ITEM NO.69 COURT NO.8 SECTION III-A

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

CONMT.PET.(C) No. 107/2016 In C.A. No. 9165-9172/2010

VINOD KUMAR KUSHWAHA & ANR. Petitioner(s)

VERSUS

ALOK RANJAN, CHIEF SECRETARY & ORS. Respondent(s)

(CP(C) 107/2016 and other connected contempt petitions only to be listed. )

WITH
CONMT.PET.(C) No. 109/2016 In C.A. No. 9165-9172/2010 (III-A)
( FOR EXEMPTION FROM FILING O.T. ON IA 2/2016)
CONMT.PET.(C) No. 110/2016 In C.A. No. 9165-9172/2010 (III-A)

CONMT.PET.(C) No. 108/2016 In C.A. No. 9165-9172/2010 (III-A)

CONMT.PET.(C) D 1911/2017 In C.A. No. 10550/2011 (III-A)

CONMT.PET.(C) D 2097/2017 In C.A. No. 10450/2011 (III-A)

CONMT.PET.(C) D 2098/2017 In C.A. No. 10546/2011 (III-A)

CONMT.PET.(C) No. 712/2017 In C.A. No. 2460/2012 (III-A)

CONMT.PET.(C) No. 187/2016 In C.A. No. 10549/2011 (III-A)
( FOR [PERMISSION TO FILE ANNEXURES] ON IA 1/2017
FOR EXEMPTION FROM FILING O.T. ON IA 2/2017)
CONMT.PET.(C) No. 210/2016 In C.A. No. 6152/2012 (III-A)

CONMT.PET.(C) No. 218/2016 In C.A. No. 8682/2012 (III-A)
( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)
CONMT.PET.(C) No. 202/2016 In C.A. No. 6155/2012 (III-A)

CONMT.PET.(C) D 7710/2016 In C.A. No. 6153/2012 (III-A)

CONMT.PET.(C) No. 201/2016 In C.A. No. 7838/2011 (III-A)

CONMT.PET.(C) No. 208-209/2016 In C.A. No. 6398-6403/2012 (III-A)
( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)
CONMT.PET.(C) No. 213/2016 In C.A. No. 991/2011 (III-A)

CONMT.PET.(C) No. 223/2016 In C.A. No. 6154/2012 (III-A)

CONMT.PET.(C) No. 225/2016 In C.A. No. 6157/2012 (III-A)

**CONMT.PET.(C) No. 206/2016 In C.A. No. 7896/2012 (III-A)**

**CONMT.PET.(C) No. 212/2016 In C.A. No. 2151/2012 (III-A)**

**CONMT.PET.(C) No. 283/2016 In C.A. No. 1508/2013 (III-A)**

**CONMT.PET.(C) No. 200/2016 In C.A. No. 8517/2012 (III-A)**

**CONMT.PET.(C) No. 203/2016 In C.A. No. 6897/2012 (III-A)**

**CONMT.PET.(C) No. 219/2016 In C.A. No. 7864/2012 (III-A)**

**CONMT.PET.(C) No. 579/2016 In C.A. No. 10546/2011 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**
**CONMT.PET.(C) No. 578/2016 In C.A. No. 10550/2011 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**
**CONMT.PET.(C) No. 571/2016 In C.A. No. 10450/2011 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**
**CONMT.PET.(C) No. 563/2016 In C.A. No. 664/2013 (III-A)**

**CONMT.PET.(C) No. 226/2016 In C.A. No. 1507/2013 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**
**CONMT.PET.(C) No. 220/2016 In C.A. No. 7895/2012 (III-A)**

**CONMT.PET.(C) No. 494/2016 In C.A. No. 7868/2015 (III-A)**

**CONMT.PET.(C) No. 573/2016 In C.A. No. 7117/2011 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**

**CONMT.PET.(C) No. 399/2016 In C.A. No. 1507/2013 (III-A)**
**( FOR [PERMISSION TO FILE ANNEXURES] ON IA 1/2017)**

**CONMT.PET.(C) No. 497/2016 In C.A. No. 2293/2011 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**

**CONMT.PET.(C) No. 619/2016 In C.A. No. 7894/2012 (III-A)**

**CONMT.PET.(C) No. 402-405/2016 In C.A. No. 6398-6403/2012 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016**
**FOR [PERMISSION TO FILE ANNEXURES] ON IA 5/2017)**

