

IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA

PRADERSH

**Writ Petition Nos.28847, 32754, 32756, 34116, 28509 & 29506 of
2016**

Between:

S.P. Abdulla Saheb and 15 others

.... Petitioners

AND

K. Krishna Murthy and 7 others

.... Respondents

JUDGMENT PRONOUNCED ON : 02-12-2016

HON'BLE SRI JUSTICE

V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE

G. SHYAM PRASAD

1. Whether Reporters of local

Newspapers may be allowed to see
the Judgments?

: Yes/No

2. Whether the copies of judgment

may be marked to Law Reporters/
Journals?

: Yes/No

3. Whether their Ladyship/Lordship

wish to see the fair copy of the
judgment?

: Yes/No

W.P.Nos.28847, 32754, 32756, 34116,
28509 & 29506 of 2016

***THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD**

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W.P.No.28847 of 2016

S.P. Abdulla Saheb and 15 others

.... Petitioners

AND

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.... Respondents

! Counsel for petitioners: Sri J. Sudheer, learned senior counsel

^ Counsel for respondents: 1. G.P. for Services-I (AP),
2. Sri P. Suresh Reddy, learned senior
Counsel
3. Sri B. Ranganadh Rao, learned counsel
4. Sri P.V. Krishnaiah, learned counsel
for implead respondents

< Gist:

> Head Note:

? Cases referred:

1) (2000) 6 SCC 359

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

**Writ Petition Nos.28847, 32754, 32756, 34116, 28509 & 29506 of
2016**

Common Order: *(per V. Ramasubramanian, J)*

The petitioners who are employed as Senior Assistants in the Department of Commercial Taxes in the State of Andhra Pradesh have come up with the present writ petitions challenging a common order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in a batch of original applications filed by the 1st respondent in each of these writ petitions.

2. Heard Mr. J. Sudheer, learned counsel for the petitioners, the learned Government Pleader for Services-I (Andhra Pradesh), Mr. P. Suresh Reddy, learned Senior Counsel appearing on behalf of Mr. B. Ranganadh Rao, learned counsel for the original applicants before the Tribunal and Mr. P.V. Krishnaiah, learned counsel appearing for the impleaded respondents.

3. The issue involved in these writ petitions lies in a very narrow compass. A group of persons (1st respondent in each of these writ petitions) who got transferred from various other departments to the Commercial Taxes Department as Junior Assistants way back on 01-01-1996, approached the Andhra Pradesh Administrative Tribunal, Hyderabad, challenging the Seniority List dated 02-12-2009 contending that they should be placed above persons who were appointed directly to the

Commercial Taxes Department, but who were undergoing probation on the date of the transfer. By a common order dated 31-10-2012 the Tribunal allowed the applications on the short ground that as per Rule 35(b) of the Andhra Pradesh State and Subordinate Services Rules, 1996, persons who were transferred from other departments to the Commercial Taxes Department are entitled to be placed in the Commercial Taxes Department just below the last of the approved probationers, but above those who were undergoing probation.

4. It appears that the original applicants before the Tribunal purportedly impleaded few probationers in their original applications, but they were not represented before the Tribunal.

5. The State filed a batch of writ petitions in W.P.Nos.38328, 38813, 38330 and 38331 of 2013 challenging the said order of the Administrative Tribunal dated 31-10-2012 passed in O.A.No.473 of 2010 batch. A Division Bench of this Court dismissed the writ petitions filed by the State, by an order dated 10-3-2014. Therefore, in order to implement the order of the Tribunal, the State took steps for the revision of the Seniority List. Immediately the petitioners in these writ petitions, who were not parties before the Tribunal, sought leave and have come up with the present writ petitions challenging the order of the Tribunal.

6. Five contentions are raised by Mr. J. Sudheer, learned counsel for the petitioners; (1) that the writ petitioners were not made parties to the original applications and hence the original applicants before the Tribunal were guilty of procuring an order behind the back of the affected parties; (2) that the original applicants before the

Tribunal were guilty of wilful suppression of material particulars in their original applications, as a consequence of which they were not entitled to any relief; (3) that the order of the Tribunal is contrary to Rules 35 (b) and 36 (i) of the A.P. State and Subordinate Services Rules, 1996 as well as the Proviso (iii) under Rule 15 (1) of the A.P. Ministerial Service Rules, 1998; (4) that the Tribunal failed to appreciate the fact that even as per the orders of transfer, the original applicants before the Tribunal were liable to take seniority below the approved probationers as well as the probationers in the Commercial Taxes Department and (5) that in any case the applications of the original applicants were barred by law in view of the fact that at least three Seniority Lists issued earlier by the Department were not challenged by them.

