IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF OCTOBER
TWO THOUSAND AND TWENTY THREE

PRESENT
THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

WRIT PETITION Nos: 15291,10593 of 2022 & 3570, 17517 of 2021

WRIT PETITION NO: 15291 OF 2022

Between:

1. A.Sow Reddy, Wo. A.Papi Reddy, Aged 44 years, P.C.No.4473, R/o. D.No.16-15, Munireddy Nagar, M.R.Palli, Thirupathi, Chittoor District.
2. P.Hari Kirisha, S/o. P.Obelesu, Aged 44 years, P.C.No.4471, R/o. D.No.12/41/4, L.B.Nagar, Thirupathi, Chittoor District.
3. P. Hari, S/o. P.Hanumanthu, Aged 42 years, P.C.No.3475, R/o. D.No.9/2, Kothapeta Street, Vayalpad, Chittoor District.
4. P.Chinna Mahaboob Basha, P.C. No.103, S/o. P.Chinna Mahaboob Basha, Aged 45 years, R/o. D.No.28-06-429, APHB Colony, Ananthapur District.

...Petitioners

AND

1. The State of Andhra Pradesh, Rep. by its Principal Secretary, Home (Legal) Department, Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The Director General of Police, Government of Andhra Pradesh, Mangalagiri, Guntur District.
3. The State Level Police Recruitment Board (SLPRB-AP), Andhra Pradesh, Represented by its Chairman, Mangalagiri, Guntur District.
4. The Superintendent of Police, Ananthapur, Ananthapur District.
5. The Superintendent of Police, Chittoor, Chittoor District.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the impugned amendment of Rule 10 (ii)(ii) of Andhra Pradesh Police (Civil Police) Subordinate Service Rules issued vide G.O.Ms.No.95 Home (Legal-II) dated 31-05-2017 issued by the 1st respondent wherein the Rule 10 (ii) (ii) has been substituted in the Special Rules for Andhra Pradesh Police (Civil Police) subordinate Service Rules 1999 by declaring the same as being illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and further action of the respondents in applying the impugned amended Rule to the petitioners though their appointment by transfer is within 10 percent quota against vacancies of the year 2016-2017 i.e., prior to Amendment, thereby depriving seniority and promotions of petitioners as illegal, arbitrary.

IA NO: 1 OF 2022

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 grant interim suspension of the impugned amendment of Rule 10 (ii)(ii) of Andhra Pradesh Police (Civil Police) Subordinate Service Rules issued vide G.O.Ms.No.95 Home (Legal.II) Department, dated 31.05.2017 issued by the 1st respondent including all further proceedings relating thereto, pending disposal of the Writ Petition.

Counsel for the Petitioners: SRI G V SHIVAJI

Counsel for the Respondents: GP FOR SERVICES - I

WRIT PETITION NO: 10593 OF 2022

Between:

1. Katikala Bhaskara Srinivasa Prasad, S/o Pullaiah, aged about 52 years, P.C.No.189, O/o Disha P.S., Narasaraopet, Guntur District.
2. Shaik Abdul Khader Jilani, S/o Shukur, Aged about 51 years, P.C.No.1128, A.P. Transco., Guntur.
3. Kokkiligadda Venkata Subba Rao, S/o Nagendram, aged about 50 years, P.C. No.1678, A.P. Transco., Guntur.
4. Thummula Suresh Babu, S/o Dibbaiah, Aged about 49 years, P.C. No.1445, C.C.S., Rural, Guntur, Guntur District.
5. Mangalagiri Srinivasa Rao, S/o Rathaiah, Aged about 54 years, PC.No.600, Sattenapalli Rural P.S., Guntur District.
6. Thalakola Suresh, S/o Venkata Ramaiah, Aged about 49 years, P.C.No.3275, Rural Police Station, Narasaraopet, Guntur District.
7. Chakka Srirama Murthy, S/o Sambasiva Rao, Aged about 53 years, P.C.No.1519, III Town Police Station, Tenali, Guntur District.
8. Borra Srinivasa Rao, S/o Gopal Rao, Aged about 58 years, P.C.No.2076, III Town Police Station, Tenali, Guntur District.
9. Bolamana Naga Malleswara Rao, S/o Pullarao Aged about 54 years, P.C.No.1874, Rural Police Station, Tenali, Guntur District.
10. Dharadula Durga Rao, S/o Hanumantha Rao, Aged about 45 years, P.C.No.1137, Police Station, Amaravathi, Guntur District.
11. Kondrathi Srinivasa Rao, S/o Venkataiah, Aged about 46 years, P.C.No.48, Amaravathi police Station, Guntur District.
12. Jonnalagadda Nagamalleswara Rao, S/o Biksharao, aged about 46 years, P.C.No.1162, Ponnuru Rural P.S., Guntur District.
13. Addanki Srinivasa Rao Dorababu, S/o Pedda Ankamma, Aged about 48 years, P.C.No.204, Talluru Traffic Police Station, Guntur District.
14. Shaik Subhani, S/o Babavali, Aged about 48 years, P.C.No.702, Political Intelligence, Guntur.
15. Kolasani Desapathi Rao, S/o Sambaiah, Aged about 46 years, P.C.No.342, Ponnuru Rural Police station, Guntur District.
16. Angadi Chennaiah, S/o Sattaiah, Aged about 52 years, P.C.No.1882, Piduguralla Town P.S., Guntur District.

17. Bala Yedukondal Reddy, S/o. Satyanarayana Reddy, Aged about 51 years, P.C.1695, Tenali Rural P.S., Guntur District.
18. Kadali Srinivasa Rao, S/o Bhushanam, Aged about 49 years, P.C.No.537, Amaravathi P.S., Guntur District.
19. Vicharapu Srinivasa Rao, S/o Venkateswara Rao, Aged about 47 years, P.C.No.485, III Town Police Station, Tenali, Guntur District.
20. Yarlagadda Venkateswara Rao, S/o Jaganmohan Rao, Aged about 49 years, P.C.No.1343, III Town Police Station, Tenali, Guntur District.
21. Ummadi Ratna Raju, S/o Yesupadam, Aged about 52 years, P.C.No.2264, Rural Police Station, Tenali, Guntur District.
22. Jalla Narasimha Rao, S/o Ramaiah, Aged about 49 years, PC.No.577, Karampudi Police Station, Guntur District.
23. Shaik Adam, S/o Basha, Aged about 51 years, P.C.No.984, Krosuru P.S., Guntur District.
24. Shaik Saleem Basha, S/o Mani, Aged about 46 years, P.C.No.816, III Town Police Station, Tenali, Guntur District
25. Ponnuru Ratna Babu, S/o Pothuraju, Aged about 48 years, P.C.No.906, Chalakaluripeta Town Police Station, Guntur District.
26. Kesana Venkateswarlu, S/o Mastan Rao, Aged about 53 years, P.C.No.6522, HI Town Police Station, Tenali, Guntur District.
27. Pallapu Vengal Rao, S/o Edukondalu, Aged about 48 years, P.C.No.528, Talluru Police Station, Guntur District.
28. Matta Sekhara Rao, S/o Vijayaratnam, Aged about 48 years, P.C.No.322, I Town Police Station, Tenali, Guntur District.
29. Banjaru Karimulla, S/o Sambasiva Rao, Aged about 47 years, P.C.No.84, Tenali Rural Police Station, Guntur District.
30. Shaik M.D.K.Sharief, S/o Moulali Saheb, Aged about 49 years, P.C.No.6525, III Town Police Station, Tenali, Guntur District.
31. Arya Sekhar Babu, S/o Mohan Rao, Aged about 49 years, P.C.3272, Karlapalem Police Station, Guntur District.
32. Govatoti Emmaniel, S/o Yesudasu, Aged about 48 years, P.C.No.3276, Ponnuru Rural Police Station, Guntur District.
33. Raturi Adisesharao, S/o Venkateswarlu, Aged about 48 years, P.C.No.3277, Ponnuru Rural Police Station, Guntur District.
34. Moral Srinivasa Rao, S/o Venkateswarlu, Aged about 47 years, P.C.No.207, Tenali Rural Police Station, Guntur District.
35. Battula Sambasiva Rao, S/o Seshagiri Rao, Aged about 49 years, P.C.No.6523, A.P. C.I.D. E..O.W-II, Guntur.
36. Simti Srinivasa Rao, S/o Ramaiah, Aged about 47 years, P.C.No.3273, III Town Police Station, Tenali, Guntur District.
37. Shaik Siddaiah, S/o Sk. Rahmatulla Aged about 49 years, P.C.No.1319, Sattanapalli Police station, Guntur Rural.
38. N.Lingaiah, S/o N.Veeraswamy, Aged about 49 years, P.C.No.6524, Piduguralla Police station, Guntur District.
39. A.Srinivasa Rao, S/o A.Pichaiah, Aged about 49 years, P.C.No.6521, Three Town Police station, Tenali, Guntur Rural
40. K,Nagaraju, S/o Ramarao Aged about 52 years,P.C.No.3136, S.I.B., A.P, Vijayawada, Krishna District.

41. B.Ganiraju, S/o Pothuraju Aged about 51 years, P.C.No.3139, Devipatnam Police station, East Godavari District.

...Petitioners

AND

1. The State of Andhra Pradesh, Rep. by its Principal Secretary, Home Department, Secretariat, Velagapudi, Guntur District.
2. The State Level Police Recruitment Board, Rep. by its Chairman, Mangalagiri, Guntur District.
3. The Superintendent of Police, Guntur, Guntur District
4. The Superintendent of Police, East Godavari District.
5. Gantel Yosepu, S/o Pullaiah, Aged 40 Years, Police Constable No.3586, West Traffic Police Station, Guntur Dist
6. Mohammed Abudul Ravoof, S/o Abullah Sharaf, Aged 40 Years, Working as PC No.3895, Sattenapalli Rural P.S., Palnadu District.
7. Katroth Bikshu Naik, S/o Cinna Nagulu Naik, Aged 36 Years, Working as PC.No.3679, Chebrolu P.S., Guntur District.
8. Mohammad Fazurulla, S/o Habizulla, Aged 34 Years, Working as PC.No.3606, I.T. Core Team, Guntur District.
9. Shaik Rafi, S/o Syda, Aged 40 Years, Working as PC.No.3545, Nallapdu P.S., Guntur District
10. Nakkala Gopi Krishna Yadav, S/o Thirumaleswara Rao, Aged 34 Years, Working as PC.No.3743, CCS, Bapatla District.
11. Prathipati Uday Kumar, S/o Nagabhushanam, Aged 34 Years, Working as PC.No.3702, Narasaraopet Rural PS, Palnadu District
12. Pinniboyina Durgaiah, S/o Musalaiah, Aged 34 Years, Working as PC.No.3735, Narasaraopet II Town PS, Palnadu District
13. Gurugubelli Janaki Ram, S/o Surya Rao, Aged 34 Years, Working as PC No.3905, Rompicherla PS, Palnadu District.
14. Mareboina Sambasiva Rao, S/o Rama Rao, Aged 37 Years, Working as PC.No.3727, Kothapet PS, Guntur District.
15. Kunchala Vinod Kumar, S/o Ankarao, Aged 34 Years, Working as PC.No.3666, Old Guntur PS, Guntur District.
16. Katumala Prema Kumar, S/o Mohanrao, Aged 39 Years, Working as PC.No.3787, Pedakakani PS, Guntur District.
17. Chandolu Satyanarayana, S/o Venkateswarlu, Aged 37 Years, Working as PC.No.3576, Nallapadu PS, Guntur District.
18. Dasi Vijaya Kanth, S/o Kishore, Aged 35 Years, Working as PC.No.3728, Mangalagiri Rural PS, Guntur District
19. Angalakuduru Rajendra Prasad, S/o. veera raghavaiah, aged 38 years, working as PC. No.3738, Tadikonda Ps Guntur District
20. Thalakola Vijaya Kumar, S/o Bala Showry, Aged 38 Years, Working as PC No.3651, Nagarampalem PS, Guntur District.
21. Mannem Tirumala Rao, S/o Venkateswararao, Aged 36 Years, Working as PC No.3845, Lalapet PS, Guntur District.
22. Kampa Anand Kumar, S/o. Bhaskar Rao, Aged 38 years, working as PC.no.3822, CID, Guntur District
23. Yalla Manikya Rao, S/o. Subba Rao, aged 38 years, working as PC.no. 3698, Medikondur PS,Guntur District
24. Mandla Venkateswarlu, S/o. Venakiah late, aged 34 years, working as PC.no.3449, Lalapet PS, Guntur District

25. Shaik Karimulla, S/o Shaida, Aged 34 Years, Working as PC No.3840, CCS, Guntur District.
26. Nelapati Pedababu, S/o. kamlaiah, Aged 37 years,working as PC.no.3687, lalapet PS, guntur District.
27. Mesa Ashok Prabhakar, S/o Vijaya Kumar, Aged 35 Years, Working as PC No.3836, Tenali Rural PS, Guntur District.
28. Pathivada Satyanarayana, S/o. Appalnaidu, aged 36 years, working as PC.NO.3922, It Core Team, Guntur District.
29. Nagisetty Srìdhar, S/o Sankar Rao, Aged 36 Years, Working as PC No.3496, IT Core Team, Guntur District.
30. Kethavath Hemla Naik, S/o. Harichand Naik aged 35 years, working as PC No.3874, Disha PS,Guntur District
31. Yelisala Kiran Kumar, S/o Venkataiah (Late), Aged 37 Years, Working as PC No.3503, Pattabhipuram PS, Guntur District.
32. Gogula Malleswara Rao, S/o Venkaiah, Aged 41 Years, Working as PC No.3540, CCS, Guntur District.
33. Tumma Ramesh Kumar, S/o Apparao, Aged 37 Years, Working as PC No.3492, Lalapet PS, Guntur District.
34. Vipparla Ravi, S/o Ramulu, Aged 35 Years, Working as PC No.3736, Lalapet PS, Guntur District.
35. K. Janaki, W/o B Murali Krishna, Aged 34 Years, Working as WPC No.3323, Bapatla Town PS, Bapatla District.
36. Kommi Madhu Babu, S/o Madhava Rao, Aged 34 Years, Working as PC No.4084, Rompicherla PS, Palnadu District.
37. Pandula Ramesh, S/o Issaku, Aged 34 years, Working as PC No.4411, Sattenapalli Rural PS, Palnadu District
38. Davuluri Venkateswarlu, S/o Koteswarao, Aged 36 Years, Working as PC No.4555, Narasaraopet 1 Town PS, Palnadu District
39. Kotha Rayapa Reddy, S/o Sambasiva Reddy, Aged 35 Years, Working as PC No.4126, Disha PS, Palnadu District.
40. Chilukuri Anantha Koteswara Rao, S/o Nageswara Rao, Aged 36 Years, Working as PC No.4185, Nadendla PS, Palnadu District.
41. Bejjam Vidaya Sagar, S/o Prakasam, Aged 32 Years, Working as PC No.6138, Nadendla PS, Palnadu District.
42. Kommu Anand Sagar, S/o Irmiyya, Aged 33 Years, Working as PC No.6160, Rompicherla PS, Palnadu District.
43. Devireddy Srikanth, S/o Ravindra Babu, Aged 32 Years, Working as PC No.6218, Chilakaluripet Rural PS, Palnadu District
44. Gummadidala Suresh, S/o Nageswara Rao, Aged 32 Years, Working as PC No.6214, Narasaraopet II Town PS, Palnadu District.
45. Thota Chennakesava Rao, S/o Anjaneyulu, Aged 33 Years, Working as PC No.6054, Karempudi PS, Palnadu District.
46. Perli Koteswara Rao, S/o Chettaiah, Aged 32 Years, Working as PC No.6080, Chilakaluripet Town PS, Palnadu District
47. Maddiguntla Ramu, S/o Krishna, Aged 36 Years, Working as PC No.6147, Narasaraopet I Town PS, Palnadu District.
48. Gurram Mehar Chandra, S/o Narayana, Aged 33 Years, Working as PC No.6050, Narasaraopet II Town PS, Palnadu District
49. Neelam Srinu Babu, S/o. Seetharamaiah, aged 37 years, working as head constable 3609, Ipur PS,Palnadu District

