



**Kalpana Devi v. State of Himachal Pradesh with
connected matter**

**CWPIL No. 19 of 2023 with CWP No. 2507 of
2023**

CWPIL No. 19 of 2023

03.01.2024

Present: Mr. Sanjay Kumar and Mr. Rakesh Kumar
Sharma, Advocates, for the petitioner.

Mr. Anup Rattan, Advocate General with Mr.
Navlesh Verma and Mr. Varun Chandel,
Additional Advocate General, for respondents
No. 1 and 2/State.

Respondent No.3 stands deleted.

Mr. Deven Khanna, Advocate, for respondent
No.4-Sunder Singh Thakur.

Mr. Ajay Sharma, Senior Advocate with Mr.
Atharv Sharma, Advocate, for respondent No.5-
Mohan Lal Brakta.

Mr. Shrawan Dogra, Senior Advocate with Mr.
Tejasvi Dogra, Mr. Bharat Thakur, Mr. Harsh
Kalta and Ms. Shikha Rajta, Advocates, for
respondent No.7-Ashish Butail.

Mr. Virender Singh Chauhan, Senior Advocate
with Mr. Vikram Thakur and Mr. Arsh
Chauhan, Advocates, for respondents No.6 and
8.

Mr. Neeraj Gupta, Senior Advocate with Mr.
Ajeet Jaswal and Mr. Vedhant Ranta, Advocate,
for respondent No.9.

CWP No. 2507 of 2023

Mr. Satya Pal Jain and Mr. Ankush Dass Sood,
Senior Advocates with Mr. Vir Bahadur Verma,
Mr. Ankit Dhiman, Mr. Gaurav Chaudhary,
Mr. Mukul Sharma and Ms. Prajval Busta,
Advocates, for the petitioners.

Mr. Anup Rattan, Advocate General with Mr.
Navlesh Verma and Mr. Varun Chandel,
Additional Advocate General, for respondents
No. 1 and 3/State.

Mr. Ashwani Chawla, Advocate, for respondent No.2.

Respondent No.4 stands deleted.

Mr. Deven Khanna, Advocate, for respondent No.5-Sunder Singh Thakur.

Mr. Ajay Sharma, Senior Advocate with Mr. Atharv Sharma, Advocate, for respondent No.6-Mohan Lal Brakta.

Mr. Shrawan Dogra, Senior Advocate with Mr. Tejasvi Dogra, Mr. Bharat Thakur, Mr. Harsh Kalta and Ms. Shikha Rajta, Advocates, for respondent No.8-Ashish Butail.

Mr. Virender Singh Chauhan, Senior Advocate with Mr. Vikram Thakur and Mr. Arsh Chauhan, Advocates, for respondents No.7 and 9.

Mr. Neeraj Gupta, Senior Advocate with Mr. Ajeet Jaswal and Mr. Vedhant Ranta, Advocate, for respondent No.10.

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Mr. Shrawan Dogra, Senior Advocate, has concluded the arguments on behalf of respondents-Mr. Ashish Butail, Sh. Ram Kumar Chaudhary and Mr. Kishori Lal, in both the petitions.

2. As prayed, list for continuation for arguments on behalf of the respondent-State by learned Advocate General and remaining private respondents on 12.3.2024.

CMP No. 11341 of 2023 in CWP No. 2507 of 2023

CMP No. 3802 of 2023 in CWPIL No. 19 of 2023

3. Referring orders passed on previous dates and also judgments passed by Supreme Court in **Bimolangshu Roy**

(Dead) through LRs v. State of Assam & Anr, (2018) 14 SCC 408, and in Civil Appeal Nos. 823-827 of 2022 (arising out of SLP (C) Nos. 2001-2005 of 2021), titled as **The State of Manipur and Ors. v. Surjakumar Okram and Ors** alongwith connected matters, decided on 1.2.2022 (**2022 SCC Online SC 130**) as well as judgment dated 12.8.2016, CWP No. 6715 of 2012, titled **Jagmohan Singh Bhatti v. Union of India and Ors.**, alongwith connected matter, and judgment dated 16.11.2019 in CWPI No. 221 of 2019 (O&M) titled as **Jagmohan Singh Bhatti v. Union of India and Ors.**, passed by the Punjab and Haryana High Court, Mr. Satya Pal Jain, Senior Advocate and Mr. Sanjay Kumar, Advocate, appearing for the respective petitioners in both the petitions, have pressed for passing interim order, as prayed in these applications, restraining the private respondents from functioning as Chief Parliamentary Secretaries (in short "CPS").

4. It has been contended by Mr. Jain, learned Arguing Counsel that in view of the provisions of Article 141 of the Constitution of India, law declared by the Supreme Court is binding on all and, therefore, in view of judgments passed by Supreme Court with reference to similar enactment of Assam and Manipur States, The Himachal Pradesh Parliamentary Secretaries (Appointment, Salaries, Allowances, Powers, Privileges and Amenities) Act, 2006 (hereinafter referred as 'Himachal Act') in the present case is also to be treated to have been enacted without legal competence.

5. According to the learned counsel for the petitioners, present cases are squarely covered by the judgments passed by the Supreme Court in **Bimolangshu Roy and Manipur's** cases (supra) and, therefore, there is no legal competence of the State Legislative Assembly to enact the Himachal Act and, thus, it has been contended that interim prayer deserves to be allowed for having a prima-facie case in favour of the petitioners.

6. Learned Arguing Counsel Mr. Shrawan Dogra, Senior Advocate, on behalf of respondents, has contended that the private respondents have been appointed in terms of provisions contained in the Legislation enacted by the State Legislative Assembly, i.e. Himachal Act and until and unless, the Act is declared invalid or unconstitutional, respondents, appointed in terms of provisions of the said Act, cannot be restrained from performing the functions of CPS. It has been further submitted that private respondents have neither been appointed as Ministers nor they are discharging their functions as or like Ministers and benefits extended to them are also not equivalent to the privileges, status and benefits extendable to the Ministers.

7. Referring judgment of Supreme Court in **Health for Millions v. Union of India and Ors (2014) 14 SCC 496**, it has been further submitted that there cannot be stay against the Legislation/Statute until and unless, the same is declared unconstitutional.

8. Learned counsel for the respondents have contended that in **Bimolangshu Roy** (supra), issue related to the provisions contained in the Assam Act was under consideration of the Court, whereas, in view of aims and objects for enacting Himachal Act, there is a material difference between the Assam Act and the Himachal Act, particularly for significant difference as under Sections 4 and 7 of the Assam Act, wherein rank and status of the Parliamentary Secretaries was declared to be equivalent to the Ministers of the State and, therefore, it has been contended that judgments in **Assam's** and **Manipur's** cases are not applicable in present cases.

9. Having heard learned Arguing Counsel for parties, on perusal of judgments referred supra and also taking into consideration the facts that final arguments in the main matter are at final stage and next date for continuance of arguments by the learned Advocate General has been fixed for 12.3.2024, and that the aforesaid rival contentions of parties are pending adjudication in main matter, and that impact and applicability of judgments referred by parties is also yet to be ascertained at the time of final adjudication of the main matters, we are of the considered opinion that any finding on merit with respect to contentions raised for and against passing restraint order is not warranted at this stage.

10. Therefore, at this stage, we do not consider it appropriate to restrain the respondents from performing the functions of CPS, but they shall not perform and discharge the

functions of Ministers and no status, privileges and benefits, available and equivalent to the Ministers, shall be extended to them.

The applications are disposed of.

(Vivek Singh Thakur),
Judge

(Sandeep Sharma),
Judge

January 03, 2024
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