being W.P.(C) 153/2013 before this Court, claiming that they met all the aforesaid attributes and were thus entitled to NFFU. The said round of litigation was decided in favour of the petitioners. Now the petitioners state that once they have been declared as OGAS, they are also entitled to other attributes of OGAS as listed in the Office Memorandum dated 20th November, 2009.

10. The present petitions are concerned with the right of the petitioners to all the posts upto the Senior Administrative Grade (SAG), which in the case of Central Armed Police Forces (CAPF) is of Inspector General.

11. During the hearing, it has transpired that as per the service rules of different services coming under the umbrella of CAPF, there is a provision for some posts upto SAG to be filled up by deputation. The question for consideration is, whether the same is required to be changed in view of the judgments in the earlier round of litigation declaring the CAPF as OGAS.

12. Prima facie, it is felt that the purport of the Office Memorandums dated 24th November, 2009 and 20th November, 2009 was not to change the service rules of different services under the umbrella of CAPF and merely because it has been held in the judgments in the earlier round of litigation that CAPF qualified as OGAS, would not entitle CAPF to exclusion of deputationists till SAG. The word used in the Office Memorandum dated 20th November, 2009 is "existing monograph".

13. The counsel for the petitioners however states that the petitioners in the petitions have claimed entitlement to exclusion of the deputationists till SAG level, independently of the judgments in the earlier round of litigation also.

14. According to the counsels for the IPS officers who have filed applications in these proceedings, there is no such independent claim besides in accordance with the judgments in the earlier round of litigation.

15. List for further hearing on 1st July, 2020.

16. CM Nos. 12887/2020, 12885/2020 & 12900/2020 for early hearing are disposed of as infructuous.

RAJIV SAHAI ENDLAW, J ASHA MENON, J JUNE 22, 2020 'gsr'..