

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA  
PRADESH**  
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**Writ Petition No. 31302 of 2015**

- 1. V. Raja Sekhar
- 2. N. Ugrappa.

.... Petitioners  
Vs.

Prinicpal District Judge Anantapur and four others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 06.04.2016.

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN  
AND  
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

- 1. Whether Reporters of Local newspapers may  
be allowed to see the Judgments? -
- 2. Whether the copies of judgment may be marked  
to Law Reports/Journals Yes
- 3. Whether Their Ladyship/Lordship wish to see the  
fair copy of the Judgment? Yes

**JUSTICE RAMESH RANGANA1**

**\*THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN  
AND  
\*THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

-

**+ Writ Petition No. 31302 of 2015**

% Dated 06.04.2016

1. V. Raja Sekhar
2. N. Ugrappa.

.... Petitioners

Vs.

\$ Principal District Judge Anantapur and four others.

.... Respondents

! Counsel for the petitioners: Sri P.V. Krishnaiah

^ Counsel for respondents: Sri P. Ravi Prasad, Learned Counsel for the first respondent, and Sri J. Narayanaswamy, Learned Counsel for respondents 4 and 5; G.P. for Home(AP); GP for Social Welfare (AP).

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> HEAD NOTE:

? Citations:

- 1) AIR 1954 SC 207 = 1954 SCR 738
- 2) (2014) 1 SCC 603
- 3) AIR 1958 SC 86
- 4) (1983) 142 ITR 663: (AIR 1983 SC 603
- 5) (2003) 2 SCC 107
- 6) (2005) 6 SCC 499
- 7) AIR 1955 SC 425
- 8) AIR 1957 SC 882
- 9) AIR 1966 SC 1089
- 10) AIR 1959 SC 422
- 11) AIR 1965 SC 1321
- 12) (1984) 2 SCC 436
- 13) (1988) 1 SCC 572
- 14) (1995) 5 SCC 75
- 15) (2000) 6 SCC 293
- 16) (2000) 7 SCC 695
- 17) (2001) 6 SCC 634
- 18) (2001) 8 SCC 509
- 19) (2002) 7 SCC 484
- 20) (2003) 1 SCC 72
- 21) (2004) 7 SCC 166
- 22) (1970) 2 SCC 355
- 23) (1995) 2 SCC 745 = AIR 1995 SC 1371
- 24) 2015(2) AWC 1354 (SC)
- 25) (2015) 10 SCC 292
- 26) (2003) 5 SCC 604
- 27) (1978) 1 SLR 844 (Allahabad HC)
- 28) (1992) Supp 3 SCC 217
- 29) (2010) 7 SCC 234
- 30) (1982) 2 SLR 307
- 31) (1989) 4 SLR 257
- 32) (2004) 9 SCC 165
- 33) (1989) 4 SCC 318
- 34) (2003) 3 SCC 321
- 35) AIR 1962 SC 386
- 36) AIR 1967 SC 1910
- 37) (1996) 8 SCC 105

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN  
AND  
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

-

**W.P.No.31302 of 2015**

**ORDER:** (per Hon'ble Sri Justice Ramesh Ranganathan)

A mandamus is sought in this Writ Petition to declare the proceedings dated 09.09.2015, and the consequential proceedings dated 10.09.2015, issued by the Principal District Judge, Anantapur as arbitrary, illegal, discriminatory, void and as contrary to Rules 22 and 23 of the Andhra Pradesh State and Subordinate Service Rules ("Rules" for short), and to set them aside. A consequential direction is sought to the 1<sup>st</sup> respondent to allow the petitioners to continue as Senior Assistants pursuant to their promotion vide proceedings dated 23.05.2015.

Facts, to the extent necessary, are that the 1<sup>st</sup> petitioner herein was appointed as a Junior Assistant on 01.12.1997, and the 2<sup>nd</sup> petitioner was appointed as a Junior Assistant on 18.09.1998. It is the petitioners' case that the cadre strength of Senior Assistants in Anantapur District is 17; Rule 22 of the Rules was amended by G.O.Ms. No.123, G.A. (Ser.D) Department dated 19.04.2003, with effect from 14.02.2003, providing for reservation in promotion to members of the Scheduled Castes and the Scheduled Tribes at 15% and 6% respectively; three posts of Senior Assistants was required to be filled up by promotion from amongst the members of the Scheduled Castes, and one post of Senior Assistant from amongst members of the Scheduled tribes; as, at the time of effecting promotions, three posts of Senior Assistants were not held by members of the Scheduled Castes, the 1<sup>st</sup> respondent was obligated to follow the rule of reservation till the required percentage was obtained, and all the reserved posts were filled up; the process of effecting promotion, to the post of Senior Assistants, was initiated by the 1<sup>st</sup> respondent on 01.09.2014, on which date there was only one Senior Assistant from the Scheduled Caste category, and one Senior Assistant from the Scheduled Tribe category, in the District; as three posts of Senior Assistants were reserved in favour of the Scheduled Castes, and there was only one member of the Scheduled Castes holding the post of Senior Assistant, the rule of reservation, as prescribed under Rule 22 of the Rules, should have been adhered to and two posts of Senior Assistants should have been filled up from amongst the Scheduled Castes; and failure of the 1<sup>st</sup> respondent, to comply with Rule 22 of the Rules, is in violation of Article 16(4) of the Constitution of India.

The 1<sup>st</sup> respondent, vide proceedings dated 23.05.2015, appointed both the petitioners herein as Senior Assistants under the Scheduled Castes category. Thereafter, a representation was submitted by Sri T. Prabhakar-4<sup>th</sup>

respondent herein on 03.06.2015 contending that, the eight vacancies of Senior Assistants, which were filled up by proceedings dated 23.05.2015, was from roster point No.53 to roster point No.60, in the cycle of 100 roster points stipulated under Rule 22(e) of the Rules; roster point Nos. 53 to 60 did not contain a roster point for members of the Scheduled Castes; both the petitioners were juniors to him; he was also a law graduate; and, as such, he should have been promoted as a Senior Assistant in one of the eight vacancies.

The 1<sup>st</sup> respondent issued notice dated 23.06.2015 calling upon the petitioners herein to submit their objections, if any, to the representation submitted by the fourth respondent. In his representation dated 04.07.2015, the 2<sup>nd</sup> petitioner sought information regarding the total strength of Senior Assistants; how many Scheduled Caste and Scheduled Tribe candidates were promoted as Senior Assistants from 14.02.2003 to 23.05.2015; and with whom the community roster point Nos.41, 47 and 52 were filled up in the category of Senior Assistants. The 2<sup>nd</sup> petitioner requested the 1<sup>st</sup> respondent to furnish information, and grant him thirty days time to submit his objections. In reply the 1<sup>st</sup> respondent, by proceedings dated 09.07.2015, granted the 2<sup>nd</sup> petitioner time till 31.07.2015, and informed him that, since he was not an aggrieved party to the proceedings dated 23.05.2015, the information sought for by him could not be supplied; and his request, on that aspect of the matter, was rejected. The 2<sup>nd</sup> petitioner submitted elaborate objections by his letter dated 30.07.2015, and requested the 1<sup>st</sup> respondent to reject the representation submitted by Sri T. Prabhakar (the 4<sup>th</sup> respondent herein).

In his proceedings dated 09.09.2015 the 1<sup>st</sup> respondent stated that G.O.Ms. No.2 Social Welfare (SW.RORI) Department, dated 09.01.2014 stipulated that, if there is inadequacy of representation, Scheduled Caste candidates should be promoted based on the roster; picking up promotees under the Schedule Castes roster point, beyond 53 to 60, does not arise; and, in order to uphold G.O.Ms. No.2 in its entirety, both the petitioners were being reverted to the category of Junior Assistants. The petitioners were asked to wait for their turn, and the next candidates in the gradation list i.e., Sri T. Prabhakar and Sri T. Upendra (respondents 4 and 5 herein) were promoted as Senior Assistants by way of a separate order. Aggrieved thereby, the petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