50. Jeldi Koteswara Rao, S/o Musalaiah, Aged 36 Years, Working as HC 3663, Disha PS, Palnadu District.
51. Singuru Narasinga Rao, S/o Subbarao, Aged 36 Years, Working as HC 3487, Lalapet PS, Guntur District.
52. Challa Venkatrao, S/o. appa rao, age 35 yeasr, working as HC 3491,DSB,Guntur District
53. Purumajji Adi Babu, S/O.APPA RAO, aged 36 years, working as HC 3446,Nallapadu PS,guntur district
54. Keelu Chiranjeevulu, S/o Balaiah, Aged 36 years, Working as HC 3468, Arundalpet PS, Guntur District.
55. Potnuru Prasada Rao, s/o. suryanarayana, aged 37 years, working as HC 3889,pattabhipuram PS,Guntur District
56. Angalakuduru Bala Krishna, s/o. venkataiah, aged 35 yeasr, working as HC 3436,Baptla town PS, Baptla Distritc
57. Gorikapudi Srinivasa Rao, s/o.Nacharaiah,aged 40 years, working as HC 3596, Vedullapalli PS,Baptla Ditstrict
58. Chennu Pothu Raju, S/o Ravindra Babu, Aged 36 Years, SB, Bapatla District
59. Kotiki Siva Sankara Rao, S/o Rangarao, Aged 41 Years, Working as HC 3464, Karlapalem PS, Bapatla District.
60. Kuppa Leela Siva Prasad, S/o. Rama Mohan Rao, aged 38 years, working as HC 3884, Baptla town PS,Baptla District.
61. Pamidi Subbaraju, S/o Sivaiah, Aged 33 years,Working as HC 3532, Bapatla Rural PS, Bapatla District.
62. Ragiri Ananth Kumar, S/o Yesu, Aged 40 Years, Working as HC 3868, (Deputation in Intelligence) Guntur District.
63. Chintalapudi Sudhakar Reddy, S/o Peddi Reddy, Aged 35 Years, Working as HC 3780, (Deputy in Intelligence, Vijayawada) Palnadu District
64. Bullagonda Rajesh Kumar, S/o. Rajaiah, age 37 years, working as HC 3661, DCRB,Planadu District.

Respondents No.5 to 64 Impleaded as per Court Order dt 08.09.2023 Vide I.A.No. 2 of 2023 in W.P.No. 10593 of 2022

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the amendments made in G.O.Ms.No.95 dt.21.5.2017 as being illegal, arbitrary and violative of rights guaranteed under Article 14, 16 and 21 of the Constitution of India and struck down the same and by declaring that the amendments made cannot defeat the vested rights of the petitioners herein to the principles of seniority contained in pre-amendment Rule-10(ii)(ii) in G.O.Ms.No.374 dt.14.12.1999 and issue appropriate directions.

IA NO: 1 OF 2022

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 Hon'ble Court may be pleased to suspend the operation of the impugned

amendment made in G.O.Ms.No.95 dt.21.5.2017 issued by the 1st respondent herein pending disposal of the above writ petition.

IA NO: 1 OF 2023

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 grant leave to the petitioners herein/Respondent No.1 in the Writ Petition No.10593 of 2022 to file counter affidavit in the above Writ Petition.

Counsel for the Petitioners: SRI VENKATA SAI KRISHNA PONNURU

Counsel for the Respondents 1 to 4: GP FOR SERVICES I

Counsel for the Respondents 5 to 64: SRI J.SUDHEER

WRIT PETITION NO: 3570 OF 2021

Between:

1. S.Shaffiulla, S/o. Shukur, Aged 45 years, P.C. No.2012, Proddutur III Town Police Station, YSR Kadapa District.
2. T. Ramesh, S/o. Dhaneilaiah, Aged 43 years, P.C. No. 2301, Venkatagiri Police Station, Nellore District.
3. M. Anil Kumar, S/o. M. Prakasa Rao Aged 44 years, P.C. No. 1489, G.HS, Hyd, Vizianagaram.
4. P. Narasaiah, S/o. P.S. Narasaiah, Aged 42 years, P.C. No. 3277, Poddutur I Town Police Station, Kadapa District.
5. G.S.R. Murty, S/o. Appanna, Aged 45 years, P.C. No. 1108, Traffic P.S, Srikakulam District.
6. D. Sreenivasulu, S/o. Narayana Aged 44 years, P.C. No. 2877, Sirivella P.S, Kurnool District.
7. U. Dhanasekhar, S/o. Late. U. Reddyappa, Aged 46 years, P.C. No. 1866, Chowdaypalli Police Station, Chittoor District.
8. K. Surya Subramanyam, S/o. K. Satyanarayana, Aged 43 years, P.C. No. 1317, III Town P.S, Rajahmundry (Urban), East Godavari District.
9. Ch. Sri Krishna Paramatma, S/o. Ch. Ganga Raju, Aged 47 years, P.C. No. 1319, I Town P.S (RJVM-Urban), Rajahmundry (Urban), East Godavari District.
10. B. Gopala Krishna, S/o. B. Tridev Aged 42 years, P.C. No. 1008, J.R. Puram P.S, Srikakulam District.
11. K. Kantha Rao, S/o. Mangayya Aged 42 years, P.C. No. 1157, Kasibugga P.S, Srikakulam District.
12. D. Manikya Rao, S/o. Dalayya, Aged 43 years, P.C. No. 1093, Donuban P.S, Srikakulam District
13. P. Vasudeva Rao, S/o. Jaganadama Naidu, Aged 42 years, P.C. No. 760, Women P.S, Vizianagaram
14. B. Jaya Ramudu, S/o. Bala Ramudu Aged 49 years, P.C. No. 1442, Guthy P.S, Ananthapur District
15. B. Thippa Swamy, S/o. Khullayappa Aged 43 years, P.C. No. 2253, II Town P.S, Ananthapur District.

16. K. Mastan Vali, S/o. K.P. Kullayappa Aged 45 years, F.C. No. 1722, Sundupalli P.S, Kadapa District.
17. P. Gangulaiah, S/o. P. Ganganna, Aged 43 years, P.C. No. 1535, Pendlimarry P.S, Kadapa District
18. S. Khaja Mohiddin, S/o. S. Amear, Aged 47 years, P.C. No. 2029, Peddamt.dam P.S, Kadapa District
19. D. Harinath Reddy, S/o. Rajagopal Reddy, Aged 43 years, P.C. No. 227, Simhadripuram P.S, Kadapa District
20. S. Bheemla Naik, S/o. N. Kamma Reddy Naik, Aged 45 years, P.C. No. 2859, Kurnool TQ P.S, Kurnool District
21. G. Rangappa, S/o. G. Venkanna Aged 44 years, P.C. No. 2869, II Town P.S, Kurnool District
22. D. Dasthagiri, S/o. D. Pedda Dasthagiri Aged 44 years, P.C. No. 2873, Kurnool Taluka P.S., Kurnool District.
23. S.N. Raju, S/o. Devanna Aged 45 years, P.C. No. 2868, Kurnool Taluka P.S, Kurnool District.
24. K. Srinu, S/o. Surya Narayana, Aged 43 years, P.C. No. 1561, Varlampudi P.S, Vizianagaram.
25. V. J. Chandra Sekar, S/o. Somanna, Aged 47 years, P.C. No. 2871, Traffic P.S, Kurnool.

...Petitioners

AND

1. State of Andhra Pradesh, Rep. by its Principal Secretary, Home (Legal) Department, Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The Director General of Police, Government of Andhra Pradesh, Vijayawada, Krishna District.
3. The State Level Police Recruitment Board (SLPRB-AP), Andhra Pradesh, Represented by its Chairman, Mangalagiri, Guntur District
4. The Commissioner of Police, Vijayawada City, Krishna District.
5. The Commissioner of Police, Visakhapatnam City, Visakhapatnam District.
6. The Superintendent of Police, Guntur Urban, Guntur District.
7. The Superintendant of Police, Rajahmundry Urban, East Godavari District.
8. The Superintendant of Police, Thirupathi Urban, Chittoor District.
9. The Superintendant of Police, Guntur Rural, Guntur District.
10. The Superintendant of Police, Visakhapatnam Rural, Visakhapatnam District.
11. The Superintendant of Police, Ananthapur, Ananthapur District.
12. The Superintendant of Police, Chittoor, Chittoor District.
13. The Superintendant of Police, East Godavari, East Godavari District.
14. The Superintendant of Police, Guntur, Guntur District.
15. The Superintendant of Police., Kadapa, Kadapa District.
16. The Superintendant of Police, Krishna, Krishna District.
17. The Superintendant of Police, Kurnool, Kurnool District.
18. The Superintendant of Police, Nellore, Nellore District.
19. The Superintendant of Police, Prakasam, Prakasam District,
20. The Superintendant of Police, Srikakulam, Srikakulam District.
21. The Superintendant of Police, Visakhapatnam, Visakhapatnam District.
22. The Superintendant of Police, Vizianagaram, Vizianagaram District.
23. The Superintendant of Police, West Godavari, West Godavari District.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the impugned amendment of Rule 10 (ii)(ii) of Andhra Pradesh Police (Civil Police) Subordinate Service Rules issued vide G.O.Ms.No. 95 Home (Legal-II) dated 31-05-2017 issued by the 1st respondent wherein the Rule 10 (ii) (ii) has been substituted in the Special Rules for Andhra Pradesh Police (Civil Police) subordinate Service Rules 1999 by declaring the same as being illegal, arbitrary and violative of Articles 14 & 16 of the Constitution of India and further action of the respondents in applying the impugned amended Rule to the petitioners though their appointment by transfer is within 10 percent quota against vacancies of the year 2014-2015 and 2015-2016 i.e., prior to Amendment, thereby depriving seniority and promotions of petitioners as illegal, arbitrary.

IA NO: 1 OF 2021

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 direct the respondents to allow the petitioners also for pre-promotional training scheduled vide proceedings issued by Respondent No.2 in Memo No. 512/Trg.2/2020 date. 18-12-2020 from 10-02-2021 to 02- 03-2021 in phase-II, pending disposal of the present Writ Petition.

IA NO: 2 OF 2021

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 grant interim suspension of the impugned amendment of Rule 10 (ii)(ii) of Andhra Pradesh Police (Civil Police) Subordinate Service Rules issued vide G.O.Ms.No.95 Home (Legal. II) Department, dated 31.05.2017 issued by the 1st respondent including all further proceedings relating thereto, pending disposal of the Writ Petition.

IA NO: 3 OF 2021

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 direct the respondents to allow the petitioners for pre-promotional training to be conducted for promotion to the post of Head Constables (Civil), pending disposal of the present Writ Petition.

IA NO: 4 OF 2021

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 direct the respondents to allow the petitioners for pre-promotional training scheduled to be held from 08.11.2021, pending disposal of the present Writ Petition.

Counsel for the Petitioners: SRI G V SHIVAJI

Counsel for the Respondents: ADDL ADVOCATE GENERAL - II

WRIT PETITION NO: 17517 OF 2021

Between:

1. Ganta Janardhana Rao, S/o. G. Adi Narayana, Aged 52 years, D/No.52-19-3/1, Chaitanya Nagar, Maddilapalem, Visakhapatnam District.
2. Gunapatla Bhaskar Raju, S/o. G. Thammi Raju, Aged 52 years, D/No.50-90-15/1, Santhipuram, Gurudwara Junction, Visakhapatnam District.
3. Kurakula Chandra Sekhar Rao, S/o. K. Appalaraju Late, Aged 51 years, 0/No. 18-98/11, N.K Homes, H.B Colony, PM Palem, last Bus Stop, Visakhapatnam District.
4. Irra Venkata Ramana, S/o. I. Kannayya, Aged 51 years, D/No. 11-154,Krishna Nagar, Near Ganesh Temple, Ward 69 GVMC, R R V Puram Post, Visakhapatnam District.
5. Bhavisetty Venkata Jagannadha Rao, S/o. B. Narayana Rao, aged 51 years, D/No. 36-92-242/26, Srinivas Nagar, Ward No. 37, Kancharapalem, Visakhapatnam District.
6. Neelakanti Govinda Rao, S/o. N. Jagannadha Rao, aged 51 years, D/No. 13-191/4, Sector-2 t I c point, Arilova, Govt Dairy Farm, Visakhapatnam District.
7. Kolli Appalareddy, S/o. K. MahaLakshmi Reddy Late, aged 51years, D/No. 5-13-24, Reddy Tungalam, B H P V, Pedagantyada, Visakhapatnam District.
8. Kasi Reddu Surendra Babu, S/o. K. Atchanna Naidu Late, aged 51 years, D/No. 11-143/2, Narasimha Enclave G F-2, T.V.Tower layout, Maruthi kalyanamandapam, Simhachalam, Visakhapatnam District.

...Petitioners

AND

1. The State of Andhra Pradesh, , Rep. by its Principal Secretary, Home (Legal) Department, Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The Director General of Police, Government of Andhra Pradesh, Vijayawada, Krishna District.
3. The State Level Police Recruitment Board, (SLPRB-AP), Andhra Pradesh, Represented by its Chairman, Mangalagiri, Guntur District
4. The Commissioner of Police, Visakhapatnam City, Visakhapatnam District.
5. The Superintendent of Police, Visakhapatnam Rural, Visakhapatnam District.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the impugned amendment of Rule 10 (ii)(ii) of Andhra Pradesh Police (Civil Police) Subordinate Service Rules issued vide G.O.Ms.No. 95 Home (Legal-II) dated 31-05-2017 issued by the 1st respondent wherein the Rule 10 (ii) (ii) has been substituted in the Special Rules for Andhra Pradesh Police (Civil Police) subordinate Service Rules 1999 and the Consequential endorsement issued by 4th respondent in LDis.No.201/A1/2021 dt. 12.01.2021 as being illegal, arbitrary and violative of Articles 14 & 16 of the Constitution of India and further action of the respondents in applying the impugned amended Rule to

the petitioners though their appointment by transfer is within 10percent quota against vacancies of the year 2014-2015 and 2015-2016 i.e., prior to Amendment, thereby depriving seniority and promotions of petitioners as illegal, arbitrary.

