

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

WRIT PETITION (A.T) Nos.66, 153, 218, 286, 346, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 568, 569, 570, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 608, 609, 651, 652, 653, 654, 655, 656, 658, 659, 660, 661, 670, 671, 672, 673, 674, 675 and 1673 of 2021.

COMMON ORDER:

The batch of Writ Petitions are filed to declare the G.O.Ms.No.1 Home (Legal.II) Department, dated 07.01.2016 as illegal, arbitrary and violative of Articles 14, 16, 21 and 311 of the Constitution of India.

2. Since the facts and issue involved in the batch of writ petitions are one and the same, I find it expedient to decide all these matters by common order.

3. For the sake of convenience, W.P.(AT).No. 66 of 2021 is taken as leading case.

4. Heard Mr. Ravi Shankar Jandhyala, Mr. K. Muralidhar Reddy, Mr. G.V.Sivaji, Mr. Ch. Srinivas, learned Senior Counsel for the respective petitioners and Mr. G.V.S.Kishore Kumar, learned Government Pleader, Services-I and Mr. M. Manohar Reddy, learned Standing Counsel for the respondents.

5. The brief facts of the case are that the petitioners are working as Armed Reserve Police in various cadres viz., Armed

Reserve Head Constables (ARHC) and Armed Reserve Police Constables (ARPC). Initially they were appointed as Police Constables in special battalions and subsequently they were transferred to Armed Reserve Constables from 2000 onwards with a promise to protect their service, seniority and pay scale vide rules issued in G.O.Ms.No.299, dated 05.10.1999 read with rule 15(c) and the same is evident from the Memo dated 04.05.2021 issued by the 2nd respondent. The petitioners were transferred on administrative grounds vide Memo dated 04.05.2001 without following the G.O.Ms.No.299, dated 05.10.1999. The said G.O. No. 299 and Memo dated 04.05.2011 are still in force and they were never challenged. The petitioners transfer from special battalions to Armed Reserve and the consequential promotions are in accordance with the rules issued in G.O.Ms.No.299 and memo dated 04.05.2001. The respondents awarded several Awards and Rewards including 'Police Seva Pathakam" to the some of the petitioners. Thus it is very clear that the service and seniority of the petitioners in the Armed Reserve be settled in all respects as early in the year 2000 and some of the petitioners are at the verge of retirement. While the matter stood thus, the respondents are making efforts to revert the petitioners from the posts of Assistant Reserve Sub-Inspectors and Head Constables to the post of Armed Reserve Constables as the case may be and depriving the petitioners from their respective seniority, which was settled in

accordance with rules issued in G.O.Ms.No.299, dated 05.10.1999 and Memo dated 04.05.2001 issued by the 2nd respondent by issuing the impugned *ad-hoc* rules issued in G.O.Ms.No.1, dated 07.01.2016, which is illegal and arbitrary. Hence the petitioners made representations to the respondents, but the respondents are making efforts to transfer the petitioners to the post of constable. Therefore the batch of writ petitions came to be filed.

6. *Per contra*, the 2nd respondent filed counter-affidavit denying all material allegations made in the affidavit and mainly contended that the respondents issued notification for filling up of AR PC vacancies on conversion from APSP PCs in terms of G.O.Ms.No.299, dated 05.10.1999 duly mentioned the conditions for counting of previous service and seniority as per the rules existed at the time of notification. Further the learned Tribunal in O.A.No. 10216 of 2008 and batch filed by the direct recruit ARPCs, passed an order holding that “the impugned order passed by the 4th respondent therein was set aside and directed the 4th respondent therein that the seniority of the unofficial respondents shall be determined from the date of their confirmation in the service of DAR in terms of Rule 15(e) of Special Rules”. Assailing the said orders, the converttee ARPCs filed W.P.No.26765 of 2011 and the Hon’ble Division Bench of erstwhile High Court while disposing the said writ petition along with other W.P.Nos.21610 of

2007 and batch which filed with similar prayers by the direct recruit AR PCs, passed the order on 08.10.2013, which reads as follows:

“Once the transfer is from one service to another, it is fundamental that the person, who enters through such a procedure, must take the seniority, immediately after the direct recruits of the contemporary period, or at least from the date of their entry into that service. The service rendered by such persons in their parent organization can, certainly, be counted towards pension and other benefits. In a given case, even Pay protection can be extended. However, the seniority of the persons, who were already working in the service to which those appointed in other service are transferred, cannot be adversely affected”.

“This much, however, can be said that instead of extending benefit of the entire service rendered by the Constables of the special battalions, on being appointed on transfer as A.Rs, feasibility of extending the benefit of weitage, subject to certain limit, can be considered. This, however, is a matter that needs to be examined by the Government, without any further loss of time. A balanced approach would keep the morale of the petitioners on one hand, the respondents on the other, intact. Any one sided decision in favour of either of them, would not at all promote the efficiency in the service”.

