

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

Petition(s) for Special Leave to Appeal (Civil) No(s).4121/2007

(From the judgement and order dated 18/10/2006 in CWP No. 16059/2004 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

PAWAN KUMAR & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 11/01/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Ms. Indira Jaising, ASG
Ms. Rekha Pandey, Adv.
Mr. Aditya Sharma, Adv.
Mr. D.S. Mahra, Adv.
Ms. Anil Katiyar, Adv.

For Respondent(s) Mr. Satish Chand Gupta, Adv .
Mr. Rameshwar Prasad Goyal, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.

(Kanchan Jain)
A.R.

(Juginder Kuar)
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 141 OF 2010
arising out of
SPECIAL LEAVE PETITION (C) No. 4121 of 2007

Union of India & Ors.

...Appellants

vs.

Pawan Kumar & Ors.

...Respondents

O R D E R

Leave granted.

This appeal is directed against the judgment and order dated 18.10.2006 passed by the Division Bench of the High Court rejecting the appellants' prayer for vacating the interim order, which had been passed on 22nd August, 2005, in the writ petition filed by the respondent No. 1.

It appears from the submissions made by the learned Additional Solicitor General - Ms. Indira Jaising, that the selection process was started for appointment by promotion to the post of Welfare Officer on 25th September, 2004 in which the respondent Nos. 1 and 2 along with others participated and respondent No. 1 was selected. Respondent No. 2, thereafter, moved the Central Administrative Tribunal and the selection of respondent No. 1 was set aside by the Tribunal and fresh selection was directed. Against the said order, the respondent No. 1 moved the High Court in a writ application and on 22nd August, 2005, the High Court stayed the operation of the judgment of the Tribunal.

2.

However, in the meantime, a second Departmental Promotion Committee was held pursuant to the orders of the Tribunal and in the said proceedings neither the respondent No. 1, nor the respondent No. 2 was selected, and, on the other hand, another candidate was selected, who was not even made a party in the writ petition.

These facts were, however, not mentioned in the writ petition and in the absence thereof, the interim order was passed staying the operation of the judgment of the Tribunal.

Subsequently, an application was made on behalf of the appellants herein, for vacating and modifying the order dated 22nd August, 2005, which was obtained by suppressing the said

facts. The High Court, however, rejected the said application by holding that the subsequent events had no bearing or relevance to the facts involved in the writ petition since in the said writ petition an earlier order of the Tribunal had been challenged.

Having heard learned counsel for the respective parties, we are unable to accept the reasoning of the High Court in holding that the earlier facts were irrelevant for the purpose of considering the question of grant of interim order. The fact, that the direction of the Tribunal was stayed, has resulted in a situation where the person appointed is functioning and yet the appellants are facing contempt proceedings on account of the stay, which has been granted in

3.

the writ petition. We are of the view that the earlier facts relating to the holding of the second Departmental Promotion Committee and the appointment of another person, to the post in question, has a direct bearing as far as grant of interim order is concerned.

In that view of the matter, we are inclined to allow the appeal and, accordingly, we set aside the interim order of stay passed by the High Court and request the High Court to hear out the pending writ petition expeditiously, and if possible, within six months from today. We make it clear that

the appointment of a third person, in the post of Welfare Officer, would be subject to the final result of the writ petition. We also make it clear that the observations made herein are only for the purpose of disposal of the appeal regarding the refusal by the High Court to vacate the interim order and should not, in any way, prejudice the parties at the time of final hearing of the writ petition.

(ALTAMAS KABIR)J

.....J
(CYRIAC JOSEPH)

New Delhi
January 11, 2010.