IA NO: 1 OF 2021

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 grant interim suspension of the impugned amendment of Rule 10 (ii)(ii) of Andhra Pradesh Police (Civil Police) Subordinate Service Rules issued vide G.O.Ms.No. 95 Home (Legal.II) Department, dated 31.05.2017 issued by the 1st respondent including all further proceedings relating thereto, pending disposal of the Writ Petition.

Counsel for the Petitioners: SRI G V SHIVAJI

Counsel for the Respondents: GP FOR SERVICES - I

The Court made the following: common order

THE HON'BLE SRI JUSTICE A V SESHA SAI

AND

THE HON'BLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

WRIT PETITION Nos.15291, 10593 of 2022 & 3570, 17517 of 2021

COMMON ORDER:- *(per Hon'ble Sri A.V. Sesha Sai, J)*

In view of the commonality of the issues in these Writ Petitions, this Court deems it appropriate and apposite to hear the matters together and to dispose of all these Writ Petitions by way of this common order.

2. Challenge in these cases is to the Amended Rule 10 (ii) (ii) of the Andhra Pradesh Police (Civil Police) Subordinate Service Rules, notified *vide* G.O.Ms.No.95 Home (Legal II) Department, dated 31.05.2017. Petitioners were initially appointed as Police Constables in Armed Reserve of Andhra Pradesh Police Subordinate service and, thereafter, appointed by transfer/conversion

as Police Constables (Civil) under the Andhra Pradesh Police (Civil) Subordinate Service and working as such till date. Appointment of the petitioners, initially as Armed Reserve Police Constables, took place under the Andhra Pradesh Police Subordinate Service Rules, notified *vide* G.O.Ms.No.1263 General Administration (Rules) Department, dated 26.08.1959. Under Rule 1 of the said Rules, Constables, including Band Constables, Reserve Constables, Buglers and Bellow boys would fall under Category-7 of Class I.

3. Initially, both Civil and Reserve Constables were under Category-7 of Class I but, subsequently, Category-7 was sub-categorized into 7(a) – Constables (Civil) and 7(b) - Constables (Armed Reserve/Special Armed Reserve/Central police lines and *vide* G.O.Ms.No.194 Home (Police-B) Department, dated 22.07.1999, a provision was made for appointment of Police Constables (Armed Reserve, City Armed Reserve and Special Armed Reserve) by transfer as Police Constables (Civil)

specifying 10% cadre strength and the eligibility criteria fixed being-one should complete the age of 40 years.

4. While the things being so, the State Government framed the Andhra Pradesh Police (Civil) Subordinate Service Rules, 1999 and notified the same *vide* G.O.Ms.No.374 Home (Police.C) Department, dated 14.12.1999. Police Constable (Civil) falls under Category-4 of Class I. Rule 3 of the said Rules deals with method of appointment and appointing authority. The following is the method of appointment to the category of Police Constable (Civil):

> *"**Police Constable (Civil):***
>
> *(i) By direct recruitment*
>
> *(ii) By transfer of Constables from District Armed Reserve, City Armed Reserve and Special Armed Reserve.*
>
> *(iii) By direct recruitment by selection from among children of serving and retired police personnel.*
>
> *(iv) By direct recruitment by selection from among eligible Home Guards.*
>
> *(v) By direct recruitment by selection from among eligible meritorious Sportsmen."*

5. Rule 3 Note 1 (b) (vii) of the said Rules stipulates that, for appointment by transfer from Armed Reserve/Special Armed Reserve Central Police line constables, 10% shall be earmarked. Explanation-II under Note I reads as follows:

> *"**EXPLANATION – II:-** The Police Constables (AR) (Men) and Police Constables (SAR CPL) (Men) will be eligible for transfer to Police Constables (Civil) (Men) provided that:*
>
> *i. They are approved probationers;*
>
> *ii. They have served in the AR/SAR CPL for not less than five years of the service on the first day of July of the year in which they are considered for transfer.*
>
> *iii. They have completed the age of forty (40) years on the first day of July of the year in which they are considered for transfer.*
>
> *iv. They have not come under any for the following categories:*
>
> *a)Any major punishment in the entire service*
>
> *b)Minor punishments – three or more in the entire service*
>
> *c) Any punishment under operation*
>
> *d)Under suspension or facing an oral enquiry"*

6. Rule 10 (ii) (ii) of 1999 Rules reads as follows:

"The seniority of police constables of Armed reserve or Andhra Pradesh Special Police Battalions transferred to this service shall be determined with reference to their date of first appointment in the former category".

7. While the matters stood thus, the Director General of Police, while referring to the judgment of the Composite High Court of Andhra Pradesh in W.P.No.26865 of 2011 and batch, made certain recommendations for amendment of Rules, notified *vide* GO Ms No.374 Home (Police.C) Department, dated 14.12.1999, i.e., Andhra Pradesh Police (Civil) Subordinate Service Rules, 1999. On the basis of the said recommendations, the State Government brought in amendment to Rule 10 (ii) (ii).The said amendment came to be notified *vide* G.O.Ms.No.95 Home (Legal.II) Department, dated 31.05.2017, and the said amended Rule 10 (ii) (ii) reads as follows:

"Rule 10 (ii) (ii):

The seniority in respect of PCs of (Civil) (Men) appointed by transfer (Conversion) from PCs (AR/SAR CPL) (Men) shall be fixed as follows:

"shall be given a weightage of one year for every completed two years of service rendered as PC (AR/SAR CPL) (Men), subject to a maximum of seven years.

Note: For the purpose of calculation of weightage under this clause, fractions, if any are to be ignored."

8. In the above back ground, the present batch of Writ Petitions came to be instituted, challenging the said amendment and applicability of the same to the writ petitioners.

9. Heard Sri G.V.Shivaji and Sri V.Mallik, learned counsel for the writ petitioners; Sri Kasa Jaganmohana Reddy, learned Special Government Pleader attached to the office of the learned Additional Advocate General for official respondents and Sri J.Sudheer, learned Counsel

for the unofficial respondents in W.P.No.10593 of 2022, apart from perusing the material available on record.

10. Contentions/Submissions of the learned counsel for the writ petitioners:

1. Impugned amendment to Rule 10 of 1999, notified *vide* G.O.Ms.No.95 Home (Legal II) Department dated 31.05.2017, which takes away the vested right of the petitioners is highly illegal, arbitrary and violative of Article 14 of the Constitution of India besides being opposed to the spirit of the service jurisprudence.
2. The judgment of the Composite High Court of Andhra Pradesh in W.P.No.26765 of 2011 should not have been made the basis for carrying out the impugned amendment to 1999 Rules.
3. In view of the judgment of the Composite High Court of Andhra Pradesh in W.P.No.21172 of 2014 dated 22.01.2015, the impugned amendment is neither sustainable nor tenable in the eye of law.

4. The respondent authorities grossly erred in applying the amended Rule to the petitioners simply on the ground that their appointment orders were issued after issuance of impugned notification though their willingness was taken prior to amendment as per unamended Rule.

5. Since the subject vacancies arose during the period 2014-2015 and 2015-2016 i.e., prior to amendment, unamended Rule should be applied as per the judgment of the Hon'ble Supreme Court in the case of ***Y.V.Rangayya vs. J.Srinivas Rao***[1].

6. It is a well settled principle of law that the vested benefits under the existing rules regarding promotion cannot be taken away with retrospective effect by amending the Rules as held by the Hon'ble Supreme Court in the case of "***T.R.Kapur and others vs. State of Haryana and others***" [2] and

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[1] (1983) 3 SCC 284

[2] 1986 (Supp) SCC 584

P.D.Aggarwal and others vs. State of U.P. and others – (1987) 3 SCC 622.

11. In support of their stand, learned counsel for the petitioners place reliance on the following judgments:

1) 1999(7) SCC 209
2) 1989(2) SCC 84
3) 2000(1) SCC 644
4) 2001(4) ALT 626
5) 1983 (2) SCC 33
6) 1986(Supplement) SCC 584
7) (1987) 3 SCC 622
8) Judgment of the High Court for the State of Telangana in WP No.4636/2018
9) Order in W.P.No.45816 of 2018 dated 18.07.2019
10) 1983 (3) SCC 284
11) 1993 Supplement (3) 181
12) 1980 Supplement SCC 524

12. Contentions/Submissions of the learned Special Government Pleader, Sri Kasa Jaganmohana Reddy:

1) The impugned amendment to Rule 10 (ii) (ii) of the Rules, in the absence of any element of arbitrariness and unconstitutionality, by any stretch of imagination, cannot be faulted.

2) The contention that in respect of the vacancies which arose prior to the advent of amended Rule, the seniority should be counted from the initial date of appointment as Reserve constables, is not tenable and contrary to the Judgments of the Hon'ble Apex Court.

3) Rules 5 and 6 of the General Rules are not applicable as the subject posts are not Selection posts nor Rule 33(1) of the General Rules comes to the rescue of the petitioners in view of Rule 1(d) of the General Rules.

4) Since the petitioners joined as Police constables (Civil) after the advent of amended Rule, it is not

open for them to dispute the applicability of the amended Rule.

13. Learned Special Government Pleader relies on the case of ***State of Himachal Pradesh and others vs. Raj Kumar and Others***[3].

14. Contentions/Submissions of Sri J Sudheer, learned counsel for unofficial respondent Nos.5 to 64 in W.P.No.10593 of 2022:

1) Since the petitioners instituted the present Writ Petitions, without impleading the persons likely to be affected, the Writ Petitions are liable to be dismissed on the ground of non-joinder of proper and necessary parties.

2) The statutory provision of law is required to be presumed to be valid unless the same is highly arbitrary, *ultra-vires* and

[3] 2022 SCC Online SC 680

unconstitutional and, as the petitioners could not establish the existence of such contingencies in the cases on hand, Writ Petitions are liable to be dismissed.

3) It is the prerogative of the State to amend the Rules retrospectively also.

4) Mere reduction of chances of promotion is not a condition of service, as such, Writ Petition is not maintainable.

5) The State Government brought in impugned amendment only for the purpose of bringing equality and, in the event of setting aside the impugned amendment, the same would result in revival of arbitrariness.

6) While dealing with a similar amendment brought in by the State of Telangana, the High Court for the State of Telangana upheld its applicability prospectively.

7) All the writ petitioners became Police Constables (Civil) in the months of September,

October and November, 2017, as such, the petitioners cannot dispute the applicability of amendment to their cases.

8) The authorities issued notification for option for appointment as Civil Constables on 03.05.2017 and, prior to their appointment as Civil Police Constables in September, October and November, the amendment came into force on 31.05.2017, as such, they had knowledge of the amendment and, in view of the same, they cannot plead against the same.

15. In support of his contentions and submissions, learned counsel places reliance on the following decisions:

1) 1981 (4) SCC 130

2) Judgment of the Supreme Court in Civil Appeal No.9746 of 2011, dated 26.05.2022

3) 2014 (10) SCC 398

4) 2008 (4) SCC 720

16. In this back ground, now the issues that emerge for consideration of this Court are:-

1. *Whether the Amended Rule 10 (ii) (ii) of the Andhra Pradesh Police (Civil) Subordinate Service Rules, notified vide G.O.Ms.No.95 Home Department, dated 31.05.2017, issued by the State of Andhra Pradesh, having regard to the facts and circumstances of the case, is sustainable and tenable? and*
2. *Whether the amended Rule is applicable to the writ petitioners?*

17. Admittedly, all the writ petitioners were initially appointed as Armed Reserve Police Constables during the years spreading over 1989 to 1998. It is absolutely not in controversy that as per the unamended Rule 10 (ii) (ii), the seniority would have to be reckoned from the date of initial appointment in the former category i.e., Armed Reserve Police Constable. The amended Rule 10 (ii) (ii) came into effect by virtue of the notification issued

by the State Government *vide* G.O.Ms.No.95 dated 31.05.2017. The unamended and amended position of Rule 10 (ii) (ii) is as follows:

> "***Unamended Rule:***
>
> *The seniority of police constables of Armed reserve or Andhra Pradesh Special Police Battalions transferred to this service shall be determined with reference to their date of first appointment in the former category.*
>
> ***Amended Rule:***
>
> *Rule 10 (ii) (ii):*
>
> *The seniority in respect of PCs of (Civil) (Men) appointed by transfer (Conversion) from PCs (AR/SAR CPL) (Men) shall be fixed as follows:*
>
> *"shall be given a weightage of one year for every completed two years of service rendered as PC (AR/SAR CPL) (Men), subject to a maximum of seven years.*
>
> *Note: For the purpose of calculation of weightage under this clause, fractions, if any are to be ignored."*

18. In order to consider and resolve the issues in these Writ Petitions, it would be highly essential and apposite to refer to the judgments cited by the learned counsel.

19. In the case of ***Ajit Singh and others (ii) vs. State of Punjab and others***[4], a Constitutional Bench of the Hon'ble Supreme Court, at paragraph Nos.22 and 23, held as follows:

> *"22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that*
>
> *"there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".*
>
> *It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion*

[4] (1999) 7 SCC 209

or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion" based on equal opportunity and "seniority" attached to such promotion are facets of fundamental right under Article 16(1)

23. Where promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying with the principle of equal opportunity stated in Article 16(1). For example, if the promotion is by rule of "seniority cum-suitability", the eligible seniors at the basic level as per seniority fixed at that level and who are within the zone of consideration must be first considered for promotion and be promoted if found suitable. In the promoted category they would have to count their seniority from the date of such promotion because they get promotion through a process of equal opportunity. Similarly, if the promotion from the basic level is by selection or merit or any rule involving consideration of merit, the senior who is eligible

at the basic level has to be considered and if found meritorious in comparison with others, he will have to be promoted first. If he is not found so meritorious, the next in order of seniority is to be considered and if found eligible and more meritorious than the first person in the seniority list, he should be promoted. In either case, the person who is first promoted will normally count his seniority from the date of such promotion. (There are minor modifications in various services in the matter of counting of seniority of such promotees but in all cases the seniormost person at the basic level is to be considered first and then the others in the line of seniority.) That is how right to be considered for promotion and the "seniority" attached to such promotion become important facets of the fundamental right guaranteed in Article 16(1)"

20. In the case of ***Haribans Misra and others vs. Railway Board and others***[5], the Hon'ble Supreme Court, at paragraph No.20, ruled as follows:

"20. The Railway Administration was to comply with the order of the High Court and in compliance with the order, it should have prepared the seniority lists in accordance with

[5] (1989) 2 SCC 84

the existing rules. It is not the case of the Railway Administration that under the existing rules the seniority list could not be prepared. There is, therefore, no reasonable justification for the Railway Board to insert in the Railway Establishment Manual rule 328(2). There can be no doubt that by virtue of rule 157 of the Railway Establishment Code, the Railway Board has the power to frame rules, but such rules must be framed with certain objects in view and must not be arbitrary. The Court is always entitled to examine whether a particular rule which takes away the vested fight of a railway employee or seriously affects him with retrospective effect, has been made to meet the exigencies of circumstances or has been made arbitrarily without any real objective behind it. In the instant case, we do not find any objective or purpose behind the framing of rule 328(2) to the serious prejudice of the appellants. In other words, rule 328(2) is arbitrary and, therefore, cannot be allowed to be operative to the detriment of the appellants. The only justification for rule 328(2) as advanced by the learned Counsel for the respondents is that as the appellants we.re promoted on ad hoc basis to the posts of Chargeman-C and Chargeman-B, they had no fight to hold these posts and, accordingly, they were to be reverted to the post

of Skilled Artisan. This contention of the respondents does not find support from the counter affidavit filed by the Railway Administration in the previous writ petition nor does it appear from any order or circular of the Railway Board or the Railway Administration in support of the same. Moreover, we have on a conspectus of the facts and circumstances and the circulars of the Railway Administration come to the finding that the appellants were not promoted on an ad hoc basis."

