

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

MONDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT
THE HONOURABLE SRI JUSTICE G.NARENDAR
AND
THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY



WRIT APPEAL Nos: 222 & 223 of 2024

WRIT APPEAL No: 222 OF 2024

Writ Appeal under Clause 15 of the Letters Patent preferred against the Order dated 23.02.2024 passed in IA.No.1 of 2024 in WP.No.14051 of 2023 on the file of the High Court.

Between:

The Chief Commissioner of Land Administration,
Government of Andhra Pradesh, APIIC Towers,
Mangalagiri, Guntur District, Andhra Pradesh.

...Appellant/Petitioner/
Respondent No.3

And

1. Desaraju Arunchandra, S/o D. Sambamurthy, aged about 39 years, Occ: Deputy Tahsildar, Presently working at Devarapalli Mandal, HDT, Anakapalli District, R/o Visakhapatnam Urban Mandal, Visakhapatnam District, Pin:530003.
2. A. Santhosh Kiran S/o AVVS Prasad, Present working Mandal /Office: SDT, Steal Plant., Visakhapatnam, R/o Chodavaram Mandal, Visakhapatnam District.
3. Rajkumar Giddi, S/o Venkateswarlu Naidu, aged about 35 years, Occ: Deputy Tahsildar, Present working Mandal /Office: HDT, GK Veedhi Mandal, Alluri Sitaramaraju District, R/o Paderu Mandal, Alluri Sitaramaraju District,
4. A. Gnanendra Prasad, S/o A.Venkataiah, aged about 37 years, Occ: Special Deputy Tahsildar, O/o Special Collector, GNSS-Kadapa, YSR District, R/o D.No.1/129, Kuchivaripalli, Rajampeta Mandal, Annamayya District.
5. K. Kishore Kumar Reddy, S/o Subbi Reddy, aged about 33 years, Occ: Deputy Tahsildar,

O/o Revenue Divisional Officer, Badvel, YSR District,
R/o 1-68, Chinna Yarasala, Porumamilla,
Kadapa District-516505.

6. Nandyala Ramanjaneyulu, S/o Rama krishnaiah.
aged about 33 years, Occ: Deputy Tahsildar,
O/o Tahsildar, Rayachoty Mandal,
R/o Kamalapuram, YSR District-516289.
 7. Jaladurgam Mallikarjuna Reddy, S/o Siva Sankar Reddy,
aged about 39 years, Occ: Deputy Tahsildar,
O/o Tahsildar, Panyam Mandal,
R/o Nandyal, Nandyal District.
 8. Perumalla Ravichandra, S/q P. Seshanna,
aged about 30 years, Occ: Deputy Tahsildar,
Krishnagiri Mandal, Kurnool District.
- ...Respondents/Respondents/
Writ Petitioners.
9. The State of Andhra Pradesh, Rep. by its
Principal Secretary, Revenue Department,
Secretariat Buildings, Amaravati,
Guntur District, Andhra Pradesh.
 10. The State of Andhra Pradesh, Rep. by its
Principal Secretary, General Administration (SR)
Department, Secretariat Buildings, Amaravathi,
Guntur District, Andhra Pradesh.
 11. The District Collector,
Srikakulam District,
Srikakulam, Andhra Pradesh.
 12. The District Collector,
Visakhapatnam District,
Visakhapatnam, Andhra Pradesh.
 13. The District Collector,
Kadapa District,
Kadapa, Andhra Pradesh.
 14. The District Collector,
Kurnool District,
Kurnool, Andhra Pradesh.

...Respondents/Respondents

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the orders dated 23.02.2024 in IA.No. 1 of 2024 in WP.No.14051 of 2023 by modifying the Interim Order dated 16.06.2023 in WP.No. 14051 of 2023 in terms of the orders dated 11.05.2023 in WP.No. 12824 of 2023 pending disposal of the Writ Appeal.

**Counsel for the Appellant: SRI G.V.S.KISHORE KUMAR,
GP FOR SERVICES - I**

**Counsel for the Respondents: SRI B.ADINARAYANA SR. COUNSEL AND
SRI M.VIJAYA KUMAR SR. COUNSEL AND
M/s S.PRANATHI AND
SRI BODDULURI SRINIVASA RAO**

WRIT APPEAL NO: 223 OF 2024

Writ Appeal under Clause 15 of the Letters preferred against the Order dated 23.02.2024 passed in IA.No.1 of 2024 in WP.No. 14038 of 20217 on the file of the High Court.