7. In response to the above contentions, it is submitted by Mr. P. Suresh Reddy, learned Senior Counsel for the original applicants before the Tribunal; (1) that a few individuals directly recruited to the Commercial Taxes Department were impleaded as parties to the original applications and hence the original applicants cannot be accused of attempting to procure an order behind the back of the aggrieved parties; (2) that since the applicants before the Tribunal chose to challenge the Final Show Cause Notice dated 02-12-2009, the tentative or provisional Seniority Lists released earlier, lost their relevance and hence need not have to be challenged; (3) that the universal rule applicable to the fixation of seniority is that a person coming on voluntary transfer should take his seniority below the approved probationers and hence the Statutory Rules have to be

read in the right perspective and (4) that the original applications before the Tribunal were not barred by law, since the previous Seniority Lists were only provisional and the applicants approached the Tribunal immediately after the Final Show Cause Notice was issued.

8. Apart from the above contentions, the learned Senior Counsel for the original applicants before the Tribunal and the learned counsel for the impleaded parties raised a preliminary objection to the very maintainability of the present writ petitions. This objection is raised on the ground that the order of the Tribunal impugned in these writ petitions got merged with the order passed by this Court in a batch of writ petitions in W.P.No.38328 of 2013 batch dated 10-3-2014 and that therefore it was not open to the petitioners to reopen the issue all over again.

9. In view of the fact that the very maintainability of the writ petitions is questioned, we shall first take up the issue of maintainability before going into the contentions on merits.

MAINTAINABILITY:

10. It is true that the common order of the Tribunal dated 31-10-2012 passed in O.A.No.473 of 2010 batch was upheld by a Bench of this Court in a batch of writ petitions in W.P.No.38328 of 2013 batch by a judgment 10-3-2014. It is also true to some extent, that the applicants before the Administrative Tribunal may be entitled to plead the doctrine of merger.

11. But it must be remembered that ***the doctrine of merger is neither founded upon the Constitution nor statutorily***

recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. The underlying principle behind the doctrine of merger is that there cannot be more than one decree.

12. As pointed out in the Vol. 12 of the Halsbury's Laws of England (5th edition, 2009), it is a fundamental doctrine of all courts that there must be an end of litigation. The courts have always followed the Latin maxim '***interest reipublicae ut sit finis litium***' meaning that "***in the interest of society as a whole, litigation must come to an end.***" To avoid repeated litigations over and over again, on the same subject matter, several principles of law were developed under the common law system. These principles of law are assigned different nomenclature depending upon the situation to which they are to be applied. ***The doctrines of res judicata, estoppel, merger, etc. are different facets of the common underlying principle that to the extent possible, parties should be prohibited from re-litigating on the same subject matter.*** As pointed out in Halsbury's Laws of England, the terms *res judicata*, issue estoppel and cause of action estoppel, estoppel by record or collateral estoppel were used in many of the older cases, very loosely. The distinction was not always very clear. But fortunately, the common law doctrine of *res judicata* came to be incorporated in the statute itself in Section 11 of the Code of Civil Procedure.

13. What normally happens is that a cause of action leads to a litigation. The moment a judgment is given in a claim, the cause of action in respect of which it is given, is merged in the judgment.

Once a judgment is given which is a matter-of-record, an estoppel by record arises. Such an estoppel may take the form of cause of action estoppel or of issue estoppel.

14. But before deciding the question as to whether any of these forms of estoppel would arise, it must be seen whether the judgment in question is one *in rem* or *in personam*. The most important distinction between judgments *in rem* and judgments *in personam* is that whereas the latter are binding only as between the parties to them and those who are privy to them, the judgment *in rem* is conclusive against all the world.