In his counter-affidavit the 1<sup>st</sup> respondent states that the petitioner has an

alternative remedy of a departmental appeal on the administrative side under Rule 23 of the Rules; he did not act arbitrarily, much less violate Rule 22(1)(ii) of the Rules; the total cadre strength of Senior Assistants, in the unit of the District Judge, Anantapur, is 17; applying the reservation percentage of 15% for the Scheduled Castes, and 6% for the Scheduled Tribes, the posts reserved for the SCs & STs comes to 3 and 1 respectively from out of the total cadre strength; one SC candidate and one ST candidate were working on the crucial date i.e. 01.09.2014; as such, there was inadequacy of two SC candidates; the process of selection, for effecting promotion from the category of Junior Assistants/Typists/Field Assistant was taken up in the month of May, 2015 to fill up eight vacancies in the higher category of Senior Assistants at the Roster Points between R.P.53 and R.P.60; R.P.No.56 is reserved for persons with disabilities as per G.O.Ms.No.23 dated 26.05.2011, and G.O.Ms.No.42 dated 19.10.2011; Sri P. Venkatesh, Junior Assistant, who is physically challenged, was selected for the said vacancy; the senior most Field Assistant Smt. B.C. Nagamani was selected for promotion to the post of Senior Assistant against the 4th vacancy, in the 6 vacancies cycle, as per G.O.Ms. No.100, Law (LA&J Home Courts-D) Department, dated 08.08.2013; four senior most Junior Assistants/Typists were selected for promotion as Senior Assistants, from out of the OC list, to fill up four vacancies; though there were no Roster Points between 53 and 60, two SC candidates Sri V. Rajasekhar and Sri N. Ugrappa, (petitioners herein) were selected as Senior Assistants in order to reach adequacy of SC candidates in the total cadre strength of Senior Assistants i.e. 17 posts; G.O.Ms. No.2 dated 09.01.2004 and G.O.Ms. No.18 dated 17.02.2005 were not placed ~~when~~ when selection, for promotion to the posts of Senior Assistants, was taken up during May, 2015; these two G.Os. were not followed, and the petitioners were erroneously promoted as Senior Assistants vide proceedings dated 23.05.2015; they were promoted under the bonafide impression that there was inadequate representation of two SC candidates, and that two SC candidates should be promoted; in terms of the note under para 7 of G.O.Ms. No.2 dated 09.01.2004, read with G.O.Ms.No.1 S, SW (SW.ROR1 Dept, dated 17.02.2005, once adequacy is achieved to the required percentage of 15% in respect of SCs and 6% in respect of STs in a category, the rule of reservation in promotions is required to be stopped, and promotions thereafter shall be effected based on merit cum seniority; as per the Note, promotions ought not to have been given to the petitioners, since both of them were far juniors to respondents 4 & 5, and since there were no SC Roster Points between R.P. No.53 and 60 for which the

promotions were taken up; the 4th respondent Sri T. Prabhakar submitted an application on 03.06.2015 stating that, though he was at Serial No.5 in the seniority list and there were eight vacancies, he was not selected for promotion to the post of Senior Assistant, two SC candidates, who were juniors to him, were promoted as Senior Assistants under the SC category without a Roster Point, and those two candidates were not eligible for promotion under the Rules as there was no Roster Point in between RP. No.53 and 60; he relied on G.O.Ms. No.2, SW (SW.ROR-I) Department dated 09.01.2004 stating that, if there is adequacy of SC representation, promotions shall be effected based on general seniority and merit; if there is inadequacy of representation, SC candidates shall be promoted based on the Roster; and since there was no Roster Points, in between RP 53 and RP 60, for the Scheduled Castes, promoting the petitioners, who were juniors to him, was not correct; considering the representation of the 4th respondent, objections were called for from the petitioners; in their objections, submitted in reply thereto, the petitioners had stated that hardly 5 to 6 persons were promoted to the higher category based on the Rule of Reservation; the rest of the Roster Points 41, 47 and 52 must be filled with persons belonging to the SC category only, but the above Roster Points were filled with persons belonging to other communities, instead of SCs/STs; the previous proceedings should be revised and, in order to reach adequacy, they should be given promotions in the SC category; they further stated that, in terms of para 4B of G.O.Ms.No.76, SW (SW.ROR.I) Dept, dated 19.10.2004, the adequacy or otherwise of representation should be counted in respect of each category of posts, but not for the department as a whole; based on the seniority gradation list, hardly 4 to 5 persons were promoted to higher categories applying the rule of reservation; the cycle point Nos. 41, 47 and 52 should have been filled 'with SC candidates only; if eligible SC/ST candidates for promotions were not available as on the date of promotions, the vacancy should have been carried forward to the subsequent year as per G.O.Ms. No.770, GAD (Ser.B) dated 15.11.1975; and promotions should be given to the SC/ST candidates subject to their fitness, but not on merit and ability.

The 1<sup>st</sup> respondent further stated that the total cadre strength of Senior Assistants, in the Unit of the District Judge, Anantapur, is 17 posts; in order to fill up 8 vacancies of Senior Assistants, by promotion from the posts of Junior Assistant/Typist/Field Assistant, interviews were conducted; the number of posts required to be reserved for SCs/STs was 3 and 1 respectively for the total cadre

strength; out of the working strength of nine Senior Assistants, one candidate each, from the SC/ST category, was working as on the crucial date i.e. 01.09.2014; the SC Roster points, as per the 100 point roster for reservation in promotion of SCs from R.P. Nos.1 to 52, are R.P. Nos.2, 7, 16, 22, 27, 41, 47 and 52; seven of the said eight roster points were filled up by the SCs; by proceedings dated 24.02.2014, one OC candidate Smt. C.S. Ramadevi was promoted, though R.P. No.52 was reserved for SC, since adequacy was reached with three SC candidates by that time i.e., Sri M. Sanjeevappa, Smt. B. Vimala Kumari and Sri A. Narasimhulu; as per their seniority and merit, two SC candidates were also promoted in the 100 point Roster i.e. R.P. No.6 Sri K. Vijaya Kumar and R.P. No.28 Smt. K. Munemmma; the contention that hardly 5 to 6 candidates were promoted to the higher category, based on the rule of reservation, is baseless and incorrect; the petitioners have not referred to any Rule in support of their objection that, in order to ensure adequacy of representation of SC candidates, they are entitled to be promoted though there was no Roster Point for SC candidates; they contended that filling up the Roster Points meant for SCs, with other categories including OC, on the ground of adequate representation of SC & ST, instead of carrying forward the same to the next year of selection by promotion, is against the spirit and purport of G.O.Ms. No.2 dated 09.01.2004 read with G.O.Ms. No.18 dated 17.02.2005; the 4<sup>th</sup> respondent had rightly stated that in terms of G.O.Ms. No.2, if there is inadequacy of representation, SC candidates shall be promoted based on the roster; that being the case, picking up the petitioners under SC roster point, beyond the Roster point between 53 and 60, does not arise; in order to uphold G.O.Ms. No.2 in its entirety the petitioners, who were promoted under the SC category, were reverted asking them to await their Roster Point; the 4<sup>th</sup> and 5<sup>th</sup> respondents, who were above them in the seniority list, were promoted; the District Judge, being the appointing authority, had rectified the earlier mistake in promoting the petitioners as Senior Assistants; the petitioners' contention, that the remedy available to 4<sup>th</sup> respondent was only to file an appeal before the higher authority under Rule 23, and not to make a representation to the 1<sup>st</sup> respondent at the stage when the period of probation of the petitioners was at the threshold, is not tenable; when an inadvertent mistake was noticed subsequently, the appointing authority rectified it; as the mistake was rectified, the 4<sup>th</sup> respondent was not required to approach the appellate authority by way of an appeal; the 2<sup>nd</sup> petitioner submitted his representation to the 1<sup>st</sup> respondent on 04.07.2015

requesting him to furnish the information mentioned in the affidavit; the 2nd petitioner was informed, by proceedings dated 10.07.2015, that, since he was not an aggrieved person to the proceedings dated 23.05.2015 by which he was promoted, the information sought for could not be supplied to him; as the petitioners have an efficacious alternative remedy of a departmental appeal on the administrative side, the Writ Petition is not maintainable; and the proceedings of the 1<sup>st</sup> respondent dated 09.09.2015 is in accordance with the Rules.

