IN THE HIGH COURT OF JUDICATURE AT HYDERBAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADERSH

**Writ Petition Nos.6640, 6650, 6658 and 7394 of 2014**

Between:

R.S.R. Anjaneya Sarma

…. Petitioners

AND

Government of Andhra Pradesh, represented
By its Principal Secretary Revenue (CT)
Department, Hyderabad and 3 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

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

+ **Writ Petition Nos.6640, 6650, 6658 and 7394 of 2014**

% 02-12-2016

**W.P.No.6640 of 2016**

R.S.R. Anjaneya Sarma

.... Petitioners

AND

Government of Andhra Pradesh, represented
By its Principal Secretary Revenue (CT)
Department, Hyderabad and 3 others

.... Respondents

! Counsel for petitioners: Mr. Ch. Dhananjaya, & Mr. Siva,

^ Counsel for respondents: 1) G.P. for Services

2) Mr. K.G. Krishnamurhty,

3) Mr. N. Subba Rao,

< Gist:

> Head Note:

? Cases referred:

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

**Writ Petition Nos.6640, 6650, 6658 and 7394 of 2014**

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

These writ petitions arise out of a common order passed by the Andhra Pradesh Administrative Tribunal, at Hyderabad, dismissing the challenge made by the petitioners in W.P.Nos.6640, 6650 and 6658 of 2014, to two Government Orders by which the unofficial respondents in these writ petitions were conferred the benefit of absorption in the post of Senior Assistant in the Commercial Taxes Department, with effect from a previous date.

2. Heard Mr. Dhananjaya and Mr. Siva, learned counsel for the writ petitioners, the learned Government Pleader for Services appearing for the official respondents, Mr. K.G. Krishnamurthy, learned Senior Counsel appearing for the unofficial respondents in a few matters and Mr. N.Subba Rao, learned counsel appearing for the unofficial respondents in two matters.

3. The admitted facts out of which the present batch of writ petitions arise are as follows:

(a) The petitioners in these writ petitions were originally selected and appointed in the Department of Commercial Taxes. In contrast, the unofficial respondents in these writ petitions were employees of a State-owned Corporation, by name Andhra Pradesh Rice Fed Limited.

(b) In January 1993, the said Corporation, namely, A.P. Rice Fed Limited was wound up, throwing the employees of the Corporation to the possibility of losing their employment. But when the employees made representations for their rehabilitation, the Government took a sympathetic view and passed G.O.Ms.No.329, Agriculture and Cooperation Department, dated 22-5-1993. By the said order, the Government directed that the employees of A.P. Rice Fed Limited as shown in the Annexure to the Government Order would be absorbed in Government Departments/ Organisations.

(c) In the Annexure to the said Government Order, the names of 34 employees of the Corporation were mentioned. We are concerned in this case only with 3 out of those 34 employees namely Y.Sambasiva Rao, P.Rama Mohan Rao and K.Venkata Ratnam. All these 3 persons whose names were found in Annexure-2 to G.O.Ms.No.329, dated 22-5-1993, were working as Assistant Managers at the time of liquidation of A.P. Rice Fed Limited.

(d) Pursuant to the aforesaid Government Order, K.Venkata Ratnam, was allotted to the Department of Commercial Taxes, Kakinada Division and he joined the Department as Junior Assistant on 24-02-1994.

(e) Mr. Y.Sambasiva Rao was allotted to the Agriculture Department on 29-11-1993, but he later got re-allotted to the Commercial Taxes Department on his own request, on 10-8-1994 and he also joined as Junior Assistant. Similarly, P.Rama Mohan Rao also joined the Commercial Taxes Department as a Junior Assistant on 24-02-1994.

(f) Out of those 3 employees, two of them namely K. Venkata Ratnam and Rama Mohan Rao filed an application in O.A.No.5887 of 1995 on the file of the A.P. Administrative Tribunal, claiming that they should have been absorbed as Senior Assistants in the Department of the Commercial Taxes, as they were holding a higher post namely the post of Assistant Managers in the A.P. Rice Fed Limited at the time of absorption. But the Tribunal dismissed the application on 01-3-1999.

(g) Aggrieved by the dismissal of their applications, Venkata Ratnam and Rama Mohan Rao filed a writ petition in W.P.No.11109 of 1999 on the file of this Court. Before this Court, those petitioners placed reliance upon a Government Order in G.O.Ms.No.421, Revenue Department, dated 19.5.1997, by which another person by name Chandramouli who was absorbed into the Registration Department was appointed to a higher post. Therefore, even while dismissing the writ petition and affirming the view taken by the A.P. Administrative Tribunal, this Court issued a direction on 01.7.1999 in the said writ petition W.P.No.11109 of 1999 to the Government to consider the representations, if any, made by Venkata Ratnam and Rama Mohan Rao.

