

***THE HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO**

+W.P. Nos. 23518, 27093, 17805, 25549, 21344 & 19843
of 2016

% 22-08-2016

#Nandipati Damodar and four others

....petitioners in W.P. No.23518 of 2016

G.Ramesh

....petitioner in W.P. No.27093 of 2016

Nandipati Damodar and two others

....petitioners in W.P. No.17805 of 2016

P.Vijay Shankar and another

....petitioners in W.P. No.25549 of 2016

Md. Abdul Ghani

....petitioner in W.P. No.21344 of 2016

R.Vijaya Kumar

....petitioner in W.P. No.19843 of 2016

Vs.

\$ The Telangana State Power Generation Corporation
Rep. by its Chairman & Managing Director,
Vidyut Soudha, Hyderabad and four others

.... Respondents in W.P. No.23518 of 2016

The Telangana State Power Generation Corporation
Rep. by its Chairman & Managing Director,
Vidyut Soudha, Hyderabad and three others

.... Respondents in W.P. No.27093 of 2016

The Telangana State Power Generation Corporation
Rep. by its Chairman & Managing Director,
Vidyut Soudha, Hyderabad and three others

.... Respondents in W.P. No.17805 of 2016

The Telangana State Power Generation Corporation
Rep. by its Chairman & Managing Director,
Vidyut Soudha, Hyderabad and three others

.... Respondents in W.P. No.25549 of 2016

The Telangana State Power Generation Corporation
Rep. by its Chairman & Managing Director,
Vidyut Soudha, Hyderabad and two others

.... Respondents in W.P. No.21344 of 2016

The Telangana State Power Generation Corporation
Rep. by its Chairman & Managing Director,
Vidyut Soudha, Hyderabad and two others

.... Respondents in W.P. No.19843 of 2016

Counsel for the petitioners : Sri G.V.Shivaji in WP. Nos.23518, 27093,
17805, 25549, 19843 of 2016

Sri J.Sudheer in W.P. No.21344 of 2016

Counsel for the Respondents: Smt. K.Udayasree

<Gist :

>Head Note:

? Cases referred:

1. (2007) 6 SCC 220
2. (2007) 11 SCC 522
3. (1994) 4 SCC 602
4. (2013) 5 SCC 111
5. (1983) 3 SCC 284
6. 1986 (Supp) SCC 584
7. (1987) 3 SCC 622
8. (2008) 9 SCC 242
9. (1999) 8 SCC 455
10. (2010) 10 SCC 1
11. (2014) 10 SCC 398

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

**WRIT PETITION Nos.23518, 27093, 17805, 25549, 21344 & 19843 of
2016**

Between:

Nandipati Damodar and others

....Petitioners

and

The Telangana State Power Generation Corporation,
Rep.by its Chairman & Managing Director,
Vidyut Souda, Hyderabad,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 22.08.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

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

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

**WRIT PETITION Nos.23518, 27093, 17805, 25549, 21344 & 19843 of
2016**

COMMON ORDER:

All these writ petitions are being disposed of by this common order as they relate to the challenge made to the service rules to the post of Chemist in the respondent Corporation.

The petitioners have been working as Junior Plant Attendants in respondent No.1 Corporation. They are qualified for consideration of their cases for the post of Chemist by appointment by transfer. Respondent No.3 issued a Circular Memo on 30.09.2015 seeking

particulars and willingness of the in-service candidates and after obtaining the willingness, respondent No.4 forwarded a list of candidates on 21.11.2015. After receipt of the same by respondents 1 to 3, petitioners came to know that respondent No.1 issued a notification on 23.05.2016 for filling up of 42 vacancies of the posts of Chemist through direct recruitment, contrary to the service regulations issued in G.O.O.No.73/JS(Per)/2008 dated 17.05.2008. They challenged the same in W.P. No.17805 of 2016 and when the same is pending, learned Standing Counsel for the respondents brought to the notice of this Court the amendment made to the service regulations deleting the method of 'appointment by transfer'. In those circumstances, they challenged T.G.O.O.No.63/CGM(HR)/2016 dated 16.05.2016.

A counter affidavit is filed stating that respondent No.1 Corporation was incorporated on 29.05.2014 and came into existence with effect from 02.06.2014. The service regulations of erstwhile APGENCO are adopted by respondent No.1. Respondent No.1 in its 16th Board Meeting held on 14.03.2016 decided to amend Regulation 6(a) of the A.P.S.E.B. Service Regulations (Part-III) and it was notified in T.G.O.O.No.63/CGM(HR)/2016 dated 16.05.2016. Thereafter, notification No.3/CGM(Admn, IS & ERP) dated 23.05.2016 was issued inviting applications for 42 posts of Chemists. The last date for receipt of applications was 25.06.2016. 9105 applications were received. The written examination was held on 17.07.2016 wherein 6630 candidates appeared. It is admitted that the petitioners are working as Junior Plant Attendants. They were selected and appointed in the year 2013. The eligibility for the post of Junior Plant Attendant is 10th Class with ITI qualification, whereas the qualification for recruitment to the post of Chemist is M.Sc. First Class with Chemistry or Environmental Sciences preceded by B.Sc. Chemistry or Environmental Science as one of the subjects from a recognised University. Some of the petitioners were qualified and obtained P.G. Degree through distance education mode. In view of the amendment made to the service regulations, petitioners are