**CONMT.PET.(C) No. 603/2016 In C.A. No. 7897/2012 (III-A)**

**CONMT.PET.(C) No. 787/2016 In C.A. No. 2152/2012 (III-A)**

**CONMT.PET.(C) No. 616/2016 In C.A. No. 7896/2012 (III-A)**

**CONMT.PET.(C) No. 570/2016 In C.A. No. 295/2013 (III-A)**

**CONMT.PET.(C) No. 507/2016 In C.A. No. 6175/2012 (III-A)**

**CONMT.PET.(C) No. 324-325/2016 In C.A. No. 10177-10179/2010 (III-A)**

**CONMT.PET.(C) No. 456/2016 In C.A. No. 3212/2011 (III-A)**

**CONMT.PET.(C) No. 502/2016 In C.A. No. 10567/2010 (III-A)**

**CONMT.PET.(C) No. 485/2016 In C.A. No. 5344/2013 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**

**CONMT.PET.(C) No. 493/2016 In C.A. No. 2460/2012 (III-A)**

**CONMT.PET.(C) No. 490/2016 In C.A. No. 620/2013 (III-A)**

**CONMT.PET.(C) No. 326/2016 In C.A. No. 10177-10179/2010 (III-A)**
**( FOR [PERMISSION TO FILE ANNEXURES] ON IA 2/2017)**

**CONMT.PET.(C) No. 398/2016 In C.A. No. 9731/2011 (III-A)**
**( FOR [PERMISSION TO FILE ANNEXURES] ON IA 1/2017)**

**CONMT.PET.(C) No. 817/2016 In C.A. No. 208/2012 (III-A)**

**CONMT.PET.(C) No. 455/2016 In C.A. No. 209/2012 (III-A)**

**CONMT.PET.(C) No. 777/2016 In C.A. No. 8764/2012 (III-A)**

**CONMT.PET.(C) No. 496/2016 In C.A. No. 201/2012 (III-A)**

**CONMT.PET.(C) No. 361/2016 In C.A. No. 6716/2013 (III-A)**

**CONMT.PET.(C) No. 457/2016 In C.A. No. 7867/2015 (III-A)**

**CONMT.PET.(C) No. 360/2016 In C.A. No. 6716/2013 (III-A)**

**CONMT.PET.(C) No. 488/2016 In C.A. No. 7109/2011 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**
**CONMT.PET.(C) No. 318/2016 In C.A. No. 7838/2011 (III-A)**

**CONMT.PET.(C) No. 870/2016 In C.A. No. 8687/2011 (III-A)**

**CONMT.PET.(C) No. 516/2016 In C.A. No. 7861-7863/2012 (III-A)**

**CONMT.PET.(C) No. 609/2016 In C.A. No. 6398-6403/2012 (III-A)**

**CONMT.PET.(C) No. 506/2016 In C.A. No. 7893/2012 (III-A)**

**CONMT.PET.(C) No. 495/2016 In C.A. No. 7868/2015 (III-A)**

**CONMT.PET.(C) No. 543/2016 In C.A. No. 2151/2012 (III-A)**

**CONMT.PET.(C) No. 517/2016 In C.A. No. 8764/2012 (III-A)**

**CONMT.PET.(C) No. 610/2016 In C.A. No. 6398-6403/2012 (III-A)**

**CONMT.PET.(C) No. 508-510/2016 In C.A. No. 311-313/2013 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**

**CONMT.PET.(C) No. 618/2016 In C.A. No. 7109/2011 (III-A)**

**CONMT.PET.(C) No. 930/2016 In C.A. No. 9165-9172/2010 (III-A)**

**CONMT.PET.(C) No. 931/2016 In C.A. No. 9165-9172/2010 (III-A)**
**( and IA No.127177/2017-INTERVENTION APPLICATION)**

**CONMT.PET.(C) D 35704/2016 In C.A. No. 208/2012 (III-A)**

**CONMT.PET.(C) No. 838/2016 In C.A. No. 10688/2011 (III-A)**

**CONMT.PET.(C) No. 833/2016 In C.A. No. 201/2012 (III-A)**

**CONMT.PET.(C) No. 929/2016 In C.A. No. 8335/2011 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2016)**

**CONMT.PET.(C) No. 1/2017 In C.A. No. 8345/2011 (III-A)**
**( FOR EXEMPTION FROM FILING O.T. ON IA 1/2017)**

**MA 987-994/2017 in C.A. No. 9165-9172/2010 (III-A)**

**CONMT.PET.(C) No. 557/2018 in C.A. No. 8345/2011 (III-A)**
**(FOR ADMISSION and IA No.9618/2018-EXEMPTION FROM FILING O.T. and IA No.9625/2018-APPLICATION FOR CONDONATION OF DELAY)**

**Date : 31-07-2018 These matters were called on for hearing today.**

**CORAM :**
**HON'BLE MR. JUSTICE ARUN MISHRA**
**HON'BLE MR. JUSTICE S. ABDUL NAZEER**

**For the parties:**
**Mr. Sanjiv Sen, Sr. Adv.**
**Mr. Abhijeet Swaroop, Adv.**
**Mr. Pankaj Kumar Singh, Adv.**
**Dr. Vinod Kumar Tewari, AOR**
**Mr. Manindra Dubey, adv.**
**Mr. Vivek Tiwari, Adv.**
**Mr. Baijnath Prasad Pathak, Adv.**
**Mr. Satyam Pandey, Adv.**

