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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 23rd July, 2020**

+ **W.P.(C) 4413/2020, CM No.15894/2020 (for interim stay)**

CDR. SENTHIL VP

..... Petitioner

Through: Mr. Santhosh Krishnan with Ms.
Sonam Anand, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harish Vaidyanath Shankar
CGSC with Mr. Varun Kishore, Adv.

AND

+ **W.P.(C) 4449/2020, CM No.16024/2020 (for interim stay)**

CDR. RUPALI ROHATGI

..... Petitioner

Through: Mr. Santhosh Krishnan with Ms.
Sonam Anand, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC, Ms.
Bharthi Raju, Ms. Aakanksha Kaul &
Mr. Manek Singh, Advs.

AND

+ **W.P.(C) 4450/2020, CM No.16027/2020 (for interim stay),**

CDR SAVITRI PANWAR

..... Petitioner

Through: Mr. Santhosh Krishnan with Ms.
Sonam Anand, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC, Ms.
Bharthi Raju, Ms. Aakanksha Kaul &
Mr. Manek Singh, Mr. Akshay, Advs

+ **W.P.(C) 4465/2020, CM No. 16101/2020 (for interim stay) & CM Nos.16102-16103/2020 (for exemption)**

CDR. SEEMA MATHUR Petitioner

Through: Mr. Santhosh Krishnan with Ms.
Sonam Anand, Advs.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Rajesh Gogna, CGSC, Ms.
Bharthi Raju, Ms. Aakanksha Kaul &
Mr. Manek Singh, Advs.

AND

+ **W.P.(C) 4466/2020, CM Nos.16104/2020 (for interim stay) & 16105-16106/2020 (for exemption)**

CDR. PREETI YADAV Petitioner

Through: Mr. Santhosh Krishnan with Ms.
Sonam Anand, Advs.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Rajesh Gogna, CGSC, Ms.
Bharthi Raju, Ms. Aakanksha Kaul &
Mr. Manek Singh, Advs.

AND

+ **W.P.(C) 4483/2020, CM No.16165/2020 (for interim stay) & CM No.16166-16167/2020 (for exemption)**

CDR. KALESH MOHANAN Petitioner

Through: Mr. Santhosh Krishnan with Ms.
Sonam Anand, Advs.

Versus

UNION OF INDIA & ORS Respondents

Through: Mr. Rajesh Gogna, CGSC, Ms.
Bharthi Raju, Ms. Aakanksha Kaul &
Mr. Manek Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.16102/2020 & CM No.16103/2020 (for exemption from filing certified copies of the annexures and typed copy of dim documents, duly attested affidavits and requisite court fees) in W.P. (C) 4465/2020

CM No.16105/2020 & CM No.16106/2020 (for exemption from filing certified copies of the annexures and typed copy of dim documents, duly attested affidavits and requisite court fees) in W.P. (C) 4466/2020

CM No.16166/2020 & CM No.16167/2020 (for exemption from filing certified copies of the orders/annexures and typed copy of the dim/illegible documents, duly attested affidavits and requisite court fees) in W.P. (C) 4483/2020

1. Allowed, subject to just exceptions and as per the extant rules.
2. The applications are disposed of.

W.P.(C) 4413/2020, CM No.15894/2020 (for interim stay)
W.P.(C) 4449/2020, CM No.16024/2020 (for interim stay)
W.P.(C) 4450/2020, CM No.16027/2020 (for interim stay)
W.P.(C) 4465/2020, CM No.16101/2020 (for interim stay)
W.P.(C) 4466/2020, CM No.16104/2020 (for interim stay)
W.P.(C) 4483/2020, CM No.16165/2020 (for interim stay)

3. The petitioner in each of these petitions, being a Short Service Commissioned officer of the respondents Indian Navy and whose

Commission is due to lapse on 6th August, 2020, have filed these petitions against the common order dated 13th July, 2020 of the Armed Forces Tribunal, Principal Bench, New Delhi (AFT) in the Original Applications (OAs) filed by each of the petitioners, denying to the petitioners interim relief of restraining the respondents Indian Navy from releasing the petitioners from service till the claim of each of the petitioners for grant of permanent commission is considered by the Navy on merits.