Between:

The Chief Commissioner of Land Administration,
Government of Andhra Pradesh, APIIC Towers,
Mangalagiri, Guntur District, Andhra Pradesh.

...Appellant/Petitioner/
Respondent No.2

And

1. Avugadda Rajababu, S/o Chittibabu, aged 35 years, Occ: Deputy Tahsildar, ISP RMC, Unit-1, Kowuru Mandal, R/o Rajavommangi Mandal, Alluri Seetaramaraju District.
2. CH. Divya Bharathi, D/o Rajendra Prasad, aged 35 years, Occ: Deputy Tahsildar, Gokavaram Mandal, R/o Rajamahendravaram Mandal, East Godavari District-533106.
3. Suneetha Marrapu, D/o M. Apparao, aged 38 years, Occ: Deputy Tahsildar, Rajanagaram Mandal, R/o Rajamahendravaram Urban Mandal, East Godavari District-533105.
4. A. Lakshmi Saraswathi, D/o Satyanarayana, aged 35 years, Occ: Special Deputy Tahsildar, O/o DMO, APSCSCL, Kakinada, R/o Kakinada, Kakinada Urban Mandal, Kakinada District-533003.
5. Allu S V Satyanarayana, S/o Satyanarayana, aged 33 years, Occ: Deputy Tahsildar, Rajavommangi Mandal, R/o A.P. Puram Village, Nathavaram Mandal, Anakapalli District-531115.

6. Chandolu Hema Prasad, S/o Bhiksham, aged 35 years, Occ: Special Deputy Tahsildar, EPIC O/o Tahsildar Milavaram, R/o Merakanapalli Village, Mopidevi Mandal, Krishna District.
7. K. V. Purna Chandra Rao, S/o Venkata Ramaiah, aged 42 years, Occ: Deputy Tahsildar O/o Tahsildar, Pedana, Krishna District, R/o Bantumilli Village, Krishna District.
8. M Srihari, S/o Sambasivarao, aged 37 years, Occ: Deputy Tahsildar, O/o Tahsildar, Mylavaram, R/o Mylavaram NTR District.
9. Hemanth Kumar Sripathi, S/o Suresh Kumar, aged 33 years, Occ: Deputy Tahsildar, O/o District Supply Office, Krishna District, R/o Machilipatnam Town and Mandal Krishna District.
10. Katta Rama Siva, S/o Anjaneyulu, aged 37 years, Occ: Deputy Tahsildar, O/o Tahsildar, Bantumilli, R/o Sethanapalli Village, Kaikaluru Mandal, Eluru District, Andhra Pradesh State.
- ...Respondents/Respondents/
Writ Petitioners
11. State of Andhra Pradesh, Rep by its Principal Secretary, Revenue Department, Secretariat, Velagapudi, Guntur District.
12. The District Collector, Kakinada District at Kakinada.
13. The District Collector, Konaseema District at Amalapuram.
14. The District Collector, West Godavari District at Bheemavaram.
15. The District Collector, East Godavari District at Rajahmundry.
16. The District Collector, Eluru District at Eluru.
17. The District Collector, Krishna District at Machilipatnam