7. Pursuant to the above said orders, the Government issued impugned G.O.Ms.No.1, dated 07.01.2016 evolving a formula for fixation of seniority in respect of AR PCs/ SAR CPL PCs appointed by transfer from APSP with effect from 01.01.2009, which reads as follows:

“Shall be given a weightage of one year for every completed two years of service rendered as PC APSP, subject to a maximum of seven years. For the purpose of calculation of weightage under this clause, fractions, if any are to be ignored”.

Accordingly the respondents revised the seniority lists of AR PCs as on 01.01.2008 and effected by complying the orders of the Hon’ble Division Bench referred above and issued impunged G.O. Consequent to the revision of seniority lists as on 01.01.2008 all the promotions affected after 01.01.2008 were revised.

8. It is further contended that though the duties are similar, but the petitioners chosen for conversion to AR by forgoing promotion in the parent Unit with an intention to work in their respective native Districts by avoiding all the rules governed and also against the observation made by the Hon’ble Division Bench of erstwhile High Court cited supra. Once the services are governed by the rules in existence, their claim for seniority as per the rules, which were in existence at the time of their conversion to AR is untenable. As per G.O.Ms.No.299, dated 05.10.1999 from 1999 onwards the PCs (APSP) are transferred to PCs(AR)/PCs (SAR CPL) on appointment by transfer and their seniority was fixed from the date of initial appointment as PC (APSP) in terms of Rule 15(c) for all districts in A.P. Subsequently the Government issued G.O.Ms.No.97, dated 01.05.2006 have amended the above police (Stipendiary Cadet Trainee) Rules, that the vacancies of 40% of

ARPCs shall be filled with appointment by transfer from APSP PCs, those who have completed 10 years of service in APSP and the same was implemented and by that time litigation started and finally Division Bench of erstwhile High Court passed the Judgment on 08.10.2013, which cited supra. Further learned Single Judge of this Court passed an order dated 11.02.2020 in W.P.No.14013 of 2019, holding that the petitioners therein i.e Mr. K. Vykunta Rao and others ARHCs (Convertees) cannot claim their seniority from the date of initial appointment in APSP under Rule 15. Therefore the batch of Writ Petitions is liable to be dismissed.

9. During hearing learned counsel for the petitioners would contend that from the year 2000 onwards the petitioners are working in Armed Reserve after their transfer by the respondents on administrative grounds from Special Police to Armed Reserve under G.O.Ms.No.299 and Memo dated 04.05.2001 protected the service and seniority of the petitioners in Special Police and the respondents promoted the petitioners from constables to Head Constables and from Head Constables to Assistant Reserve Sub-Inspectors and all the petitioners are working in promotional posts, since several years. The respondents without issuing any prior notice or without giving any opportunity issued impugned G.O.Ms.No.1, dated 07.01.2016 issued to revert the petitioners to the post of constable is highly illegal and arbitrary.

10. Learned counsel for the petitioners in W.P.(A.T).No.66 of 2021 relied on decision of the Hon'ble Apex Court in "**K. Madhavan and Another Vs. Union of India and others**"

¹wherein it was held as follows:

"21.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 this 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 consideration in determining their ranking in the new service cadre....."

11. Further he relied on a decision of Hon'ble Apex Court in the case of "**Sub-Inspector Rooplal and Another Vs. Lt. Governor, through Chief Secretary, Delhi and Others**"² wherein it was held as follows:

"15.....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 Case to give relief to the deputations, we will first consider the law laid down by this Court in Madhavan case. This Court in that case while considering a similar question, came to the following conclusion: (SCC P.580.Para 21)

¹ (1987) 4 SCC 566

² (2000)1 SCC 644

21. 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 or 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.

12. So also, he relied on a decision of the Hon'ble Apex Court in **“Wing Commander J. Kumar Vs. Union of India and Others”**³ wherein it was held as follows:

“ 34.....As pointed by this Court in the decision in *Rs. Makashi V. I.M.Menon*, it is just and wholesome principle commonly applied in such situations where persons from different sources are drafted to serve in a new service that their pre-existing length of service in the parent department should be respected and preserved by taking the same into account in determining their ranking in the new service cadre. Such a provision does not involve any discrimination violative of Article 16 of the Constitution”.

³ (1982) 2 SCC 116

13. Therefore, learned counsel for the petitioners would contend that in view of the decisions cited supra, the facts and circumstances are squarely applicable to the facts of the case and that the petitioners are entitled to claim relief as prayed for.

