

ITEM NO.302

COURT NO.9

SECTION IV-A

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

MA No.1151 of 2018 in Civil Appeal No.2368/2011

(Arising out of impugned final judgment and order dated 20-03-2018 in C.A. No.2368/2011 passed by the Supreme Court Of India)

B.K. PAVITRA &amp; ORS.

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(R.P. (C) Diary Nos.7833/2017, 10240/2017, 10258/2017, 10859/2017, 12622/2017, 12674/2017, 13047/2017; 14563/2017; 16896/2017 in CA No.2368 of 2011; and, IA No.66814/2018 - For placing on record compliance orders)

WITH

MA No.1152/2018 in C.A. No.2369/2011 (IV-A)

W.P.(C) No.764/2018 (X)

(IA No.36981/2019 - Stay Application; IA No.88163/2018 - For grant of Interim Relief; IA No.90623/2018 - For intervention; and, IA No.97808/2018 - For intervention/impleadment)

W.P.(C) No.769/2018 (X)

(IA No.88278/018 - For grant of Interim Relief)

W.P.(C) No.791/2018 (X)

(IA No.90624/2018 - For grant of Interim Relief)

W.P.(C) No.823/2018 (X)

(IA No.94270/2018 - For grant of Interim Relief)

W.P.(C) No.827/2018 (X)

(IA No.94669/2018 - For grant of Interim Relief)

W.P.(C) No.850/2018 (X)

(IA No.98464/2018 - For grant of Interim Relief)

W.P.(C) No.875/2018 (X)

W.P.(C) No.872/2018 (X)

(IA No.101719/2018 - For grant of Interim Relief; and, IA No.101721/2018 - For exemption from filing OT)

W.P.(C) No.901/2018 (X)

W.P.(C) No.879/2018 (X)

W.P.(C) No.1209/2018 (X)

Date : 01-03-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

Counsel for the Parties:

Dr. Rajeev Dhavan, Sr. Adv.  
Mr. Kumar Parimal, Adv.  
Mr. Smarhar Singh, AOR  
Ms. Siddhi Padia, Adv.

Mr. Basava Prabhu Patil, Sr. Adv.  
Mr. Devadatt Kamat, AAG  
Mr. V.N. Raghupathy, AOR  
Ms. Rachitha Herimath, Adv.  
Mr. Chinmay Deshpande, Adv.  
Mr. Parikshit P. Angadi, Adv.

Ms. Indira Jaising, Sr. Adv.  
Mr. Anuj Saxena, Adv.  
Mr. Prakash Sharma, Adv.  
Ms. Prakrati Raj, Adv.  
Mr. Rameshwar Prasad Goyal, AOR

Mr. V. Lakshminarayana, Sr. Adv.  
Mr. Dinesh K. Garg, Adv.  
Mr. Abhishek Garg, Adv.  
Mr. Dhananjay Garg, AOR  
Mr. Deepak Mishra, Adv.

Mr. Puneet Jain, Adv.  
Ms. Christi Jain, AOR  
Mr. Harsh Jain, Adv.  
Mr. Abhinav Deshwal, Adv.

Dr. K.S. Chauhan, Adv.  
Mr. Ajit Kumar Ekka, Adv.  
Mr. Ravi Prakash, Adv.  
Mr. Chand Kiran, Adv.  
Mr. S.P. Singh, Adv.

Mr. Anand Sanjay M. Nuli, Adv.  
Mr. Dharm Singh, Adv.  
Mr. Nanda Kumar K.B., Adv.  
Mr. Suraj Kaushik, Adv.  
for M/s. Nuli & Nuli, AOR

Mr. Sarbendra Kumar, Adv.  
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Ms. Nehmat Kaur, Adv.  
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Mr. Joseph Aristotle S., AOR  
Ms. Priya Aristotle, Adv.  
Mr. Shiva P., Adv.

Mr. R. Balasubramanian, Adv.  
Ms. Shraddha Deshmukh, Adv.  
Mr. B.V. Balaram Das, AOR

Mr. S.K. Kulkarni, Adv.  
Mr. M. Gireesh Kumar, Adv.  
Mr. Ankur S. Kulkarni, AOR

Mr. Shirish K. Deshpande, AOR  
Mr. Sharan G. Patil, Adv.  
Mr. Mohit Gautam, Adv.

Mr. Naveen R. Nath, AOR  
Mr. Rahul Jain, Adv.  
Mr. Siddharth Agarwal, Adv.