18. The District Collector,
NTR District at Vijayawada.
19. The District Collector,
Alluri Seetaramaraju District At Paderu.
20. State of Andhra Pradesh, Rep by its
Principal Secretary, Finance Department,
Secretariat, Velagapudi, Guntur District.
23. Karaka Satyanarayana, S/o Lakshmaiah,
aged 49 years, Occ: Tahsildar,
Devipatnam mandal, ASR District.
24. K Ramesh, S/o Not known to Petitioner,
aged 40 years, Occ: Deputy Tahsildar,
Civil Supplies, Amalapuram Mandal,
Dr. B. R. Ambedkar Konaseema District.
25. Kosu Anasuya, D/oPothu Raju,
aged 46 years, Caste: Koya(ST)
Occ:Tahsildar, Kunavaram Mandal,
Alluri Seetaramaraju District.
26. Karam Subbarao, S/o Rajulu,
aged 51 years, Caste: Koya(ST) Occ: Tahsildar,
Chinturu, Alluri Seetaramaraju District.
27. T Nagaraju, S/o Not known to the Petitioners,
aged 43 years, Occ: Deputy Tahsildar,
Kankipadu Mandal, Krishna District.
28. Abdul Rahiman, S/o Not known to Petitioners,
aged 42 years, Occ: Deputy Tahsildar,
O/o DSO, NTR District, Andhra Pradesh.
29. S. V. Ravindranath, S/o Not known to Petitioners,
aged 45 years, Occ: Deputy Tahsildar, EPIC
Vijayawada East Constituency, NTR District,
Andhra Pradesh.
30. P. Balaji, S/o Not known to Petitioners,
aged 45 years, Occ: Deputy Tahsildar,
O/o Tahsildar, Gudlavalleru Mandal, Krishna District.
31. G. Srilatha, S/o Not known to Petitioners,
aged 45 years, Occ: Deputy Tahsildar,
O/o Tahsildar, Unguturu Mandal, Krishna District.
- ...Respondents/Respondents

32. A. Sivakrishna, S/o Vasantharao,
Aged 26 years, O/o Tashildar, Palacoderu Mandal,
West Godavari District R/o H.No.297, Yadav Street,
Cheemalapadu Village, A.Konduru Mandal, NTR District.
33. A. Premasai Srinivas, S/o A. Srihari,
Aged 33 years, Occ: Dy. Tahsildar,
O/o District Collector, Tirupati, R/o Tirupati.
34. P. Lavankumar, S/o P. Madhava Reddy,
Aged 31 years, Occ: Dy. Tahsildar,
O/o Tahsildar, Rajampet Mandal, Annamaya District,
R/o Kanipakam, Chittoor District.
35. U. Suneetha, D/o U. Janardhana,
Aged 28 years, Occ: Deputy Tahsildar,
O/o Tahsildar, Kadiri Mandal, Sri Sathyasai District,
R/o D.No.8-102, Kandur Road, Nimmanapalli Village,
Nimmanapalli Mandal, Annamayya District.
36. Darla Santhi Swaroop, S/o Ramadasu,
Aged 36 years, Occ: Deputy Tahsildar, O/o District Collector,
SPS Nellore District, R/o H.No.25/6/573, C/o Ch. Hariram,
2nd Street, NCC Colony, Nellore-524004.
37. Y. Sai Viswa Teja, S/o Y. Harinath,
Aged 29 Occ: Deputy Tahsildar, O/o District Collector,
Nandyal, R/o H.No.91-127, Medhari Street,
Allagadda-518543, Kurnool District.
38. R. Chenna Kesava Naidu, S/o R. Chandra Sekhar Chowdary,
Aged 36 years, Occ: Deputy Tahsildar, O/o District Supply
Officer, Sri Satyasai District, R/o Putlur Mandal, Anantapur
District.
39. T. Prudvi, S/o Veera Swamy,
Aged 26 years, Occ: Deputy Tahsildar, Tahsildar (FAC),
O/o Tahsildar, Yatapaka Mandal, R/o Yatapaka ASR District.
40. N. Hari Kishan Mouli, S/o Chandra Mouli,
Aged 49 years Occ: Deputy Tahsildar, O/o Tahsildar,
Kunavaram Mandal, R/o Kunavaram, ASR District.
- ...Respondents/Party Respondents

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the orders dated 23.02.2024 in IA.No. 1 of 2024 in WP.No. 14038 of 2023 by modifying the Interim Order dated 16.06.2023 in WP.No. 14038 of 2023 in terms of the orders dated 11.05.2023 in WP.No. 12824 of 2023 pending disposal of the Writ Appeal.