14. Whereas learned Government Pleader for the respondents vehemently opposed to grant relief in favour of the petitioners as the learned Single Judge of this Court dismissed the Writ Petition and passed an order dated 11.02.2020 in W.P.No.14013 of 2019, wherein it was held as follows:

“.....The Division Bench noticed that G.O.Ms.No.299 by which the appointment and transfer of constables was permitted did not confer any weightage on them on the basis of their services. The Division Bench also noticed that such practice is in vogue in other departments of Government, particularly in Engineering Department. Ultimately, it held that placement of these constables above the constables who are already working in armed reserved for years together cannot be countenanced either in law or in logic but to bring about a balance the direction was given to consider the feasibility of evolving a formula. This order of the Division Bench has become final. Pursuant to the final order a committee was constituted to suggest a formula. This formula was accepted and G.O.Ms.No.1 (Home) was issued. The petitioner states that this rule is an ad hoc rule and is applicable only for those who are transferred after 01.01.2008 only. He states that the seniority fixed as per Rule 15 (c) is valid and G.O.Ms.No.1 is not applicable to the petitioners. This Court is however of the opinion that the Division Bench of High Court of Andhra Pradesh has clearly and categorically interpreted the rules. The order in O.A.No.954 of 2018, dated 17.05.2018, in the opinion of this Court did not consider the judgment passed by the Division Bench. Even in O.A.No.953 of 2018, the Tribunal did

not consider the interpretation of Rules 15(c) and 15(e). As far as the Division Bench of this High Court W.P.No.8857 of 2019 is concerned it merely gave further directions for preparations of seniority lists. Hence this Court hold that the order of the Division Bench in W.P.No.21610 of 2007 and Batch lays down the correct position.

15. Therefore the learned Single Judge in the above matter opines that the clauses 15(c) and 15(e) by the Division Bench and the further formula evolved as per the Division Bench direction only the petitioners cannot claim that their seniority should be fixed from the date of their initial appointment in APSP and as per Rule 15. Therefore the petitioners therein are not entitled to any relief and dismissed the writ petition.

16. At this juncture, this court has referred to various G.Os for better understanding the facts of the case. As per G.O.Ms.No. 270, dated 02.04.1990, the Government has given a provision of for conversion of PC (APSP) to PC (AR) by earmarking 10% quota to PCs (APSP). Duly invoking Rule 15(c) of Police Subordinate Service Rules issued in G.O. Ms. No. 1263, dated 26.08.1959 which reads as follows:

“The transfer of a person from one class or category of the service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of person so transferred shall be determined with reference to the date of his first appointment to class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority”.

17. As per the said G.O, the personnel who got transferred would be placed in the seniority list of PCs (AR) after their conversion as per their date of first appointment as PC (APSP). In this case, no disputes in the seniority by the direct recruit PCs (AR). Later, as per proposal of the DGP, AP, the total PCs (AR) posts are reserved for conversion of PCs (APSP) i.e. 100% conversion only and no direct recruitment to AR vide G.O.Ms. No. 299, dated 5.10.1999 in order to relieve the APSP from continuous tension and longer outdoor duties. Thus, relaxation will be given to PCs (APSP) who are converted to PCs (AR) from their ordeal duties in APSP.

18. Whereas, the post of PC (APSP) is a State-wide post and their selection was made by the Commandant of the Battalion concerned till 1999 and thereafter by the Chairman, AP State Level Police Recruitment Board (SLPRB) as per G.O.Ms.No.315, dated 13.10.1999. Those who are willing to work even at faraway places choose to APSP and are willingly appointed in APSP. Who wish to go to their native District by way of conversion and waiting for such conversion, give unwillingness for further promotion in APSP since such conversion is more beneficial to live along with their families. From the year 2000, total PCs (AR) were filled up by conversion of PCs (APSP) subject to completion of 10 years of service strictly on seniority basis in APSP and local candidature of

the respective District or Units. Since, there was no mention about the fixing of seniority of those who are converted from PCs (APSP) in G.O.Ms.No.299, seniority has been fixed following Rule 15(c) of Police Subordinate Service Rules as was done earlier reckoning their date of first appointment as PCs (APSP). As total force of PCs (AR) are converttees from the year 2000, there was no dispute either from converttee PCs or from direct recruit PCs against the inter-se-seniority thus fixed.

19. The DGP, AP vide letter dated 01.05.2005 has proposed certain amendment to the existing recruitment procedure in order to remove some anomalies and to improve the standards and methods of recruitment for various posts in Police Department as the existing rules not serving purpose adequately based on the feedback taken from the field Units. Accordingly, the Government vide G.O.Ms.No.97, dated 01.05.2006, has issued certain amendments to recruitment procedures wherein the quota of PCs (AR) to fill up through conversion of PCs (APSP) is revised to 40%. The fixation of seniority is continued as per Rule 15(C) of AP Police Subordinate Service Rules i.e. the AR personnel converted from APSP would get their seniority from date of their first appointment as PCs (APSP).