In his counter-affidavit, the 4<sup>th</sup> respondent stated that he and the 5<sup>th</sup> respondent were selected by the A.P. Public Service Commission in the year 1996, and allotted to the Judicial department of Anantapur; both of them had reported for duty in the month of February, 1996; petitioners 1 and 2 were selected under a recruitment made by the District Selection committee; both of them had reported for duty in December, 1997, and September, 1998 respectively; the 4<sup>th</sup> and 5<sup>th</sup> respondents were above them in the seniority list of junior assistants; the 1<sup>st</sup> respondent called for interview for appointment to eight posts of Senior Assistants; he issued posting orders, vide proceedings dated 23.05.2015, promoting the petitioners to the 7<sup>th</sup> and 8<sup>th</sup> posts though there was no roster point for SC candidates; aggrieved thereby, he submitted representation dated 03.06.2015 to the 1<sup>st</sup> respondent; by then, the petitioners had not been relieved from their designated posts of Junior Assistants; the 1<sup>st</sup> respondent concluded that a wrong note was put up by the district administration, and thereby the petitioners were promoted as Senior Assistants by-passing the 4<sup>th</sup> and 5<sup>th</sup> respondents; he, accordingly, issued revised orders reverting the petitioners, and promoting the 4<sup>th</sup> and the 5<sup>th</sup> respondents as Senior Assistants; Rule 22(2)(i)(c) of the Rules stipulates that filling up the roster points shall continue till the required percentage of Scheduled Caste and Scheduled Tribe candidates is obtained; once the required percentage is obtained, further adjustment of the Scheduled Caste and Scheduled Tribe employees against the roster points has to be stopped; the Government issued G.O.Ms. No.2 dated 09.01.2004 explaining how to follow the rule of reservation in promotion; the crucial date, for implementing the rule of reservation in promotion, is 14.02.2003 i.e., the date of issue of G.O.Ms. No.5 dated 14.02.2003; obtaining adequacy is not the criteria in applying the rule of reservation; the criteria for applying the rule of reservation is only on the basis of the roster point earmarked to them; there is no roster point in favour of the Schedule Castes from RP.53 to RP.60; the 1<sup>st</sup>

respondent strictly followed the rules and the roster points; Scheduled Caste candidates are entitled to get 15 posts in a cycle of 100 posts i.e., when 100 posts are filled up by promotion, 15 Scheduled Caste candidates shall be represented at the relevant earmarked roster points; when there is adequacy of representation, there is no need to follow the rule of reservation; accepting the petitioners contention would mean that introduction of the roster point system is unnecessary; the 1<sup>st</sup> respondent has not violated Articles 14, 16 and 21 of the Constitution of India or Rule 22 of the Rules; the 1<sup>st</sup> respondent has furnished details of the Scheduled Caste candidates since the date from which the G.O. came into force; this clearly shows that, out of the present 60 promotees in the cadre of Senior Assistants, 10 SC candidates have been promoted i.e., 7 SC candidates under the rule of reservation and 3 SC candidates under seniority (OC category); though only 15 SC candidates are required to be promoted in 100 posts, 10 SC candidates, out of 60 posts, have been promoted; adequacy of representation has thus been achieved by promoting more than 15% from the members of the Scheduled Castes; the available SC roster points, in the remaining future 40 posts, are 7 i.e., R.P. No.62, 66, 72, 77, 87, 91, 97; the respondents have not violated principles of natural justice in passing the impugned order dated 09.09.2015; and the petitioners have approached this Court without exhausting the alternative remedy available to them.

Sri P.V. Krishnaiah, Learned Counsel for the petitioners, would submit that, in view of Rule 23 of the Rules, the 1<sup>st</sup> respondent, who had earlier vide proceedings dated 23.05.2015 promoted the petitioners as Senior Assistants following the rule of reservation against vacancies earmarked for the Scheduled Caste Category under the 100 point roster prescribed under Rule 22 of the Rules, lacked jurisdiction to review/rescind/cancel the promotions; the representation/review petition filed by the 4<sup>th</sup> respondent was not maintainable; 1<sup>st</sup> respondent should not have entertained the representation/review petition filed by the 4<sup>th</sup> respondent as the order of promotion, issued by him earlier, could only have been modified or set aside by the appellate authority, that too if an appeal was filed; and all the proceedings initiated by the 1<sup>st</sup> respondent, pursuant to the representation/review petition filed by the 4<sup>th</sup> respondent, is liable to be set aside as being arbitrary, illegal, void, without jurisdiction, and as contrary to Rule 23 of the Rules.

On the other hand both Sri P. Ravi Prasad, Learned Counsel for the first respondent, and Sri J. Narayanaswamy, Learned Counsel for respondents 4 and 5, would submit that the first respondent is competent to exercise powers under Rule 27(5) of the A.P. Judicial Ministerial Service Rules, 2003, and has the right to revert, to a lower category, any person promoted under Rule 22(2)(i) of the Rules at any time without assigning any reasons, and without notice; on the basis of the said rule, the first respondent had correctly rectified the previous mistake; the petitioners' contention that the first respondent lacked jurisdiction, to entertain the representation, is not tenable as the first Respondent had sought to rectify the mistake/erroneous order passed earlier without considering G.O.Ms. Nos. 2 and 18; the Writ Petition is not maintainable as the petitioners have not exhausted the alternative remedy available to them by way of a departmental appeal, on the administrative side, under Rule 23 of the Rules; and the petitioners can raise all the contentions, urged in this Writ Petition, before the appellate authority also.

Rule 27 of the A.P. State Judicial Ministerial Service Rules relates to temporary promotions, and sub-rule (1)(i) thereof enables the appointing authority to promote a person temporarily, otherwise than in accordance with these Rules, where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category of the service by promotion from a lower category, and there would be undue delay in making such promotion in accordance with these rules. Rule 27(2) enables the appointing authority, where it is necessary to fill a short vacancy in a higher category in any division of the service by promotion from a lower category and the appointment of the person who is entitled to such promotion under these rules would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, to promote any other person who possesses the qualifications, if any, prescribed for the higher category. Rule 27(5) confers a right on the appointing authority to revert to a lower category any person promoted under sub-rule (1) or sub-rule (2) at any time without assigning any reason and without notice. As the power conferred by Rule 27(5), to revert a person to a lower category without assigning any reasons and without notice, is applicable only to temporary promotions made under Rule 27(1) and (2), and as the subject promotions are not promotions made under Rule 27, reliance placed on Rule 27(5) of the Judicial Ministerial Service Rules to justify the action of the 1<sup>st</sup> respondent, in reverting the petitioners to the

category of Junior Assistants, is misplaced.

Rule 23 of the Rules stipulates that an order appointing a member of a service, or a class of service or category, to a higher post by transfer or by promotion may, within a period of six months from the date of such order, be revised by an authority to which an appeal would lie against the order of dismissal passed against a member of a service, class or category; and such revision may be made by the appellate authority, either on its own motion or on an appeal filed by the aggrieved member of the service, class or category. Under the first proviso thereto, the Government may, irrespective of whether they are the appellate authority or not, revise such order of appointment after the expiry of the period of six months aforesaid, for special and sufficient reasons to be recorded in writing. Under the second proviso, no order under Rule 23 shall be passed unless the person likely to be affected by such revision is given an opportunity of making his representation against the proposed revision. Under the third proviso a member of service may submit a revision petition against the order of the appellate authority, within three months of the order passed by him, to the Government.

It is no doubt true that against the earlier order dated 23.05.2015 the 4<sup>th</sup> respondent, who submitted a representation to the District Judge, had the remedy of an appeal to the Government. Likewise the petitioners herein also had the remedy of an appeal against the order passed by the District Judge promoting respondents 4 and 5 as Senior Assistants, and reverting them as Junior Assistants. It is also true that the remedy, provided under Article 226 of the Constitution, is discretionary and the High Court has always the discretion to refuse to grant any Writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. (**K.S. Rashid and Son v. Income Tax Investigation Commission**<sup>[1]</sup>). It is also within the discretion of the High Court, after examining various documents and the evidence to the transaction, to grant relief under Article 226 despite the existence of an alternative remedy, more so where there are no disputable questions of fact and the jurisdictional error, committed by the respondent authorities, is on account of mis-appreciation of the law and the statutory provisions. (**CIT v. Chhabil Dass Agarwal**<sup>[2]</sup>; **State of U.P. v. Mohd. Nooh**<sup>[3]</sup>; **Titaghur Paper Mills Co. Ltd. v. State of Orissa**<sup>[4]</sup>; **Harbanslal Sahnia v. Indian oil Corpn. Ltd.**<sup>[5]</sup>; **State of H.P. v. Gujarat Ambuja Cement Ltd.**<sup>[6]</sup>; **K.S. Rashid and Son**<sup>1</sup>; **Sangram Singh v. Election**

Tribunal<sup>[7]</sup>; **Union of India v. T.R. Varma**<sup>[8]</sup>; **K.S. Venkataraman and Co.(P) Ltd. v. State of Madras**<sup>[9]</sup>; **N.T. Veluswami Thevar v. G.Raja Nainar**<sup>[10]</sup>; **Municipal Council, Khurai v. Kamal Kumar**<sup>[11]</sup>; **Siliguri Municipality v. Amalendu Das**<sup>[12]</sup>; **S.T. Muthusami v. K. Natarajan**<sup>[13]</sup>; **Rajasthan SRTC v. Krishna Kant**<sup>[14]</sup>; **Kel'ala SED v. Kurien E. Kalathil**<sup>[15]</sup>; **A. Venkatasubbiah Naidu v. S. CheUappan**<sup>[16]</sup>; **L.L. Sudhakar Reddy v. State or A.P.**<sup>[17]</sup>; **Shri Sant Sadguru Janardan Swami (Moingiri Mabara) Sahakari Dugdha Utpadak Sanstha v. State or Maharashtra**<sup>[18]</sup>; **Pratap Singh v. State of Haryana**<sup>[19]</sup>; and **GKN Driveshafts (India) Ltd. v. ITO**<sup>[20]</sup>).

