

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.61 OF 2002

M.NAGARAJ & ORS.

... PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

... RESPONDENT(S)

WITH W.P.(C)NO.62/2002, W.P.(C)NO.134/2002, W.P.(C)NO.135/2002,
W.P.(C)NO.226/2002, W.P.(C)NO.227/2002, W.P.(C)NO.255/2002, W.P.
(C)No.266/2002, W.P.(C)No.298/2002 W.P.(C)NO.299/2002, W.P.
(C)NO.294/2002, W.P.(C)NO.319/2002, W.P.(C)NO.386/2002, W.P.
(C)NO.387/2002, W.P.(C)NO.320/2002, W.P.(C)NO.338/2002, W.P.
(C)NO.482/2002, W.P.(C)NO.483/2002, W.P.(C)NO.485/2002, S.L.P.
(C)Nos.4915-4919/2003, Cont.Petn.(C)No.505/2002 in W.P.
(C)NO.61/2002, Cont.Petn.(C)No.553/2002 in W.P.(C)NO.266/2002,
Cont.Petn.(C)No.570/2002 in W.P.(C)No.255/2002, Cont.Petn.
(C)No.122/2003 in W.P.(C)NO.61/2002, Cont.Petn.(C)No.127/2003 in
W.P.(C)NO.61/2002, Cont.Petn.(C)No.85/2003 in W.P.(C)No.255/2002,
C.A.Nos.12501-12503/1996, S.L..P.(C)NO.754/1997, SLP(C)No.19689/1996
WITH CONT.PETN.(C)No.404/2004 in W.P.(C)No.255/2002 AND
SLP(C)NO.14518/2004

O R D E R

WITH W.P.(C)No.61/202, W.P.(C)NO.62/2002, W.P.(C)NO.134/2002,	W.P.
(C)NO.135/2002, W.P.(C)NO.226/2002, W.P.(C)NO.227/2002,	W.P.
(C)No.266/2002, W.P.(C)No.298/2002, W.P.(C)NO.255/2002,	W.P.
(C)NO.299/2002, W.P.(C)NO.294/2002, W.P.(C)NO.319/2002,	W.P.
(C)NO.386/2002, W.P.(C)NO.387/2002, W.P.(C)NO.320/2002,	W.P.
(C)NO.338/2002, W.P.(C)NO.482/2002, W.P.(C)NO.483/2002,	W.P.
(C)NO.485/2002:	

These Writ Petitions, under Article 32, have been filed challenging Constitution(Eighty Fifth) Amendment Act, 2001. In terms of the said amendment, the State of Karnataka passed an enactment giving benefit to its employees. The said enactment was also challenged subsequently by amending the Writ Petitions. The main challenge against various Constitutional amendments was dealt with by this Court in M.Nagaraj & Ors. Vs. Union of India & Ors., reported in (2006) 8 SCC p.212. The said Constitutional amendment

was upheld by this Court with certain observations vide the above judgment. During the course of the pendency of these Writ Petitions, on 08.04.2002, this Court passed the following order:

".....Insofar as interim relief is concerned, the respondents shall not revert the petitioners nor affect their standing in the seniority list and promotion, pay etc. At the same time, it shall be open to the respondents to promote those who are benefited by the impugned amendment but so that it does not affect the petitioners in any manner and

subject to the result of the writ petitions...."

The State of Karnataka and some of the respondents moved for variation/modification of this interim order and this Court passed the following order on 11.11.2002, in supersession of the earlier order :

"...These writ petitions involve the constitutionality of Article 16(4A). The Court, by an interim order, has directed not to revert any of the petitioners from their existing placement nor affect their standing in the seniority list, but at the same time the provisions of Article 16(4A) can be implemented and by virtue of that provision if some of the reserve category candidates are entitled to promotion, they shall be promoted. The obvious idea being the Court should not stay the operation of a constitutional provision. The State finds difficulty in implementing the order on the ground that there does not exist sufficient vacancy of posts in a particular cadre to give effect to the provisions contained in Article 16(4A). This being an interim arrangement, we direct that they should apply to the number of vacancies available in a cadre to give effect to the promotional policy and undoubtedly, such a promotion can be granted only when the State makes a provision for reservation in terms of Article 16(4A). In view of the fact that the implementation of interim order may cause a lot of chaos in the service, it is just and proper that the matter should be finally heard and disposed of and we, therefore, direct that this batch of writ petitions be listed before a Constitution Bench in the month of February, 2003....."

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We have made it clear in the judgment of Nagaraj (supra) that "We have not examined the validity of individual enactments of appropriate States and that question will be gone into in individual writ petition by the appropriate bench in accordance with law laid down by us in the present case". Therefore, in our opinion, it is desirable that these matters be considered by the High Court in the light of the above observations. In view of the above, we transfer these matters to the file of the Division Bench of High Court of Karnataka at Bangalore to be dealt with by it in accordance with law. The interim orders of 08.04.2002 and 11.11.2002 shall hold good for a period of four weeks from the date of receipt of records.