20. As per the above rule, the personnel who got conversion from APSP had advantage of counting previous service and had

been placed above the direct recruit AR PCs and got early promotions than those of direct recruit AR PCs in view of their seniority reckoned from their date of first appointment. Since PCs (APSP) get conversion to AR after putting 10 years of service in APSP they would be placed above the direct recruit PCs (AR) and as a result the converttee PCs (AR) would be above the direct recruit PCs (AR) in the seniority list and get next promotion in AR immediate after completion of (03) three years required service in the latter category i.e. earlier than those direct recruit PCs (AR) with the advantage of previous service counting. In certain instances, Head Constable posts could not be filled up as the converttee PCs (AR) had not completed (03) three years required service and above the direct recruit PCs (AR) in the seniority list, because of which the direct recruit PCs (AR) could not be considered for promotion even though they completed (05) five years required service. As such, large number of HC vacancies remained unfilled due to this seniority lists and direct recruit PCs (AR) deprived of such situation.

21. The Government vide G.O. Ms. No. 329, dated 28.12.2010 has issued amendment to certain Rules issued in G.Os. No. 1263, 270, 299 and 97 wherein the percentage of conversion of PCs (APSP) is retold and selection procedure has been prescribed for conversion of PCs (APSP) to PCs (AR). Aggrieved

with the above rule, several AR direct recruit PCs of 2008 batch preferred O.A.No.10216/2008. The learned Tribunal issued directions to follow rule 15(e) in fixation of seniority vide orders dated 09-09-2011. Rule 15(e) is reproduced hereunder:

*“The seniority of qualified Special Policemen appointed by transfer as Constables in this service shall be **determined by the date of their first appointment in this service** (Latter category) for purposes of confirmation in vacancies in this service”.*

By application of this rule, the seniority of converttee PCs has been determined from the date of their conversion to AR.

Rule 15(c): *“The transfer of a person from one class or category of the service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of person so transferred shall be determined with reference to the date of his first appointment to class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority”.*

Rule 15(e): *“The seniority of qualified Special Policemen appointed by transfer as Constables in this service shall be **determined by the date of their first appointment in this service** for purposes of confirmation in vacancies in this service”.*

22. Against the above said Hon`ble APAT orders, certain converttee PCs (AR) filed W.P. 26765/2011 before Hon`ble High

Court seeking directions to suspend the Judgment dated 09.09.2011 passed by learned Tribunal in O.A. No. 10216/2008.

23. In the meantime, the Government vide G.O.Ms. No. 54, dated 18.02.2013 has omitted the Rule 15(e) in amendment to Special Rules for the Andhra Pradesh Police Subordinate Service issued in G.O.Ms.No.1263, General Administration (Rules) Dept., Dt. 26.08.1959 in view of contradiction between Rule 15(c) and Rule 15(e) of Andhra Pradesh Police Subordinate Service Rules while fixing seniority of Special Policemen (read to be APSP).

24. The Hon'ble High Court had disposed the W.P. Nos. 26765 of 2011 along with other W.Ps. 21610 of 2007, 24847 of 2007, 31595 of 2012, 33217 of 2012 and 18254 of 2013 filed against the orders of the learned Tribunal on 08-10-2013 with directions to Government to consider the feasibility of evolving a formula to extend the benefit of weightage of service rendered by the ARPCs who were appointed by transfer from APSP subject to certain limit, duly taking the interest of the Constables appointed by direct recruitment or other modes over the period and till such time the formula is evolved, the reversion which are warranted on account of implementation of the orders passed by the Tribunal shall stand stayed.

25. Pursuant to the above said Hon'ble High Court orders and this Office proposal dated 22.02.2014, the Government had amended the A.P Police Subordinate Service Rules duly incorporating the following formula vide G.O.Ms.No.1, dated 07.01.2016 and the same shall be deemed to have come into force with effect from 01.01.2008 (since the litigation started from 01.01.2008 in respect of PCs (AR) and PCs (Special Armed Reserve Central Police Lines) (SARCPL) who were appointed by transfer from the APSP):

"The seniority of Police Constables in Armed Reserve, appointed by transfer from Special Police Battalions shall be fixed giving weightage of one year of service for every completed two years of service rendered as Police Constables in Special Battalions, 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.

26. Subsequently, Director General of Police has issued a Circular dated 08.09.2016 with instructions to all Units to revise the seniority lists from 01.01.2008 and issue reversion orders to those already got promotions after their conversion to AR. Against the amendment issued in G.O.Ms.No.1, converttee PCs (AR) who were already promoted to the next higher category i.e. HC (AR) and ARSI filed several OAs (around 73 cases) in APAT in the year 2018 which is now the subject matters of this Court.

27. It is also noted that the petitioner in W.P.No.14013 of 2019 and other HCs (AR) (convertees) have filed before the High Court seeking relief to fix their seniority from the date of their initial appointment as PCs APSP, which was dismissed with an observation that the petitioners therein cannot claim their seniority from the date of initial appointment in APSP under Rule 15.

28. Sri G.V.S.Kishore Kumar, The learned Government Pleader for Services-1, has taken this court to the relevant G.O.s and the authorities of the Hon'ble Apex court on subject issue in 'lis'.