The rule of exclusion of the writ jurisdiction, in view of the existence of an alternative remedy, is not a rule of compulsion. (**Harbans Lal Sahnia**<sup>5</sup>; **Gujarat Ambuja Cement**<sup>6</sup>). When, on undisputed facts, the authorities are shown to have assumed jurisdiction which they do not possess, a writ petition can be entertained. (**Gujarat Ambuja Cement**<sup>6</sup>). Some exceptions to the rule of alternative remedy have been recognized i.e. where the statutory authority has not acted in accordance with the provisions of the enactment or in defiance of the fundamental principles of judicial procedure etc. (**Chhabil Dass Agarwal**<sup>2</sup>). The existence of an alternative remedy is merely a factor to be considered, and would not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. (**S.J.S. Business Enterprises (P) Ltd. v. State of Bihar**<sup>[21]</sup>).

If the High Court has entertained a petition despite availability of an alternative remedy, and has heard the parties on merits it would, ordinarily, not be justified in dismissing the Writ Petition on the ground of non-exhaustion of the statutory remedies unless it finds that factual disputes are involved, and it would not be desirable to deal with them in a Writ Petition. (**L. Hirday Narain v. Income Tax Officer, Bareilly**<sup>[22]</sup>; **Gujarat Ambuja Cement Ltd**<sup>6</sup>). No disputed questions of fact arise for consideration in this Writ Petition, and the dispute only involves interpretation of certain Rules and executive instructions relating to reservation in promotion in favour of the Scheduled Castes. As we have heard the matter elaborately on merits, and are satisfied that larger questions of public importance arise for consideration herein, we see no reason to exercise

discretion to relegate the petitioners to the statutory remedy of an appeal under Rule 23 of the Rules.

Sri P.V. Krishnaiah, Learned Counsel for the petitioners, would submit that G.O.Ms.No.2 dated 09.01.2014 does not expressly stipulate, nor is there any scope to interpret it in a manner, that the rule of reservation should be implemented only if a roster point arises with reference to the posts for which promotion is made at a particular time; the contention that the petitioners promotion as Senior Assistants, following the rule of reservation, is illegal on the sole ground that, between roster point Nos.53 to 60, no roster point in favour of the Scheduled Castes is available, is not tenable; such an interpretation would violate Article 16(4) of the Constitution of India; as the rule of reservation is prescribed for promotions also, the first respondent was required to implement the rule of reservation, and show the names of the petitioners against the available roster points in the 100 point roster; it is irrelevant whether or not there is any roster point for the Scheduled Castes between roster point Nos.53 to 60, as the very purpose of prescribing roster points is to ensure that reservation, provided under law, is strictly implemented; G.O. Ms. No.2 dated 09.01.2014 is no longer applicable as, after the said G.O. was issued under Article 162 of the Constitution of India, the State Government made appropriate amendments to Rule 22 of the Rules invoking its power under the proviso to Article 309 of the Constitution of India; the contention that the petitioners' promotion, following the rule of reservation, is contrary to GO Ms. No.2 dated 09.01.2014 is not tenable; and the issue regarding rule of reservation, and effecting promotions following the rule of reservation under the roster point system, has been considered by the Constitutional Bench of the Supreme Court in **R.K. Sabharwal v. State of Punjab**<sup>[23]</sup>).

On the other hand both Sri P. Ravi Prasad, Learned Counsel for the first respondent, and Sri J. Narayanaswamy, Learned Counsel for respondents 4 and 5, would submit that the total cadre strength of Senior Assistants, in the unit of the District Judge, Ananthapur, is 17; for 15% and 6% reservation for SCs and STs respectively, required three posts to be reserved in favour of the S.Cs, and 1 in S from out of the total cadre strength of 17, one Scheduled Caste and 1 Scheduled Tribe candidate were working on the prescribed cut off date i.e. 1.9.2014 and, as such, there was inadequacy of 2 SC candidates; selection was taken up for promotion to eight posts of Senior Assistants, from the posts of Junior Assistants / Typists / Field Assistants, in the

month of May, 2015 from roster point Nos.53 to 60; though there were no roster points between 53 and 60, two SC candidates i.e., the Petitioners herein were selected in order to reach adequacy of SC candidates in the total cadre strength of 17 posts of Senior Assistants; when the selection process, for promotion to the post of Senior Assistants was taken up G.O.Ms.No.2, SW(SW.ROR-I) Department, dated 09.01.2004, and G.O.Ms.No.18, SW(SW.ROR-I) Department dated 17.2.2005, were not considered; the petitioners herein were erroneously promoted as Senior Assistants, vide proceedings in Dis.No.C240, dated 23.5.2015, under the impression that there was inadequate representation of SC Candidates, and that two SC candidates should be promoted; the representation dated 3.6.2015, submitted by the 4<sup>th</sup> Respondent, was considered in view of G.O.Ms.No.76 SW(SW.ROR-I) Department, dated 19.10.2004; the SC Roster points, as per the Roster Register prescribed reservation in promotion in SCs/STs, under the order from 1 to 52 are : RPs 2, 7, 16, 22, 27, 41, 47 and 52 (Total 8 roster Points); the said SC Roster Points were filled with the following individuals: (i) R.P.2 - Smt. G.Premleela Rani (SC), (ii) R.P. 7 - Sri D.Narasimhulu (SC), (iii) R.P. 16 - Smt. B.Aruna Kumari (SC), (iv) R.P. 22 - Sri P. Prakasam Babu (SC), (v) R.P. 27 - Smt. M. Umadevi (SC), (vi) R.P. 41 - Sri M.Sanjeevappa (SC), (vii) R.P. 47 - Sri A. Narasimhulu (SC), and (viii) R.P. 52 - Smt.C.S.Ramadevi (OC); in the promotion effected from the Junior 'Assistants to the Senior Assistants' cadre, under Order A.No.25/2014 in Dis.No.1519 dated 24.02.2014, one OC Candidate Smt. C.S.Ramadevi was promoted though RP No.52 was reserved for SC, since adequacy was reached with three SC Candidates by that time, i.e., (1) Sri M. Sanjeevappa, (2) Smt.B. Vimala Kumari and (3) Sri A.Narasimhulu; two SC Candidates were promoted in the OC Roster Points as per seniority and merit i.e., RP No.16 Sri K.Vijaya Kumar and RP No. 28 Smt. K. Munemma; as envisaged in G.O.Ms.No.2 SW(SW.ROR-I) Department dated 09.01.2004, read with G.O.Ms.No.18 SW(SW.ROR-I) Department dated 17.02.2005, if there is inadequacy of reservation, SC candidates shall be promoted based on the Roster; as there is no Roster Point between 53 and 60, the order promoting the Petitioners does not arise; in order to ensure compliance with G.O.Ms.No.2 SW(SW.ROR-I) Department dated 09.01.2004, and G.O.Ms.No.18 SW(SW.ROR-I) Department dated 17.02.2005, both the Petitioners herein were reverted; if the Petitioners are aggrieved by the implementation of G.O.Ms. No.2 SW(SW.ROR-I) Department dated 09.01.2004, and G.O.Ms.No.18 SW(SW.ROR-

l) Department dated 17.02.2005, they ought to have challenged its validity; and in view of the Note to para 7 of G.O.Ms.No.2 SW(SW.ROR-1) Department, dated 09.01.2004, read with G.O.Ms.No.18 SW(SW.RORII) Department dated 17.02.2005, promotions ought not to have been given to the petitioners, as both of them are juniors to respondents 4 & 5, and there were no SC Roster Points between 53 and 60 for which promotions were taken up to fill up eight posts of Senior Assistants.

Article 16 of the Constitution of India empowers the State to take affirmative action in favour of members of the Scheduled Castes and the Scheduled Tribes, providing reservation in their favour in employment under the Union or the State (or for that matter, public sector undertakings or authorities which are treated as a "State" under Article 12 of the Constitution). Article 16(4) of the Constitution enables the concerned State to provide reservation in appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. The laudable object, underlying these provisions, should be borne in mind while undertaking any exercise touching upon the issues of reservation for SC/ST employees. Such reservation is not restricted only to the entry level, but is also permissible in matters of promotions. Clauses (4) and (4A) of Article 16 of the Constitution are enabling provisions which permit the State to make provision for reservation, including promotion, in favour of the members of the Scheduled Castes and the Scheduled Tribes if, in the opinion of the State, they are not adequately represented in the services under the State. It is for the State to act in a given situation and take affirmative action. (**Chairman and Managing Director, Central Bank of India v. Central Bank of India SC/ST Employees Welfare Association** <sup>[24]</sup>).