15. But as pointed out by the English Courts, the term ***judgment in rem has been judicially described as a “specialised and somewhat misleading term of art limited to judgments concerned with status.”*** But the Judicial Committee of the Privy Council pointed out in *Katama Natchiar v. Rajah of Shivaganga* (1863 9 Moo. Ind. App 539) that a judgment need not necessarily be a judgment *in rem* because it has, in a suit between parties, determined an issue concerning the status of a particular person.

16. In the petitions on hand, what had earlier been decided was only the question of seniority. Therefore, the decision in the previous writ petition to which the petitioners herein were not parties, cannot operate either as estoppel by record or as issue or cause of action estoppel. In any case, ***service matters relating to persons holding civil posts or in the civil services of the State, do not fall strictly within the private law regime. The application of the***

principles of estoppel to public law proceedings has been in doubt. Moreover, as is pointed out in Para 1182 in Halsbury's, the extent to which the doctrine of issue estoppel is applicable in judicial review proceedings is highly doubtful. We are dealing in this batch of cases with writ petitions seeking a judicial review of the order of a statutory tribunal. Therefore, the doctrine of merger which is a common law doctrine of procedure cannot be invoked to defeat the claims of the writ petitioners herein, especially when they were not parties to the writ petition filed by the Government.

17. It is not necessary for us to multiply authorities relating to the doctrine of merger, since the Supreme Court has already carried out such an exercise in **KUNHAYAMMED v. STATE OF KERALA**¹. The following principles were laid down by the Supreme Court in the said decision, on the question of applicability of the doctrine of merger:

“To sum up our conclusions are:-

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

ii) The jurisdiction conferred by [Article 136](#) of the Constitution is divisible into two stages. First stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it.

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Under [Article 136](#) of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of [Article 141](#) of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C.

Having thus made the law clear, the case at hand poses no problem for solution. The earlier order of the High Court was sought to be subjected to exercise of appellate jurisdiction of Supreme Court by the State of Kerala wherein it did not succeed. The prayer contained in the petition seeking leave to appeal to this Court was found devoid of any merits and hence dismissed. The order is a non-speaking and unreasoned order. All that can be spelled out is that the Court was not convinced of the need for exercising its appellate jurisdiction. The order of the High Court dated 17.12.1982 did not merge in the order dated 18.7.1983 passed by this Court. So it is available to be reviewed by the High Court. Moreover such a right of review is now statutorily conferred on the High Court by sub-section (2) of Section 8C of the Kerala Act. Legislature has taken care to confer the jurisdiction to review on the High Court as to such appellate orders also against which though an appeal was carried to the Supreme Court, the same was not admitted by it. An appeal would be said to have been admitted by the Supreme Court if leave to appeal was granted. The constitutional validity of sub-section (2) of [Section 8C](#) has not been challenged. Though, Shri T.L.V. Iyer, the learned senior

counsel for the appellant made a feeble attempt at raising such a plea at the time of hearing but unsuccessfully, as such a plea has not so far been raised before the High Court also not in the petition filed before this Court.”

18. As pointed out by the Supreme Court in one of the portions extracted above, ***the doctrine of merger is not one of universal or unlimited application. It will depend upon the nature of the jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or capable of being laid shall be determinative of the applicability of merger.***

19. In the cases on hand, the writ petitioners were not parties either to the original applications before the Tribunal or to the writ petitions filed by the State against the order of the Tribunal. Though the applicants before the Tribunal had impleaded two or three individuals as party respondents in their applications before the Tribunal, they do not appear to have contested either the original applications or the writ petitions. The original applicants before the Tribunal did not make those two or three party respondents in a representative capacity for and on behalf of their entire tribe. The Rules framed by the Central Administrative Tribunal provide for such class actions. A group of individuals may join together and file an original application before the Tribunal or a writ petition before this Court. Similarly, where the number of unofficial respondents is huge, the original applicants before the Tribunal are entitled to seek the permission of the Tribunal to sue one or two of them in a representative capacity. It is not the case of the original applicants before the Tribunal that they impleaded two or three rival parties in a

representative capacity, after seeking the leave of the Court. Therefore, the doctrine of merger cannot be invoked by the original applicants before the Tribunal, as against persons who were not parties before the Tribunal and who were also not parties before this Court and who did not even have knowledge of those proceedings. Doctrine of merger, as in the case of *res judicata*, cannot be invoked as against strangers to the litigation. Therefore, preliminary objection regarding the maintainability of the writ petitions is rejected.