**Counsel for the Appellant: SRI G.V.S.KISHORE KUMAR,
GP FOR SERVICES - I**

**Counsel for the Respondents: SRI B.ADINARAYANA SR. COUNSEL AND
SRI M.VIJAYA KUMAR SR. COUNSEL AND
M/s S.PRANATHI AND
SRI BODDULURI SRINIVASA RAO**

The Court made the following common judgment:

**THE HON'BLE SRI JUSTICE G.NARENDAR
AND
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

Writ Appeal Nos.222 and 223 of 2024

COMMON JUDGMENT: (per Hon'ble Sri Justice G.Narendar)

Heard Sri G.V.S.Kishore Kumar, learned Government Pleader for Services-I ("G.P. for S-I") for the appellants and Sri B. Adinarayana Rao and Sri M.Vijay Kumar, learned Senior Counsels, along with Ms.S.Pranathi and Sri Srinivasa Rao Bodduluri, learned counsel, appearing for the respondents/writ petitioners.

2. Under Interlocutory Application No.1 of 2024, the Appellant had sought for modification of the interim order, dated 16.06.2023, passed in W.P.No.14038 of 2023 in terms of the interim order, dated 11.05.2023, passed in W.P.No.12824 of 2023, and thereby enable the Appellant-State i.e. 1st respondent State before the learned Single Judge to fill-up the vacancies on account of the instructions received from the Chief Electoral Officer, Andhra Pradesh, under Memo. No.2389/Elecs.D/A1/2023, dated 06.02.2024. The said application with I.A.No.1 of 2024 was resisted by the writ petitioners and the private respondents, who are sailing with them, on the ground that the

1st respondent-State is attempting to achieve indirectly what it could not achieve directly on account of the interim order granted by the Court and that the modification sought is not *bona fide*.

3. The appeals were listed on 01.03.2024 before this Court and on the said date, this Court had in fact put to the learned Counsels to look into the order of the Division Bench of the Karnataka High Court rendered in the case of **Election Commission of India, New Delhi v. The State of Karnataka, rep. by its Chief Secretary to Government of Karnataka, Bangalore**¹, wherein, the Division Bench of the Karnataka High Court, while dealing with a somewhat similar issue of transfer postings, taking note of the law, more particularly, Article 324 of the Constitution of India and after appreciating the provisions of the Representation of People Act, 1951 and after appreciating the law laid down by the Hon'ble Apex Court in the cases of **Mohinder Singh Gill v. Chief Election Commissioner, New Delhi**²; **A.C.Jose v. Sivan Pillai**³; **Election Commissioner of India v. State Bank of India, Patna**⁴ and in the matter of

¹ 2013 SCC OnLine Kar 3830 = (2013) 6 Kant LJ 363 (DB)

² AIR 1978 SC 851

³ (1984) 2 SCC 656

⁴ AIR 1995 SC 1078

Special Reference 1 of 2002⁵, has been pleased to observe and hold in paras.24, 25, 26 and 27 as under:

“24. In the Constituent Assembly when the question of making the Election Commission an independent body was being debated, At page 905, *Constituent Assembly Debates* (Vol. 8), Dr. Ambedkar observed thus:

“But the House affirmed without any kind of dissent that in the interests of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing Articles 289, 290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute. What article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission.”

25. The Constitution of our country ushered in a Democratic Republic for the free people of India. The founders of the Constitution took solemn ease to devote a special chapter to Elections nitched safely in Part XV of the Constitution. Elections supply the Vis Viva to a democracy. It was, therefore deliberately and advisedly thought to be of paramount importance that the high and independent office of the Election Commission should be created under the Constitutions to be in complete charge of the entire electoral process commencing with the issue of the

⁵ (2002) 8 SCC 237

notification to the final declaration of the results. Election Commission in our democratic scheme is a central figure and a high functionary. As is clear from the Constituent Assembly debate, the superintendence, direction and control of the preparation of the electoral rolls and all elections to Parliament and the Legislatures of States was transferred to a body outside the executive to be called the Election Commission. Therefore, the Election Commission is a Constitutional authority and is a body outside the Executive. We have adult franchise and general elections as constitutional compulsions. The right of election is the very essence of the Constitution. The heart of the parliamentary system is free and fair election periodically held, based on adult franchise is the **basic**. The regulatory procedures vis-a vis the repositories of functions and the distribution of legislative, executive and judicature roles in the total scheme, directed towards holding of free elections are the **species**. The fairness of the Constitution took care of leaving scope for exercise of residuary power by the Commission in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen or anticipated with precision. That is why there is no hedging in Article 324. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules. That seems to be *raison d'être* for the opening clause in Article 327 and Article 328 of the Constitution which leaves the exercise of powers under Article 324 operative and effective when it is reasonably called for in a vacuous area. Election Commission is