not eligible for consideration to the post of Chemist. In fact, the erstwhile A.P.S.E.B. had deleted the method of appointment by transfer to the post of Chemist vide B.P.(P&G Per.)Ms.No.253 dated 28.08.1990 and the same continued till issuance of the G.O.O.Ms.No.73/JS(Per)/2008 dated 17.05.2008. This clearly shows that it was the prerogative of employer to prescribe the method of recruitment to any post. The calling up of particulars for filling up of posts of Chemist vide Circular Memo dated 30.09.2015 does not confer any right on the petitioners. The amendments are made to the service rules in exercise of the statutory provisions contained in the Andhra Pradesh Electricity Reforms Act, 1998. It is for the employer to prescribe the method of recruitment and the petitioners cannot insist for a particular mode of recruitment.

Learned Senior counsel for the petitioners submits that the amendment to the service regulations cannot take away the vested right of petitioners, who are in service as on the date of amendment. Even assuming that the amendments are valid, it cannot apply to the vacancies existing on the date of amendment and it will have only prospective effect.

Learned Senior Counsel appearing for the respondents submits that the amendment can be made with retrospective effect also and by virtue of the amendment to service regulations, petitioners are not eligible to be considered to the post of Chemist.

In the light of above averments, the points that arise for consideration are as under:

- (1) Whether the amendments made to the service regulations are valid in law?
- (2) If the amendments made to the service regulations are valid, whether the amended regulations can be made applicable to the existing vacancies as on the date of amendment?

The papers filed along with the counter affidavit of respondent No.1 show that respondent No.1 held its 13th Board Meeting on 03.11.2015 and approved the filling up of 41 vacant Chemist posts by method of direct recruitment. As on the date of said meeting, there were 10 vacancies and 31 new posts were sanctioned. It appears that due to promotion of the existing Senior Chemists and due to bifurcation of the State, certain new vacancies arose. When information was called on 30.09.2015 from the in-service candidates for willingness, nine candidates, who possessed the requisite qualification, have submitted their willingness for appointment by transfer. Among nine candidates, one candidate acquired M.Sc. qualification from Periyar University, Salem, Tamilnadu, under distance mode and as per G.O.O.No.252/JS(Per)/2010 dated 31.12.2010, such degree is not valid. A representation was received from the TSGENCO Chemists Association requesting for changing the method of recruitment, by deleting the method of recruitment by transfer of in-service candidates as Chemist and for adoption of G.O.O.No.425/JS(Per)/2014 dated 17.12.2014 of the APGENCO. The 16th Board Meeting was held on 14.03.2016 wherein the proposal for filling up of 42 vacant posts of Chemist by direct recruitment and deleting the existing regulation of appointment by transfer to the said post was approved. It accordingly issued T.G.O.O.No.63/CGM (HR)/2016 dated 16.05.2016.

The relevant service rule for the post of Chemist before amendment reads as follows:

Chemist	By direct recruitment	(a) Must not have completed 28 years of age on the first day of July of the year in which the selection for appointment is made (b) M.Sc. First class with Chemistry preceded by B.Sc. with Chemistry as one of the subjects from a recognized university. Note: The Board employees who are fully qualified for appointment to the post of chemist under “Direct recruitment” not exceeding the age of 45 years as on date last date of submission of application for the post of Chemist are eligible to be considered for direct recruitment along with other open candidates. They will have to appear at the common examination. They will be eligible for protection of pay only if selected and for all purposes including seniority in the category of chemist they should be treated as “direct recruitee”. (c) Preference shall be given for the experience in a power station or a chemical plant where a large demineralization plant is in use.
	Recruitment by transfer	(a) For in service candidates (b) M.Sc with Chemistry preceded by B.Sc with Chemistry or Environmental Sciences as one of the subjects from a recognized University. (c) Must pass in the screening test to be conducted by the department once in a year

As stated in the counter affidavit, there was no provision for recruitment to the post of Chemist by transfer during the period from 1990 to 2008. The provision was made in G.O.O.73/JS(Per)/2008 dated 17.05.2008, pursuant to the amendment approved in 74th Board Meeting held on 06.05.2008 by providing for recruitment by transfer. Now, by the impugned decision, the said amendment is deleted.

The impugned order amending the service regulations by deleting the method ‘appointment by transfer’ states that the amendment would come into force with immediate effect. Thus, it has not given any retrospective operation. In the case of **Tejshree Ghag v. Prakash Parashuram Patil**^[1], it was held that the State has the power to alter the terms and conditions of service even with retrospective effect and the rules so made ordinarily should state so expressly. In the case of **Marripati Nagaraja v. Government of A.P.**^[2], the Supreme Court held

as follows:

“The State, in exercise of its power conferred upon it under the proviso appended to [Article 309](#) of the Constitution of India, is entitled to make rules with retrospective effect and retroactive operation. Ordinarily, in absence of any rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied. But if some rule has been given a retrospective effect which is within the domain of the State, unless the same is set aside as being unconstitutional, the consequences flowing therefrom shall ensue. In such an event, the applicable rule would not be the rule which was existing but the one which had been validly brought on the statute book from an anterior date.”