4. It is *inter alia* the case of the petitioners, (i) that the petitioners, in the year 2006, pursuant to the public advertisement and selection, were inducted as 'Short Service Commission (SSC) Officers' in the respondents Indian Navy, in the Education Branch, w.e.f 7th August 2006; (ii) that at the time of appointment of the petitioners as SSC Officers, the SSC Officers were eligible for extension and continuation as SSC Officer up to 14 years and were eligible to be considered for grant of permanent commission in accordance with Article 203, Chapter IX of the Regulations Navy Part III; (iii) that on 26th September 2008, without adverting to the extant regime in the respondents Indian Navy, a policy decision was taken on the issue of consideration of SSC Officers for permanent commission, prospectively and from specified streams; (iv) that though education cadre was included but the said policy decision excluded the petitioners as they were commissioned prior thereto, in the year 2006; (v) that pursuant to the said decision, the respondents Indian Navy proposed to permit SSC Officers (men and women) from the year

2009 onwards batches of Education, Law, Naval Architecture Branches as eligible for consideration of permanent commission; (vi) in 2010, several writ petitions came to be filed by SSC Officers challenging the said decision and its implementation, on account of being discriminatory and arbitrary; (vii) On 4th September 2015, this court allowed the petitions aforesaid, directing the respondents Indian Navy to grant permanent commission to those who had filed the petitions; (viii) the respondents Indian Navy preferred an appeal being SLP(C) Nos. 30791-30796/2015 to the Supreme Court; no stay of the judgment of this court was granted; on the contrary, the serving SSC Officers were permitted to continue in service while the appeal was pending; (ix) SSC Officers of the 2002 batch who were not being considered for grant of permanent commission in spite of judgment of this court and refusal of the Supreme Court to stay the same, approached the AFT, which by a judgment dated 11th August, 2016 set aside the release orders issued against the officers and directed the respondents Indian Navy to consider the cases of the officers for grant of permanent commission, within 6 months; (x) on appeal being preferred by the respondents Indian Navy against the judgment of the AFT, Supreme Court protected the said officers, directing them to be continued in service; (xi) however the respondents Indian Navy, disregarding both the judgments, persisted in its stand, resulting in SSC Officers from every subsequent batch being driven to the courts for protection; (xii) the AFT passed several protective orders granting stay against the release, till the respondents Indian Navy properly examined their cases for permanent commission and such protection

has been granted to the SSC Officers from 2003, 2004 and 2005 batches; (xiii) the petitioners, of the 2006 batch, also represented for consideration for permanent commission but their request was rejected relying on the policy which had been struck down by this court; (xiv) each of the petitioners thus approached the AFT, seeking directions to the respondents Indian Navy to grant permanent commission to the petitioners and seeking directions to the respondents Indian Navy to consider each of the petitioners for grant of permanent commission and seeking protection from release till such consideration; (xv) the said OAs filed by each of the petitioners were entertained by the AFT, New Delhi and notices thereof issued; (xvi) in the meanwhile, the Supreme Court vide judgment dated 17th March, 2020 has conclusively held that SSC Officers of the Indian Navy are entitled to be considered for grant of permanent commission in accordance with Article 203, Naval Regulations and Policy Letter dated 25th February, 1999 and directed compliance within three months; (xvii) as per own case of the respondents Indian Navy before the Supreme Court, there were at least 77 SSC Officers who were in service because of protective orders passed by the courts/AFT; (xviii) though the Supreme Court granted three months time which expired in June 2020, the respondents Indian Navy took the entire three months only to take the first step in the matter, asking all those interested in being considered for permanent commission to apply therefor on or before 10th July 2020; (xix) that the petitioners though had already requested for grant of permanent commission as far back as in October 2019 but by way of abundant caution, again applied;

(xx) the petitioners' scheduled date of completion of SSC is 6th August, 2020 and the release orders to the said effect were issued more than one year prior thereto; (xxi) the petitioners approached the AFT for interim orders to protect their status as in-service candidates, till the date of decision/intimation of outcome of consideration for permanent commission by the respondents Indian Navy, of the petitioners, for permanent commission.