insulated from extraneous influences and that cannot be achieved unless it has amplitude of powers in the conduct of elections in accordance with the existing laws. But where the law is absent, he must lawfully exercise his power independently, in all matters relating to the conduct of elections and see that the election process is completed properly and in a free and fair manner. Article 324 of the Constitution operates in areas left unoccupied by legislation and the words superintendence, direction and control as well as conduct of elections are the broadest terms. An express statutory grant of power or the imposition of a definite duty carries with it by implication in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power or the performance of the duty. That which is clearly implied is as much a part of a law as that which is expressed. Implied powers are such as are necessary to make available and carry into effect those powers which are expressly granted or conferred and which must therefore be presumed to have been within the intention of the Constitutional or legislative grant.

26. Clause (6) of Article 324 provides that for the conduct of elections when the Election Commission makes a request to the President or Governor to make available the staff, they are obliged to provide the services. Such staff used in the said provision can only mean, that staff which is under the control of the President or the concerned Governor and not any other staff over which they do not exercise control. It can mean only the staff on which the President or the Governor as the case may be would be in a

position to exercise disciplinary powers. Although the Constitution-makers did not say the Union or the State Governments but only the President or the Governor, it is obvious they would have to act consistently with Articles 74(1) and 163(1), respectively. Therefore on a request by the Election Commission, the services of those Government servants who are appointed to public services under Central or State Government will have to be made available for the purpose of election. Part IIA of the 1950 Act deals with officers. Section 13CC makes it clear that the officers referred to in the said Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission. Similarly Part IV of the 1951 Act, provides for administrative machinery for the conduct of elections. Section 28A in the said Part reiterates what is contained in Section 13CC of the 1950 Act and provides that the returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control,

superintendence and discipline of the Election Commission.

27. Therefore under the scheme of the Act, clause (6) of Article 324 of the Constitution, read with Section 13CC of 1950 Act and Section 28A of the 1951 Act, makes it clear that the Government officials who are under the control of the Government when they are deputed to the Election Commission for the purpose of conduct of elections, their deputation would commence on and from the date of notification calling for such election and ending with the date of declaration of the results of such election. There is no law passed by the Parliament or the State Legislature providing for such transfer or deputation or appointment during the period of General Election. When there is no Parliamentary legislation or Rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections. Once the area is not covered by any legislation, then Article 324 being a reservoir of power, confers on the Election Commission power to pass such appropriate orders or issue such appropriate direction for conduct of free and fair election."

4. The observations and findings in paras 28, 29, 30 & 31, answer the queries or rather the objections raised by the petitioners. Paras 28, 29, 30 and 31 read as under:

"28. It is by virtue of such power conferred on the Election Commission, it has issued directions to the State Government to make available the officers who in their

opinion are needed for conduct of election. In obedience of the said direction issued, the Government has passed the impugned order of transfer. Though in the impugned order, the word 'transfer' is used, it is to be understood in the context in which it is passed. It is not a transfer which is governed by All India Services Rules framed under the All India Services Act, 1951. The said Rule does not provide for transfer of a person appointed to the All India Service, to the Election Commission during election. Therefore when the said law is silent about how the services are to be utilized during elections, the Election Commission has a free hand and if it requests or directs the Government, the Government is bound to honour the said request/direction. The Election Commission has not assigned any reasons why they are displacing these applicants. The Election Commission has no obligation to give reasons for opting for such officers. Similarly, they are under no obligation to give reasons why the person incumbent is not required. It is the matter of confidence the Election Commission has in a particular officer. Having regard to the number of days these persons are going to be displaced, there is no obligation cast on the Election Commission either to give reasons or point out in what circumstances these transfers are effected. It is made clear that when a Government servant is transferred on a direction issued by the Election Commission, the said direction is to be understood in the context of conducting free and fair election. It has no reflection on the integrity or character or the capacity or competence of the said person. It cannot, under any circumstances, be held against him. The apprehension of the applicants that in the eye of the public or otherwise, it

may amount to stigma, is without any substance. The impugned order does not cast any stigma on the applicant. Once the election process is over, they will be reverted back to their original position and therefore they cannot have any grievance whatsoever. As the period during which the transfer will be in force is a very short period and the purpose of such transfer being to conduct free and fair election, the said action cannot be found fault with on any count. In the matter of election, when the ultimate responsibility is that of the Election Commission, being a Constitutional authority, they have onerous responsibility of conducting free and fair election in order to preserve democracy in the country. It is to achieve the said object, for a limited period, the impugned order is passed.