Articles 16(4) and 16(4A) should be read with Article 335 of the Constitution which deals with the norms for appointment of the Scheduled Castes and the Scheduled Tribes to services and posts, and lays down that the claims, of members of the Scheduled Castes and the Scheduled Tribes, shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. (**S. Panneer Selvam v. State of Tamil Nadu** <sup>[25]</sup>). Affirmative action, in terms of Article 16(4) & (4-A) of the Constitution, is meant to provide representation to a class of citizens who are socially or economically backward. (**Bimlesh Tallwar v. State of Haryana** <sup>[26]</sup>).

Rule 4, of the Andhra Pradesh Judicial Ministerial Service Rules, stipulates that the permanent cadre of each category in each unit shall be determined by the State Government as suggested by, and with the concurrence of, the High Court. Rule 5 stipulates that the service shall consist of the following categories of posts in the Andhra Pradesh Judicial Ministerial Service, and includes Senior Assistants in Category-III and Junior Assistants in Category-IV. Rule 6 prescribes the method of appointment and the appointing authority. For the post of Senior Assistant the method of appointment is by promotion of Junior Assistants (Category-IV), Personnel Assistants (category-V), and Typists (Category-VI) from a combined seniority list, and the appointing authority is the District Judge. Rule 7, which relates to reservation in appointment, stipulates that the rule of special representation (General Rule 22(A) of the Andhra Pradesh State and Subordinate Service Rules, 1996), shall apply.

The Government of Andhra Pradesh issued G.O.Ms. No.5 Social Welfare (SW.ROR.1) Department dated 14.02.2003 providing reservation in promotion to ensure adequate representation of the Scheduled Caste and Scheduled Tribe employees i.e., 15% and 6% respectively in all categories of posts. They directed that reservation shall be implemented in favour of the Scheduled Castes and the Scheduled Tribes in promotion to all categories of posts in State Government departments with immediate effect; such reservation was applicable to all categories or cadres whose strength was more than five; the existing 100 point roster, already prescribed in Rule 22 of the Rules by the State Government, should be applied to all categories where reservation in promotion is provided in favour of the Scheduled Castes and the Scheduled Tribes; reservation in promotion was prospective, and was applicable to those candidates who were fully qualified and eligible to hold the post as per the existing Rules and guidelines; and reservation in promotion, in favour of the Scheduled Castes and the Scheduled Tribes, shall also apply to other institutions in which reservation, in respect of the Scheduled Castes and the Scheduled Tribes, is followed.

Thereafter G.O.Ms. No.21 Social Welfare (ROR.I) Department dated 18.03.2009 was issued stipulating, among others, that, while preparing a panel of eligible candidates for promotion, the names of eligible Scheduled Caste and Scheduled Tribe employees, from the feeder category, should be shown against the roster points earmarked for them irrespective of their seniority position in the feeder category; if a Scheduled Caste and a Scheduled Tribe employee get a higher place in the eligible candidates list by virtue of his seniority in the feeder

category, he need not be adjusted in a lower position which is earmarked for the Scheduled Caste and the Scheduled Tribe employees as per the roster system; such roster point has to be filled up by moving up Scheduled Caste and Scheduled Tribe employees who are below in the seniority list in the feeder category; filling up the roster points shall continue till the required percentage of Scheduled Caste and Scheduled Tribe candidates is obtained; once the required percentage is obtained, by taking into account both the Scheduled Caste and the Scheduled Tribe candidates who are found in the list of candidates fit for promotion on account of their seniority in the feeder category, and those who are moved up to fill up the required roster point, further adjustment of the Scheduled Caste and the Scheduled Tribe employees against roster points should be stopped; unutilised roster points, after the required number of Scheduled Caste and Scheduled Tribe percentage is met, shall lapse; and if the required number of Scheduled Castes and Scheduled Tribes are not available in the feeder category, to obtain the required representation in the promotion category, the vacancies, earmarked for the Scheduled Castes and the Scheduled Tribes according to the roster points, should be carried forward.

G.O.Ms. No.123 General Administration (SER.D) Department dated 19.04.2003 was issued amending the A.P. State and Subordinate Service Rules, 1996. By the said notification, Rule 22 was amended and Clause (ii) of Sub-Rule (1) was substituted stipulating that, otherwise than by direct recruitment, the principle of reservation in the matter of promotion and appointment by transfer involving promotion, in so far it related to the Scheduled Castes and the Scheduled Tribes only, shall apply to such services in relation to a class or category whose total cadre strength of posts was more than five. Sub-Rule 2(a) was also substituted, and Clauses (A) to (E) were inserted thereunder.

Rule 22 of the Rules, after its amendment, provides for special representation (reservation) and, under sub-rule (1) thereof, reservation may be made for appointment to a service, class or category in favour of, among others, the Scheduled Castes to the extent and in the manner specified in the said rule or in the special rules. Under sub-clause (ii) thereof, the principles of reservation, in the matter of promotion and appointment by transfer in so far as it relates to the Scheduled Castes and the Scheduled Tribes only, shall apply to such services. Under the proviso thereto, such reservation shall apply to a class or category whose total cadre strength of posts is more than five. Rule 22(2)(a)(i) of the Rules stipulates that the unit of appointment, for the purpose of reservation in the matter of promotion and appointment by transfer involving promotion, shall be

100 vacancies of which 15 shall be reserved for the Scheduled Caste, and 6 for the Scheduled Tribe, employees as per the roster points in sub-rule 2(e).

Clause-A, under Rule 22(2)(a)(i) of the Rules, stipulates that, in case of appointment/promotion to the posts referred to in clause 2(a)(i), the panel of eligible candidates for promotion, the names of eligible Scheduled Caste and Scheduled Tribe employees from the feeder category should be shown against the roster points earmarked for them irrespective of their seniority position in the feeder category. Clause-B stipulates that, if a Scheduled Caste and Scheduled Tribe employee gets a higher place in the eligible candidates list by virtue of his seniority in the feeder category, he need not be adjusted in a lower position which is earmarked for Scheduled Caste and Scheduled Tribe employees as per the roster system; and such roster point has to be filled up by moving up a Scheduled Caste and a Scheduled Tribe employee who is below in the seniority list in the feeder category. Clause-C stipulates that filling up the roster points shall continue till the required percentage of Scheduled Caste and Scheduled Tribe candidates is obtained; and once the required percentage is obtained by taking into account both the Scheduled Caste and Scheduled Tribe candidates who are found in the list of candidates fit for promotion on account of their seniority in the feeder category and those who are moved up to fill up the required roster point, further adjustment of Scheduled Caste and Scheduled Tribe employees, against the roster point, has to be stopped. Clause-D stipulates that unutilised roster points, after the required Scheduled Caste and Scheduled Tribe percentage is met, shall lapse. Clause-E stipulates that, if the required number of Scheduled Caste and Scheduled Tribe employees are not available in the feeder category to obtain the required representation in the promotion category, the vacancies earmarked for the Scheduled Caste and the Scheduled Tribe employees, according to the roster points, will be carried forward. Rule 22(e) stipulates that appointment under this Rule shall be made in the order of rotation specified thereunder in a unit of 100 vacancies.

The High Court of A.P. issued circular in ROC. No.496/2003-C.1(3) dated 30.12.2003 informing all District Judges that G.O.Ms.No.5 dated 14.02.1003, G.O.Ms. No.21 dated 18.03.2003 and G.O.Ms.No.123 dated 19.04.2003 should be strictly implemented.

As noted hereinabove Articles 16(4) and (4-A) of the Constitution are both enabling provisions, and they confer a discretion on the Government to provide reservation in promotion in favour of the Scheduled Castes and the Scheduled

Tribes. As the Government has exercised its discretion, and has made Rules providing reservation in promotion in favour of the Scheduled Castes and the Scheduled Tribes, strict adherence thereto is obligatory. The percentage of reservation is the desired representation of the backward classes in the State Services, and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary, but represents a figure determined after due application of mind. (**R.K. Sabharwal**<sup>23</sup>). When the State Government, after undertaking the necessary exercise, makes reservation, and prescribes the percentage of posts to be reserved in favour of the Scheduled Castes/Scheduled Tribes, the percentage should be strictly followed. The prescribed percentage cannot be varied or changed simply because some of the members of the said class have already been appointed/promoted against the general seats. (**R.K. Sabharwal**<sup>23</sup>).