Ms. Shraddha Deshmukh, Adv.  
Mr. B.V. Balram Das, AOR

M/s. Devasa & Co., AOR

Mr. Satpal Singh, AOR

Mr. S. N. Bhat, AOR

Mr. Pulkit Tare, AOR

Ms. Anagha S. Desai, AOR

Mr. E.C. Vidya Sagar, AOR

Mr. Shirish K. Deshpande, AOR

Dr. (Ms.) Vipin Gupta, AOR

Mr. Sudhir Nagar, AOR

Mr. Kabir Dixit, AOR

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

IA No.36981/2019 in W.P.(C) No.764/2018

On 12.10.2018, following order was passed by this Court:

"1. After the judgment was rendered by this Court in *B.K. Pavitra & Others v. Union of India & Others*, (2017) 4 SCC 620, contempt petitions were filed submitting *inter alia* that the directions issued in the judgment were not followed. Those contempt petitions were disposed of by order dated 20.03.2018 making certain observations.

2. According to the contempt petitioners, the directions issued by this Court were still not being followed in its entirety and as such they had prayed for consequential reliefs by filing Miscellaneous Applications.

3. The Karnataka Extension of Consequential Seniority to Government Servants Promoted on the basis of Reservation (to the Posts in the Civil Services of the State) Act, 2017 came into force on 23.06.2018.

4. On 28.6.2018, stand was taken by the State in affidavit filed in this Court that with the above enactment, the basis or the foundation of the judgment stood taken away. Later, independent writ petitions were filed challenging the validity of the aforesaid legislation which are still pending consideration by this Court.

5. While the matters were under consideration, learned Advocate General for the State of Karnataka appeared before this Court on 27.7.2018. During the course of hearing, it was suggested by the Court that pending consideration by this Court, status-quo may not be altered, which suggestion the learned Advocate General orally agreed and accepted.

6. It must be put on record that a decision has since than been rendered by this Court in *Jarnail Singh & Others v. Lachhmi Narain Gupta & Others*, reported in 2018 (11) SCALE 510.

7. Today, Mr. Mukul Rohatgi learned Senior Counsel appearing for State of Karnataka submitted that since there is a legislation passed by the Karnataka Legislature, and, secondly, in view of the decision of

this Court in *Jarnail Singh (supra)*, the State would no longer go by the oral assurance of the learned Advocate General and must not be bound to the assurance given by the learned Advocate General on the earlier occasion. The stand taken by Mr. Rohatgi is supported by learned Senior Counsel Mr. Dinesh Dwivedi, Ms. Indira Jaising and Mr. Basava Prabhu S. Patil.

8. Dr. Rajiv Dhawan and Ms. Kiran Suri, learned Senior Counsel appearing for the other side however submitted that the intent of the Legislation was only to nullify the effect of the judgment and, as such, going by the decisions of this Court starting from *Shri Prithvi Cotton Mills Ltd. & Another v. Broach Borough Municipality & Others*, (1969) 2 SCC 283, and, *Madan Mohan Pathak & Another v. Union of India & Others*, (1978) 2 SCC 50, it was not open to render the judgment of this Court ineffective, without taking away the basis or foundation of the judgment which was not so done in the present matter.

9. Since the matters are of urgent nature, we deem it appropriate to list these matters for final hearing on 23.10.2018. We must record that the pleadings stand exchanged between the parties and matters are ripe for consideration."

In para 5, the order referred to the statement made by the learned Advocate General for State of Karnataka during the course of hearing on 27.07.2018. Subsequently, the Government of Karnataka, with reference to Demi Official Letter No.1068/AGB/2018-1 dated 30.07.2018 of the Advocate General, issued Circular dated 03.08.2018 stating as under:

"(3) Various Writ Petitions are registered in the Hon'ble Supreme Court questioning the above Act (Act No.21 of 2018) and these cases have been tagged with pending M.A. No.1151/2018 in the Hon'ble Supreme Court in connection with B.K. Pavitra case, came to be heard on 27.07.2018 and as the Hon'ble Supreme Court has directed to maintain Status Quo till further orders, the Hon'ble Advocate General has advised the Government to maintain Status Quo till further orders of the Hon'ble Supreme Court.

Hence, it is directed to all the Additional Chief Secretaries/Principal Secretaries/Secretaries of the Government to maintain Status Quo and not to effect the process of Promotion/Demotion till further direction from the Government.

(4) It is informed to all the Additional Chief Secretaries/Principal Secretaries/Secretaries of the Government to convey these directions immediately to all the Autonomous Bodies/Universities/Public Enterprises/Commissions/Corporations/Boards and the institutions availing aid from the Government coming under their administrative control."