[emphasis by this Court]

29. The argument that the Election Commission, even though they chose to requisition the services of these officers from the Government for election work and if they are to be transferred and posted before the expiry of the minimum tenure, they should make a request to the State Government, which in turn should make a request to the Committee to consider their case and make recommendation and then only they can be posted, holds no water. The said rule is not meant to deal with a situation where elections are announced to the Legislative Assembly. It is not a case of transfer. It is a case of deemed deputation. The said rule is silent and therefore under Article 324 of the Constitution, the Commission has the

power to issue directions to transfer and post the officials for the proper conduct of the elections.

30. In the instant case, after preliminary preparations are made for conducting election, before issue of notification calling for the elections, the Election Commission wanted these respondents-4 to 10 to be posted in place of applicants during the period of election. Once they are so posted, after the issue of notification, they are deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of results of such election and accordingly such officers shall, during that period are subject to control, superintendence and discipline of the Election Commission. Therefore the order passed by the Election Commission directing the State to post these officers in the place suggested by them would result in deemed deputation to the Election Commission for the aforesaid period. Once declaration of results of such election is announced, the said deputation comes to an end and at the end of the deputation, the officers are reverted back to their parent organization (previous post held by them).

31. Unfortunately, the Tribunal proceeds on the assumption that there are no complaints against these persons and without complaint, a person cannot be transferred and before such transfer is effected, the Rules have to be followed. In the first place, it is not a case of transfer. It is not a case of premature transfer. It is a case of deputation for a limited period and for a specific purpose

of conducting elections. Therefore, the said Rules have no application. There is no obligation either on the part of the Election Commission or on the State Government to follow the Rules before effecting transfer or posting. Therefore there is no substance in the said contention as well.”

[emphasis by this Court]

5. It is not in dispute that under the Memo., dated 06.02.2024, the Chief Electoral Officer, Andhra Pradesh, has directed the Government to look into the issue of vacancies in the post of A.R.Os. etc. It is not in dispute that the Officers occupying these posts are those who carry out the duty of the revision of rolls etc. and admittedly it is a critical component of the democratic process called election, and also requires to be carried out in a Time Bound Manner.

6. The learned G.P. for S-I would submit that the postings that are sought to be effected are only for the purposes of the election and nothing more and that as the interim orders in the instant Writ Petitions have prohibited the same, the State is duty bound to secure the clarification in order to avoid any future unpleasantness for the authorities who would be required to effect orders of posting of the officers who are before this Court to discharge election related duties and that the 1st

respondent/State has no intention of creating any rights which would impinge on the interim orders granted by this Court and that the postings are only with the intent of giving effect to the directions issued by the Chief Electoral Officer and hence, he prays that the interim order granted earlier be modified suitably.

7. *Per contra*, the learned Senior Counsels Sri B.Adinarayana Rao and Sri M.Vijay Kumar, appearing for the respondents/writ petitioners, would submit that the proposal is for more than 100 officers and in support of this, they would place reliance and invite the attention of the Court to a document, which apparently a communication between the counsel and his client.

8. That apart, we have perused the said communication also. The communication only calls upon the Counsel to take-up the matter on an urgent basis. That apart, the instructions given to the Counsel ought not to be the basis for adjudicating any lis.

9. The learned Senior Counsel Sri B.Adinarayana Rao, appearing for the respondents/writ petitioners, would also submit that the number of postings sought to be given and the number of promotions that are sought to be given are far in excess of the required numbers and that the Chief Electoral Officer having

pointed out only 50 posts and 38 postings have already been given, what was required was mere 12 number of officers and that the said number of officers could be sourced from other departments, having officers of equal category and class and that the learned Single Judge has rightly observed that the short fall can be addressed by engaging the officers from the other offices to discharge the duties of the A.R.Os.