Existence of a provision for reservation, in matters of promotion, is the sine qua non for seeking a mandamus, as it is only when such a provision is made by the State, does a right accrue in favour of the members of the SC/ST category. A provision for reservation, in matters of recruitment or promotion, bestow an enforceable right in favour of persons belonging to the SC/ST category and, on failure on the part of any authority to reserve the posts while making selections/promotions, the beneficiaries of these provisions can approach the Court for enforcement of their rights. (**Chairman and Managing Director, Central Bank of India**<sup>24</sup>). As Rules have been made under the proviso to Article 309 of the Constitution, providing reservation in promotion in favour of the Scheduled Castes, the eligible members of the Scheduled Castes in the feeder category have an enforceable right to seek appointment to the higher posts, reserved in their favour, as and when such posts are sought to be filled up.

The word 'post' means an appointment, job, office or employment. A position to which a person is appointed. 'Vacancy' means an unoccupied post or office. The plain meaning of the two words make it clear that there must be a 'post' in existence for a 'vacancy' to occur therein. The cadre-strength is always measured by the number of posts comprising the cadre. The right to be considered for appointment can only be claimed in respect of a post in a cadre. Consequently, the percentage of reservation should be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation. (**R.K. Sabharwal**<sup>23</sup>).

The percentage of reservation is in respect of appointment to the posts in a cadre. If reservation is permitted in the vacancies, after all the posts in a cadre are filled, then serious consequences would ensue and the general category is likely to suffer considerably. (**J.C. Malik v. Union of India**<sup>[27]</sup>; **R.K. Sabharwal**<sup>23</sup>).

The total cadre strength of Senior Assistants, in the unit of the District Judge, Anantapur is 17, and reservation of 15% of these posts in favour of the Scheduled Castes, as stipulated under Rule 22(2)(a)(i) of the Rules, would require 3 posts to be reserved in their favour. Among the nine Senior Assistants working in the unit of the District Judge, Anantapur, during the relevant period, only one belonged to the Scheduled Castes. From the records placed for our perusal, it is evident that Smt. B. Vimala Kumari, who belonged to the Scheduled Tribe category, was appointed against roster point No.33 reserved for the Scheduled Castes pursuant to the order dated 24.02.2014. The counter-affidavit, filed by the District Judge, Anantapur, records that, by proceedings dated 24.02.2014, one O.C. candidate Smt. C.S. Ramadevi was promoted as Senior Assistant, though roster point No.52 was earmarked in favour of the Scheduled Castes, on the ground that adequacy was reached with three Scheduled Caste candidates i.e. 1) Sri M. Sanjeevappa, 2) Smt. B. Vimala Kumari and 3) Sri A. Narasimhulu; and, as per seniority and merit, two Scheduled Caste candidates were also promoted in O.C. roster points i.e., Roster Point No.6 Sri K.Vijaya Kumar and Roster Point No.28 Smt. K. Munemma.

Thereafter eight of the remaining vacancies in the seventeen posts of Senior Assistants, in the unit of the District Judge, Anantapur, were sought to be filled up and, on the ground that these eight vacancies fell under roster point Nos.53 to 60, and none of these roster points included a roster point for the Scheduled Castes, the petitioners were denied promotion. The 100 point roster, prescribed under the Rules, provides that Roster Point Nos.2, 7, 16, 22, 27, 41, 47, 52, 62, 66, 72, 77, 87, 91 and 97 shall be reserved in favour of the Scheduled Caste i.e., 15 posts in a cycle of 100 posts are reserved in favour of the Scheduled Castes. If, as is stated in the counter-affidavit, Smt. C.S. Ramadevi, an open category candidate was appointed against Roster Point No.52, (a roster point earmarked for the Scheduled Castes) on the ground that all the three posts reserved in favour of the Scheduled Castes had been filled up by appointing members of the said category to such posts, then two of the aforesaid three employees, appointed against posts reserved for the Scheduled Castes, must

have retired/resigned from service thereafter, resulting in two vacancies arising in the posts of Senior Assistants reserved in favour of the Scheduled Castes. The counter-affidavit is, however, silent as to how and when two of the three posts of Senior Assistants, reserved in favour of the Scheduled Castes, fell vacant, and which two of the three Scheduled Caste employees, who were earlier appointed against the reserved posts, left the service.

Section 22(2)(a)(i) of the Rules is mandatory in character and stipulates that, from out of 100 vacancies, 15 “**shall**” be reserved in favour of the Scheduled Castes. The District Judge, Anantapur was, therefore, obligated to ensure that three, of the 17 posts of Senior Assistants, were filled up only from among the members of the Scheduled Castes. It is only if no member of the Scheduled Castes was available in the feeder category, would clause-E of Rule 22(2)(a)(i) have required the vacancies, earmarked for the Scheduled Castes, to be carried forward. As both the petitioners, who belong to the Scheduled Caste category, were available in the feeder category of Junior Assistants, and were eligible for promotion to the posts of Senior Assistants, were they hitherto considered for promotion as Senior Assistants against the two posts reserved for members of the Scheduled Castes. On the eight vacancies, for which selection was made, being filled up, no vacancy remained in the 17 posts of Senior Assistants. It was incumbent upon the respondents to ensure that the three posts, reserved in favour of the Scheduled Castes, were filled up only from members of the Scheduled Castes, and not with persons who did not belong to the said category. Accepting the submission, urged on behalf of the respondents, that no reservation can be provided to the Scheduled Castes category as there is no roster point earmarked to the Scheduled Castes between roster point Nos.53 to 60, would mean that only one post, from out of the 17 posts of Senior Assistants in the unit of the District Judge, Anantapur, would be held by a member of the Scheduled Castes, even though three posts are reserved in their favour.

Clause A to E, under Rule 22(2)(a)(i) of the Rules, deal with different situations. The mandate of Clause A is that a member of the Scheduled Caste should be placed at the roster point earmarked for the Scheduled Caste category irrespective of his seniority in the feeder category from which promotions are effected. Clause B stipulates that reservation is in addition to merit or seniority. If a member of the Scheduled Caste is eligible for promotion on the basis of his seniority, he should then be treated as having been appointed to an unreserved post and another employee from the Scheduled Caste category, lower than him in seniority, should be appointed against the post reserved for the Scheduled

Caste category. When a percentage of reservation is fixed in respect of a particular cadre, and the roster indicates the points reserved in their favour, it should be taken that the posts, shown at the reserved points, are to be filled from amongst members of the reserved categories, and candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand, the reserved category candidates can compete for non-reserved posts and, in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. (**R.K. Sabharwal**<sup>[23]</sup>).

The roster point, which is reserved for a Scheduled Caste, should be filled by way of appointment/promotion of only a member of the said class. No general category candidate can be appointed against such a slot. The fact that a considerable number of members of the Scheduled Castes have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but, as long as the instructions/rules providing a certain percentage of reservation for the Scheduled castes, are operative, they must be followed and the prescribed percentage should be provided, in addition to the Scheduled Castes who were promoted/appointed against the general category posts. (**R.K. Sabharwal**<sup>[23]</sup>).

In view of Clause (B), under Rule 22(2)(a)(i) of the Rules, appointment by promotion of Sri K. Vijaya Kumar and Smt. K. Munemmma, (both members of the Scheduled Castes), at R.P. No.6 and 28 (unreserved seats) is in order as they were promoted to the said post in the order of their seniority, and not against posts reserved for members of the Scheduled Castes. Reservations, under Article 16 (4) of the Constitution, do not operate as communal reservation. It may well happen that some members belonging to the Scheduled Castes, get selected in open competition on the basis of their own merit. They will not be counted against the quota reserved for the Scheduled Castes, and they will be treated as open competition candidates. (**Indra Sawhney v. Union of India**<sup>[28]</sup>; **Union of India v. Ramesh Ram**<sup>[29]</sup>).

In **Joginder Singh Sethi v. Punjab Govt.**<sup>[30]</sup>, 22% reservation was provided for the members of the Scheduled Castes/Tribes and Backward Classes; members of the Scheduled castes were entitled to 42 posts from the cadre strength of 202 posts; while there were already 47 members of the said

category in the cadre, 10 of them were promoted, on the basis of seniority-cum-merit, against the general category posts; there being only 37 persons who had been promoted against reserved posts, 4 more Scheduled Castes were sought to be promoted against the reserve vacancies. The Punjab and Haryana High Court quashed the promotion on the ground that the cadre already had more than 22% from the reserved categories. The Supreme Court in **R.K. Sabharwal**<sup>23</sup>, held that the Punjab and Haryana High Court, in **Joginder Singh Sethi**<sup>30</sup>, had fallen into a patent error; and subsequently a Full Bench of Punjab and Haryana High Court, in **Jaswant Singh v. Secretary to Government Punjab, Education Department**<sup>[31]</sup>, did not agree with the ratio laid down therein and had reversed the same.