29. At the outset, it is essential to have a glance at the order of the Hon'ble Division Bench of the High Court for the State of Telangana and Andhra Pradesh dated 08.10.2013 in Writ Petition Nos.21610, 24847 of 2007, 26765 of 2011, 31595, 33217 of 2012 and 18254 of 2013, wherein it was discussed on the very genesis of the batch cases and the perennial issue of seniority among the A.P. Special Police (APSP) and the Armed Reserve (AR) police. The relevant paras are reproduced hereunder :-

“Even according to the procedure contemplated under G.O.Ms.No.299, the appointment of the petitioners is only through transfer. It is, certainly, otherwise than through direct recruitment. Once the transfer is from one service to another, it is fundamental that the person, who enters through such a procedure, must take the seniority, immediately after the direct recruits of the contemporary period, or at least from the date of their entry into that service. The service rendered by such persons in their parent

organization can, certainly, be counted towards pension and other benefits. In a given case, even Pay protection can be extended. However, the seniority of the persons, who were already working in the service to which those appointed in other service are transferred, cannot be adversely effected”.

“True, the Government may have definite purpose in its mind, when it issued G.O.Ms.No.299. The making of appointment by transfers of constables from battalions, as the only means of recruitment of Constables in the AR, would certainly have the effect of relieving the constables of the special battalions, of the arduous duties. However, if the Government wanted to confer any benefit on them, it could have provided for weightage on the basis of service, subject to certain limit, that too, duly taking into account the interests of the persons, who are already working as Constables in the AR and awaiting promotions. Such practice is in vogue in the engineering wings of the various departments of the Government of A.P.; Wherever the Assistant Engineers (Supervisors) are upgraded as Deputy Executive Engineers on acquiring the prescribed qualifications, the benefit of service in the post of A.E. subject to certain limit is extended. This would bring about a sort of balance between the conflicting interests. The placement of hundreds of Constables above the Constables, who are already working in the AR for decades together, cannot be countenanced either in law or on logic”.

“It is not in dispute that Rule 15-e of the Rules was very much in force, when the seniority lists were prepared. The fact that it came to be repealed in the recent past, does not rectify the serious infirmity, that has crept into the seniority lists. The petitioners are not able to convince us to take a different view, from the one that was taken by the Tribunal. This much, however, can be said that instead of extending benefit of the entire service rendered by the Constables of the special battalions, on being appointed on transfer as ARs, feasibility of extending the benefit of weightage, subject to certain limit, can be considered. This, however, is a matter that needs to be examined by the Government, without any further loss of time. A balanced approach would keep the morale of the petitioners on one hand, the respondents on the other, intact. Any one sided decision in favour of either of them, would not at all promote the efficiency in the service”.

“Hence, we dispose of the writ petitions a) upholding the orders passed by the Tribunal in the respective O.A., b) directing that the Government shall consider the feasibility of evolving a formula to extend the benefit of weightage of service rendered by the petitioners i.e., the Constables appointed to AR by transfer from special battalions, subject to certain limit, duly taking into account the interests of the Constables appointed through direct recruitment and other modes over the period”.

“This exercise shall be completed within a period of four (04) months from today. Till such time, the reversions, that are warranted on account of the implementation of the orders passed by the Tribunal, shall stand stayed. There shall be no order as to costs”.

30. The observations in the judgement are acted in credence and the Government issued G.O.Ms.No.1, Home (Legal.II) Dept, dated 07.01.2016 and the same came into force with effect from 01.01.2008. The Hon’ble Division bench has also rightly appreciated the legal proposition that courts, either under Article 226 or Article 32 have no power to frame or evolve a policy decision and rightly left open to the Statute making organs of the State to evolve a policy on the above subject to maintain equity, equilibrium and to maintain rule of law in evolving a policy on the seniority of Police Constables in Armed Reserve, appointed by transfer from Special Police Battalions. Rightly the State Government issued G.O.Ms.No.01, Home (Legal.II) Dept, dtd: 07.01.2016 and the same came into force with effect from 01.01.2008 (since the litigation started from 01.01.2008 in respect of PCs (AR) and PCs (Special

Armed Reserve Central Police Lines) (SARCPL), who were appointed by transfer from the APSP):

“The seniority of Police Constables in Armed Reserve, appointed by transfer from Special Police Battalions shall be fixed giving weightage of one year of service for every completed two years of service rendered as Police Constables in Special Battalions, subject to a maximum of seven years.”