CONTENTIONS ON MERITS

Contention No.1:-

20. As we have indicated earlier, the 1st contention of the learned counsel for the writ petitioners is that the original applicants before the Tribunal are guilty of non-impleadment of affected parties before the Tribunal and procuring an order behind their back. The response of the original applicants to this contention is that they impleaded a few affected parties.

21. A perusal of the original applications filed by the applicants before the Tribunal indicates that they had in fact impleaded a few persons as parties to the original application. For instance the applicant in O.A.No.473 of 2010, (out of which arises W.P.No.28509 of 2014), had impleaded three persons as parties to the main application on the ground that the names of those three persons were found at serial Nos.1 to 3 in the Seniority List whereas his own name was found at serial No.33. Therefore, it is clear that some persons, though not all affected parties, were impleaded by the original applicants.

22. Though the impleadment of a few takes the vigour out of the first contention, the fact remains that the writ petitioners herein who were likely to be affected by the result of the application, did not have an opportunity of being heard. There are two facets to the 1st contention. The first relates to the procedural propriety on the part of the original applicants and the second relates to the lack of opportunity for the writ petitioners herein. Therefore, though we cannot hold that the original applicants were guilty of procuring an order behind the back of the affected parties, it is nevertheless true that all parties likely to be affected were not impleaded in the original applications before the Tribunal.

Contention No.2:-

23. The 2nd contention of the learned counsel for the writ petitioners is that the original applicants were guilty of suppression of material facts. This contention is raised on the ground that all the original applicants before the Tribunal who were working in irrigation/Accounts/Agriculture/Cooperation Departments came to the Commercial Taxes Department on their own request, on 01.01.1996 and that within three years, a first Provisional Seniority List was released on 06-9-1999. Objections were invited to the Seniority List and some of the applicants in the original applications before the Tribunal actually filed objections. Overruling their objections, a Final Seniority List was released on 14-02-2000. An appeal was filed by some of the original applicants before the Appellate Authority, but the appeal was rejected on 28-3-2001.

24. For reasons unknown to anyone, a Show Cause Notice was issued by the Department on 31-12-2007, calling upon the interested parties to submit objections to a tentative/provisional/integrated Seniority List for the period from 01-4-1994 to 31-3-2005. Again objections were submitted and a Final Seniority List was issued on 08-8-2008. Once again a Revised Show Cause Notice dated 02-12-2009 was issued and it was as against this Revised Show Cause Notice that the original applicants went before the Tribunal.

25. Therefore in all fairness, the original applicants before the Tribunal ought to have disclosed in their applications (1) the issue of first Provisional Seniority List dated 06-9-1999, (2) the filing of objections to the same, (3) the issue of Final Seniority List on 14-02-2000, overruling their objections, (4) the filing of a statutory appeal as against the said Final Seniority List, (5) dismissal of their appeal by order dated 28-3-2001, (6) the issue of a Show Cause Notice enclosing a tentative/provisional/integrated Seniority List dated 31-12-2007, (7) the filing of objections to the same and (8) the issue of a Final Seniority List dated 08-8-2008.

26. But quite surprisingly, none of the original applicants before the Tribunal disclosed any of the above matters in their applications. If the original applicants had disclosed the aforesaid events from 1999 to 2008, the Tribunal would have been left with no alternative except to throw the original applications out, even on the sole ground that settled Seniority List cannot be unsettled just as a scrambled egg cannot be unscrambled.

27. We are convinced that the original applicants before the Tribunal deliberately suppressed all the above events that happened from 1999 to 2008, only to overcome the legal position that a Seniority List settled long time ago cannot be unsettled. Therefore, we are of the considered view that the 2nd contention of the writ petitioners is well taken and has to be upheld.

28. The suppression of the above material facts actually tantamounts to a fraud upon the Tribunal. Since fraud vitiates all solemn acts, the decision procured by the original applicants by suppressing the material facts and playing fraud upon the Tribunal, cannot inure to their benefit even on the principle of doctrine of merger. Once the foundation for the order of the Tribunal goes, the order of this Court confirming the order of the Tribunal would also fall for the same reason.