21. In the case of ***Sub-Inspector Rooplal and another vs. LT.Governor through Chief Secretary, Delhi and others***[6] the Hon'ble Supreme Court, at Paragraph Nos.15 and 16, held as follows:

"15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspector in the BSF for the purpose of their seniority after absorption as Sub-Inspector (Executive) in Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of Delhi Police that these officials were deputed to Delhi Police from the BSF following the procedure laid down

[6] (2000) 1 SCC 644

in Rule 5(h) of the Rules and subsequently absorbed as contemplated under the said Rules. It is also not in dispute that at some point of time in the BSF, the appellants' services were regularised in the post of Sub-Inspectors and they were transferred as regularly appointed Sub-Inspectors to Delhi Police force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department. At any rate, this question is not res Integra and is squarely covered by the ratio of judgments of this Court in more than one case. Since the earlier Bench of the tribunal relied upon Madhavan's case to give relief to the deputationists, we will first consider the law laid down by this Court in Madhavan`s case (supra). This Court in that ease while considering a similar question, came to the following conclusion:

"We may examine the question from a different point of view. There is `not-.much. difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed oh transfer. In other words, deputation may be regarded as a transfer from one government department to another. .It will be

against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Mokashi and Ors, v. l.M. Menon and Ors., [1982] 1 SCC 379 and Wing Commander J, Kumar V. Union of India and Ors., [1982] 3 SCR 453."

16. Similar is the view taken by this Court in the cases of K.S. Mokashi and Ors. and Wing Commander J, Kumar (supra) which judgments have been followed by This Court in Madhavan's case. Hence, we do not think it is necessary for us to deal in detail as to the view taken by this Court in those judgments. Applying the principles laid down in the above referred cases, we hold the appellants are entitled to count the

substantive service rendered by them in the post of Sub-Inspector in the BSF while counting their service in the post of Sub-Inspector (Executive) in Delhi Police force."

22. In the case of ***E.Shankar Reddy vs. Government of Andhra Pradesh., rep. by Commissioner of Police, Hyderabad City and others***[7], the Composite High Court of Andhra Pradesh, at paragraph Nos.56, 57 & 58, held as follows:

"56. Rule 15(c) in no uncertain terms protects the past seniority of such categories of persons from the date of his first appointment to the class or category of service from which he has been transferred. To the said extent the decision of the Apex Court in K. Jagannadha Rao's case (1 supra) shall squarely apply. In the said decision it has been observed:

We do not however think it necessary to decide whether appointments to category 2 from category 3 amount to transfer attracting Rule 33(c) of the Andhra Pradesh State and Subordinate Services Rules. Under Rule 3(a) of the Andhra Pradesh Police Service Rules, 1966, appointment from category 3 is one method of

[7] (2001) 4 ALT 626 (DB)

recruitment to category 2 and the only question is whether giving credit to such appointees for past service in another category in the State Service is justified. We have mentioned the above points of similarity in matters of recruitment and promotion to the two respective categories. It has been noticed also that they carry the same scale of pay. Whether or not some credit should be given for past service in such circumstances is a matter of policy resting with Government. We do not find anything arbitrary or absurd in what Rule 3(d) prescribes, and that being so, the Court cannot examine the matter and come to its own conclusion about what should be the length of past service for which credit should be given.....

57. Once it is held that rule 15(c) applies to the instant case, the submission of the learned Counsel for the parties to the effect that rule 15(a) being special rule, the principle of generalia specialibus non derogant shall apply, cannot also be accepted.

58. For the self-same reasons, the question of the effect of the persons borne in the cadre for the first time takes a back seat in view of the fact that although the RSIs, Irving been appointed on transfer to the posts of Sis (Civil) were borne on a new cadre, their seniority is protected by reason.

of a statutory rule."

23. In the case of ***State of Gujarat and another vs. Raman Lal Keshav Lal Soni and others***[8], a Constitutional Bench of the Hon'ble Apex Court, at paragraphs 6, 22, 24, 26, 48, 51 and 52, held as follows:

> *"6. At this juncture, we may mention that prior to the enactment of the Gujarat Panchayats Act, 1961, there were in force in the State of Gujarat the Bombay Village Panchayat Act, 1958, the Bombay Local Boards Act, 1923, the Bombay District Municipal Act, 1901 and the Bombay Municipal Boroughs Act, 1925. The Bombay Village Panchayat Act 1958 and the Bombay Local Boards Act, 1923 are repealed by Secs. 325 and 326 of the Gujarat Village Panchayats Act, 1961. A local area declared to be a village under the Bombay Village Panchayats Act, 1958 and a Panchayat constituted under that Act, are deemed to be gram and panchayat under the Gujarat Gram Panchayats Act. 1961. The Secretaries and all officers and servants under the employment of the old village Panchayats are to be Secretaries, officers and servants of the new gram*

[8] (1983) 2 SCC 33

panchayats. A District Local Board constituted under the Bombay Local Boards Act for a local area is to stand dissolved. All property which stood vested in the district local board P immediately before the appointed day is to be deemed transferred to the district panchayat constituted for the local area, called the successor panchayat. All officers and servants in the employment of the District Local Board are similarly to be deemed transferred to the service of the successor panchayat. Where local areas are declared to be grams or nagars under Sec. 9 of the Gujarat Gram Panchayats Act, 1961 and such areas correspond to the limits of a municipal district or municipal borough under the Bombay District Municipal Act or Bombay Municipal Borough Act, it is provided by Sec. 307 of the Gujarat Panchayats Act that the municipality previously functioning in such local area shall cease to exist and that the councillors of such municipality shall constitute an interim gram panchayat or interim nagar panchayat as the case may be for the gram or nagar. It is also provided that all officers and servants in the employment of the municipality immediately before the date of declaration of the local areas as gram or nagar, shall be officers and Servants of the interim panchayat.

22. Subject to the rules made under Sec. 203, appointment to posts in the panchayat service, Sec. 205 provides, shall be made by direct recruitment by promotion or by transfer of a member of the State service to the panchayat service. Sec. 206 obliges the State Government by general or special order to allocate to the panchayat service:

"(i) such number of officers and servants out of the staff allotted or transferred to a panchayat under sections (157, 158 and 325) as it may deem fit,

(ia) all officers and servants of the municipalities dissolved under Sec. 307,

(ii) all officers and servants in the service of district local boards and district school boards immediately before their dissolution under this Act and transferred to the panchayats under secs. 155 and 326".

It is further provided that officers and servants so allocated shall be taken over by such panchayats in such cadre and on such tenure, remuneration and other conditions of service, as the State Government may determine. Sec. 204 provides that, subject to the rules which the State Government may make, the expenditure towards the pay, allowances and other benefits allowed to an officer or servant of the panchayat service serving for the time being under any

panchayat shall be met by that panchayat from its own fund. Sec. 207 enables the State Government to direct the posting of officers of the Indian P administrative service and of Class II services of the State under panchayat institutions. Sec. 208 enables a panchayat to obtain the services of any officer of Government on loan. Sec. 210 provides for the constitution of a Panchayat Services Selection Board and Sec. 211 provides for the constitution of District Panchayat Service Selection Committees and District Primary Education Staff Selection Committees.

24. After the coming into force of the 1961 Act, several sets of rules were promulgated and orders were made which concerned the Gujarat Panchayat Service. One such order was that made on January 2, 1967 under Sec. 203 (2) directing that the Panchayat service shall consist of district cadre, taluqa cadre and local cadre and further specifying the posts which belonged to each of the cadres. Amongst the rules made were the Gujarat Panchayat Service (Absorption, Seniority, Pay. and Allowances) Rules, 1965, which provided for the equation of posts, fixation of seniority, scales of pay and allowances of "allocated employees". "Allocated employees' were defined in the rules to mean persons allocated to the panchayat service under the

provisions of Sec. 206 (i). The rules provide that every allocated employee holding a corresponding post, immediately before the appointed day, shall be appointed to the equivalent post. Equivalent post is defined to mean a post in the panchayat service, which the State Government may, by order, determine to be generally corresponding to a post held by an allocated employee immediately before the appointed day (called corresponding post) having regard to the pay scales, the minimum educational and other qualifications prescribed for the equivalent post and the corresponding post and the nature and magnitude of responsibilities attached to such posts. Therefore, unless equivalence of posts is first determined, by order, by the Government the Gujarat Panchayat Service Absorption Seniority Pay and Allowances Rules, 1965 cannot be effectively applied. Even so, the State Government did not make any order regarding equation of posts of the staff in the local cadre and the fixation of their scale of pay, although such orders were made in respect of posts of other cadres. The State Government did not also extend to the staff borne on the local cadre of the panchayat service the benefit of revision of scales of pay, etc. which were made on the basis of the recommendations of the two Pay

Commissions, though such benefit was extended to the District and Taluqa cadres; nor did the Government make any order providing for promotional avenues to employees of the local cadre. Aggrieved by the deaf ear turned to their representations, certain ex-municipal employees now included in the local cadre of the Panchayat Service, for themselves and on behalf of other ex-municipal employees now in the local cadre of the Panchayat Service, filed a Writ Petition in the High Court of Gujarat seeking various reliefs. The Writ Petition was resisted by the State of Gujarat and the Development Commissioner on the principal ground that the members of the Panchayat Service were not Government servants and therefore, they were not entitled to claim the reliefs asked by them. The High Court of Gujarat allowed the Writ Petition holding that the members of the panchayat service belonging to the local cadre were Government servants and directed the State Government.

"(1) To make suitable orders under the Gujarat Panchayat Service (Absorption, Seniority, Pay and Allowances) Rules, 1965 as regards the equivalence of posts, fixation of pay scales for such posts, fixation of the petitioners and the person to whom they represented an appropriate stage in such pay scales and other incidental matters covered by the said rules and

to give effect to such orders from the date of allocation of the petitioners and the persons whom they represent to the Panchayat Service, that is to say, from February 11, 1969.

(2) To initially fix the pay scales and allowances and other conditions of service, including the grant of house rent allowance, compensatory local allowance, leave benefits, medical benefits, retirement benefits, etc. Of the petitioners and the persons whom they represent in the equivalent posts in the Panchayat Service in accordance p with the provisions of the Gujarat Panchayats Service (Absorption, Seniority, Pay and Allowances) Rules, 1965 and simultaneously give to them the benefit of such of the accepted recommendations of the First Pay Commission (Sarala Commission) in the said matters as were extended to the other officers and servants of the Panchayat Service; alternatively, having initially fixed the pay scales, allowances and other conditions of service in the equivalent post in accordance with the said rules, to revise subsequently such pay scales and other conditions of service as per the accepted recommendations of the First Pay Commission (Sarala Commission) in the said matters with effect from February 11, 1969.

(3) To further revise the pay scales and allowances and other conditions of service,

including the grant of house rent allowance, compensatory local allowance, leave benefits, medical benefits, retirement benefits, etc. of the Second Pay Commission (Desai Commission) in the said matters and to give effect to such revision on and with effect from January 1, 1975.

(4) To extend to the petitioners and the persons whom they represent the benefit of interim relief in the same manner in which such benefit was extended to the other officers and servants of the Panchayat Service.

(5) To pay to the petitioners and the persons whom they represent the amount payable to them as a consequence of the rationalisation or revision of pay scale and allowances and other conditions of service in pursuance of the directions contained in clauses (I) to (4) hereinabove.

(6) To consider the question of making suitable provisions in the Gujarat Panchayats Service (Promotion to Cadres in State Service) Rules, 1974 or by framing appropriate Rules for promotion of the ex-municipal staff of the Panchayat Service to consider the question of providing to such staff, by framing appropriate rules, pro motional avenues to the other two cadres in the Panchayat Service, namely, the taluka cadre and the district cadre".

26. The appeal was argued first as if the Amending Act had not been passed and the main question argued in the appeal was whether the members of the Panchayat service were Government servants. The Writ Petitions were argued next and the question argued in the Writ Petitions was about the constitutional validity of the Amending Act.

48. From the summary of the provisions of the Amending Act that has been set out above it requires no perception to recognise the principal target of the amending legislation as the category of ex-municipal employees', who are, so to say, pushed out of the Panchayat Service and are to be denied the status of Government servants and the consequential benefits. The ex-municipal employees are virtually the "poor relations", the castle, the Panchayat Service, is not for them nor the attendant advantages, privileges and perquisites, which are all for the "pedigree descendants" only. For them, only the out-houses. As a result of the amendments they cease to be Government servants with retrospective effect. Their earlier allocation to the Panchayat Service is cancelled with retrospective effect. They become servants of Gram and Nagar Panchayats with retrospective effect. They are treated differently from those working in taluqa and district panchayats as well as from the

talatis and Kotwals working in Gram and Nagar Panchayats. Their conditions of service are to be prescribed by panchayats, by resolution, whereas the conditions of service of others are to be prescribed by the Government. Their promotional prospects are completely wiped out and all advantages which they would derive as a result of the judgments of the courts are taken away.

51. Now, in 1978 before the Amending Act was passed, thanks to the provisions of the Principal Act of 1961, the ex- municipal employees who had been allocated to the Panchayat Service as Secretaries, officers and servants of Gram and Nagar Panchayats, had achieved the status of government servants. Their status as Government servants could not be extinguished, so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Art. 311 of the Constitution. Nor was it permissible to single them out for differential treatment. That would offend Art. 14 of the Constitution. An attempt was made to justify the purported differentiation on the basis of history and ancestry, as it were. It was said that Talatis and Kotwals who became Secretaries, officers and servants, of Gram and Nagar Panchayats were Government servants, even to start with, while municipal employees

who became such secretaries, officers and servants of Gram and Nagar Panchayats were not. Each carried the mark or the 'brand' of his origin and a classification on the basis of the source from which they came into the service, it was claimed, was permissible. We are clear that it is not. Once they had joined the common stream of service to perform the same duties, it is clearly not permissible to make any classification on the basis of their origin. Such a clarification would be unreasonable and entirely irrelevant to the object sought to be achieved. It is to navigate around these two obstacles of Art. 311 and Art. 14 that the Amending Act is sought to be made restrospective, to bring about an artificial situation as if the erstwhile municipal employees never became members of a service under the State. Can a law be made to be destroy today's accured constitutional P rights by artificially reverting to a situation which existed seventeen years ago? No.