**Mr. Sunil Kumar Jain, AOR**
**Mr. Punya Garg, Adv.**

**Mr. Balraj Dewan, AOR**

**Mr. Rajesh Sharma, Adv.**
**Ms. Nidhi Singh Dubey, Adv.**

Mr. Shafiq Khan, Adv.
Ms. Shalu Sharma, AOR

Mr. T.S. Chaudhary, Adv.
Mr. G.S. Chauhan, Adv.
Mr. V. K. Sidharthan, AOR

Mr. Shankar Divate, AOR

Mr. Yatindra Singh, Sr. Adv.
Mr. Sujeet Kumar, Adv.
Mr. Prakash Gautam, Adv.
Ms. Reema Patel, Adv.
Mrs. Priya Puri, AOR

Mr. Manoj Prasad, Sr. Adv.
Mr. Ashutosh Dubey, Adv.
Mr. Dhirendra Kumar, Adv.
Mr. Ajay Kumar Srivastava, AOR

Mr. Santosh Kumar Tripathi, AOR

Mr. Anuvrat Sharma, AOR

Mr. Pawan Kumar, Adv.

Mr. K.C. Vishwakarma, Adv.

Ms. Aishwarya Bhati, Adv.
Mr. Puspraj Singh, Adv.
Mr. Chitrangda Rastravara, Adv.
Ms. Alka Sinha, Adv.

Mr. Anuvrat Sharma, AOR

Gp. Capt. Karan Singh Bhati, AOR

UPON hearing the counsel the Court made the following

**O R D E R**

Heard learned counsel for the parties.

It was submitted that the respondent and the State is in the process of making compliance of the order passed by this Court on 9$^{th}$ September, 2015. Following is the operative portion of the order:

> “18. In view of the aforesaid analysis, we find no reason that the appellants herein should not reap the benefits of absorption and, accordingly, it is directed that they shall be absorbed by the State Government as per their seniority and be given the benefit of increments, within eight weeks hence. Needless to say, they will be entitled to their seniority as per the prevalent rules. If anyone has been retired from service, he shall get the retiral benefits inclusive of pension.
>
> 19. At this juncture, the question arises as to what amount should be paid towards back wages. In this context, our attention haws been invited to the order passed by this Court in contempt proceeding. However, after some debate, learned counsel for the appellants left it to the discretion of this Court. Ms. Reena Singh, learned Additional Advocate General for the State vehemently opposed with regard to grant of any back wages. Having heard the learned counsel for the parties on this score and regard being had to the facts and circumstances of the case, we think that the cause of justice would be best sub-served if each of the appellant is paid 40% of the back wages, and it is so directed. It shall be computed as per our directions issued hereinbefore within a period of twelve weeks hence and be paid to the appellants.”

Thus, it is apparent from the aforesaid order that the absorption was to be in the regular service not on temporary basis and the petitioners would be entitled for the seniority as per the then prevalent rules and they shall also be entitled for the retiral benefits as well as for pension. With respect to backwages, 40% of the back wages have been ordered and were required to be

**paid within twelve weeks.**

**Mr. Yatindra Singh, learned senior counsel for the petitioners and other learned counsel have urged that compliance of the order passed by this Court on 9th September, 2015 has not been made. Certain orders have been issued making the absorption on purely temporary basis; that was not the intendment of the order passed by this Court. It was also pointed out that the compulation of 40% backwages paid was also not correct; paltry amount has been offered.**

**It was stated that one Mr. Ashok Kumar was entitled for approximately Rs.55,00,000/- as 40% backwages, but he has been paid only a sum of Rs.14,00,000/- as 40% backwages.**

**Grievance has also been raised that the absorption has been made on lower post than the one to which the incumbents were entitled for and thereby seniority has been affected.**

**Ms. Aishwarya Bhati, learned counsel appearing on behalf of the contemnors has prayed for time to obtain instruction in this regard and to place the orders issued regarding absorption, on record and also show the basis of the calculation of the 40% backwages with respect to**

all the employees.

It was also pointed out by Ms. Aishwarya Bhati, learned counsel appearing on behalf of the contemnors that order of this court is required to be complied with respect to approximately 200 persons; at the same time it was the grievance pointed out by learned counsel appearing on behalf of the retired employees that they are not being paid pension; aforesaid scenario indicate clear violation of the order passed by this Court.

We also direct the petitioners to file affidavit in detail, within fifteen days, indicating how the order has been violated and thereafter within next 15 days the respondents to file affidavit in reply the affidavit to be filed on behalf of the petitioners covering aforesaid other aspects and let order be duly complied with by next date.

Let the respondents make Compliance and same be reported to this court on the next date.

The respondents are directed to furnish the copy of affidavit to the counsel appearing on behalf of the petitioners.

**List on 04th September, 2018.**

**(NEELAM GULATI)**
**COURT MASTER (SH)**

**(JAGDISH CHANDER)**
**BRANCH OFFICER**