Contention No.3:-

29. The third contention of the learned counsel for the writ petitioners is that the order of the Tribunal is contrary to Rules 35(b) and 36(1) of the Andhra Pradesh State and Subordinate Services Rules, 1996 as well as the Proviso (iii) under Rule 15(1) of the Andhra Pradesh Ministerial Service Rules, 1998.

30. This contention of the writ petitioners assumes significance in the wake of one important fact. Normally, the rule relating to seniority of a person transferred from one department to another is (1) that if the transfer was due to administrative reasons, the transferee will go to the new department along with his seniority and (2) that if the transfer was ordered on his request, he will take

seniority in the new department immediately below the last of the approved probationers.

31. It is the above normal rule that the Tribunal as well as this Court appears to have followed. But the language employed in A.P. State and Subordinate Services Rules and A.P. Ministerial Service Rules appears to be quite different from the rule position prevailing in some other States. Rule 35(b) of the A.P. State and Subordinate Services Rules, 1996 reads as follows:

“35 (b). The seniority of a member of a service, class or category, who is transferred on his own request from one unit of appointment to another unit of appointment shall be fixed with reference to the date of his joining duty in the latter unit of appointment.”

32. Rule 35(b) does not use the words “below the last of the approved probationers”. Instead, Rule 35(b) uses the words “the date of his joining duty in the latter unit of appointment”.

Therefore, the original applicants before the Tribunal are entitled to take seniority in the Department of Commercial Taxes with reference to the date of their joining duty, namely, 01-01-1996.

33. Admittedly as on 01-01-1996, the writ petitioners herein were undergoing probation as persons directly recruited after being selected by the Andhra Pradesh Public Service Commission. The writ petitioners have actually joined duty on various dates ranging from December, 1994 to December, 1995. Some of them had completed almost one year of probation in the Department of Commercial Taxes on 01-01-1996 when the original applicants before the Tribunal came to this Department on their own request.

34. The rule relating to seniority of persons, who are directly recruited to a post, is found in Rule 36 of the A.P. State and Subordinate Services Rules, 1996. Rule 36 may be usefully extracted in entirety as follows:

“36. INTER-SE-SENIORITY WHERE THE DATES OF COMMENCEMENT OF PROBATION ARE SAME:-

The seniority of the persons in the service shall be determined as follows:-

- (i) In respect of the candidate selected by the Andhra Pradesh Public Service Commission or other selecting authorities by direct recruitment, shall be with reference to their ranking assigned irrespective of the date of commencement of their probation in that category.
- (ii) In respect of the persons promoted or appointed by transfer (involving promotion) the dates from which they were placed on their probation;
- (iii) In respect of persons covered under item (ii) above, in case the date of commencement of probation is the same, whoever is aged shall be the senior;
- (iv) In respect of the persons appointed on transfer on administrative grounds, shall be from the date on which the individual was placed on probation in the original department; and
- (v) In respect of the persons appointed on request transfer; the date of joining of such person in the new department /unit.”

35. It may be seen from Rule 36 (iv) that the seniority of persons directly appointed on transfer on administrative grounds, will be from the date on which the individual was placed on probation in the original department. But under Rule 36 (v), the seniority of persons appointed on request transfer will be fixed with reference to the date of his joining in the new department. Therefore, they cannot take seniority over and above those who have already joined service in the new department and were undergoing probation.

36. The Proviso to Rule 15 (1) of the A.P. Ministerial Service Rules, 1998, also speaks the same language as contained in Rule 36 of the A.P. State and Subordinate Services Rules, 1996. Proviso (ii) and (iii) under Rule 15(1) of the A.P. Ministerial Service Rules, 1998, reads as follows:

“ii) The Seniority of a person transferred on administrative grounds from one Department to another shall be fixed in the latter department with reference to the date of his first appointment in the former department or office.

iii) If it is at request seniority shall be fixed in the latter department or office with reference to the date of his first appointment in the latter department or office.”

37. Since all the relevant Rules speak about “the date of joining”, the Tribunal was wrong in holding that the transferees will take seniority below the approved probationers in a new department, to the detriment of persons who were undergoing probation. Hence, the orders of the Tribunal, as rightly contended by the writ petitioners, are contrary to law and the 3rd contention of the petitioners is to be upheld.