52. The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and

don'ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking onto account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench of this Court in BS. Yadav and others etc. v. State of Haryana and others etc.(1) Chandrachud CJ., speaking for the Court, "Since the Governor exercises the legislative power under the proviso to Art. 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate, must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the

retrospective effect extends over a long period as in this case". Today's equals cannot be made unequal by saying that they were unequal twenty years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tempered with that way law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation 3 cannot become valid by being made restrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats third Amendment) Act, 1978 is unconstitutional, as it offends Arts. 311 and 14 and is arbitrary and unreasonable. We have considered the question whether any provision of the Gujarat Panchayats (Third Amendment) Act, 1978 might be salvaged. We are afraid that the provisions are so interwined with one another that it is well-nigh impossible to consider any life saving surgery. The whole of the Third Amendment Act must go. In the result the Writ Petition Nos 4266-70 are allowed with costs quantified at Rs. 15,000. The directions given by the High Court, which we have confirmed, should be complied with before

June 30, 1983. In the meanwhile, the employees of the Panchayats covered by the appeal and the Writ Petitions will receive a sum of Rs. 200 per month over and above the emoluments they were receiving before February 1, 1978. This order will be effective from February 1, 1983 The interim order made on February 20, 1978 will be effective upto January 31, 1983. The amounts paid are to be adjusted later."

24. In the case of ***T.R.Kapur and others vs. State of Haryana and others*** (2nd cited *supra*), the Hon'ble Supreme Court, at paragraphs Nos.1, 4, 9, 11, 15 and 16, held as follows:

"1. These petitions under Art. 32 of the Constitution assail the constitutional validity of a notification issued by the State Government of Haryana in the Public Works Department (Irrigation Branch) dated June 22, 1984 purporting to amend r.6(b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964 (for short 'the Class I Rules') with retrospective effect from July 10, 1964 as violative of Arts. 14 and 16(1) of the Constitution and also ultra vires the State Government by reason of the proviso to s.82(6) of the Punjab Reorganisation Act, 1966. The

purport and effect of the impugned notification is to nullify the decision of this Court in A.S. Parmar v. State of Haryana, [1984] 2 SCR 476, holding that a degree in Engineering was not essential for such promotion. By the impugned notification, a degree in Engineering is made an essential qualification for promotion of Assistant Engineers in the Irrigation Branch, a Class II service under r.6(b) of the Class I Rules and thereby the petitioners have been rendered ineligible for promotion to the post of Executive Engineer in Class I service.

4. In order to appreciate the points involved, it is necessary to state a few facts. The three petitioners T.R. Kapur, Mohinder Singh and V.D. Grover who are Diploma-holders hold the posts of Sub Divisional Officers, Public Works Department (Irrigation Branch), Haryana, a Class II service, governed by the Haryana Service of Engineers, Class II P.W.D. (Irrigation Branch) Rules, 1970. They joined Class III service as Overseers in the Irrigation Branch on September, 18, 1953, October 6, 1949 and November 8, 1952 respectively in the erstwhile State of Punjab. At the time when they were appointed to the Overseers Engineering Service, Punjab, r.3(c) of the Punjab Service of Engineers, Class II P.W.D. (Irrigation Branch) Rules, 1941 enjoined that no person shall be appointed to the

service unless he possessed one of the University degrees or other qualifications prescribed in Appendix 'A' to the Rules. Note beneath cl.(c), however, provided that the requirements of cl.(c) could be waived in the case of members of the Overseers Engineering Service (Irrigation Branch) Punjab to be promoted in the service under the proviso to r.5 of the Rules. The term 'service' was defined in r. 1(2)(g) to mean the Punjab Service of Engineers, Class II (Irrigation Branch), Proviso to r.5 of Part II-- Appointments Rules, reads as follows:

"Provided that this rule may be relaxed by Government on the recommendations of the Chief Engineers in order to admit the promotion of a member of an Overseer Engineering Service (Irrigation Branch), Punjab of outstanding merit who may not possess the qualifications specified in due course, the petitioners were promoted as Offg. SubDivisional Officers in the Class II service in November 1969, July 1966 and January 1964 respectively. Subsequently, by notification dated October 27, 1985, the petitioners were appointed as Sub-Divisional Officers on a regular basis w.e.f. December 25, 1970. Under the unamended r.6(b) of the Class I Rules, the petitioners were eligible for promotion as Executive Engineers in Class I service despite the fact that they did not possess a degree in

Engineering. Rule 6 of Class I Rules insofar as relevant may be reproduced:

"6. Qualifications: No person shall be ap- pointed to the service unless he—

(a) possesses one of the University Degrees or other qualifications prescribed in Appendix B of these rules;

Provided that Government may waive this qualification in the case of a particular officer belonging to the Class II Service.

(b) In case of appointment by promotion from Class II Service, has completed in that Class of Service for a period of ten years from the commencement of these rules, six years service and after that period eight years service."

9. In Mohammad Bhakar's case, the Court speaking through Mitter, J. said: "A rule which affects the promotion of a person relates to his conditions of service". It was held that a rule which made the passing of certain departmental examinations a pre-requisite for promotion having been made without the previous approval of the Central Government was void by reason of sub-s. (7) of s. 115. In Mohammad Shujat Ali's case, a Constitution Bench of this Court speaking through Bhagwati, J. observed:

"A rule which confers a right of actual promotion or a right to be considered for

promotion is a rule prescribing a condition of service."

Under the Class I Rules as they existed immediately prior to the appointed day i.e. before November 1, 1966, a member of the Overseers Engineering Service in the Irrigation Branch, Punjab having a diploma was eligible for being promoted as Sub-Divisional Officer in the Class II Service and then in due course to the post of Executive Engineer in the Class I service within the quota prescribed for them without having a degree in Engineering. It was not necessary to possess a degree in Engineering as held by this Court in A.S. Parmar's case for purposes of promotion under the unamended r.6(b) of the Class I Rules, as in the case of promotion to the post of Executive Engineer in Class I service under r.6(b) what was essential was eight years' service in that class and not a degree in Engineering. The impugned notification which purports to amend r.6(b) with retrospective effect, however, renders members of the Class II service like the petitioners who are diploma-holders ineligible for promotion by making a degree in Engineering an essential qualification for such promotion which amounts to alteration of the conditions of service applicable to them to their disadvantage without the previous approval of the Central Government and is thus void by

reason of the proviso to sub-s.(6) of s.82 of the Punjab Reorganisation Act, 1966.

11. Undoubtedly, at the time when the petitioners were recruited as Supervisors in the Irrigation Branch, a Class III service, r.3(c) of the Punjab Service of Engineers, Class II, P.W.D. (Irrigation Branch) Rules, 1941 laid down that no person shall be appointed to the service unless he possessed one of the university degrees or other qualifications prescribed in Appendix 'A' to the Rules. Note beneath r.3(c) however provided that the requirements of cl. (c) could be waived in the case of members of the Overseers Engineering Service, Irrigation Branch, Punjab for promotion to the service under the proviso to r.5 of the Rules. The term 'service' as defined in r. 1(2)(g) meant the Punjab Service of Engineers, Class II (Irrigation Branch). Proviso to r.5 of the Rules, however, empowered the State Government to relax the condition. It is clear from the terms of the proviso to r.5 quoted above that the State Government could relax the requirements of r.3(c) on the recommendation of the Chief Engineer in order to admit the promotion of a member of the Overseers Engineering Service, Irrigation Branch, Punjab if he was an officer of outstanding merit although he did not possess the qualifications specified in r.3(c) i.e. a degree in Engineering. Presumably,

the petitioners were officers of outstanding merit and they were promoted as Offg. Sub-Divisional Officers in Class II service in January 1964, July 1966 and November 1969. Eventually, the State Government by notification dated October 27, 1985 appointed them on a regular basis in that post, w.e.f. December 25, 1970. 'Further, it is wrong to suggest that on the appointed day i.e. on November 1, 1966 they were all Overseers belonging to the Class III service and were therefore not governed by the unamended r 6(b). Two of them V.D. Grover and Mohinder Singh had already been' promoted as Offg. Sub-Divisional Officers prior to the appointed day i.e. in January 1964 and July 1966 and were therefore governed by the unamended r.6(b) of the Class I Rules and the third petitioner T.R. Kapur was also promoted to that post. subsequently in November 1969. Upon such promotion to the post of Offg. Sub- Divisional Officers they had not only the legitimate expectation that they would in due course be considered for confirmation but also had the right on such confirmation to be considered for promotion. It is also not quite accurate to say that the petitioners were not shown as belonging to the Class II service. A bare look at the notification dated October 27, 1985 would show

that the petitioners figure at Sr. Nos. 246, 254 and 369.

15. More fundamental is the contention that the impugned notification issued by the State Government purporting to amend r.6(b) with retrospective effect from July 10, 1964 which rendered members of Class II Service who are diploma- holders like the petitioners. ineligible for promotion to the post of Executive Engineer although they satisfied the condition of eligibility of 8 years' experience in that class of service was unreasonable, arbitrary and irrational and thus offended against Arts. 14 and 16(1) of the Constitution. It is urged that they were eligible for promotion under the unamended r.6(b) of the Class I Rules and had a fight to be considered for promotion to the post of Executive Engineer, and a retrospective amendment of r.6(b) seeking to render them ineligible was constitutionally impermissible. It is said that the reason for this was obvious inasmuch as immediately prior to the reorganisation of the State of Punjab i.e. prior to November 1, 1966 even a member of the Overseers Engineering Service, a Class III Service, having only a diploma was eligible for being promoted as Executive Engineer in Class I Service in due course since in the matter of promotion under the unamended r.6(b) it was not necessary to possess a degree in Engineering as

held by this Court in A.S. Parmar's case. It follows there- fore that every member of the Overseers Engineering Service was eligible for promotion first as Assistant Engineer or Sub-Divisional Officer in Class II Service and thereafter, in due course, to the post of Executive Engineer in Class I Service even without the educational qualification of a degree in Engineering. In substance, the submission is that a retrospective amendment of r.6(b) by the impugned notification which seeks to take away the eligibility of members of Class II Service who are diploma-holders for purposes of promotion to the posts of Executive Engineers in Class I Service from a back date ranging over 20 years and thereby renders invalid the promotions already made is constitutionally impermissible.

16. It is well-settled that the power to frame rules to regulate the conditions of service under the proviso to Art. 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect: B.S. Vadhera v. Union of India, [1968] 3 SCR 575, Raj Kumar v. Union of India, [1975] 3 SCR 963, K. Nagaraj & Ors. v. Sate of A.P. & Anr., [1985] 1 SCC 523 and State Of J & K v. Triloki Nath Khosla & Ors., [1974] 1 SCR 771. It is equally well-settled that any rule which affects the right of a person to be considered for promotion is a condition of service

although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well-recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Art. 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be re- verted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessary satisfy the tests of Arts. 14 and 16(1) of the Constitution: State of Mysore v. M.N. Krishna Murty & Ors., [1973] 2 SCR 575 B.S. Yadav & Ors. v. State of Haryana & Ors., [1981] 1 SCR 1024 State of Gujarat & Anr. v. Ramanlal Keshavlal Soni & Ors., [1983] 2 SCR 287 and Ex-Captain K.C. Arora & Anr. v. State of Haryana & Ors., [1984] 3 SCR 623."

25. In the case of ***P.D.Aggarwal and others vs. State of U.P. and others***[9], the Hon'ble Supreme Court, at paragraph Nos.16, 18 and 21, ruled as follows:

> *"16. This memorandum dated 7.12.1961 was considered in Baleshwar Dass's case by this Court and it was held that this G.O. was not arbitrary insofar as it fixes the proportion of permanent vacancies to be filled from various sources, and it has statutory force being under Rule 6. It has also been observed that:*
>
> *"The office memorandum makes it clear that direct recruitments will be made to both permanent and temporary vacancies of Assistant Engineers. But this scheme of 1961 cannot stand in isolation and has to be read as subordinate to the 1936 Rules. After all, the 196 1 Memorandum cannot override the Rules which are valid under Article 3 13, and so must be treated as filling the gaps, not flouting the provisions."*
>
> *Hence the said O.M. does not affect the petitioners who have become members of the Service and are entitled to have their seniority reckoned from the date of their being members of the Service according to Rule 23 of the 1936 Rules. The 1969 Rules and 197 1 Rules have*

[9] (1987) 3 SCC 622

however, affected the rights of the respondents who have become members of the Service being substantively appointed in temporary posts as Assistant Engineers inasmuch as there has been an amendment effected in Rule 3(b) by providing that a member of the Service meant a Government servant appointed in a substantive capacity to a post in the cadre of the Service. Rule 3(c) also amends the earlier provisions by meaning direct recruitment as in the manner prescribed in Rule 5(a)(i) and 5(b)(i). Similar amendments have been made in Rule 5 and 6. The effect of these amendments is that Assistant Engineers who have become members of the Service being appointed substantively in temporary posts will no longer be members of the service and will have to wait till they are selected and appointed as Assistant Engineers under Rule 5(a)(ii) against quota fixed by Rule 6 for this purpose. This creates serious prejudice to them and it also creates uncertainty as to when they will be selected and appointed against the quota set up for such selection under Rule 5(a)(ii). The amended Rule 23 lays down that seniority will be determined from the date of order of appointment in substantive vacancy. These amended provisions have been made retrospectively effective from March 1, 1962 to the existing officers i.e. the respondents

appointed substantively against temporary vacancies. It has been urged that Government has the power to amend rules retrospectively and such rules are quite valid. Several decisions have been cited of this Court at the Bar. Undoubtedly the Government has got the power under proviso to Article 309 of Constitution to make rules and amend the rules giving retrospective effect. Nevertheless, such retrospective amendments cannot take away the vested rights and the amendments must be reasonable, not arbitrary or discriminatory violating Articles 14 and 16 of the Constitution.