The Registrar is directed to send all connected records to the High Court of Karnataka at Bangalore immediately. Needless to say that the High Court will consider the same as expeditiously as possible. In the meanwhile, the petitioners would be at liberty to move the High Court within four weeks for appropriate interim

relief, if any, in these proceedings.

All these matters are disposed of accordingly.

Cont.Petn.(C)No.505/2002 in W.P.(C)NO.61/2002, Cont.Petn.
(C)No.553/2002 in W.P.(C)NO.266/2002, Cont.Petn.(C)No.570/2002 in
W.P.(C)No.255/2002, Cont.Petn.(C)No.122/2003 in W.P.(C)NO.61/2002,
Cont.Petn.(C)No.127/2003 in W.P.(C)NO.61/2002, Cont.Petn.
(C)No.85/2003 in W.P.(C)No.255/2002 WITH Cont.Petn.(C)No.404/2004 in
W.P.(C)No.255/2002:

The Contempt Petitions are dismissed as withdrawn with
liberty to move the High Court, if so advised.

C.A.Nos.12501-12503/1996:

The Civil Appeals are dismissed as withdrawn with liberty
to move the High Court.

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SLP(C)NO.14518/2004:

The Special Leave Petition is dismissed as having become
infructuous.

SLP(C)No.754/1997, SLP(C)No.19689/1996 & SLP(C)Nos.4915-4919/2003:

The Special Leave Petitions are dismissed as withdrawn
with liberty to move the High Court.

.....CJI
(K.G. BALAKRISHNAN)

.....J.
(DEEPAK VERMA)

.....J.
(Dr. B.S. CHAUHAN)

NEW DELHI;
18TH MARCH, 2010

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ITEM NO.101 COURT NO.1 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (C)NO.61 OF 2002

M. NAGARAJ & ORS. Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(With appln(s) for amendment of the
petition,directions,clarification,vacating stay,clarification/

modification of court's order,impleadment,permission to file additional documents,bring on record subsequent event and office report)

WITH W.P.(C)NO.62/2002 (with appln.(s) for vacating stay), W.P.(C)NO.134/2002, W.P.(C)NO.135/2002, W.P.(C)No.226/2002 (With appln.(s) for impleadign party and amendment of the petition), W.P.(C)No.227/2002, W.P.(C)No.255/2002 (With appln.(s) for modification of court's order and amendment of the petition and with office report), W.P.(C)NO.266/2002 (with appln.(s) for directions), W.P.(C)No.299/2002 (With appln.(s) for amendment of cause title), W.P.(C)No.294/2002 (with appln.(s) for directions), W.P.(C)No.298/2002,W.P.(C)NO.319/2002, 386/2002, 387/2002, 320/2002 (with appln.(s) for ex-parte stay), W.P.(C)No.338/2002, W.P.(C)No.482/2002, 483/2002 (With appln.(s) for ex-parte stay), W.P.(C)No.485/2002, SLP(C)Nos.4915-4919/2003, Cont.Pet.(C)no.505/2002 in W.P.(C)NO.61/2002 (With appln.(s) for exemption from filing O.T.), Commt.Pet.(C)No.553/2002 in W.P.(C)No.266/2002 (With office report), Cont.Pet.(C)No.570/2002 in W.P.(C)No.255/2002 (with office report), Cont.Petn.(c)No.122/2003 in W.P.(C)NO.61/2002, Cont.Pet.(C)No.127/2003 in W.P.(C)No.61/2002, Cont.Petn.(C)No.85/2003 in W.P.(C)NO.255/2002, C.A.Nos.12501-12503/1996 (with office report), SLP(C)NO.754/1996 (with appln.(s) for directions), SLP(C)NO.19689/1996

Date: 18/03/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK VERMA
HON'BLE DR. JUSTICE B.S. CHAUHAN

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For Petitioner(s) Dr.Rajiv Dhavan, Sr.Adv.
Ms. Kiran Suri,Adv.
Mr.S.J.Amith, Adv.

Dr. (Mrs.) Vipin Gupta ,Adv(NP)

Mr. Janaranjan Das, Adv.(NP)

Mr. Lakshmi Raman Singh(NP)

Ms. Meenakshi Arora, Adv.(NP)

Mr. Pramod Dayal, Adv.(NP)

Ms. Pratibha Jain, Adv.(NP)

Mr. Sushil Kumar Jain, Adv.(NP)

Mr. Sunil Kumar Jain, Adv.(NP)

Mr. Ugra Shankar Prasad, Adv.(NP)

Petitioner-In-Person(NP)

Mrs. Kirti Renu Mishra, Adv.