38. In regard to the contention No.3, Mr. P. Suresh Reddy, learned senior counsel appearing for the original applicants before the Tribunal submitted that Rule 15 of the A.P. Ministerial Service Rules relied upon by the writ petitioners came into force, when the A.P. Ministerial Service Rules, 1966 were superseded by A.P. Ministerial Service Rules, 1998 issued under G.O.Ms.No.261, General Administration (Ser.-B), Department dated 14-07-1998. The original applicants before the Tribunal were transferred from other departments to the Commercial Taxes Department on 01-01-1996,

when the A.P. Ministerial Service Rules, 1966 were in force. Therefore, the learned counsel contended that proviso (ii) and (iii) under Rule 15 (1) of the A.P. Ministerial Service Rules, 1998 cannot be relied upon by the writ petitioners. On the other hand, it was Rule 16 of the 1966 Rules that had to be taken note of.

39. But unfortunately for the original applicants, Rule 16 of the 1966 Rules was completely substituted by a new Rule under G.O.Ms.No.665, General Administration (Ser.B) Department dated 14-12-1990. The newly substituted Rule 16, which came into force in December 1990, did not deal with the seniority of a person transferred to a department on his own request.

40. Moreover, Rule 27 of the 1966 Rules dealt with Probation, Seniority and Confirmation. Sub-rule (1) of Rule 27 entitled a person to count for probation and seniority, the services rendered in a post. There were 5 provisos to Rule 27 (1) of the A.P. Ministerial Service Rules, 1966. The proviso (iii) under Rule 27 (1) of the 1966 Rules reads as follows:

“.....the seniority of a member of the service who is transferred at his own request from one department or office to another shall be fixed in the latter department or office with reference to the date of his first appointment in the latter department or office.....”

41. A reading of proviso (iii) under Rule 27 (1) of the 1966 Rules shows that it is nothing but what has now become proviso (ii) and (iii) under Rule 15 (1) of the 1998 Rules. Therefore, it is clear that the rule position has always remained the same, and hence, the third contention of the petitioners is to be upheld.

Contention No.4:-

42. The 4th contention of the writ petitioners is that even as per the orders of appointment issued to the original applicants before the Tribunal, they were liable to take seniority below both the approved probationers as well as the probationers.

43. The orders of transfer of all the original applicants before the Tribunal have been filed before us. The orders of transfer contain several conditions, the first of which reads as follows:

“His transfer to C.T. Department C.T. Division, Kurnool/ Anantapur District is ordered at his request and is subject to the following conditions.

1) He should take last rank below ***the probationer and approved probationer*** working in this department/ division.”

44. It is patently clear from the above condition that the original applicants agreed to take the last rank below (1) the probationers and (2) the approved probationers working in the Commercial Taxes Department. If the original applicants were to be assigned seniority only below the approved probationers, the orders of transfer would not have contained both the expressions (1) probationers and (2) approved probationers. But the orders of transfer contain both the expressions. After having accepted the aforesaid conditions and joined the Commercial Taxes Department, the original applicants were not entitled to seek a benefit contrary to the condition subject to which they were transferred. The original applicants were not entitled to retain the benefit and throw the

condition subject to which the benefit was conferred upon them.

Hence, the 4th contention of the petitioners is also to be upheld.

Contention No.5:-

45. The 5th contention of the writ petitioners is that the original applications were barred by law inasmuch as three Seniority Lists had earlier been released during the period from 1999 to 2008 and the original applicants failed to challenge anyone of them.

46. From the facts that we have narrated in the previous paragraphs, it would be clear that the original applicants before the Tribunal were actually attempting to reopen the issue of seniority, which had been settled at least 10 years before the original applicants went before the Tribunal. This can be seen, by having a look at the sequence of events, at the cost of repetition as follows:

- (1) There is no dispute about the fact that a provisional seniority list was issued first on 06-09-1999, along with a notice to all employees to show cause as to why the seniority position as reflected therein should not be confirmed. This first provisional seniority list was in respect of Junior Assistants/ Typists/Junior Stenos for the period from 01-04-1994 to 31-03-1996, which was issued in Rc.No.A3/944/96.
- (2) There is no dispute about the fact that some of the original applicants before the Tribunal filed objections to the said seniority list dated 06-09-1999. In particular, the applicants in O.A.Nos.473, 474, 481 and 485 had filed objections to the seniority list dated 06-09-1999.