18. It has been held by this Court in E.P. Ravappa v. State of Tamil Nadu, AIR 1974 (SC) 555 at 583 and Maneka Gandhi v. Union of India, AIR 1978 (SC) 597 at 624 that there should not be arbitrariness in State action and the State action must ensure fairness and equality of treatment. It is open to judicial review whether any rule or provision of any Act has violated the principles of equality and non-arbitrariness and thereby invaded the rights of citizens guaranteed under Arts. 14 and 16 of the Constitution. As has been stated hereinbefore the Assistant Engineers who have already become members of the Service on being appointed substantively against temporary posts have already acquired the benefit of 1936 rules

for having their seniority computed from the date of their becoming members of the Service. 1969 and 197 1 Amended Rules take away this right of these temporary Assistant Engineers by expressly providing that those Assistant Engineers who are selected and appointed in permanent vacancies against 50% quota provided by Rule 6 of the amended 1969 Rules will only be considered for the purpose of computation of seniority from the date of their appointment against permanent vacancies. Therefore the temporary Assistant Engineers are not only deprived of the right that accrued to them in the matter of determination of their seniority but they are driven to a very peculiar position inasmuch as they are to wait until they are selected and appointed against permanent vacancies in the quota set up for this purpose by the amended Rule 6. The direct recruits on the basis of the competitive examination conducted by the Commission and appointed against permanent vacancies on probation will supersede the rights that accrued under the unamended rules to the temporary Assistant Engineers having precedences in the matter of determination of their seniority from the date of their appointment against permanent vacancies. In other words, the Assistant Engineers appointed substantively against temporary posts

several years before the direct recruits and working in the posts of Assistant Engineers will be pushed down to the direct recruits against permanent vacancies. It is also evident that there are about 200 Assistant Engineers who have been appointed substantively by the Government with the approval of the Public Service Commission before the enforcement of 1969 rules. The direct recruits appointed on the basis of the examination against permanent vacancies will get precedence over Assistant Engineers appointed in the matter of determination of their seniority in the cadre of Assistant Engineers on the basis of changed rules, particularly new Rule 23 which takes into account only appointments in substantive vacancies. Thus appointments made under Rule 5(b)(i) are to be treated as temporary i.e. 'T' category officers and their such services will not be taken into consideration in determining seniority until they are selected and appointed to permanent posts under Rule 5(a)(ii). Note I to Rule 23 made it clear that an appointment made substantively on probation against a clear vacancy in a permanent post will be treated as substantive appointment. Thus the 1969 and 1971 amendments in effect take away from the officers appointed to the temporary posts in the cadre through Public Service Commission, i.e. after selection by Public Service

Commission, the substantive character of their appointment. These amendments are not only disadvantageous to the future recruits against temporary vacancies but they were made applicable retrospectively from 1.3.1962 even to existing officers recruited against temporary vacancies through Public Service Commission. As has been stated hereinbefore that the Government has power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and not reasonable then such retrospective amendments are subject to judicial scrutiny if they have infringed Arts. 14 and 16 of the Constitution.

21. We have already mentioned hereinbefore that the amended rules of 1969 read with the amended rules of 197 1 adversely affect the rights of the Assistant Engineers appointed to substantive posts prior to the introduction of these amended rules and create fetters for the long years of service being ever considered for reckoning of seniority in the cadre of Assistant Engineer. It is pertinent to refer in this connection the decision of this Court in the case of Mohammad Shujat Ali & Ors. etc. v. Union of India & Ors. etc., [1975] 1 SCR 449 wherein it has been observed that "it is true that a rule which confers a right of promotion or the right to

be considered for promotion is a rule prescribing condition of service." For promotion from Assistant Engineer to the post of Executive Engineer seniority-cum-merit is the criterion in accordance with the service rules in question. These temporary Assistant Engineers unless they are selected to the 50% quota in permanent vacancies reserved for promotion from the Assistant Engineers appointed to temporary posts, will never have their service reckoned for determination of seniority in the cadre. It is pertinent to mention in this connection that 'T' category and 'D' category engineers have got some technical qualification i.e. both are graduates in Civil Engineering and both worked as Assistant Engineers in temporary vacancies. the respondents were appointed long before the appointment of appellants as Assistant Engineers in permanent vacancies. The appointment of respondents has been made in consultation with the Public Service Commission and according to the decision in Baleshwar Dass's case the respondents having become members of the Service they are deemed to be appointed substantively in temporary posts. Therefore the amended rules more particularly rules 3(c), 5 and 6 of 1960 rules as well as rule 23 of 197 1 amended rules are wholly arbitrary and discriminatory and so they are violative of

Articles 14 and 16 of the Constitution. It has been tried to be urged in this connection on behalf of the direct recruits that the method of selection to the cadre of Assistant Engineers by providing quota for direct recruits in permanent vacancies was introduced by the authorities concerned in order to attract meritorious and talented engineers in the U.P. Service of Engineers (Buildings & Roads Branch) as there were very little prospects of promotion for such Assistant Engineers to be promoted to the higher posts owing to the large number of Assistant Engineers appointed to temporary posts. It has thus been urged that these new rules have been introduced in order to give an incentive to meritorious and talented engineers to get themselves recruited directly to permanent posts in the cadre on the basis of the competitive examination in order to have a fair promotional prospect in the service. This submission cannot be sustained in view of the fact that firstly it seriously prejudices the rights of the Assistant Engineers appointed substantively to the temporary posts and working as Assistant Engineers for a number of years and discriminates them from having their long years of service after being appointed substantively in temporary posts and being members of the service though the 'D' category engineers

appointed much later in permanent posts will steal a march over them by having their seniority reckoned from the date of their appointment on probation. Secondly, this process of direct recruitment against permanent vacancies was discontinued after 1971 and these amended rules were not thereafter taken recourse to in filling up the vacancies in the cadre of Assistant Civil Engineers as it worked injustice and had led to patent discrimination violating Articles 14 and 16 of the Constitution. This is perhaps the reason and rationale which impelled the Shukla Committee to recommend the discontinuance of this practice of giving promotion to direct recruits. Quota and rota are introduced where recruitments to a cadre of Service are made from two or more sources. But in the instant case the quota has been introduced for the first time after their recruitment for determining seniority in service 'T' category having become members of the Service already and also there are no different sources of recruitment as both 'D' and 'T' category employees are recruited by examination conducted by Commission. Moreover no quota for filling up permanent vacancies has been provided at the initial stage of recruitment but a quota has been made after recruitment at the stage of confirmation."

26. A Division Bench of the High Court for the State of Telangana, when the same issue fell for consideration in W.P.Nos.4636 of 2018 and batch, at paragraph Nos.17, 35, 43, 45, 46 to 49, held in the following manner:

> *"17. Keeping in view the aforesaid judgment, a right which has accrued in favour of the petitioners cannot be wiped out by amending the statute especially when the applicability of the statute is not with retrospective effect. In the present case, the amending notification uses the phraseology "shall be substituted" which clearly indicates that the amendment is prospective and therefore, in the considered opinion of this Court, the question of making the Rules applicable with retrospective effect does not arise. The amendment in the Rules shall be applicable to all those persons who are now joining the Telangana Civil Police after the amendment only.*
>
> *35. In the light of the aforesaid Judgment, the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect.*
>
> *43. The dispute involved in the present case is altogether different and the amendment to the recruitment rules has to be prospective in the absence of any such specific provision and the right accrued in favour of the employees who*

have come on transfer prior to amendment cannot be wiped out.

45. In the present case, the State Government has not been able to point out the public interest involved in the matter, on the contrary the benefit of seniority was granted to the persons who come on transfer from branch to another branch and are now being deprived of their accrued right of their past seniority and their accrued right for consideration of promotion and therefore, the Judgment relied upon by the learned counsel is distinguishable on facts.

46. Learned counsel for the respondents 18 to 43 has placed reliance upon the Judgment delivered in the case of K.Jagannadha Rao (supra). In the aforesaid case, the Division Bench has held that the benefit of past service rule is a matter of policy for the Government, however, past service must be of an equivalent post. In the present case, the past service is an equivalent post and the right accrued already in favour of the employees cannot be wiped out by making the Rules applicable to the retrospective effect.

47. Learned counsel for the respondents 18 to 43 has also placed reliance upon the Judgment delivered in the case of K.Rajaiah (supra). This Court has carefully gone through the aforesaid Judgment. It was a case relating to direct recruitment and recruitment by transfer for the

purpose of Sub Inspector of Police. There was no such issue of retrospective applicability of the Recruitment Rules involved in the aforesaid case and therefore, the Judgment relied upon does not help the respondent respondents 18 to 43.

48. Lastly, he has also placed reliance upon the Judgment delivered in the case of Palure Bhaskar Rao (supra). In the aforesaid case also, the issue of retrospective applicable of the Rules was not in question and therefore, the Judgment is distinguishable on facts.

49. In the considered opinion of this Court, as the Recruitment Rules provided for transfer only to the extent of 10% posts, the petitioners at the relevant point of time opted for transfer to Civil Police and they would have certainly received promotions by now in the parent organisation. The Amendment in the Recruitment Rules, i.e., G.O.Ms.No.19, dated 06.08.2018 has been introduced and for the first time, a weightage formula has been introduced by the State Government under the Recruitment Rules governing the field, meaning thereby, wiping the past seniority and therefore, once a right which has accrued in favour of the petitioners, cannot be wiped out by the impugned Amendment and the Amendment is certainly not at all applicable with retrospective effect. The question of depriving the petitioners by making the

Amendment applicable with retrospective effect does not arise. Therefore, this Court is of the considered opinion that all those constables who have come prior to 06.02.2018 are certainly entitled for grant of seniority and all those constables who have come on transfer after 06.02.2018 shall be governed by the Amended Recruitment Rules.

27. In the case of ***Prafulla Kumar Swain vs. Prakash Chandra Misra and others***[10], the Hon'ble Supreme Court, at paragraph Nos.22, 23, 30, 31, 33, 34, 36 and 47, held as follows:

"22. While the matter stood thus one of the directly recruited officers (Prakash Chandra Misra, respondent No.1) filed a petition before the Tribunal challenging the seniority. He contended that the promotees who were promoted in the year 1981- 82 ought to have been assigned a place lower than him as per recruitment rules. Two main contentions were:

1.His services should be reckoned from the date of recruitment itself and not from the date of actual appointment. Therefore, the exclusion of the

[10] 1993 Supp (3) SCC 181

period of two years' training for the purposes of reckoning the seniority was illegal.

2. The promotees had been appointed in excess of the quota which the rules had prescribed. There is no specific order of Government providing otherwise.

23. The Tribunal accepted these contentions and held that the petitioner before it being a direct recruit of the year 1979 must be treated as such and had to be confirmed and promoted on the basis of being a direct recruit of the year 1979. This should be done within the 2/3rd quota for direct recruits. Accordingly the petition was allowed. It is under these circumstances, special leave petitions have come to be preferred. Having regard to the arguments two points arise for our determination:

1. Whether the direct recruits are to be considered as recruited in the year in which they were selected by the Service Commission and sent for training into the Forest College or in the year in which they were actually appointed to a working post on completion of training?

2. Whether there was a quota fixed for promotees in the Orissa Forest Service during the relevant years?

30. Recruitment is just an initial process. That may lead to eventual appointment in the service. But, that cannot tantamount to an appointment.

No doubt, Rule 5 talks of recruitment to Class II Service. We consider these are two sources of recruitment. Nowhere in the Recruitment Rules of 1959 it is specified that the services of a direct recruit under the Government shall be reckoned from the date of selection in the competitive examination. On the contrary, Regulation 12(c) is very clear that the period of training is not to be reckoned as Government service. It is admitted before us that after the successful completion of training when the appointment order is issued the direct recruits are put on probation. Similar is in the case of the promotees. Both of them undergo probation. Therefore, in the light of these provisions it is not possible for us to accept the contention advanced on behalf of the direct recruits that their seniority must be reckoned from the date of their recruitment.

31. This is why Mr. Shanti Bhushan, learned counsel for the direct recruits, respondents, would urge that 1984 Rules would govern. Rule 16 in Explanation provides thus:

"Explanation For the purpose of clause (a), the year of appointment of direct recruits shall be deemed to be the year arrived at after deducting two years from the date of successful completion of the training in the Forest College."

33. Therefore, according to him, the benefit of Explanation to Rule 16 quoted above must apply.

We find it impossible to accept this contention for the following reasons:

1.Since the appointments in question have been made under 1959 Rules, 1984 Rules will be inapplicable.

2.The 1984 Rules came into force only when they were published in the Official Gazette on December 21, 1984.

3. Explanation under Rule 16 is a substantive provision. Therefore, it cannot be retrospective.

4. As regards Rule 24, the proviso clearly states that the Rules cannot be construed as affecting or invalidating the appointments already made.

34. Therefore, if any right has been acquired or any privilege had accrued that would remain unaltered. Therefore, these appointments which are governed by the 1959 Rules will continue notwithstanding the repeal. Clauses (a) and (e) of Section 6 of the General Clauses Act, 1897 also point this position:

6. Effect, of repeal: Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

*(b) * * * *

*(c) * * * *

*(d) * * * *

(e) effect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid."

36. Therefore, by the operation of deeming clause it only enables appointments made under 1959 Rules to be continued under 1984 Rules. Certainly, by the repeal of 1959 Rules it cannot mean all those appointments cease. Nor again, the substantive provision of Rule 16, as stated above. Would govern. Therefore, Rule 24 has no application. Thus, we conclude that the seniority of direct recruits will have to be reckoned only from the date of appointment and not from the date of recruitment.

47. In view of the foregoing discussion, we set aside the judgment of the Tribunal. The appeals will stand allowed. However, there shall be no order as to costs."

28. In the case of ***B.S.Yadav and others vs. State of Haryana and others***[11], the Hon'ble Supreme Court, at paragraph No.47, held in the following manner:

> *"We entertain no doubt that seniority is a condition of service and an important one at that. The control vested in the High Court by the first part of Article 235 is therefore subject to any law regulating seniority as envisaged by the second part of that article. The power to make such law is vested by Article 309 in the legislature, and until it acts, in the Governor. Whether it is the legislature which passes an Act or the Governor who makes rules regulating seniority, the end product is 'law' within the meaning of the second part of Article 235. The legislatures of Punjab and Haryana not having passed an Act regulating seniority of the respective State judicial officers, the Governors of the two States have the power to frame rules for that purpose under the proviso to Article 309 of the Constitution. Such rules are, of course, subject to the provisions of the Constitution and to the provisions of any Act which the appropriate legislature may pass on the subject."*

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[11] 1980 (Supp) SCC 524

29. Coming to the judgments cited by the learned Special Government Pleader, Sri K.Jagan Mohan Reddy, and the learned counsel for the unofficial respondents in W.P.No.10593 of 2022, in the case of ***State of Maharashtra and another vs. Chandrakant Anant Kulakarni and others***[12], the Hon'ble Supreme Court, at paragraph No.16, held as follows:

> *"16. Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not. Under the Departmental Examination Rules for STOs, 1954, framed by the former State Government of Madhya Pradesh. as amended on January 20, 1960, mere passing of the departmental examination conferred no right on the STIs of Bombay, to promotion. By passing the examination, they merely became eligible for promotion. They had to be brought on to a select list not merely on the length of service, but on the basis of merit-cum-seniority principle. It was, therefore, nothing but a mere chance of*

[12] (1981) 4 SCC 130

promotion. In consequence of the impugned orders of reversion, all that happened is that some of the STIs who had wrongly been promoted as STOs Gr. III had to be reverted and thereby lost a few places. In contrast, the conditions of service of ASTOs from Madhya Pradesh and Hyderabad, at least so far as one stage of promotion above the one held by them before the reorganisation of States, could not be altered without the previous sanction of the Central Government as laid down in the Proviso to sub-s. (7) of s. 115 of the Act."