5. A perusal of the common order dated 13th July 2020 of the Principal Bench, New Delhi of the AFT in the OAs filed by each of the petitioners shows the AFT to have declined interim relief of, stay against release on completion of 14 years of SSC in the respondents Indian Navy on 6th August 2020, reasoning (i) that though the petitioners had a prima facie case for consideration of their applications for grant of permanent commission, the balance of convenience and irreparable loss were not existing in favour of the petitioners; (ii) that though earlier interim protection was being granted to such officers but after 10th August, 2017 no interim protection was granted and the SSC Officers who were found eligible for grant of permanent commission, after their claims were scrutinised by the appropriate Selection Committee/Board, were reinstated in service with all consequential benefits; (iii) that the claim of the petitioners was still to be considered by the appropriate Selection Committee/Board, which will scrutinise the same on merit and make recommendations for grant/non-grant of permanent commission; (iv) that in case the cases of the petitioners or the case of any of the

petitioners are/is not recommended for permanent commission, they/he/she would be considered discharged from service; (v) that being the position, permitting the petitioners to continue in service even after completion of tenure as SSC Officer and before being found fit for grant of permanent commission by the Selection Committee/Board, would not be justifiable; (vi) that the earlier interim orders could not be treated as a binding precedent; (vii) that in case the petitioners or any of them were allowed to continue in service without scrutiny of his/her case by the expert Selection Committee/Board and finally if the Selection Committee/Board were to find him/her unfit for grant of permanent commission, it would amount to permitting a person, in spite of being unfit for permanent commission, to continue by an interim order; (viii) that this makes the balance of convenience in favour of the respondents Indian Navy and not in favour of the petitioners; and, (ix) that if the petitioners or any of them were found fit for permanent commission, they/he/she shall be reinstated in service with all consequential benefits so that no irreparable loss would be caused to them.

6. Reliance was also placed by the AFT on its earlier order dated 6th July 2020, rejecting interim relief in OA No. 740/2020. However, the respondents Indian Navy was directed to file counter affidavit to the OAs within four weeks and to inform when the case of the petitioners for grant of permanent commission will be concluded and final decision taken. Further, on the plea of the petitioners that they are in occupation of Government accommodation and, if before their

case for grant of permanent commission is considered, they are evicted from the Government accommodation, the same will cause serious hardship to them, status quo has been directed to be maintained by the AFT with regard to the occupation of the official Government accommodation in occupation of each of the petitioners.

7. Three of these petitions were listed before us yesterday, when after hearing the counsel for the petitioners we also had enquired, how the order of the AFT could be faulted with. The same is in consonance with the established principle of triple test of prima facie case, irreparable injury and balance of convenience, relating to grant of an interim relief. It was further observed during the hearing yesterday, whether not grant of interim relief to the petitioners would result in the petitioners drawing emoluments and other benefits from the respondents Indian Navy and which the respondents Indian Navy will be unable to recover back from the petitioners in the event of the petitioners or any of them being not found fit for permanent commission and/or whether not the same would result in multiplicity of proceedings, with the respondents Indian Navy being compelled to institute proceedings against the petitioners and/or such of them. It was further enquired whether, on the contrary, it can specifically be ordered that in the event of the petitioners or any of them being granted permanent commission, they would be entitled to all consequential benefits including from the date of release and which the impugned order records, has already been ordered by AFT in the past. However on being informed that three other petitions were

scheduled to be listed today, we had deemed it appropriate to take up all the petitions together.

