

ITEM NO.17

COURT NO.1

SECTION PIL-W

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

Writ Petition (Civil) No.699/2016

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With IA No.142097/2022 - APPLICATION FOR PERMISSION, IA No.123776/2023 - APPLICATION FOR PERMISSION, IA No.118900/2023 - APPLICATION FOR PERMISSION, IA No.107427/2018 - APPROPRIATE ORDERS/DIRECTIONS, IA No.111768/2023 - APPROPRIATE ORDERS/DIRECTIONS, IA No.39027/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.73459/2019 - APPROPRIATE ORDERS/DIRECTIONS, IA No.8016/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.81287/2018 - CLARIFICATION/DIRECTION, IA No.102773/2023 - CLARIFICATION/DIRECTION, IA No.2029/2020 - CLARIFICATION/DIRECTION, IA No. 143394/2021 - CLARIFICATION/DIRECTION, IA No. 100245/2023 - CLARIFICATION/DIRECTION, IA No.136819/2017 - CLARIFICATION/DIRECTION, IA No.126476/2021 - CLARIFICATION/DIRECTION, IA No.108743/2021 - CLARIFICATION/DIRECTION, IA No.55244/2022 - CLARIFICATION/DIRECTION, IA No.54637/2017 - CLARIFICATION/DIRECTION, IA No.156548/2022 - CLARIFICATION/DIRECTION, IA No.54552/2017 - DIRECTIONS, IA No.97487/2022 - EXEMPTION FROM FILING AFFIDAVIT, IA No.149485/2021 - EXEMPTION FROM FILING O.T., IA No.146933/2018 - EXEMPTION FROM FILING O.T., IA No.130543/2018 - EXEMPTION FROM FILING O.T., IA No.91514/2022 - EXEMPTION FROM FILING O.T., IA No.103522/2019 - EXEMPTION FROM FILING O.T., IA No.55246/2022 - EXEMPTION FROM FILING O.T., IA No.168881/2022 - EXEMPTION FROM FILING O.T., IA No.107431/2018 - EXEMPTION FROM FILING O.T., IA No.101624/2021 - EXEMPTION FROM FILING O.T., IA No.2083/2019 - INTERVENTION APPLICATION, IA No. 81286/2018 - INTERVENTION APPLICATION, IA No.2027/2020 - INTERVENTION APPLICATION, IA No.204637/2022 - INTERVENTION APPLICATION, IA No.127368/2018 - INTERVENTION APPLICATION, IA No.127553/2020 - INTERVENTION/IMPLEADMENT, IA No.7992/2022 - INTERVENTION/IMPLEADMENT, IA No.156545/2022 - INTERVENTION/IMPLEADMENT, IA No.20037/2023 - INTERVENTION/IMPLEADMENT, IA No.58124/2017 -

INTERVENTION/IMPLEADMENT, IA No.57812/2017 - INTERVENTION/IMPLEADMENT, IA No.108742/2021 - INTERVENTION/IMPLEADMENT, IA No.127023/2018 - INTERVENTION/IMPLEADMENT, IA No.55243/2022 - INTERVENTION/IMPLEADMENT, IA No.156559/2022 - INTERVENTION/IMPLEADMENT, IA No.2085/2019 - PERMISSION TO APPEAR AND ARGUE IN PERSON, IA No.98425/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.105809/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.72938/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.130542/2018 - STAY APPLICATION)

Date : 11-07-2023 These matters were called on for hearing today.

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HON'BLE MR. JUSTICE MANOJ MISRA

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**UPON hearing the counsel the Court made the following
O R D E R**

- 1 By its order dated 10 August 2021, this Court directed, *inter alia*, that the Presiding officers of the Special Courts involving prosecution of MPs or MLAs, shall not be transferred except with the leave of this Court.
- 2 Several High Courts filed interlocutory applications seeking permission to transfer judicial officers due to administrative exigencies or on other grounds.
- 3 Subsequently, by an order dated 10 October 2022, this Court directed, *inter alia*, as follows:

“...henceforth it will not be necessary for the High Courts to seek prior permission of this Court for transfer of judicial officers where the transfers are made in the normal course consequent upon the end of their tenure in a particular posting. However, if a transfer is necessitated for any other reason, otherwise than in the normal course of transfers and postings pursuant to the policy of the High Court, the prior permission of this Court shall be deemed to be necessary in terms of the order dated 10 August 2021.”
- 4 A number of interlocutory applications have been filed by the High Courts seeking permission to transfer judicial officers.
- 5 In order to ensure that the administrative work of the High Courts does not suffer as a result of the delay occasioned in dealing with the interlocutory applications, we modify the orders dated 10 August 2021 and 10 October 2022 in the following terms:
 - (I) The permission of this Court shall not be required for transfer of Presiding officers of Special Courts dealing with cases pertaining to MPs/MLAs by the High Courts subject to due observance of the following conditions:

- (i) The High Court concerned may transfer the Presiding officers of Special Courts - MPs/MLAs after obtaining the approval of the Chief Justice of the High Court on the administrative side;
 - (ii) While granting permission, the Chief Justice shall ensure that some other judicial officer is posted in the vacancy which would be caused by the transfer so that the Special Court in charge of cases of MPs/MLAs is not kept vacant; and
 - (iii) The transfer shall be permitted subject to the condition that there is no case pending for final judgment after the conclusion of the arguments in the trial.

- 6 The following interlocutory applications which have been moved by the High Court of Judicature at Allahabad are accordingly allowed by permitting the transfer of the judicial officers subject to the above conditions:
 - (i) IA No 100245 of 2023;
 - (ii) IA No 102773 of 2023; and
 - (iii) IA No 111768 of 2023

- 7 Similarly, the following interlocutory applications filed by the Madras High Court are allowed by permitting the transfer of the judicial officers subject to the above conditions:
 - (i) IA No 118900 of 2023; and
 - (ii) IA No 123776 of 2023

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar