

ITEM NO.1501

COURT NO.2

SECTION III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 16161/2018

(Arising out of impugned final judgment and order dated 11-05-2018 in SCA No. 3212/2018 passed by the High Court of Gujarat at Ahmedabad)

HARIHARAN & ORS.

Petitioner(s)

VERSUS

HARSH VARDHAN SINGH RAO & ORS.

Respondent(s)

([HEARD BY: HON. S. ABDUL NAZEER AND HON. ABHAY S. OKA, JJ.]

IA No. 34652/2022 - APPLICATION FOR VACATION OF INTERIM ORDER  
IA No. 143129/2022 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 161062/2019 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 143132/2022 - EXEMPTION FROM FILING ANNEXTURES  
IA No. 143128/2022 - INTERVENTION APPLICATION  
IA No. 144682/2022 - INTERVENTION APPLICATION  
IA No. 176701/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/  
FACTS/ANNEXURES)

WITH

Diary No(s). 12422/2022 (XVI)

(IA No. 68424/2022 - CONDONATION OF DELAY IN FILING  
IA No. 68427/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT)

Date : 14-12-2022 These matters were called on for pronouncement of  
Judgment today.

For Parties

Mr. Vikramjeet Banerjee, Ld. ASG  
Mr. Shashank Bajpai, Adv.  
Mr. Raj Bahadur Yadav, AOR

Mr. Huzefa Ahmadi, Sr. Adv.  
Ms. Aastha Mehta, Adv.  
Ms. Vishakha, Adv.  
Mr. Mishra Saurabh, AOR  
Ms. Prerana Mohapatra, Adv.

Ms. Rita Jha, AOR

Mr. Nidhesh Gupta, Sr. Adv.  
Ms. Pallavi Singh, Adv.  
Ms. Vriti Gujral, Adv.

Ms. Japneet Kaur, Adv.  
Mr. V. K. Verma, AOR  
Mr. Rajat Srivastav, Adv.

Dr. Sushil Balwada, AOR

Mr. Rameshwar Prasad Goyal, AOR

Mr. Satyavikram, Adv.  
Ms. Lekha G.V., AOR

Mr. Shrutanjaya Bhardwaj, Adv.  
Ms. Shivani Vij, Adv.  
Mr. Zeeshan Diwan, AOR

Hon'ble Mr. Justice Abhay S. Oka pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice S. Abdul Nazeer.

Leave granted in Special Leave Petition (C) No.16161 of 2018. Delay in filing Special Leave Petition (C) Diary No.12422 of 2022 is condoned and leave is granted in the said Special Leave Petition as well.

The operative part of the Judgment reads as under:

"34. At this stage, we may note here the factual aspects stated in the affidavit dated 12<sup>th</sup> October 2022 filed by Shri Anurag Chandra, Deputy Commissioner of Income Tax in the Office of the Principal Chief Commissioner of Income Tax, Gujarat. The affidavit refers to the interim order dated 13<sup>th</sup> July 2018 in the Civil Appeal arising out of S.L.P. (C) No.16161 of 2018, by which status quo as of that date with respect to the posts held, was ordered to be maintained. The affidavit notes that as a result of the interim order, the promotion to the cadre of Income Tax Officers from the cadre of Income Tax Inspectors could not take place. As a

result, 33.33% of posts in the cadre of Income Tax Officers are vacant as the same cannot be filled in. As noted earlier, the decision in the case of *K.Meghachandra*<sup>2</sup> applies prospectively i.e. from 19<sup>th</sup> November 2019. Prima facie, the seniority fixed based on the decision in the case of *N.R. Parmar*<sup>1</sup> has to be given effect. Therefore, while we are recommending a reference to a larger Bench, interim relief will have to be vacated and seniority will have to be fixed on the basis of the impugned judgment, subject to the final outcome of the appeal or the decision of the larger Bench, as the case may be.

35. Hence, we pass the following order:

i. We are of the considered view that the following questions need to be decided by a larger Bench of five Hon'ble Judges:

a. Whether the decision in the case of *K. Meghachandra*<sup>2</sup> can be said to be a binding precedent in the light of the law laid down by the Constitution Bench in the case of *Mervyn Coutindo*<sup>3</sup> and the law laid down by a Coordinate Bench in the case of *M. Subba Reddy*<sup>6</sup>?

b. In absence of specific statutory rules to the contrary, when the 'rotation of quota' rule is applicable, whether the seniority of direct recruits who were recruited in the recruitment process which

commenced in the relevant recruitment year but ended thereafter, can be fixed by following 'rotation of quota' by interspersing them with the direct recruits of the same recruitment year who were promoted earlier during the same year?

ii. We direct the Registry to place this petition before Hon'ble the Chief Justice of India for appropriate orders.

iii. The interim relief granted on 13<sup>th</sup> July 2018 stands vacated. Effect shall be given to the impugned judgment subject to the final outcome of this appeal or reference, as the case may be. We also clarify that the seniority of promotees and direct recruits who may be appointed hereafter will be subject to the final outcome of the decision of this appeal or the decision in reference, as the case may be. Accordingly, concerned persons shall be informed in writing by the Income Tax Department.

36. In the Civil Appeal arising out of Special Leave Petition (C) Diary No.12422 of 2022, the challenge is to the judgment and order dated 6<sup>th</sup> February 2018 passed by the High Court of Judicature at Patna which follows the decision in the case of *N.R. Parmar*<sup>1</sup> dealing with the issue of appointment of Income Tax Inspectors pertaining to the recruitment year 2009-10. This appeal be heard along with the main appeal."

(NEETA SAPRA)

COURT MASTER (SH)

(POONAM VAID)

COURT MASTER (NSH)

(Signed reportable judgment is placed on the file)