

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

**AND**

**THE HON'BLE MRS. JUSTICE ANIS**

**WRIT PETITION No. 13312 OF 2004**

**ORDER:** *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Writ Petition is preferred by a Senior Inspector/Auditor of the Cooperative Department challenging the correctness of the view expressed by the Andhra Pradesh Administrative Tribunal in its order dated 06.02.2004 passed in O.A.No. 7106 of 1999.

The following facts are very relevant for our inquiry:

The petitioner appears to have been directly recruited to the service of the Cooperative Department of the State as a Junior Assistant on 11.08.1973. He was promoted on 08.01.1987 as a Senior Inspector. By about the year 1993, he seems to have crossed the age of 45 years. Initially, the State Government announced its policy decision through G.O.Ms.No. 165, General Administration (Service-C) Department, dated 22.04.1997 granting exemption, in case of those employees, who have crossed 45 years of age, from passing certain departmental tests, which are prescribed as a condition precedent either under the Special Rules or State and Subordinate Service Rules or Ad hoc Rules for getting promotion, but however, because of certain ambiguity contained therein, it resulted in litigation. Pursuant to a judgment rendered by this Court in a batch of Writ Petitions, the State Government has given a fresh look to the issue and framed a new Ad hoc Rule, in exercise of the power available to it under the proviso to Article 309 of the Constitution of India and published the same through G.O.Ms.No. 225, General Administration (SER.C) Department, dated 18.05.1999. The main limb of the newly framed Ad hoc Rule reads as under:

“ Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules or in the Special Rules or in Ad hoc Rules, the government employees who have crossed 45 (forty five) years of age shall be exempted from passing the departmental tests prescribed in the special rules or the ad hoc rules for the purpose of promotion to the next higher category i.e. promotion or appointment by transfer involving promotion to a post above the

one held by him or her, if they could not get even one promotion after their initial appointment.”

(highlighted for the purpose of this case)

Since the three provisos thereafter are not relevant for our inquiry, we have omitted them from consideration.

The question now required to be resolved by us is whether this Ad hoc Rule has any applicability to the case of the petitioner at all. In our opinion, it “does not”, for, the last clause of the Ad hoc Rule, which has set out that *if one could not get even one promotion after the initial appointment* holds the key to understand the rationale behind the policy of the State. The State is not granting some kind of a blanket exemption for its employees, who have crossed 45 years of age, from passing departmental or other tests prescribed under the Special Rules or Ad hoc Rules governing the conditions of service. A limited exemption is sought to be carved out in favour of such employees, who could not even get one promotion after their initial recruitment/appointment. This rule, it is so obvious, is intended to relieve the spirit of disappointedness to such of those employees, who have crossed their prime age of 45 years, in not passing the requisite tests to get at least one promotion. In the instant case, as we have noticed, the petitioner was appointed as a Junior Assistant on 11.08.1973 and he got one promotion on 08.01.1987. Therefore, the Ad hoc Rule is not attracted to a case of this nature.

Sri D. Govardhanachary, learned counsel for the petitioner would submit that the rule is intended to grant exemption for such of those employees, who have crossed 45 years of age and hence, whether one has got any promotion after one has crossed 45 years of age has to be examined. It is a very well-settled principle of law that by an interpretative process, the Court shall not expand or widen the policy choice of the State. So long as the policy is unambiguous and is expressed in clear terms, it is not the job of the Court to widen its net. As per the Ad hoc Rule, it is intended, no doubt, to grant a kind of an exemption in favour of such employees of the government, who could not get even one promotion and who have crossed 45 years of age and who could not pass the departmental or pre-requisite tests prescribed under the Ad hoc/Special Rules to enable them to get one promotion at least. Therefore, we are not in a position to concede the contention of Sri Govardhanachary.

There is another contention of Sri Govardhanachary which requires to be referred to, in that he places reliance upon the judgment rendered by a Division Bench in ***J. Parvathalu v. Andhra Pradesh Administrative Tribunal*** (W.P.No. 15590 of 2001) dated 01.11.2001. The learned Chief Justice *Sri S.B. Sinha* (as he then was) had occasion to consider the question whether retrospectivity should be given to the Ad hoc Rule in question or not in the aforementioned judgment. Such a question does not engage our attention in the present case and hence, the judgment rendered by the Division Bench, in our opinion, is not applicable to the present case scenario.

For all the aforesaid reasons, we do not find any merit in this Writ Petition and it is accordingly, dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

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**NOOTY RAMAMOHANA RAO, J**

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**ANIS, J**

12<sup>th</sup> October 2015

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