8. Today, the counsel for the petitioners at the outset contends that in the prevalent pandemic times, the petitioners need to be protected qua medical coverage which is available to them as SSC Officers. It is contended that if the petitioners or any of them, in the interregnum between the date of release and consideration of their application for permanent commission, suffers any ailment, they would not be able to avail the benefits as Navy Officers; without prejudice to their contentions, it is stated that even if this court does not agree to grant total protection from release to the petitioners, at least the medical coverage of the petitioners be continued.

9. Yesterday, during the hearing, it was also enquired from the counsel for the petitioners how this court is bound by the earlier orders granting interim protection to other SSC Officers who were then due for release and who were stated to be still continuing in service under the protection of interim orders. It was enquired that if the said orders did not consider the aspect of irreparable injury and balance of convenience, how they could be treated as precedent.

10. The counsel for the petitioners in response thereto has drawn our attention to Annexure P-9 to the petition, being the judgment dated 11th August, 2016 supra of AFT, reported as **Cdr. Priya Khurana vs. Union of India** 2016 SCC Online AFT 798, in which, while setting aside the orders of the respondents Indian Navy rejecting

the request for grant of permanent commission and directing the respondents Indian Navy to reconsider such request on the parameters laid down, it was directed that till such consideration and decision is taken, the OAs Applicants therein shall continue as SSC Officers on the existing terms.

11. However we do not find the triple test for grant of interim relief, i.e. balance of convenience, irreparable injury and prima facie case having being adverted to in the said judgment. Moreover, the said judgment does not qualify as an interim order and the direction to which attention is drawn was the final order of the AFT.

12. The counsel for the petitioners has then taken us to the order dated 28th October, 2016 of the Supreme Court, Annexure P-10 to the petitions, by which, while directing notice of the appeal then before it, on the basis of the order dated 20th November, 2015 in an earlier SLP, it was directed that as an interim measure, the appellants before it shall continue in service in the capacity of members of SSC, until further orders. Attention is also drawn to the judgment dated 17th March, 2020 of the Supreme Court in the appeals against the judgment of this Court, reasoning that the situation as had arisen was a consequence of the failure of the respondents Indian Navy to implement the statutory notifications and to abide by the Policy and breach of the obligation to implement the judgment of this court and the AFT. It is argued that the respondents Indian Navy, now again by not deciding within three months of the judgment dated 17th March, 2020, has created this situation and thus the petitioners are entitled to

the interim order. It is also argued that the contention of the counsel for the respondents Indian Navy yesterday, that the monetary burden on the respondents Indian Navy is of about Rs. 7 crores per month, is not correct as a number of persons in the batch of the 2006 batch of the petitioners and several others have already accepted the relieving orders. It is emphasised that the respondents Indian Navy, being in defiance of the order of this Court, AFT as well as Supreme Court, ought not be permitted to place the petitioners at a disadvantage.

13. Per contra, the counsel for the respondents Indian Navy have drawn our attention to Annexure P-24 to the petition, being the release order dated 16th May, 2019 for the 2006 batch of SSC Officers to contend that there are in all 675 such Officers, hence it is argued that the petitioners will not suffer any irreparable loss inasmuch as if granted the permanent commission, would get all consequential benefits including medical benefits. It is argued that in fact the petitioners have no *prima facie* case also, though the AFT in the impugned order has held so. It is contended that the Supreme Court also has only directed consideration of each of the SSC Officers for permanent commission and the petitioners as of today have no right to be absorbed in the Navy. It is informed that the respondents Indian Navy had already approached the Supreme Court for extension of time but the said application has not been listed. Otherwise on enquiry it is informed that the respondents Indian Navy requires only 2-3 months for considering the case of each of the petitioners for permanent commission and the delays are on account of prevalent

restrictions in the ongoing pandemic.

14. The counsel for the petitioners, in rejoinder has contended that no advance copy of the application for extension of time, if any filed by the respondents Indian Navy in the Supreme Court, has been received. It is also contended that the AFT has found *prima facie* case in favour of the petitioners and the respondents Indian Navy has not challenged the same and is now not entitled to contend that the petitioners have no *prima facie* case.

