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C.A.No. 8476-8481 OF 1997
ITEM No.106

Court No. 1

SECTION XIA & IX

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

Civil Appeal Nos. 8476-8481 of 1997

The Comptroller & Auditor General of India and Ors.Appellant (s)

VERSUS

M.V. Ramachandran Nair and Ors.Respondent (s)
(With office report)

With
C.A. Nos. 5443-5446 of 2002
(With office report)

Date : 04/09/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.B. SINHA

For Appellant (s)Mr. L.N. Rao, ASG
Mr. Kailash Vasdev,Sr. Adv.
Mr. Hemant Sharma, Adv.
Ms. Anil Katiyar, Adv.

For Respondent (s)Mr. B.D. Sharma, Adv.
Mr. Narottam Vyas, Adv.

Mr. Deepak Prakash, Adv.
Mr. M.P. Vinod, Adv.
Mr. A.K. Jain, Adv.

Mr. A.K. Sanghi, Adv.

UPON hearing counsel the Court made the following
O R D E R

C.A. Nos. 8487-81 of 1997:

The appeals are allowed. There shall be no order as to costs.

C.A. Nos. 5443-46 of 2002:

The appeals are dismissed.

[Alka Dudeja][Suraj Parkash]
Court Master Court Master

(Signed order is placed on the file.)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 8476-8481 of 1997

The Comptroller & Auditor General of India and Ors.- Appellant(s)

Versus

M.V. Ramachandran Nair & Ors. - Respondent(s)

With

C.A. Nos. 5443-5446 of 2002.

O R D E R

Civil Appeal Nos. 8476-8481 of 1997 :

The Comptroller and Auditor General of India have been conducting a departmental examination, called 'the Section Officers Grade Examination'. The examination is conducted ordinarily once in a year for all Audit and Accounts Officers on the dates notified by and on behalf of the Comptroller and Auditor General of India. In the year 1996, the process for holding examination commenced. It is at this stage the Comptroller and Auditor General of India by his letter dated 4th November, 1996 circulated to all the State units asking them not to hold the examination in view of the fact that, there already exists a back-log of candidates who have passed the examination and are awaiting promotion and sufficient vacancies do not

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exist for promoting the successful candidates. It is at this stage, the respondents herein filed O.As. before the Central Administrative Tribunal, Bench at Ernakulam, for questioning the staying of the holding of the examination. The Central Administrative Tribunal, held that since the order of staying the examination was passed at the eleventh hour of holding the examination, it is arbitrary and, thus, directed the appellant to hold the said examination. It is against the said order, the appellants are in appeal before us.

When the matter was taken up, the learned

Additional Solicitor General brought to our notice the position as regards the vacancies in Kerala Unit, which is as under:

"Sanctioned strength of SO/AAO:230
Total backlog:371

Projected vacancy each year
@ 2% of SS:05"

In view of these figures, we are of the view that the order passed by the Comptroller and Auditor General of India cannot be branded as an arbitrary one. The said backlog is continuing from 1988. Even if the respondents passed the examination, which results in a long queue, they would not be considered for promotion in the near future and, thus, the holding of the examination would be a mere futility.

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Learned Additional Solicitor General, however, brought to our notice that since then 369 ad-hoc posts have been created which are required to be filled up wherefor the Comptroller and Auditor General of India has ordered to hold the examination this year. In view of this subsequent event also, we are of the view that the judgment under challenge deserve to be set aside. Furthermore, the order of the High Court was stayed. No examination was, therefore, held. The respondents, thus, so far did not appear at the examination. They can only appear at the next examination. No prejudice thus would also be caused to them.

For the abovesaid reasons, the order and Judgment under challenge is set aside.

These appeals are, accordingly, allowed. There shall be no order as to costs.

Before we part with the case, we direct that in case the vacancies are not filled up, the appellants shall take steps for filling up the vacancies in terms of the extent rules.

Civil Appeal Nos. 5443-5446 of 2002 :

In the present case, what we find is that in pursuance of the order passed by the Central Administrative Tribunal, Bench at Nagpur, the

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examination of Maharashtra Unit was held. However, on appeal filed by the appellants before this Court, the publication of the result was stayed.

After we heard the matter, we are of the view that since ministerial act is only required to be done by the appellants, we are not inclined to interfere in the matter. The appeals are, accordingly, dismissed. The appellants shall now publish the result of the examination, which was held in November, 1997. The interim order passed by this Court on 29.8.2002 shall stand vacated. Here we would like to observe that the respondents shall not claim any preference or priority over the officers who have already passed the examination or have been promoted.

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(S.B. Sinha)

New Delhi,

September 04, 2003.