

\$~6.

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

+ **W.P.(C) 5426/2020**

NAWAL KISHOR TIWARI AND ORS

..... Petitioners

Through: Mr. Manoj V. George, Ms. Shilpa
Liza George and Ms. Bhavika, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Vivek Goyal, CGSC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

O R D E R

% **19.08.2020**

[VIA VIDEO CONFERENCING]

CM APPL. 19583/2020 (for exemption from filing duly attested affidavits).

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

W.P.(C) 5426/2020.

3. The eighty three petitioners, being personnel of the respondents No. 1 & 2 Central Reserve Police Force (CRPF), have filed this petition seeking mandamus to the respondents No. 1 & 2 CRPF to, (i) grant the first Assured Career Progression (ACP) upgradation to the petitioners on completion of 12 years service, in the scale of Sub-Inspector Pay Band of Rs.5500-9000 with Grade Pay of Rs.4200/- from the date of completion of 12 years of service and to pay all arrears thereof with interest; and, (ii) grant the second Modified Assured Career Progression (MACP) upgradation to the petitioners on completion of 20 years of service and other consequential benefits including arrears with interest, according to the settled position of

law as per the Supreme Court.

4. It is the plea of the petitioners that the petitioners are similarly placed as the petitioners in W.P.(C) No.4821/2020 titled *Vinod Kumar & Ors. Vs. Union of India & Ors.* which was disposed of on 31st July, 2020 with a direction to the respondents No. 1 & 2 CRPF to, within eight weeks, consider the case of each of the petitioners therein and if found entitled to be covered by the judgment dated 14th February, 2020 of this Court in W.P. (C) 1716/2020 titled *Satish Kumar Vs. Union of India*, to grant to them the same relief.

5. The counsel for the petitioners, who was the counsel for the petitioners in *Vinod Kumar* supra also, states that on 31st July, 2020 when *Vinod Kumar* supra had come up before this Court, he did not inform this Court that Supreme Court in *Union of India Vs. M.V. Mohanan Nair* 2020 SCC OnLine SC 302 has held that MACP is to be granted not in the next higher pay scale but only in the next higher grade pay. He states that for this reason, the relief paragraph in this petition has been modified.

6. The counsel for the respondents CRPF appearing on advance notice states that time to file counter affidavit and to obtain instructions be granted to enable the respondents CRPF to verify the case of each of the petitioners. It is also stated that Special Leave Petition (SLP) in the Supreme Court against the dicta of this Court in *Satish Kumar supra* is in the process of being filed and it is expedient that in this writ petition, the outcome of *Satish Kumar supra* in the Supreme Court is awaited.

7. Once we intend to dispose of this petition with a direction to the respondents No. 1 & 2 CRPF to examine the case of the petitioners and to grant to only such of the petitioners who are found to be at par with *Satish*

Kumar supra and entitled to the same relief as granted in *Satish Kumar supra*, we see no reason to keep the petition pending.

8. As far as the contention of the counsel for the respondents CRPF, to await the outcome of the SLP in *Satish Kumar supra* is concerned, we have enquired from the counsel for the respondents CRPF, whether not it is the respondents No. 1 & 2 CRPF themselves who are found to be encouraging such litigation, by refusing/rejecting the representations of those claiming to be entitled to the same relief as granted to others in petitions filed by such others, merely by contending that the relief was granted only with respect to the petitioners in that case before the Court, thereby compelling all those claiming to be similarly situated, to approach the Court. Only if the respondents No. 1 & 2 CRPF take a stand that once a particular relief with respect to service emoluments has been granted in the Court, the same, if of general application, will be granted to all those similarly placed, without rejecting their claims on the ground of the judgment, though of general application, being in *personam*, will the personnel of the forces await the final order; else they are all compelled by the conduct of the respondents No. 1 & 2 CRPF themselves, to approach the Court.

9. We are therefore of the opinion that it will be open to the respondents No. 1 & 2 CRPF to, in the SLP being preferred against *Satish Kumar supra*, seek appropriate orders with respect to all other matters in the High Courts, claiming the same relief and we are not inclined to keep this petition pending.

10. We therefore dispose of this petition by directing the respondents No.1&2 CRPF to, within eight weeks hereof, consider the case of each of the petitioners vis-a-vis *Satish Kumar supra* and if the petitioners or any of

them are found entitled to be covered by the said judgment, to grant to the petitioners or such of them who are found entitled to be so covered, the same relief as granted in *Satish Kumar* supra i.e. of grant of first financial upgradation under the ACP Scheme, from the date the petitioners or each of the petitioners completed 12 years of service and in the pay scale of Sub-Inspector and to grant the benefit of second financial upgradation under MACP Scheme, from the date of completion of 20 years of regular service, as per the dicta of the Supreme Court in *Union of India Vs. M.V. Mohanan Nair* supra, with arrears being paid within a period of 12 weeks from today, failing which the respondents No. 1 & 2 CRPF shall be liable to pay interest at 6% per annum. If on the examination of the cases, the petitioners or any of the petitioners are not found entitled to be covered by the judgment in *Satish Kumar* supra, the respondents No. 1 & 2 CRPF to, within eight weeks aforesaid inform the petitioners or such of them who are not found entitled to the relief, the reasons in writing therefor and with respect whereto the petitioners or such of them who are not so determined by the respondents No. 1 & 2 CRPF to be covered by the said judgment, shall have remedies in accordance with law.

RAJIV SAHAI ENDLAW, J

ASHA MENON, J

AUGUST 19, 2020
'pp'..