When the total number of posts in a cadre are filled by the operation of the roster, then the result envisaged by the Rules is achieved. In other words, in a cadre of 100 posts when 15% of the posts earmarked in the roster for the Scheduled Castes are filled, the percentage of reservation provided in their favour is achieved. The purpose of the "running account" is to make sure that the Scheduled Castes/Schedule Tribes get their percentage of reserved posts. (**R.K. Sabharwal**<sup>23</sup>). Clause (C), under Rule 22(2)(a)(i) of the Rules, relates to a situation where the required percentage of Scheduled Castes are obtained in the higher category. If, for instance, out of the total sanctioned strength of 17 posts 14 have already been filled up, and three of such posts had already been filled up by way of reservation in favour of members of Scheduled Castes, then, even if one of the three remaining posts fall in a particular roster point earmarked for the Scheduled Caste category, the 15% reservation i.e of three posts, in favour of the Scheduled Castes having already been achieved, the later roster points, earmarked for members of the Scheduled Castes, can be filled up treating such roster points as unreserved. This is emphasised by Clause D which provides that the unutilised roster point shall lapse. In **R.K. Sabharwal**<sup>23</sup>, the Supreme Court, after examining the likely result if the roster is permitted to operate in respect of vacancies arising after all the posts in a cadre are filled, observed:-

"..... In a 100-point roster, 14 posts at various roster points are filled from amongst the Scheduled Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by 31-12-1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and, thereafter, the

vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserved category and the general category shall always be maintained ..... »

A similar view was taken by the Supreme Court in **E.A. Sathyaesan v. V.K. Agnihotri**<sup>[32]</sup>).

The condition, stipulated in G.O.Ms.No.2 dated 09.01.2004, also is that, once adequacy is achieved to the required percentage of 15% in respect of the Scheduled Castes in a category, application of the rule of reservation in promotions shall be stopped, and all promotions thereafter shall be effected on the basis of merit/seniority. The "running account" is to operate only till the quota, provided under the Rules, is reached and not thereafter. Once the prescribed percentage of posts is filled, the numerical test of adequacy is satisfied and, thereafter, the roster does not survive. (**R.K. Sabharwal**<sup>23</sup>). The only way to ensure equality of opportunity to both the Scheduled Castes/Scheduled on the one hand and the general category on the other is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster, and the "running account", must come to an end thereafter. The concept of "running account", in the said Rules, should also be interpreted in a manner that it does not result in excessive reservation. (**R.K. Sabharwal**<sup>23</sup>).

Clause E, under Rule 22(2)(a)(i) of the Rules, deals with a situation where, despite posts in the higher category earmarked in their favour being available, no member of the Scheduled Castes is available in the feeder category for being promoted to the post in the higher category. In such a situation, Clause E requires the vacancy earmarked for the Scheduled Castes, to be carried forward.

The object of Clauses (A) to (E), under Rule 22(2)(a)(i) of the Rules, is to ensure that, in the prescribed percentage of posts reserved in their favour, only members of the Scheduled Castes are appointed/promoted, and none else. It is only when all the posts, reserved in favour of the Scheduled Castes, are filled up by members from the said category can the rule of reservation be stopped and the unutilised roster points, earmarked for the Scheduled Castes, lapse. In the present case, for the two vacant posts of Senior Assistants reserved in favour of the Scheduled Castes, two eligible candidates (petitioners) were available in the feeder category. Consequently, for both the posts of Senior Assistants reserved in favour of the Scheduled Castes, only the eligible Scheduled Castes

employees in the feeder category could have been appointed and none else.

As reliance is placed on G.O.Ms.No.2 dated 09.01.2004 to justify denial of promotion as Senior Assistants to the petitioners, it is necessary to note its contents. G.O.Ms. No.2 Social Welfare (SW.ROR1) Department dated 09.01.2004 was issued stipulating that reservation in promotion shall be implemented in favour of the Scheduled Castes and the Scheduled Tribes in all categories of posts in all State Government Departments, if they are not adequately represented to the extent of 15% and 6% respectively; and the crucial date, for implementing the rule of reservation in promotion, shall be 14.02.2003.

Clause 4 of the said G.O provides for the computation of adequacy of representation. Clause 7 relates to roster points and stipulates that the existing 100 point roster, already prescribed in Rule 22 of the Rules for direct recruitment, shall be followed for implementing the rule of reservation for promotion of the Scheduled Castes and the Scheduled Tribes. The Note to Clause 7 reads thus:

“Once the adequacy is achieved to the required percentage of 15% in respect of Scheduled Castes and 6% in respect of Scheduled Tribes, in a category, the application of the rule of reservation in promotions shall be stopped and the promotions shall be effected based on merit cum seniority. The candidates so promoted shall be fitted into the same roster, without earmarking the reserved roster points. If on 1<sup>st</sup> September of any panel year, the representation of Scheduled Castes/Scheduled Tribes is inadequate, the reservation in promotions shall be resumed. The roster point shall start from next point of the candidate figuring in the previous panel prepared and given effect to. For example as on 1<sup>st</sup> September of a panel year, there are 20 posts in a particular category and there are 2 SC candidates in position. Therefore as on 1<sup>st</sup> September of a panel year, the adequacy of SC representation is short by one candidate. The vacancies for the panel year are estimated as 10. If the roster starts from 1, then the 2<sup>nd</sup> roster point has to be filled up with SC-A candidate or with any other SC candidate as per the procedure stipulated. After inclusion of the said candidate there shall be adequacy of representation and there is no need to follow the SC roster. The other candidates shall have to be promoted, including the SC candidates if they are figuring in the general seniority list, based on merit cum general seniority. They shall be shown at the continuous roster points. The 7<sup>th</sup> roster point of SC shall be filled up with the candidate based on merit cum seniority. The roster points from 1 to 10 shall have to be filled up in such manner. In the next panel year, if it is found that there is adequacy of SC representation, then the promotions shall be effected based on general seniority and merit. If there is inadequacy of representation, SC candidates shall be promoted based on roster. The roster point for that panel year shall start from 11 and the next SC roster point is available at 16 and the same shall be filled up with SC candidate.”

The Note to clause 7 of G.O.Ms. No.2 dated 09.01.2004 merely stipulates that on adequacy being achieved, and the stipulated percentage of reservation of 15% in favour of the Scheduled Castes and 6% in favour of the Scheduled Tribes being fulfilled, reservation in promotion should be stopped; and, thereafter, promotion should be effected on merit-cum-seniority. The procedure to be followed is explained therein by way of an illustration.

It is only if all the three posts of Senior Assistants, reserved in favour of the Scheduled Castes, had been filled up, and vacancies arose thereafter in any one

of the 17 posts in the cadre, would G.O.Ms.No.2 have disabled the respondents from applying the rule of reservation to appoint a fourth member of the Scheduled Castes to the roster points reserved in their favour. The note to clause 7 neither expressly provides nor can it be understood as requiring the roster system to be applied in such a manner as to deny reservation in favour of the Scheduled Castes even in cases where they are not adequately represented in the promotion posts of Senior Assistants, or to deny eligible members of the Scheduled Castes in the feeder category promotion to reserved posts in the higher category. G.O.Ms.No.2 has no application to a situation, such as the one which arises in the present case, where only one of the three posts reserved in favour of the Scheduled Castes, among the total 17 posts of Senior Assistants, is occupied by a member of the Scheduled Castes, the other two reserved posts are vacant, and there are two members of the Scheduled Castes in the feeder category eligible for promotion to the higher post.

The A.P. State & Subordinate Services Rules were made in the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. As G.O.Ms. No.2 dated 09.02.2004 is in the nature of Executive Instructions the Note to Clause 7 therein cannot be so read as to fall foul of the A.P. State and Subordinate Service Rules. Executive Instructions can only supplement and not supplant these Rules, (**Senior Supdt. of Post Offices v. Izhar Hussain**<sup>[33]</sup>; **St. Johns Teachers Training Institute v. Regional Director, NCTE**<sup>[34]</sup>), and cannot be so framed or utilised as to override the provisions of law as it would then destroy the very basis of the rule of law, and strike at the very root of orderly administration of law. (**Mannalal Jain v. State of Assam**<sup>[35]</sup>). If, however, the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. (**Sant Ram v. State of Rajasthan**<sup>[36]</sup>).