30. In the case of ***State of Himachal Pradesh and others vs. Raj Kumar and others*** (3rd cited *supra*), the Hon'ble Supreme Court, at paragraph Nos.1.1 and 36, held as follows:

"1.1 These appeals arise out of the decision of the High Court of Himachal Pradesh allowing the writ petition and directing the State to consider the case of the writ petitioners, Respondents no. 1 to 3 herein, for promotion under Rules that existed when the vacancies arose and not as per the subsequently amended rules. These directions were based on the decision of this Court in the case of Y.V. Rangaiah v. J. Sreenivasa Rao1 . As we noticed

a number of decisions of this Court that have followed Rangaiah, and far more decisions that have distinguished it, we had to examine the issue afresh. The question is whether appointments to the public posts that fell vacant prior to the amendment of the Rules would be governed by the old Rules or the new Rules. After examining the principle in the context of the constitutional position of services under the State, and having reviewed the decisions that have followed or distinguished Rangaiah in that perspective, we have formulated the legal principles that should govern services under the State. Applying the said principles, we have held that the broad proposition formulated in Rangaiah does not reflect the correct constitutional position. We have thus allowed the appeals following the principles that we have laid down.

36. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when

they arose, Rangaiah's case must be understood in the context of the rules involved therein.

2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit.61 The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

5. When there is no statutory duty cast upon the State to consider appointments to

vacancies that existed prior to the amendment, the State cannot be directed to consider the cases."

31. In the case of ***State of Jharkhand vs. Bhadey Munda and another***[13], the Hon'ble Supreme Court, at paragraph No.14, held as follows:

"The first issue is no longer res integra the matter having been put to rest long ago by a Constitution Bench of this Court which held that the mere chance of a promotion is not a condition of service. It was said in Mohd. Shujat Ali v. Union of India2:

"It is true that a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service. This proposition can no longer be disputed in view of several pronouncements of this Court on the point and particularly (1975) 3 SCC 76, 95 the decision in Mohammad Bhakar v. Y. Krishna Reddy3 where this Court, speaking through Mitter, J., said: "Any rule which affects the promotion of a person relates to his condition of service". But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion — the latter

[13] (2014) 10SCC 398

would certainly not be a condition of service. This Court pointed out in State of Mysore v. G.B. Purohit4 that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service. What happened in State of Mysore v. G.B. Purohit was that the districtwise seniority of Sanitary Inspectors was changed to State wise seniority and as a result of this change, the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115 sub-section (7) [of the States Reorganization Act, 1956]. This contention was negatived and Wanchoo, J. as he then was, speaking on behalf of this Court observed: "It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service". Now, here in the present case, all that happened as a result of the application of the Andhra Rules and the enactment of the Andhra Pradesh Rules was that the number of posts of Assistant Engineers available to non-graduate Supervisors from the erstwhile Hyderabad State for promotion, was

reduced: originally it was fifty per cent, then it became thirty-three and one-third per cent, then one in eighteen and ultimately one in twenty-four. The right to be considered for promotion was not affected but the chances of promotion were severely reduced. This did not constitute variation in the condition of service applicable immediately prior to November 1, 1956 and the proviso to Section 115 sub-section (7) was not attracted. This view is completely supported by the decision of a Constitution Bench of this Court in Ramchandra Shankar Deodhar v. The State of Maharashtra5.""

32. In the case of ***Government of Andhra Pradesh and others vs. P.Laxmi Devi***[14], the Hon'ble Supreme Court, at paragraph Nos.30 to 68, held as follows:

"30. However, this would not mean that the proviso to Section 47A becomes unconstitutional. There is always a difference between a statute and the action taken under a statute. The statute may be valid and constitutional, but the action taken under it may not be valid. Hence, merely because it is possible that the order of the registering authority under the proviso to Section 47A is arbitrary and illegal, that does not mean

[14] (2008) 4 SCC 720

that the proviso to Section 47A is also unconstitutional. We must always keep this in mind when adjudicating on the constitutionality of a statute.

31. Since we have dealt with the question about constitutionality of Section 47A of the Stamp Act, we think it necessary to clarify the scope of judicial review of statutes, since Courts often are faced with a difficulty in determining whether a statute is constitutionally valid or not. We are, therefore, going a little deep into the theory of judicial review of statutes, as that will give some guidance to the High Courts in future.

A. Do Courts have the power to declare an Act of the Legislature to be invalid?

32. The answer to the above question is : Yes. The theoretical reasoning for this view can be derived from the theory in jurisprudence of the eminent jurist Kelsen (The Pure Theory of Law).

33. According to Kelsen, in every country there is a hierarchy of legal norms, headed by what he calls as the `Grundnorm' (The Basic Norm). If a legal norm in a higher layer of this hierarchy conflicts with a legal norm in a lower layer the former will prevail (see Kelsen's `The General Theory of Law and State').

34. In India the Grundnorm is the Indian Constitution, and the hierarchy is as follows: (i) The Constitution of India;

(ii) Statutory law, which may be either law made by Parliament or by the State Legislature;

(iii) Delegated legislation, which may be in the form of Rules made under the Statute, Regulations made under the Statute, etc.;

(iv) Purely executive orders not made under any Statute.

35. If a law (norm) in a higher layer in the above hierarchy clashes with a law in a lower layer, the former will prevail. Hence a constitutional provision will prevail over all other laws, whether in a statute or in delegated legislation or in an executive order. The Constitution is the highest law of the land, and no law which is in conflict with it can survive. Since the law made by the legislature is in the second layer of the hierarchy, obviously it will be invalid if it is in conflict with a provision in the Constitution (except the Directive Principles which, by Article 37, have been expressly made non enforceable).

36. The first decision laying down the principle that the Court has power to declare a Statute unconstitutional was the well-known decision of the US Supreme Court in Marbury vs. Madison 5 U.S. (1Cranch) 137 (1803). This principle has been followed thereafter in most countries, including India.

B. How and when should the power of the Court to declare the Statute unconstitutional be exercised?

37. Since, according to the above reasoning, the power in the Courts to declare a Statute unconstitutional has to be accepted, the question which then arises is how and when should such power be exercised.

38. This is a very important question because invalidating an Act of the Legislature is a grave step and should never be lightly taken. As observed by the American Jurist Alexander Bickel "judicial review is a counter majoritarian force in our system, since when the Supreme Court declares unconstitutional a legislative Act or the act of an elected executive, it thus thwarts the will of the representatives of the people; it exercises control, not on behalf of the prevailing majority, but against it." (See A. Bickel's `The Least Dangerous Branch')

39. The Court is, therefore, faced with a grave problem. On the one hand, it is well settled since Marbury vs. Madison (supra) that the Constitution is the fundamental law of the land and must prevail over the ordinary statute in case of conflict, on the other hand the Court must not seek an unnecessary confrontation with the legislature, particularly since the legislature

consists of representatives democratically elected by the people.

40. The Court must always remember that invalidating a statute is a grave step, and must therefore be taken in very rare and exceptional circumstances.

41. We have observed above that while the Court has power to declare a statute to be unconstitutional, it should exercise great judicial restraint in this connection. This requires clarification, since, sometimes Courts are perplexed as to whether they should declare a statute to be constitutional or unconstitutional.

42. The solution to this problem was provided in the classic essay of Prof James Bradley Thayer, Professor of Law of Harvard University entitled 'The Origin and Scope of the American Doctrine of Constitutional Law' which was published in the Harvard Law Review in 1893. In this article, Professor Thayer wrote that judicial review is strictly judicial and thus quite different from the policy-making functions of the executive and legislative branches. In performing their duties, he said, judges must take care not to intrude upon the domain of the other branches of government. Full and free play must be permitted to that wide margin of considerations which address themselves only to the practical judgment of a legislative body. Thus, for Thayer,

legislation could be held unconstitutional only when those who have the right to make laws have not merely made a mistake (in the sense of apparently breaching a constitutional provision) but have made a very clear one, so clear that it is not open to rational question. Above all, Thayer believed, the Constitution, as Chief Justice Marshall had observed, is not a tightly drawn legal document like a title deed to be technically construed; it is rather a matter of great outlines broadly drawn for an unknowable future. Often reasonable men may differ about its meaning and application. In short, a Constitution offers a wide range for legislative discretion and choice. The judicial veto is to be exercised only in cases that leave no room for reasonable doubt. This rule recognizes that, having regard to the great, complex ever-unfolding exigencies of government, much which will seem unconstitutional to one man, or body of men, may reasonably not seem so to another; that the Constitution often admits of different interpretations; that there is often a range of choice and judgment; that in such cases the Constitution does not impose upon the legislature any one specific opinion, but leaves open this range of choice; and that whatever choice is not clearly in violation of a constitutional provision is valid even if the Court thinks it unwise or

undesirable. Thayer traced these views far back in American history, finding, for example, that as early as 1811 the Chief Justice of Pennsylvania had concluded: "For weighty reasons, it has been assumed as a principle in constitutional construction by the Supreme Court of the United States, by this Court, and every other Court of reputation in the United States, that an Act of the legislature is not to be declared void unless the violation of the Constitution is so manifest as to leave no room for reasonable doubt" vide Commonwealth ex. Rel. O'Hara vs. Smith 4 Binn. 117 (Pg.1811).

43. Thus, according to Prof. Thayer, a Court can declare a statute to be unconstitutional not merely because it is possible to hold this view, but only when that is the only possible view not open to rational question. In other words, the Court can declare a statute to be unconstitutional only when there can be no manner of doubt that it is flagrantly unconstitutional, and there is no way of avoiding such decision. The philosophy behind this view is that there is broad separation of powers under the Constitution, and the three organs of the State - the legislature, the executive and the judiciary, must respect each other and must not ordinarily encroach into each other's domain. Also the judiciary must realize that the legislature is a democratically elected

body which expresses the will of the people, and in a democracy this will is not to be lightly frustrated or obstructed.

44. Apart from the above, Thayer also warned that exercise of the power of judicial review "is always attended with a serious evil", namely, that of depriving people of "the political experience and the moral education and stimulus that comes from fighting the question out in the ordinary way, and correcting their own errors" and with the tendency "to dwarf the political capacity of the people and to deaden its sense of moral responsibility".

45. Justices Holmes, Brandeis and Frankfurter of the United States Supreme Court were the followers of Prof. Thayer's philosophy stated above. Justice Frankfurter referred to Prof Thayer as "the great master of constitutional law", and in a lecture at the Harvard Law School observed "if I were to name one piece of writing on American Constitutional Law, I would pick Thayer's once famous essay because it is the great guide for judges and therefore, the great guide for understanding by non-judges of what the place of the judiciary is in relation to constitutional questions". (vide H. Phillip's `Felix Frankfurter Reminisces' 299-300, 1960).

46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or

a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways, e.g. if a State legislature makes a law which only the Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the Court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide Mark Netto vs. Government of Kerala and others AIR 1979 SC 83 (para 6). Also, it is none of the concern of the Court whether the legislation in its opinion is wise or unwise.

47. In a dissenting judgment in Bartels vs. Iowa 262 US 404 412(1923), Justice Holmes while dealing with a state statute requiring the use of English as the medium of instruction in the

public schools (which the majority of the Court held to invalid) observed "I think I appreciate the objection to the law but it appears to me to present a question upon which men reasonably might differ and therefore I am unable to say that the Constitution of the United States prevents the experiment being tried".

48. The Court certainly has the power to decide about the constitutional validity of a statute. However, as observed by Justice Frankfurter in West Virginia vs. Barnette 319 U.S. 624 (1943), since this power prevents the full play of the democratic process it is vital that it should be exercised with rigorous self restraint.

49. In this connection we may quote from the article titled 'The Influence of James B Thayer Upon the Work of Holmes, Brandeis & Frankfurter' by Wallace Mendelson published in 31 Vanderbilt Law Review 71 (1978), which is as follows:

"If, then, the Thayer tradition of judicial modesty is outmoded · if judicial aggression is to be the rule in policy matters, as in the 1930's · some basic issues remain. First, how legitimate is government by judges ? Is anything to be beyond the reach of their authority ? Will anything be left for ultimate resolution by the democratic processes · for what Thayer called "that wide margin of considerations which address

themselves only to the practical judgment of a legislative body" representing (as courts do not) a wide range of mundane needs and aspirations ? The legislative process, after all, is a major ingredient of freedom under government

Legislation is a process slow and cumbersome. It turns out a product · laws · that rarely are liked by everybody, and frequently little liked by anybody. When seen from the shining cliffs of perfection the legislative process of compromise appears shoddy indeed. But when seen from some concentration camp as the only alternative way of life, the compromises of legislation appear but another name for what we call civilization and even revere as Christian forbearance.

Let philosophy fret about ideal justice. Politics is our substitute for civil war in a constant struggle between different conceptions of good and bad. It is far too wise to gamble for Utopia or nothing · to be fooled by its own romantic verbiage. Above all, it knows that none of the numerous clashing social forces is apt to be completely without both vice and virtue. By give and take, the legislative process seeks not final truth, but an acceptable balance of community interests. In this view the harmonizing and educational function of the process itself counts for more than any of its legislative products. To intrude upon

its pragmatic adjustments by judicial fiat is to frustrate our chief instrument of social peace and political stability.

Second, if the Supreme Court is to be the ultimate policy-making body · without political accountability · how is it to avoid the corrupting effects of raw power? Can the Court avoid the self-inflicted wounds that have marked other episodes of judicial imperialism? Can the Court indeed satisfy the expectations it has already aroused?

A third cluster of questions involves the competence of the Supreme Court as a legislative body. Can any nine men master the complexities of every phase of American life which, as the post 1961 cases suggest, is now the Court's province? Are any nine men wise enough and good enough to wield such power over the lives of millions? Are courts institutionally equipped for such burdens? Unlike legislatures, they are not representative bodies reflecting a wide range of social interest. Lacking a professional staff of trained investigators, they must rely for data almost exclusively upon the partisan advocates who appear before them. Inadequate or misleading information invites unsound decisions. If courts are to rely upon social science data as facts, they must recognize that such data are often tentative at best, subject to

varying interpretations, and questionable on methodological grounds. Moreover, since social science findings and conclusions are likely to change with continuing research, they may require a system of ongoing policy reviews as new or better data become available. Is the judiciary capable of performing this function of supervision and adjustment traditionally provided by the legislative and administrative processes?

Finally, what kind of citizens will such a system of judicial activism produce · a system that trains us to look not to ourselves for the solution of our problems, but to the most elite among elites: nine Judges governing our lives without political or judicial accountability? Surely this is neither democracy nor the rule of law. Such are the problems addressed by and · at least in the minds of jurists like Holmes, Brandeis, and Frankfurter · resolved by Thayer's doctrine of judicial restraint".

We respectfully agree with the views expressed above, and endorse Thayer's doctrine of self restraint.

50. In our opinion judges must maintain judicial self-restraint while exercising the power of judicial review of legislation. "In view of the complexities of modern society", wrote Justice Frankfurter, while Professor of Law at Harvard

University, "and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and expressed in memorable language:

"It is a misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong."