10. *Per contra*, learned G.P. for S-I would submit that no postings or promotions have been given as alleged and that the State is only awaiting for modification orders in order to give the postings.

11. Having heard the learned Counsels on both sides, the short point that would arise for consideration by this Court is, whether the Courts can mandate as to who or how many officers are required for the conducting of elections.

12. The said issue has been extensively considered by the Courts, as noted supra, and it has been conclusively held that the discretion with regard to the class and category of officers or the number of officers would lie exclusively within the domain of the

Election Commission. There is no denial of the fact that the State has received a dicta from the Chief Electoral Officer to fill-up vacant posts by way of transfer. Be that as it may, it is vacant posts relating to the class of officers, who are before this Court in the Writ Petitions, who are required to be given postings in view of the CEO's dicta. It is these officers who are vehemently disputing the very cadre strength and consequential seniority. The issue, in our considered opinion, is squarely covered by the order of the Division Bench of the Karnataka High Court in **Election Commission of India, New Delhi & Anr. v. The State of Karnataka, rep. by its Chief Secretary to Government of Karnataka, Bangalore & Ors.**¹ and in that view, we are of the considered opinion that the instant appeals may be disposed of by partly allowing the I.A.No.1 of 2024 with directions akin to those passed in the E.C.I. case in Para 32 of the said order. At the cost of being repetitive, it is clarified that the postings are said to be considered as deputation.

13. Accordingly, the impugned common order of the learned Single Judge is set aside and the application in I.A.No.1 of 2024 in both the Writ Petitions are allowed in part in the following terms:

- (a) Both the Writ Appeals are allowed;
- (b) the impugned common order passed by the learned Single Judge is hereby set aside;
- (c) It is made clear that this order of transfer which is challenged by the writ petitioners before the learned Single Judge is in the nature of deputation and deputation comes to an end the moment the results of the elections are announced. Consequently, the deputationists would be reverted back to their original organization (previous post held by them) without any order from the State Government; and
- (d) parties to bear their own costs.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

//TRUE COPY//

Sd/- P.VENKAT RAMANA
JOINT REGISTRAR
SECTION OFFICER

To,

1. The Principal Secretary, Revenue Department, State of Andhra Pradesh, Secretariat Buildings, Amaravati, Guntur District, Andhra Pradesh.
2. The Principal Secretary, General Administration (SR) Department, State of Andhra Pradesh, Secretariat Buildings, Amaravathi, Guntur District, Andhra Pradesh.
3. The Principal Secretary, Finance Department, State of Andhra Pradesh, Secretariat, Velagapudi, Guntur District.
4. The District Collector, Srikakulam District, Srikakulam, Andhra Pradesh.
5. The District Collector, Visakhapatnam District, Visakhapatnam, Andhra Pradesh.
6. The District Collector, Kadapa District, Kadapa, Andhra Pradesh.
7. The District Collector, Kurnool District, Kurnool, Andhra Pradesh.
8. The District Collector, Kakinada District at Kakinada.
9. The District Collector, Konaseema District at Amalapuram.
10. The District Collector, West Godavari District at Bheemavaram.
11. The District Collector, East Godavari District at Rajahmundry.
12. The District Collector, Eluru District at Eluru.
13. The District Collector, Krishna District at Machilipatnam
14. The District Collector, NTR District at Vijayawada.
15. The District Collector, Alluri Seetaramaraju District At Paderu.
16. One CC to Sri Bodduluri Srinivasa Rao, Advocate [OPUC]
17. One CC to M/s S.Pranathi, Advocate [OPUC]
18. Two CCs to GP for Services - I, High Court of Andhra Pradesh. [OUT]
19. Two CCs to GP for Revenue, High Court of Andhra Pradesh. [OUT]
20. Two CCs to GP for Finance & Planning, High Court of Andhra Pradesh. [OUT]
21. Two CCs to GP for GAD, High Court of Andhra Pradesh. [OUT]
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RAM

Pujitha

HIGH COURT

DATED:04/03/2024

COMMON JUDGMENT

WA.Nos.222 & 223 of 2024



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**ALLOWING THE BOTH WRIT APPEAL'S
WITH COSTS**