The matter was taken up for hearing in the month of October, 2018 itself and since then this Court has heard submissions for a considerable length of time where both sides are represented by a number of Counsel including Counsel for the intervenors on either side. The submissions are on the verge of completion and the only counsel who remains to be heard is Dr. Rajiv Dhavan, Senior Advocate in rejoinder.

We have fixed the matter for remainder of submissions on 06.03.2019 at 2.00 p.m. whereafter the order will be reserved.

On 27.02.2019, G.O. No.DPAR 186 SRS 2018, Bengaluru was issued. Clauses 8 and 9 of the said G.O. read as under:

"8. In the circumstances explained in the preamble, the following instructions are hereby issued subject to the conditions that the officers/officials, who have been reverted, shall be reposted to the cadres held by them immediately prior to their reversion and if vacant posts are not available in those cadres, supernumerary posts shall be created to accommodate them. It is also ordered that the officers/officials working at present in those cadres, belonging to any category, shall not be reverted.

13. The Government Order shall be subject to the judgment/orders of the Hon'ble Supreme Court in M.A. No.1151-1152 of 2018 and W.P. No.791 of 2018 and connected cases pending before the Hon'ble Supreme Court."

Immediately thereafter I.A. No.36981 of 2019 has been filed in Writ Petition (Civil) No.764 of 2018 praying *inter alia* for stay of the operation and implementation of the G.O. No.DPAR 186 SRS 2018, Bengaluru dated 27.02.2019.

While arguing in support of the application, Dr. Rajiv Dhavan, learned senior counsel relied upon following aspects of the matter to submit that at this juncture *status quo* ought not to be disturbed. He submitted that:

- a) In M.A. Nos.1151-1152 of 2018, prayer was specifically made seeking time to implement the decision rendered by this Court in *B.K. Pavitra & Others v. Union of India & Others*, (2017) 4 SCC 620;
- b) I.A. No.111998/2018 was filed on behalf of the State of Karnataka seeking permission to implement the Act;
- c) An affidavit was filed on behalf of the State Government on 28.06.2018 placing certain factual aspects of the matter and stating that the implementation of the decision in *B.K. Pavitra & Others v. Union of India & Others*, (2017) 4 SCC 620, was stalled as a result thereof; and

- d) Statement made by the learned Advocate General of State of Karnataka was recorded in the proceedings of this Court dated 27.07.2018.

Mr. Basava Prabhu S. Patil, learned senior counsel for the State of Karnataka and Ms. Indira Jaisingh, learned senior counsel appearing for some of the affected parties stressed upon the fact that insofar as the present applicants or similarly situated candidates are concerned, the last sentence in para 8 of the Government Order afforded sufficient protection and in any case para 13 had made it clear that whatever be the arrangement in terms of the Government Order dated 27.02.2019, it would be subject to the result of pending matters in this Court.

Mr. V. Lakshminarayana, learned senior counsel invited our attention to three decisions of this Court, namely:

1. Union of India v. Indian Radiological and Imaging Association, 2018 SCC OnLine SC 221
2. State of Uttar Pradesh v. Hirendra Pal Singh & Others, (2011) 5 SCC 305, paras 13, 16, 17, 27, 30
3. Health For Millions v. UOI & Others, (2014) 14 SCC 496, paras 13 and 14

In his submission, the effect of a legislation is normally never stayed by the Courts. He further submitted that by entertaining this application and granting stay of the Government Order, effectively the operation of the legislation itself would stand stayed.

We have considered rival submissions and the facts and circumstances on the record.

It must be noted that the statement made by the learned Advocate General recorded in the proceedings of this Court on 27.07.2018 was subject matter of discussion on 12.10.2018. A specific submission as recorded in para 7 of order dated 12.10.2018 was made on behalf of the State that it would no longer go by the oral assurance of the learned Advocate General made on the earlier occasion. However, no orders were passed in that behalf and the matter was set down for hearing immediately.

We have thereafter heard extensive submissions of number of learned counsel including learned counsel who appeared in support of the impleadment applications.

At this length of time, when we are in concluding stages of the proceedings, it would not be appropriate to alter the present status. The matter is in seisin of this Court. We, therefore, see force in the submissions of Dr. Rajiv Dhavan, learned senior counsel. As the matter is in the concluding stages and it is a matter of few weeks now for final decision, we accept the prayer made in the application and grant stay of the operation and implementation of the G.O. No.DPAR 186 SRS 2018, Bengaluru dated 27.02.2019.

List the matters for further hearing on 06.03.2019 at 2.00  
p.m.

(MUKESH NASA)  
COURT MASTER

(SUMAN JAIN)  
BRANCH OFFICER