(See Frankfurter's 'Mr. Justice Holmes and the Supreme Court')

51. In our opinion the legislature must be given freedom to do experimentations in exercising its powers, provided of course it does not clearly and flagrantly violate its constitutional limits.

52. As observed by Mr. Justice Brandeis of the U.S. Supreme Court in his dissenting judgment in New State Ice Co. vs. Liebmann 285 U.S. 262 (310-11) :

"The discoveries in physical science, the triumphs in invention, attest the value of the process of trial and error. In large measure,

these advances have been due to experimentation... There must be power in the States and the Nation to re-mould, through experimentation, our economic practices and in situations to meet changing social and economic needs...

To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation."

53. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote:

"It was not for him (Homes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the state. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of skepticism · by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest."

(see 'Essays on Legal History in Honour of Felix Frankfurter' edited by Morris D. Forkosch)

54. In this connection Justice Frankfurter while Professor of Law at Harvard University wrote in 'The Public and its Government' -- "With the great men of the Supreme Court constitutional

adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of government. The great judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people."

In the same book Justice Frankfurter also wrote: "In simple truth, the difficulties that government encounters from law do not inhere in the Constitution. They are due to the judges who interpret. That document has ample resources for imaginative statesmanship, if judges have imagination for statesmanship."

55. In Keshvananda Bharati vs. State of Kerala AIR 1973 SC 1461 (vide para 1547) Khanna J. observed:

"In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error."

56. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimization of the judges personal preferences. The Court must not invalidate a statute lightly, for, as observed above, invalidation of a statute made by the legislature elected by the people is a grave step.

As observed by this Court in State of Bihar vs. Kameshwar Singh AIR 1952, SC 252(274) : "The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence".

57. In our opinion, the Court should, therefore, ordinarily defer to the wisdom of the legislature unless it enacts a law about which there can be no manner of doubt about its unconstitutionality.

58. As observed by the Constitution Bench decision of this Court in M.H. Quareshi vs. State of Bihar AIR 1958 SC 731 (vide para 15): "The Court must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest, and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, common report, the history of the times, and may assume every state of facts which can be conceived existing at the time of the legislation. (See also Moti Das vs. S.P. Sahi AIR 1959 SC 942(947).

59. In the light of the above observations, the impugned amendment is clearly constitutional. The amendment was obviously made to plug a loophole in the Stamp Act so as to prevent evasion of stamp duty, and for quick collection of the duty. There are other statutes e.g. the Income Tax Act in which there are provisions for deduction at source, advance tax, etc. which aim at quick collection of tax, and the constitutional validity of these provisions have always been upheld.

C. Application of Thayer's Doctrine by the Courts

60. In America, after the activist period of the US Supreme Court which was at one time declaring Act after Act of the U.S. Congress to be invalid on the ground that it violated the due process clause in the U.S. Constitution or the right to liberty of contract, there was a realization by the Judges of the U.S. Supreme Court that they were following a confrontationist path vis-`-vis the U.S. Congress which was causing all kinds of major problems. Hence in 1937 the U.S. Supreme Court accepted Thayer's doctrine of judicial restraint, and the same was followed thereafter (except for the period of the Warren Court).

61. The U.S. Supreme Court enunciated the principle that there is a presumption in favour of the constitutionality of Statute, and the burden is

always upon the person who attacks it to show that there has been a clear transgression of a constitutional provision. This view was adopted by the Constitution Bench of this Court in Charanjit Lal Chowdhury vs. Union of India and others AIR 1951 SC 41 (para 10), which observed : "Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and while examining it, two principles have to be borne in mind : (1) that a law may be constitutional even through it relates to a single individual, in those cases where on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself; (2) that it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in Middleton vs. Texas Power and L. Company, (248 U.S. 152 and 157), in which the relevant passage runs as follows:

It must be presumed that a legislature understands and correctly appreciates the need

of its own people, that its laws are directed to problems made manifest by expression and that its discriminations are based upon adequate grounds."

(emphasis supplied) and this view has been consistently followed thereafter.

62. Thus in M/s. B.R. Enterprises vs. State of U.P. and others AIR 1999 SC 1867 this Court observed:

"Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment, vide Charanjit Lal Chowdhury vs. Union of India 1950 SCR 869: AIR 1951 SC 41); State of Bombay vs. F.N. Bulsara, 1951 SCR 682: (AIR 1951 SC 318), Mahant Moti Das vs. S.P. Sahi (AIR 1959 SC 942)".

The following passage in Seervai, Constitutional Law of India (3rd Edn.) page 119 found approval in Delhi Transport Corporation vs. D.T.C.

Mazdoor Congress, 1991 (Supp) 1 SCC 600 : (AIR 1991 SC 101). The Court held:

"Seervai in his book Constitutional Law of India (3rd Edn) has stated at page 119 that:

the courts are guided by the following rules in discharging their solemn duty to declare laws passed by a legislature unconstitutional:

1) *There is a presumption in favour of constitutionality and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; 'to doubt the constitutionality of a law is to resolve it in favour of its validity'.*
2) *A statute cannot be declared unconstitutional merely because in the opinion of the court it violates one or more of the principles of liberty, of the spirit of the Constitution, unless such principles and that spirit are found in the terms of the Constitution"*

(emphasis supplied)

63. Similarly in Union of India vs. Elphinstone Spinning and Weaving Co. Ltd. and others AIR 2001 SC 724 (vide para 9) a Constitution Bench of this Court observed :

"There is always a presumption that the legislature does not exceed its jurisdiction and the burden of establishing that the legislature has transgressed constitutional mandates such as, those relating to fundamental rights is

always on the person who challenges its vires. Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution it must be allowed to stand as the true expression of the national will · Shell Company of Australia vs. Federal Commissioner of Taxation, 1931 AC 275(Privy Council). The aforesaid principle, however, is subject to one exception that if a citizen is able to establish that the legislation has invaded his fundamental rights then the State must justify that the law is saved. It is also a cardinal rule of construction that if one construction being given the statute will become ultra vires the powers of the legislature whereas on another construction which may be open, the statute remains effective and operative, then the Court will prefer the latter, on the ground that the legislature is presumed not to have intended an excess of jurisdiction".

(emphasis supplied)

64. In State of Bihar and others vs. Bihar Distillery Ltd. AIR 1997 SC 1511 (vide para 18) a Constitution Bench of this Court observed :

"The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain

its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void."

65. The same view has been taken by the Constitution Bench of this Court in Hamdard Dawakhana and another vs. Union of India AIR 1960 SC 554 (vide para 9) which observed :

"Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people, that the laws it enacts are directed to problems which are made manifest by experience, and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an

enactment. Charanjit Lal vs. Union of India, 1950 SCR 869: (AIR 1951 SC 41); State of Bombay vs. F.N. Baulsara, 1951 SCR 682 at p.708; (AIR 1951 SC 318 at p. 326); AIR 1959 SC 942."

66. As observed by the Privy Council in Shell Company of Australia vs. Federal Commissioner of Taxation (1931) AC 275 (298) : "Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution it must be allowed to stand as the true expression of the national will."

67. Hence if two views are possible, one making the provision in the statute constitutional, and the other making it unconstitutional, the former should be preferred vide Kedarnath vs. State of Bihar AIR 1962 SC 955. Also, if it is necessary to uphold the constitutionality of a statute to construe its general words narrowly or widely, the Court should do so vide G.P. Singh's `Principles of Statutory Interpretation, 9th Edition, 2004 page 497'. Thus the word `Property' in the Hindu Women's Right to Property Act, 1937 was construed by the Federal Court in In re Hindu Women's Right to Property Act AIR 1941 FC 72 to mean `property other than agricultural land', otherwise the Act would have become unconstitutional.

> *68. The Court must, therefore, make every effort to uphold the constitutional validity of a Statute, even if that requires giving the statutory provision a strained meaning, or narrower or wider meaning, than what appears on the face of it. It is only when all efforts to do so fail should the Court declare a statute to be unconstitutional."*

33. There is absolutely no controversy with regard to the ground reality that all the writ petitioners were appointed as Armed Reserve Police Constables during the years spreading over 1989 to 1998 under the Andhra Pradesh Police Subordinate Service Rules notified *vide* G.O.Ms.No.1263, General Administration (Rules) Department, dated 26.08.1959. The fact remains that the State Government, in exercise of the powers conferred under Sections 8 and 10 of the Andhra Pradesh (Andhra Area) District Police Act, 1859, Sections 6 and 10 of the Andhra Pradesh (Telangana Area) District Police Act and Section 5 r/w Sections 6, 7 and 12 of the Hyderabad City Police Act r/w the proviso to Article 309 of the Constitution of India and in

supersession of the Special Rules issued in G.O.Ms.No.2743, Public Services, dated 30.09.1953, and G.O.Ms.No.1263 General Administration (Rule) Department, dated 26.08.1959, framed the Rules called the 'Andhra Pradesh Police (Civil Police) Subordinate Service Rules'. The said Rules came to be notified *vide* G.O.Ms.No.374, Home (Police.C), dated 14.12.1999. It is not in dispute that the Government created a channel for appointment of Armed Reserve Police Constable also by transfer as Police Constable (Civil) and earmarked 10% for the same. According to Rule 10 (ii) (ii) of the said Rules notified *vide* G.O.Ms.No.374 Home (Police.C) Department, dated 14.12.1999, the seniority of Police Constables of Armed Reserve or Andhra Pradesh Special Police Battalions transferred to the service shall be determined with reference to their date of first appointment in the former category. It is absolutely not in controversy that Rule 10 (ii) (ii) continued to be in force till the Government carried out the amendment to the said Rule and notified the same *vide* G.O.Ms.No.95

Home (legal.II) Department, dated 31.05.2017. It is significant to note in this context that all the vacancies of Civil Police Constables against which the writ petitioners were appointed subsequent to the amendment arose during the period 2014-15 and 2015-2016. It is also not in controversy that the respondents issued notification for exercising the option by the writ petitioners for appointment as Civil Constables on 03.05.2017 and, admittedly, all the petitioners herein submitted their willingness prior to the impugned amendment. However, the appointment orders came to be issued in favour of the writ petitioners as Civil Constables posterior to the amendment i.e., in the months of September, October and November 2017. The contention of the learned Government Pleader and the learned counsel for the unofficial respondents in W.P.No.10593 of 2022 is that, since the writ petitioners came to be appointed after the advent of the impugned amendment, in the absence of any arbitrariness and constitutional violation, the said amended Rule needs to be applied.

34. In view of the law laid down in the judgments cited by the learned counsel for the writ petitioners, referred to supra, in the preceding paragraphs, the said contention of the learned Special Government Pleader and the learned counsel for the unofficial respondents in W.P.No.10593 of 2022 is liable to be rejected. The fact remains that, except the issuance of the appointment orders, the rest of the process came to an end by the time the amendment came into force. It is a settled and well established principle of law that the rules of the game cannot be changed in the middle of the game. In this context, it may also be pertinent to note that, when a similar amendment was made by the State of Telangana *vide* G.O.Ms.No.19 dated 06.02.2018, the aggrieved filed a batch of Writ Petitions *vide* W.P.No.4636 of 2018 and batch before the High Court for the State of Telangana. A Division Bench of the High Court for the State of Telangana, while categorically holding that a right, which has accrued, cannot be wiped out by amending the statute when the applicability of the

statute is not in retrospective effect and that the State Government was not able to point out the public interest involved in the matter, held that the constables, who came on transfer after 06.02.2018, were required to be governed by the amended recruitment Rules. In the case on hand, the reality remains that, as mentioned *supra,* the process of recruitment, by transfer of the writ petitioners started anterior to the impugned amendment. It is equally true that the writ petitioners submitted their willingness for being posted as Police Constables (Civil) much anterior to the impugned amendment.

35. Since the writ petitioners, admittedly, applied in terms of the notification issued under the unamended Rule and as they expressed willingness for being appointed as Police Constables (Civil) in terms of the unamended Rule, in the considered opinion of this Court, the action of the respondent authorities in denying the benefit/right accrued to the writ petitioner under the unamended Rule, cannot stand for judicial

scrutiny and the said action is a clear infraction of the Fundamental Rights guaranteed under Chapter 3 of the Constitution of India. Admittedly, the impugned amendment came to be carried out by placing reliance on the judgment of the Composite High Court of Andhra Pradesh in W.P.No.26765 of 2011 and batch, dated 08.10.2013. In the considered opinion of this Court, the respondents grossly erred in making the said judgment as the basis as the issues in the said batch of Writ Petitions would not relate to the subject category of posts. In the considered opinion of this Court, the impugned amended Rule cannot be made applicable to the cases of the petitioners.

36. For the aforesaid reasons, Writ Petitions are allowed, declaring that the amended Rule 10 (ii) (ii) cannot be made applicable to the cases of the writ petitioners either for appointment as Police Constables (Civil) or for computation of their seniority. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

Sd/- K.TATA RAO
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to the Hon'ble Sri Justice A.V.SESHA SAI
(for His Lordship's Kind Perusal)

One fair copy to the Hon'ble Sri Justice VENUTHURUMALLI GOPALA KRISHNA RAO
(for His Lordship's Kind Perusal)

To,

1. The Principal Secretary, Home (Legal) Department, State of Andhra Pradesh, Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The Director General of Police, Government of Andhra Pradesh, Vijayawada, Krishna District.
3. The Chairman, State Level Police Recruitment Board, (SLPRB-AP), Andhra Pradesh, Mangalagiri, Guntur District.
4. The Commissioner of Police, Visakhapatnam City, Visakhapatnam District.
5. The Superintendent of Police, Visakhapatnam Rural, Visakhapatnam District.
6. The Commissioner of Police, Vijayawada City, Krishna District.
7. The Superintendent of Police, Guntur Urban, Guntur District.
8. The Superintendant of Police, Rajahmundry Urban, East Godavari District.
9. The Superintendant of Police, Thirupathi Urban, Chittoor District.
10. The Superintendant of Police, Guntur Rural, Guntur District.
11. The Superintendant of Police, Visakhapatnam Rural, Visakhapatnam District.
12. The Superintendant of Police, Ananthapur, Ananthapur District.
13. The Superintendant of Police, Chittoor, Chittoor District.
14. The Superintendant of Police, East Godavari, East Godavari District.
15. The Superintendant of Police, Guntur, Guntur District.
16. The Superintendant of Police., Kadapa, Kadapa District.
17. The Superintendant of Police, Krishna, Krishna District.
18. The Superintendant of Police, Kurnool, Kurnool District.
19. The Superintendant of Police, Nellore, Nellore District.
20. The Superintendant of Police, Prakasam, Prakasam District,
21. The Superintendant of Police, Srikakulam, Srikakulam District.
22. The Superintendant of Police, Visakhapatnam, Visakhapatnam District.
23. The Superintendant of Police, Vizianagaram, Vizianagaram District.
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RAM

Pujita

HIGH COURT

DATED:03/10/2023

COMMON ORDER
WP.Nos.15291, 10593 of 2022 & 3570, 17517 of 2021

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