31. The learned Government Pleader took this court to the observations of the Division Bench in fixing seniority that seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre, are compatible with the authorities of the Hon'ble Apex Court. Nevertheless, the Division Bench extended its principles of equity to the employees of APSP, who are to be inducted in AR, on the basis of transfer, from one department to another department by directing the State, that the Government shall consider the feasibility of evolving a formula to extend the benefit of weightage of service rendered by the petitioners i.e., the Constables appointed to AR by transfer from special battalions, subject to certain limit, duly taking into account the interests of the Constables appointed through direct recruitment and other modes over the period. The Government, in strict adherence to the directions given by the Division Bench and to put a quietus to the issue, formulated a principle that the seniority of Police Constables in Armed Reserve, appointed by transfer from Special Police Battalions shall be fixed giving weightage of one year of service for

every completed two years of service rendered as Police Constables in Special Battalions, subject to a maximum of seven years. The Division Bench has taken into consideration all the issues in the batch writ petitions and directed the State to formulate a policy, that instead of extending benefit of the entire service rendered by the Constables of the special battalions, on being appointed on transfer as ARs, feasibility of extending the benefit of weightage, subject to certain limit, can be considered.

32. This court having considered the judgement of the Division Bench as reasoned and endowed with equities and the subsequent issuance of the impugned G.O.Ms.No.1, dated 07.01.2016, smacks no arbitrariness and issued to put a quite end to the perennial issue. No doubt, duty is cast upon the State to consider all the permutations and combinations in formulating a policy, which sometimes causes stress or difficulty on some sections of the employees, but the authorities of the Hon'ble Apex court shall prevail over, at the cost and interest of certain sections of employees. The law is well settled that a policy decision of a State shall not be interdicted by way of judicial review under Article 226 of Constitution of India, in the event the same is evolved on the principles of Article 14 of the Constitution of India and it is to be understood that the Courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity.

33. The Hon'ble Supreme Court in the case of "**D.P. Das Vs. Union of India**"⁴, has observed regarding seniority and promotion and observed at Para 24 of the judgement which reads as follows:

"Determination of seniority is a vital aspect in the service career of an employee. His future promotion is dependent on this. Therefore, the determination of seniority must be based on some principles, which are just and fair. This is the mandate of Articles 14 and 16." The impugned G.O. is rational, in the given circumstances of the case, the Government issued G.O. Ms. No. 01, Home (Legal.II) Dept, dtd: 07.01.2016 is appropriate to suit and balance the interests of all the parties in the 'lis'

34. Further, learned Government Pleader relied on the judgement of the Hon'ble Supreme court in "**State of H.P. v. Raj Kumar**"⁵, the relevant para on the Status of employee with State or Union is vividly explained by relying on a Constitutional Bench judgement in "**Roshan Lal Tandon v. Union of India**"⁶ and the same is reproduced hereunder :

23. It is in this background that the employment of a public servant is to be understood. Though the relationship between the employee and the State originates in contract, but by virtue of the constitutional constraint, coupled with the legislative and executive rules governing the service, the relation attains a unique position. Identifying such a relationship as being a 'status', as against a contract, this Court in Roshan Lal Tandon v. Union of India, explained what such

⁴ (2011) 8 SCC 115,

⁵ 2022 SCC OnLine SC 680

⁶ (1968) 1 SCR 185

a 'status' constitutes. We have extracted hereinbelow the exposition of the concept of 'status' as explained by the Constitution Bench for ready reference. In this case, the petitioner Roshan Lal Tandon was appointed as Train-Examiner - Grade 'D'. At the time when he joined the service, the promotion to the next post in Grade 'C' was governed by certain rules which later came to be amended. Questioning the amendment, he contended that he had a right to be promoted to Grade 'C' when he joined the service and such a right could not have been altered by way of a subsequent amendment. Rejecting this argument, this Court explained the relationship of Government employment as a 'status' as under:

"6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon

*the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are **fixed by the law** and in the enforcement of these duties, society has an interest...*

*7. We are therefore of the opinion that **the petitioner has no vested contractual right in regard to the terms of his service** and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case."*

35. The above decision would amply establish the 'Status' of an employee with the 'State or Union'. The decision needs to be read in context with the impugned G.O. and the judgement of the Division Bench in the batch writ petitions. Thus, when the impugned G.O. is well reasoned, neither smacked by arbitrariness nor unreasonable, interdiction by way of judicial review is unwarranted.

36. Further, in the case of "**Shitla Prasad Shukla v. State of U.P.**"⁷ the Hon'ble Apex Court held as follows:

"10. The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue. On principle the appellant cannot therefore succeed. What is more in matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent

⁷ 1986 Supp SCC 185

authority, so long as the competent authority has acted bona fide and acted on principles of fairness and fair play. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the Court will not overturn the determination unless it would be unfair not to do so..."

37. In **"Ganga Vishan Gujrati v. State of Rajasthan"** ⁸

Hon'ble Justice Dr. D.Y. Chandrachud speaking for the Court opined as under:—

"A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade as to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engineering Officers' Association v State of Maharashtra¹⁴. The principle was reiterated by this Court in State of Bihar v Akhouri Sachindra Nath¹⁵ and State of Uttaranchal v Dinesh Kumar Sharma¹⁶. In Pawan Pratap Singh v Reeven Singh¹⁷, this Court revisited the precedents on the subject and observed:

"45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

⁸ (2019) 16 SCC 28

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

38. The principle was reiterated by this Court in “**State of Bihar v. Akhouri Sachindra Nath**”⁹ and in the case of “**State of Uttaranchal v. Dinesh Kumar Sharma**”¹⁰. In **State of Bihar v. Arbind Jee**¹¹, the Hon’ble Supreme Court discussed on when notional seniority can be considered where the contesting parties were recruited through a common competitive process.

