

CASE NO.:
Appeal (civil) 1604 of 2008

PETITIONER:
U.P. Avas Evam Vikas Parishad & Anr

RESPONDENT:
Rajendra Kumar Aggarwal & Ors

DATE OF JUDGMENT: 22/02/2008

BENCH:
Tarun Chatterjee & Harjit Singh Bedi

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.1604 OF 2008
(Arising out of SLP (C) No. 3097 of 2008)

1. Leave granted.
2. This appeal by special leave is directed against an interim order passed by the High Court of Judicature, Allahabad at Lucknow in a writ petition by which the respondents have challenged the constitutional validity of the provisions of Article 16 (4-A) of the Constitution of India and Rule 8(A) of the UP Government Servants Seniority \026 (Third Amendment) Rules 2007. The High Court, while granting the interim order, quoted herein below, has observed that since in a bunch of writ petitions, the question regarding the constitutional validity of the provisions of Article 16 (4-A) of the Constitution of India and Rule 8(A) of the UP Government Servants Seniority \026 (Third Amendment) Rules 2007 is already under challenge and the interim order, quoted herein

below, has already been passed in those bunch of writ petitions, similar interim order shall also be passed in the present writ application.

3. The interim order granted by the High Court runs as under: -
"In the meantime, as an interim measure, we provide that the seniority of the petitioners as existing prior to the enforcement of the U.P. Government Servants Seniority (Third Amendment) Rules, 2007, shall not be disturbed in pursuance of the Rules."

4. Mr. Trivedi, the learned senior counsel appearing for the appellants has drawn our attention to the fact that since the constitutional validity of Article 16(4-A) has already been upheld in M. Nagaraj Vs. Union of India [(2006) 8 SCC 212], the writ application itself could not be entertained and in that view of the matter, the question of granting the interim order shall not arise at all.

5. Mr. P.P. Rao, the learned senior counsel appearing for the respondents, however, has drawn our attention to an interim order passed in a pending writ petition in which the constitutional validity of Article 16 (4-A) of the Constitution of India and Rule 8(A) of the UP Government Servants Seniority \026 (Third Amendment) Rules 2007 has been challenged and submitted that the decision of this court in M. Nagaraj Vs. Union of India [supra] has already been considered by another division bench of the High Court after explaining the said decision and the interim order in the manner indicated above has been continued. Therefore, Mr. Rao submitted that instead of interfering with the interim order passed by the Division Bench of the High Court, direction may be given to the High Court to dispose of the pending writ application at an early date preferably within 3 months from this date.

6. Having heard the learned counsel for the parties and after going through the decision of this court in M. Nagaraj Vs. Union of India [supra] in which the constitutional validity of the provisions of Article 16 (4-A) of the Constitution of India and Rule 8(A) of the UP Government Servants Seniority \026 (Third Amendment) Rules 2007 has already been upheld, we are unable to agree with Mr. P.P. Rao that at the interim stage, there was any occasion for the High Court to grant the interim order in this pending writ application. In any view of the matter, in our view, it was not a fit case for grant of the interim order. It is true that another Division Bench of the High Court, after considering the decision of this court in M. Nagaraj Vs. Union of India [supra], has granted the interim order but we feel that since the grant of interim order is discretionary in nature and therefore, only because an interim order has been passed by another coordinate bench of the High Court, it cannot be said that the interim order should also be passed in this pending writ application when the constitutional validity of Article 16 (4-A) of the Constitution of India and Rule 8(A) of the UP Government Servants Seniority \026 (Third Amendment) Rules 2007 has already been upheld.

7. For the reasons aforesaid, we set aside the interim order, as quoted hereinabove, and request the High Court to dispose of the pending writ application at an early date preferably within 2 months from the date of communication of this order to the High Court. The appeal is allowed to the extent indicated above. There will be no order as to costs.