In the case of **Hitendra Vishnu Thakur v. State of Maharashtra**^[3], the ambit and sweep of the amending Act and its affect on the substantive rights was summarised as follows:

- (i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.
- (ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.
- (iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.
- (iv) A procedural statute should not, generally speaking, be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.
- (v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

The above cited decisions were quoted with approval in the case of

State of Andhra Pradesh v. Ch. Gandhi^[4]

Thus, there is no dispute for the proposition that the competent authority, who framed the service regulations, can make amendments to the regulations. Learned counsel for the petitioners could not point out the irregularity in amending the service regulations. Hence, it has to be held that the amendments to the service regulations are valid.

The only point that remains for consideration is whether the amended service regulations can be applied to the vacancies existing on the date of notification of the amendment. The record shows that as on the date of 16th Board Meeting on 14.03.2016, there were 42 vacancies of the posts of Chemist and the following subjects are placed before the Board:

- a) Whether, the total 42 nos. Chemist vacancies may be filled up by the method of direct recruitment without considering the in service employees by appointment by transfer.
- b) If so, whether, the existing regulation of appointment by transfer to the post of Chemist may be deleted by amendment.

Thus, it is clear that there are 42 vacancies of posts of Chemist as on the date of amendment. Now, it has to be seen whether the petitioners have got a vested right to consider their case as per the unamended rule.

Learned counsel for the petitioners placed reliance on the following decisions:

- (1) **Y.V.Rangaiah v. J.Sreenivasa Rao**^[5]
- (2) **T.R. Kapur v. State of Haryana**^[6]
- (3) **P.D.Aggarwal v. State of U.P.**^[7]

In **Y.V.Rangaiah's** case (1 Supra), the Supreme Court categorically held that in respect of the posts, which fell vacant prior to

the amended rules, would be governed by the old rules and not by the new rules. In **T.R.Kapur's** case (2 supra), it was held that though the employer has got power to amend the rules retrospectively, the benefits acquired under the existing rules cannot be taken away and it must satisfy the test of Articles 14 and 16 of the Constitution of India. In **P.D.Agarwal's** case (3 supra) also, the Supreme Court laid down the same proposition.

In the instant case, the petitioners joined service in the year 2013, when the rule for filling up of the post of Chemist by method of recruitment by transfer was in vogue. In fact, the willingness of candidates was called for by a Circular Memo dated 30.09.2015. They got a right to be considered for appointment under the rules existing as on the date of arising of vacancies. But, the learned Senior Counsel Sri G.Vidya Sagar submits that those decisions relate to the cases of promotion and the post of Chemist is not a promotional post from the post of Junior Plant Attendant. He submits that in the case of **Union of India v. Pushpa Rani**^[8], it was clearly held that the creation/abolition of post, formation/restructuring of cadre, sources/mode of recruitment, prescription of qualifications, selection criteria and evaluation of service records are matters, which fall in employer's domain and it is not for the Court to lay down the methodology of recruitment. There is no dispute with regard to the said proposition. But, in the instant case, the issue that is being considered by this Court is with regard to the application of amended service rules to the vacancies already existing on the date of such amendment by holding that the amendments made to the service rules are valid and hence, the said decision is not applicable to the facts of present case. Similarly, the decision in **G.Venkateshwara Rao v. Union of India**^[9] is also a case of restructuring the cadre and is not applicable to the facts of present case. In the case of **Official Liquidator v. Dayanand**^[10] relied on by the learned counsel for respondents, the Supreme Court laid down the same proposition. The

other decision of **State of Jharkhand v. Bhadey Munda**^[11] relied on by the learned counsel for respondents lays down the proposition that the right to be considered for promotion is not a right to get promoted and in the absence of any existing vacancies in promotion post, it was held that a direction to the State to promote respondents was held to be unsustainable. In the instant case, there is no dispute with regard to the existence of vacancies and as rightly held by the Senior Counsel for the respondents that this is not a case of promotion. Hence the said decision is also not applicable.

In view of the above discussion, it is held that the amendments to the service rules under the impugned T.G.O.O.No.63/CGM(HR)/2016 dated 16.05.2016 are valid in law, but they are applicable to the vacancies arising after the said date of amendment, but not to the vacancies notified in the notification dated 23.05.2016. The said vacancies shall be filled up as per the unamended rules only.

Accordingly all these Writ Petitions are allowed. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

22.08.2016

MVA

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- ^[1] (2007) 6 SCC 220
^[2] (2007) 11 SCC 522
^[3] (1994) 4 SCC 602
^[4] (2013) 5 SCC 111
^[5] (1983) 3 SCC 284
^[6] 1986 (Supp) SCC 584
^[7] (1987) 3 SCC 622
^[8] (2008) 9 SCC 242
^[9] (1999) 8 SCC 455
^[10] (2010) 10 SCC 1
^[11] (2014) 10 SCC 398