- (3) Admittedly, the objections were overruled by the proceedings in reference No.A3/944/96, dated 14-02-2000 and the provisional seniority list was confirmed. The proceedings dated 14-02-2000 show that the objections of each one of the original applicants were specifically considered and rejected.
- (4) The original applicants filed statutory appeals against the final seniority list dated 14-02-2000. The appeal was rejected by an order dated 28-03-2001. That order was never challenged by the original applicants. Therefore, the seniority list attained finality way back in 2001.
- (5) For some strange reason, the Department issued one more provisional integrated seniority list dated 31-12-2007. This was for the ministerial staff for the period from 01-04-1994 to 31-03-2005. Even to this seniority list, objections were received and after overruling the objections a final list was issued on 08-08-2008. This seniority list was also not challenged.
- (6) It is only when yet another show cause notice dated 02.12.2009 was issued, that the original applicants chose to come up before the Tribunal.

47. Therefore, it is clear that the original applicants before the Tribunal (1) were aware of the first provisional seniority list dated 06-09-1999; (2) objected to the same; (3) suffered an order of rejection; (4) filed an appeal and got it rejected in 2001 and allowed the same to attain finality.

48. The contention of the learned counsel for the unofficial respondents is that the final show cause list dated 02.12.2009 enclosing a provisional integrated seniority list gave a fresh cause of action. But the said argument is stated only to be rejected. The first provisional seniority list dated 06-09-2009 covered the ministerial staff working in the department during the period from 01-04-1994 to 31-03-1996. In so far as persons who were in employment during the said period, the tentative seniority list attained finality by the proceedings dated 14-02-2000 and by the rejection of the appeal on 28-03-2001. Subsequent seniority list related to persons and who joined service after 01-04-1996, though a comprehensive seniority list was prepared for the entire period from 01-04-1994.

49. To put it differently, the seniority list dated 31-07-2007 gave a cause of action only for those appointed after 01-04-1996 up to 31-03-2005. For those appointed before 31-03-1996, the seniority list attained finality on 14-02-2000. Therefore, it is clear that by the present proceedings, the original applicants were attempting to reopen the issue of seniority that was settled at least 10 years earlier. In service jurisprudence, it is not possible to reopen a long settled seniority. Therefore, the 5th contention of the petitioners is also to be upheld.

Conclusion:

50. In the light of the above, we are of the considered view that the Tribunal faulted in granting a benefit to a set of applicants, who were guilty of suppression of facts, who were guilty of long delay and laches in approaching the Tribunal, to reopen an issue of seniority

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that had attained finality 10 years earlier. Hence, the order of the Tribunal is liable to be set aside.

In the result the writ petitions are allowed, the common order of the Tribunal is set aside and the Original Applications filed by the contesting respondents herein shall stand dismissed.

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

V.RAMASUBRAMANIAN, J

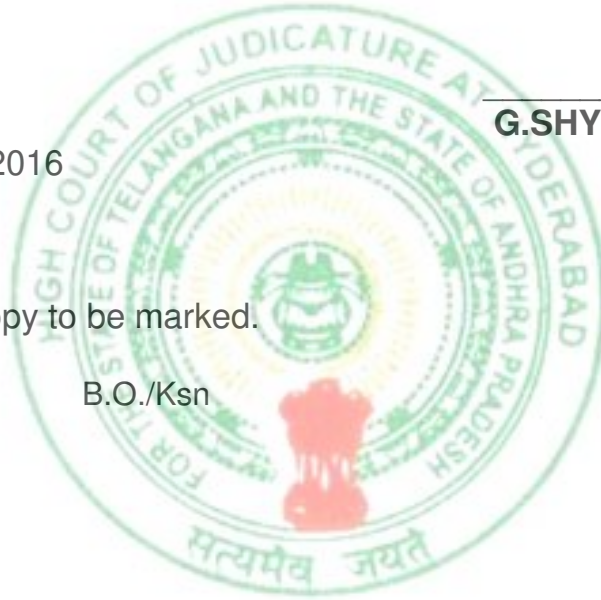
Date: 02-12-2016

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Note: L.R. copy to be marked.

B.O./Ksn

G.SHYAM PRASAD, J



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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD



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(per VRS, J.)

2nd December, 2016.
(Ksn)