39. The learned Government Pleader for respondents relied on the decision in “**C. Jayachandran v. State of Kerala**”¹² to argue for retrospective seniority. The Hon’ble court in the context of a diligent litigant observed that:

“41The appellant has submitted the representation on 11-4-2012 i.e. within 1 year and 2 months of his joining and submitted reminder on 18-9-2014. It is the High Court which has taken time to take a final call on the representation of the appellant and other direct recruits. The appellant was

⁹ 1991 Supp (1) SCC 334

¹⁰ (2007) 1 SCC 683

¹¹ 2021 SCC OnLine SC 821

¹² (2020) 5 SCC 230,

prosecuting his grievances in a legitimate manner of redressal of grievances. Therefore, it cannot be said that the claim of the appellant was delayed as he has not claimed the date of appointment as 30-3-2009. The appellant having been factually appointed vide communication dated 22-12-2010, he could not assume or claim to assume charge prior to such offer of appointment. The appellant has to be granted notional seniority from the date the other candidates were appointed in pursuance of the same select list prepared on the basis of the common appointment process."

40. As can be seen from the above extracted passage, "*the benefit of notional seniority was claimed within one year from date of actual appointment*". This was also a case where the contesting parties were recruited through a common competitive process. But the present is not a case of recruitment by selection and is a compassionate appointment made on this court's order. The court's direction to the State was to appoint within one month without specifying that the appointment should have a retrospective effect. The respondent never raised any claim for relating his appointment to an earlier date from this Court. Post appointment, he never raised any grievance within reasonable time, for fixing his date of appointment as 20.11.1985. Six years later, only on 10.09.2002, he made a representation and the same was rejected with the observation that on 01.08.1985, the respondent was yet to enter service. Proceeding with these facts, it is clearly discernible that the respondent has slept over his rights, and never earlier pointedly addressed his present claim either to

the Supreme Court (in the earlier round) or to the State, soon after his appointment. Moreover, his was a compassionate appointment without any element of competitive recruitment where the similarly recruited has stolen a march over him. Therefore, the ratio in **C. Jayachandran** (supra) will be of no assistance to the respondent as that case is distinguishable on facts.

41. In **“Hariharan v. Harsh Vardhan Singh Rao”**,¹³ the Hon’ble Supreme court, at para 29, referred to paragraph 39 in N.R. Parmar that N.R. Parmar had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, **“Jagdish Ch. Patnaik v. State of Orissa,”**¹⁴; in **“Suraj Parkash Gupta v. State of J&K”**¹⁵ and in the case of **“Pawan Pratap Singh v. Reevan Singh”**¹⁶. These three judgements and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. Further, the Apex court opined that, the law on the issue is correctly declared in **“Jagdish case”** cited supra and consequently disapproved the norms on

¹³ 2022 SCC OnLine SC 1717

¹⁴ (1998) 4 SCC 456 : 1998 SCC (L&S) 1156],

¹⁵ (2000) 7 SCC 561 : 2000 SCC (L&S) 977]

¹⁶ (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481

assessment of inter se seniority, suggested in **“Union of India v. N.R. Parmar,”**¹⁷.

42. Accordingly, the decision in *N.R. Parmar* was overruled and made it clear that the decision *N.R. Parmar* will not affect the *inter se* seniority already based on *N.R. Parmar* and the same is protected and further observed that the decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.

43. Mr. G.V.Shivaji, learned counsel for the petitioner in W.P.(A.T) No.153 of 2021 placed on record the Memorandum dated 04.05.2001 issued by the Director General of Police, A.P, Hyderabad, which reproduced hereunder:

“SENIORITY OF THE P.Cs OF APSP TRANSFERRED TO DAR/CAR/SAR:

The seniority of the P.Cs of APSP selected and transferred to DAR/CAR/SAR will be fixed with reference to the date of their first appointment in APSP units as their transfers to DAR/CAR/SAR are ordered on administrative grounds and under specific provisions contained in the special rules covering the conditions of appointment by transfer in the Police force.

They are also eligible to appear for promotion tests conducted for ARPCs for promotion to the post of H.Cs in District (A.R)/CAR/SAR after completing the period of probation as P.Cs in DAR/CAR/SAR. The period of service rendered by the P.Cs in APSP shall also, be counted for the purpose of promotional tests to the next higher post.”