Ms. S. Janani, Adv.(NP)

Mr. Jana Kalyan Das, Adv.(NP)

Mr. E.C. Vidya Sagar, Adv.(NP)

Mr.Himinder Lal, Adv.(NP)

Mr. M.A.Chinnasamy, Adv.(NP)
Mr. Prashant Kumar, Adv.(NP)
Mr. V.K. Monga, Adv.(NP)
Mr. Rajesh Mahale, Adv.(NP)
Mr. Sanjay Jain, Adv.(NP)
Mr. V.K. Sidharthan, Adv.(NP)
Mr. Naveen R. Nath, Adv.(NP)
Mr. Rameshwar Prasad Goyal, Adv.(NP)
Mr. Ashwani Bhardwaj, Adv.(NP)

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Mr. Ashok Kumar Gupta, Adv.
Ms.Madhurima Tatia, Adv.
Mr.P.K.Jain, Adv.(NP)

For Respondent(s)

Mr.P.P.Malhotra, ASG
Mrs.Indra Sawhney, Adv.
Mr.S.W.A.Qadri, Adv.
Mr.Ron bastian, Adv.
Mr.Minnat Ullah, Adv.
For Mrs.Anil Katiyar, Adv.
For Mr. P. Parmeswaran ,Adv
for Mr. B. Krishna Prasad, Adv.
For Ms. Sushma Suri, Adv.
For Mr.B.V.Balram Das, Adv.
For Mr.Shrikant N.Terdal, Adv.

Mr. Sanjay R. Hegde,Adv.
Mr.A.Rohen Singh, Adv.
Mr.Ramesh Kr.Mishra, Adv.

Mr. S.N. Bhat ,Adv
Mr.N.P.S.Panwar, Adv.
Mr.Amandeep Singh Baba, Adv.

Dr. Krishan Singh Chauhan ,Adv
MR.Kartar Singh, Adv.
Mr.Chand Kiran, Adv.
Mr.Tej Singh Varun, Adv.

M/S. Lawyer'S Knit & Co ,Adv

Mr. A.V. Rangam, Adv.

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Ms. Binu Tamta, Adv.

Ms. Kiran Suri, Adv.

Mr. Naresh K. Sharma, Adv.(NP)

Mr.Suraj Singh, Adv.
For Mr. Pradeep Misra, Adv

Mr. Tara Chandra Sharma, Adv.

Mr.Vijay Kedia, Adv.

Mr.Sachin Das, Adv.
Mr.G.S.Chatterjee, Adv.

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Mr.Gopal Singh, Adv.(NP)
Mr.Kamal Mohan Gupta, Adv.(NP)
M/s.K.J.JOhn & Co., Adv.
Mr.Kh.Nobin Singh, Adv.(NP)
Mr. Abhisht Kumar, Adv.
Mr.Jitendra Mohan Sharma, Adv.(NP)
Ms.Vibha Datta Makhija, Adv.(NP)
Mr.Gopal Prasad, Adv.(NP)
Mr.Shibashish Mishra, Adv.(NP)
Mr.Arvind Kr.Sharma, Adv.
Mr.Praveen Swarup, Adv.(NP)
Mr.Satya Prakash Sharma, Adv.
Mrs.Lalita Kaushik, Adv.(NP)
Mr.R.P.Wadhvani, Adv.(NP)
Mr.Raj Kumar Mehta, Adv.(NP)
Ms.V.MOhana, Adv.
Mr.Ravi Prakash Mehrotra, Adv.(NP)
Mr.Anuvrat Sharma, Adv.
Mr.S.Chandra Shekhar, Adv.(NP)
Mr.D.N.Mishra, Adv.

UPON hearing counsel the Court made the following

O R D E R

W.P.(C)No.61/202, W.P.(C)NO.62/2002, W.P.(C)NO.134/2002, W.P.
(C)NO.135/2002,W.P.(C)NO.226/2002, W.P.(C)No.266/2002, W.P.
(C)No.298/2002, W.P.(C)NO.227/2002, W.P.(C)NO.255/2002, W.P.
(C)NO.299/2002, W.P.(C)NO.294/2002, W.P.(C)NO.319/2002, W.P.
(C)NO.386/2002, W.P.(C)NO.387/2002, W.P.(C)NO.320/2002, W.P.
(C)NO.338/2002, W.P.(C)NO.482/2002, W.P.(C)NO.483/2002, W.P.
(C)NO.485/2002:

These matters are disposed of, in terms of the signed
order.

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Cont.Petn.(C)No.505/2002 in W.P.(C)NO.61/2002, Cont.Petn.
(C)No.553/2002 in W.P.(C)NO.266/2002, Cont.Petn.(C)No.570/2002
in W.P.(C)No.255/2002, Cont.Petn.(C)No.122/2003 in W.P.
(C)NO.61/2002, Cont.Petn.(C)No.127/2003 in W.P.(C)NO.61/2002,
Cont.Petn.(C)No.85/2003 in W.P.(C)No.255/2002 WITH Cont.Petn.
(C)No.404/2004 in W.P.(C)No.255/2002:

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The Special Leave Petitions are dismissed as withdrawn with liberty to move the High Court.

(G.V.Ramana)
Court Master

(Veera Verma)
Court Master

(signed order is placed on the file)