Rule 22(2)(a)(i) of the Rules, by the use of the words "shall", mandates 15% reservation in favour of the Scheduled Castes. The substantive right, conferred by Rule 22(2)(a)(i) on members of the Scheduled Castes in the feeder category, to occupy 15% of the total number of promotion posts, cannot be negated by the procedural provisions of G.O.Ms.No.2 dated 09.02.2004. Neither Rule 22(2)(a)(i) of the Rules nor the Note to clause 7 of G.O.Ms. No.2 dated 09.01.2004 permit candidates from the open category to occupy posts reserved for members of the Scheduled Castes and Scheduled Tribes in cases where

there are eligible candidates, from the Scheduled Castes and the Scheduled Tribes, in the feeder category.

When all the roster points in a cadre are filled, the required percentage of reservation is achieved. Once the total posts in a cadre have full representation of the Scheduled Castes/Scheduled Tribes, in accordance with the reservation policy, the vacancies arising thereafter in the cadre should be filled from amongst the category of persons to whom the respective vacancies belong. (**R.K. Sabharwal**<sup>23</sup>; **Prabhash Chand Jain v. State of Haryana**<sup>[37]</sup>). As 15% of the 17 posts of Senior Assistants, in the unit of the District Judge, Anantapur, i.e., three posts are reserved in favour of the Scheduled Castes, it is only if three members of the Scheduled Castes are occupying the three reserved posts of Senior Assistants, or if there are no eligible members of the Scheduled Castes in the feeder category of Junior Assistants, can the three reserved posts in the Senior Assistants cadre either be filled up by members of the general category, or be carried forward, as the case may be as, on the posts earmarked for the Scheduled Castes and the Scheduled Tribes being filled up, the reservation is complete. Any post falling vacant in a cadre, thereafter, is to be filled from the category - reserved or general - due to retirement or removal of a person belonging to the respective category. (**R.K. Sabharwal**<sup>23</sup>).

While it does appear that there are no roster points for the Scheduled Castes between Roster Point Nos.53 to 60, it is also not in dispute that there is inadequacy in the representation of members of the Scheduled Castes in the category of Senior Assistants and, as against three posts reserved in their favour, only one of the said three posts is occupied by a member of the Scheduled Castes. Accepting the contention, urged on behalf of the respondents, would mean that, though all the seventeen posts of Senior Assistants have now been filled up only one of them can be occupied by members of the Scheduled Castes, and the remaining two reserved posts, earmarked in their favour, can be filled up under the open/unreserved category. As a result, only one of seventeen posts i.e., less than 6% of the total posts of Senior Assistants would then be reserved in their favour, though eligible members of the Scheduled Castes were available in the feeder category.

A solution, to the problem of the kind which arises in the present case, has been provided in **R.K. Sabharwal**<sup>23</sup> wherein the Supreme Court observed:

“.....**The reservation provided under the impugned Government instructions are to be maintained in each Department.** The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Scheduled Tribes and Backward classes get their percentage of reserved posts. The

concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16 Per Cent of the posts..." are reserved for members of the Scheduled Caste and Backward classes. **In a lot of 100 posts those falling at serial numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87, and 91 have been reserved and earmarked in the roster for the Scheduled Castes.** Roster points 26 and 76 are reserved for the members of Backward Classes. **It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Caste.** To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter..... Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. **The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster-points 1, 7, 15, retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation....."** (emphasis supplied)

As there are seventeen posts, in the cadre of Senior Assistants in the unit of the District Judge, Anantapur, the law declared by the Supreme Court, in **R.K. Sabharwal**<sup>23</sup>, required the District Judge to initially fill up all the seventeen posts with Roster Point Nos.1 to 17. As Roster Point Nos.2, 7 and 16, forming part of Roster Point Nos.1 to 17, are reserved in favour of the Scheduled Castes, these three posts should have been filled up only by members of the Scheduled Castes. Once all the seventeen posts were initially filled up, any vacancy arising thereafter should have been filled up from the very same category, be it reserved or unreserved. Adopting this procedure would have ensured that members of the Scheduled Castes get their quota of the three reserved seats in their favour – nothing more, nothing less. The law, declared by the Supreme Court in **R.K. Sabharwal**<sup>23</sup>, required two of the three roster points, in which Sri M. Sanjeevappa, Smt.B.Vimala Kumari and Sri A.Narasimhulu (in the three roster points reserved for the Scheduled Castes) were appointed earlier, and which fell vacant thereafter, to be filled up only by the members of the Scheduled Castes, and none else.

As it is not in dispute that two of the three posts of Senior Assistants reserved for the Scheduled Caste category are vacant, and only one reserved post is occupied by a member of the Scheduled Castes, the law declared by the Supreme Court in **R.K. Sabharwal**<sup>23</sup> would obligate the District Judge to consider the candidature of the petitioners herein for appointment as Senior Assistants in the roster points which fell vacant, on two of the three Scheduled

Caste employees i.e., Sri M. Sanjeevappa, Smt. B. Vimala Kumari and Sri A. Narasimhulu, having ceased to hold the post of Senior Assistants. As the petitioners (both being members of the Scheduled Castes) were entitled to be considered for appointment to the two vacant posts of Senior Assistants reserved in favour of the Scheduled Castes, they were rightly appointed as Senior Assistants earlier. The subsequent action of the District Judge in reverting them, and in appointing respondents 4 and 5 in their place though they did not belong to the Scheduled Caste category, is in violation of Articles 16(4) & (4-A) of the Constitution of India and Rule 22 of the Rules.

The impugned proceedings, whereby the earlier appointment of the petitioners as Senior Assistants was set aside and respondents 4 and 5 were appointed in their place, are accordingly set aside. The first respondent-District Judge shall, in the light of the aforesaid observations, forthwith consider the case of both the petitioners herein for appointment as Senior Assistants in the two vacant posts reserved in favour of the Scheduled Castes, so as to ensure adequacy in representation of the members of the Scheduled Castes i.e 15% of the total number of posts in the cadre of Senior Assistants. The Writ Petition is allowed. However, in the circumstances, without costs. The miscellaneous petitions, pending if any, shall also stand disposed of.

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**(RAMESH RANGANATHAN, J)**

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**(M. SATYANARAYANA MURTHY, J)**

Date: 06-04-2016.

Note: L.R. copy to be marked.

B/O

MRKR/CS

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[\[1\]](#) AIR 1954 SC 207 = 1954 SCR 738

[\[2\]](#) (2014) 1 SCC 603

[\[3\]](#) AIR 1958 SC 86

[\[4\]](#) (1983) 142 ITR 663: (AIR 1983 SC 603

[\[5\]](#) (2003) 2 SCC 107

[\[6\]](#) (2005) 6 SCC 499

[\[7\]](#) AIR 1955 SC 425

[\[8\]](#) AIR 1957 SC 882

[\[9\]](#) AIR 1966 SC 1089

- [\[10\]](#) AIR 1959 SC 422
- [\[11\]](#) AIR 1965 SC 1321
- [\[12\]](#) (1984) 2 SCC 436
- [\[13\]](#) (1988) 1 SCC 572
- [\[14\]](#) (1995) 5 SCC 75
- [\[15\]](#) (2000) 6 SCC 293
- [\[16\]](#) (2000) 7 SCC 695
- [\[17\]](#) (2001) 6 SCC 634
- [\[18\]](#) (2001) 8 SCC 509
- [\[19\]](#) (2002) 7 SCC 484
- [\[20\]](#) (2003) 1 SCC 72
- [\[21\]](#) (2004) 7 SCC 166
- [\[22\]](#) (1970) 2 SCC 355
- [\[23\]](#) (1995) 2 SCC 745 = AIR 1995 SC 1371
- [\[24\]](#) 2015(2) AWC 1354 (SC)
- [\[25\]](#) (2015) 10 SCC 292
- [\[26\]](#) (2003) 5 SCC 604
- [\[27\]](#) (1978) 1 SLR 844 (Allahabad HC)
- [\[28\]](#) (1992) Supp 3 SCC 217
- [\[29\]](#) (2010) 7 SCC 234
- [\[30\]](#) (1982) 2 SLR 307
- [\[31\]](#) (1989) 4 SLR 257
- [\[32\]](#) (2004) 9 SCC 165
- [\[33\]](#) (1989) 4 SCC 318
- [\[34\]](#) (2003) 3 SCC 321
- [\[35\]](#) AIR 1962 SC 386
- [\[36\]](#) AIR 1967 SC 1910
- [\[37\]](#) (1996) 8 SCC 105