¹⁷ (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711

44. Whereas, Mr. Ch. Srinivas, learned counsel for the petitioners in W.P.(AT) No.651 of 2021 & batch would contend that if the unofficial respondents are given promotion soon after completion of Pre Promotional Training the chances of getting promotion to the post of AR HCs to the petitioners are very remote and the petitioners may not get promotion in near future and they will become far juniors to their juniors in the promotional posts. He further submits that even though the petitioners get promotions in future it adversely affects to future promotion to the petitioners for next higher posts. Therefore, Mr. Ch. Srinivas, learned counsel for the petitioners seeking a relief to direct the respondents not to promote the unofficial respondents as AR HCs before the petitioners are considered for promotion after completion of Pre Promotional Training. Further, it is observed that their case is supporting the version of the Government.

45. Whereas, Mr. K. Muralidhar Reddy, learned counsel for the petitioner in W.P.(A.T) No.552 of 2021 & batch would contend that the Director General of Police made recommendations for fixation of weightage formula for the purpose of further promotions to all the units, but the Government implemented the same and passed orders only in the case of Police Constables, who sought for transfer from A.P. Special Police to Armed Reserve, whereas in the case of transfer of Police Constables, who sought for transfer from Armed Reserve Civil Wing did not considered, which is highly

illegal and arbitrary. Further learned counsel for the petitioner placed on record the proceedings of the Director General of Police, A.P, Hyderabad dated 22.02.2014, which reproduced hereunder:

“7. The following formula is proposed for fixation of seniority

a).....

b) For PCs (Civil) (Men) appointed by transfer from PCs (AR/SAR CPL0 (Men).

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 nine years. For the purpose of calculation of weightage under this clause, fractions, if any are to be ignored.”

46. Therefore, Mr. K. Muralidhar Reddy, learned counsel for the petitioner seeking a relief to direct the Government to implement the recommendation of the Director General of Police made in Para 7(b) of his report dated 22.02.2014 by issuing orders in similar terms of G.O.Ms.No.1, dated 07.01.2016 in the case of transfer of Armed Reserve Police Constables to the Civil Wing and also for further promotions to the post of Head Constables by considering the petitioner for sending him to the pre-promotional training along with other unofficial respondents.

47. Whereas, Mr. G.V.S.Kishore Kumar, learned Government Pleader for the respondents has relied on a decision of the erstwhile High Court of Andhra Pradesh, Hyderabad in W.Ps.No.21610 and batch, dated 08.10.2013 as cited supra,

wherein the Division Bench of this Court made clear findings and further in W.P.No.14013 of 2019, wherein the learned Single Judge of this Court also relied on the decision of the Division Bench in W.P.No.21610 of 2007. Further basing on decision of this Court a committee was constituted to suggest a formula and the same was accepted and G.O.Ms.No.1 was issued. Therefore the G.O.Ms.No.1 Home (Legal.II) Department, dated 07.01.2016 is acted upon. Further, it is observed that the version of the writ petitioners in W.P(AT) Nos. Nos.66, 218, 286, 346, 608, 609 and 1673 of 2021 are supporting the version of the writ petitioners in WP (AT) No.153 of 2021 and 552 to 563, 568 to 570, 573 to 586, and 594 to 604 of 2021 are one and the same.

48. Having regard to the facts and circumstances of the case, considering the submissions of respective counsel and the law laid down in **Ganga Vishan Gujrati's** case (supra 8), this Court observed that the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. It is also observed that the seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant Service Rules. The seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it

may adversely affect the employees who have been appointed validly in the meantime. In the present case, some of the petitioners were joined the post and they were transferred to other places on deputation. But as per service Rules they cannot question the seniority.

49. In view of the foregoing discussion, the petitions filed by some of the writ petitioners in W.P.(AT) Nos.651 to 656 of 2021, 658 to 661 of 2021, 670 to 675 of 2021 are liable to be allowed and some of the writ petitions filed by the other petitioners in W.P.(AT) Nos.66, 218, 286, 346, 608, 609 and 1673 of 2021 and WP (AT) No.153 of 2021 and 552 to 563, 568 to 570, 573 to 586, and 594 to 604 of 2021 are liable to be dismissed.

50. Accordingly, the W.P.(AT) Nos.651 to 656 of 2021, 658 to 661 of 2021, 670 to 675 of 2021 are allowed. Consequently, the writ petitions in W.P.(AT) Nos.66, 218, 286, 346, 608, 609 and 1673 of 2021 and WP (AT) No.153 of 2021, and 552 to 563, 568 to 570, 573 to 586, and 594 to 604 of 2021 are dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall also stand closed.

DR.JUSTICE K. MANMADHA RAO

Date: 04.04.2023.

Note: L.R.Copy to be marked.

KK/Gvl

THE HON'BLE Dr.JUSTICE K. MANMADHA RAO

WRIT PETITION (A.T) Nos.66, 153, 218, 286, 346, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 568, 569, 570, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 608, 609, 651, 652, 653, 654, 655, 656, 658, 659, 660, 661, 670, 671, 672, 673, 674, 675 and 1673 of 2021.

Date: 04.04.2023.

Note: L.R.Copy to be marked

KK/ Gvl