15. We have considered the controversy as well as whether we should limit the time for consideration of the cases of the petitioners for permanent commission by the Indian Navy, so that in the event of the petitioners or any of them being found fit for permanent commission, the period between their release as SSC Officer and their absorption in the permanent commission is minimum, but on further thought are of the opinion that the Supreme Court, in the judgment dated 17th March, 2020 having limited the time to 3 months, and qua which an application is stated to have been filed, it is not in our domain to make any such order. We are thus, though not making any such consideration time bound, but impress upon the respondents to do the same at the earliest.

16. Else on merits, our opinion remains the same as we had expressed yesterday. None of the arguments of the counsel for the petitioners fulfil the requirements of irreparable injury and balance of convenience. On the contrary, the balance of convenience is found to

be in favour of the respondents Indian Navy. The petitioners, if granted permanent commission, as per the counsel for the respondents Indian Navy also, would be entitled to all consequential benefits including all emoluments for the interregnum between the date the petitioners are relieved as SSC Officers and the date the petitioners are absorbed in permanent commission.

17. We have also considered the matter of grant of interim relief on the question of parity. It has been emphasised by the counsel for the petitioners that the petitioners are entitled to parity with other SSC Officers, who in spite of their commission having lapsed, are enjoying such protection and continuing as SSC Officers. However none of the orders to which the counsel for the petitioners has drawn our attention to show that the aspect of irreparable injury and balance of convenience was considered, are found to have dealt with the grant of relief on the anvil thereof. On the contrary, when the said orders were made, the issue of the legality of the policy of the Indian Navy was still at large, with the appeal pending before the Supreme Court and the time frame between the date when the SSC Officers were to be released and the date when the outcome of the litigation would be known, was indefinite. Owing to the same, perhaps it was deemed fit to grant interim protection as the SSC Officers whose commission was then lapsing could not be expected to await the decision on the legality of the policy, for years. However now the legal position is settled and clear and the petitioners have only to be considered for permanent absorption, on the parameters prescribed and which

according to the respondents Indian Navy also, will not take more than two or three months' time and the said time is unlikely to cause any hardship to the petitioners. The concern of the petitioners, of being evicted from Government accommodation allotted to them by virtue of employment, has already been addressed by the AFT. As far as the contention of the counsel for the petitioners with respect to medical benefits is concerned, even if the petitioners have to incur any expenses in that regard, the petitioners if absorbed on permanent commission, will be entitled to reimbursement thereof as per their Service Rules/Service conditions. The Supreme Court, in the judgment dated 17th March, 2020, notices the argument of the respondents Indian Navy that some cadres are saturated. It is significant that the Supreme Court also, though in the judgment dated 17th March, 2020, noticed the case of at least 2 of the petitioners herein, but did not order that all SSC Officers will continue till their cases are considered.

18. There is another aspect of the matter. We have been approached in exercise of our jurisdiction under Article 226 of the Constitution of India. The scope of interference even in an appeal against interim orders, which are essentially discretionary in nature, is very limited. The interference permitted in writ jurisdiction would be much narrower. When we do not find any perversity or illegality in the order of the AFT denying interim relief to the petitioners and rather find it to be in consonance with the principles of law applicable to grant of an interim relief, we would be exceeding our writ jurisdiction

in still interfering therewith on sympathetic grounds. Showing sympathy, at the cost of others, in this case the public exchequer, though is attractive but always at the cost of others who may also have demands on the funds with the public exchequer.

19. Now the courts have also added the fourth test of public interest, in the matter of grant of interim reliefs. On the anvil of the said test also, the petitioners are not entitled to the interim relief claimed. The petitioners, if continued as SSC Officers, as is sought by them, would have to be paid their emoluments by the public exchequer and as aforesaid, if not found fit for permanent commission, it would result in loss of public funds, which are already scarce.

20. The writ petitions are dismissed.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

JULY 23, 2020
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