(h) Pursuant to the directions so issued, the Government issued an order in G.O.Ms.No.72, Revenue Department, dated 20.01.2001. The operative portion of the order passed by the Government in G.O.Ms.No.72 reads as follows:

> "Government after careful examination, have considered the request of S/Sri K.Venkataratnam and P.Ram Mohan Rao, formerly Assistant Managers in A.P. Ricefed presently working as Junior Assistants in Commercial Taxes Checkpost, Ethakota, East Godavari Dist., and in the O/o the Commercial Tax Officer, Tuni,

> East Godavari District respectively and hereby order that they shall be absorbed as Senior Assistants in the scale of Rs.4190-8700 in Commercial Tax Department, subject to the conditions as follows:-
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> 1.they shall not claim the emoluments relating to a Senior Asst. post from any date earlier to that on which they actually join as Senior Assistant.
>
> 2.they shall not claim any seniority in that post on the basis that they should have been appointed as Senior Assistant from any earlier date.
>
> 3.they shall pass relevant tests prescribed for the post of Senior Asst in Commercial Tax Department.
>
> The Commissioner of Commercial Taxes shall take further action accordingly."

(i) Contending non-implementation of G.O.Ms.No.72, dated 20-01-2001, Venkata Ratnam filed O.A.No.1979 of 2001 on the file of the Tribunal and obtained a direction to the Commissioner of Commercial Taxes to act in accordance with G.O.Ms.No.72.

(j) Taking cue from Venkata Ratnam, Sambasiva Rao filed an application in O.A.No.543 of 2001 on the file of the A.P. Administrative Tribunal seeking a direction to absorb him as Senior Assistant with retrospective effect from 29-11-1993. In the said application he also sought an interim direction to consider his representation. The Tribunal gave an interim direction to consider his case, pursuant to which the Government issued G.O.Rt.No.1095, Revenue Department, dated 23-5-2001 rejecting the claim of Sambasiva Rao.

(k) Therefore, challenging G.O.Rt.No.1095, dated 23-3-2001, Sambasiva Rao filed yet another application in O.A.No.3572 of 2001 on the file of the A.P. Administrative Tribunal.

(l) In the meantime a person by name P.Vijaykumar who was directly recruited as Junior Assistant in the office of the Deputy Commissioner of Commercial Taxes, Kakinada, filed an application in O.A.No.3360 of 2001 on the file of the A.P. Administrative Tribunal challenging the very Government Order in G.O.Ms.No.72, dated 20-01-2001 passed in favour of K.Venkata Ratnam and Rama Mohan Rao.

(m) After clubbing all the 3 applications O.A.Nos.543, 3572 and 3360 of 2001 together, the Tribunal heard them and passed a detailed common order dated 02-01-2002. By the said order, the Tribunal set aside G.O.Ms.No.72, dated 20-01-2001 issued in favour of Venkata Ratnam and Rama Mohan Rao, granting them the benefit of absorption in the Commercial Taxes Department as Senior Assistants. As a consequence, the Tribunal dismissed the claim made by Sambasiva Rao in O.A.Nos.543 and 3572 of 2001.

(n) By the aforesaid order of the Tribunal, all the 3 candidates namely Venkata Ratnam, Rama Mohan Rao and Sambasiva Rao lost their claim for absorption in the post of Senior Assistant.

(o) However, the order of the Tribunal dated 02-01-2002 passed in the aforesaid 3 applications was challenged by K.Venkata Ratnam and P.Rama Mohan Rao in W.P.No.1216 of 2002 and by Sambasiva Rao in W.P.Nos.4136 and 4137 of 2002.

(p) By a final order dated 28-10-2003, a Bench of this Court disposed of W.P.No.1216 of 2002 filed by K.Venkata Ratnam and Rama Mohan Rao, directing the Commissioner of Commercial Taxes to absorb Venkata Ratnam and Rama Mohan Rao as Senior Assistants as per the directions contained in G.O.Ms.No.72. While passing the said order, the Bench of this Court took note of the fact that there was no direct recruitment to the post of Senior Assistants, in the Department of Commercial Taxes from 1998 and that however there were vacancies available in the post before the abolition of direct recruitment to the said post in 1998.

(q) By a separate order passed on the very same date namely 28-10-2003, in the two writ petitions filed by Sambasiva Rao in W.P.Nos.4136 and 4137 of 2002, the Division Bench merely permitted Sambasiva Rao to make a representation and left it open to the Government to review the matter and take appropriate decision. Interestingly this Court which thought fit to grant relief to Venkata Ratnam and Rama Mohan Rao in W.P.No.1216 of 2002, did not grant the very same relief to Sambasiva Rao in his writ petitions in W.P.Nos.4136 and 4137 of 2002, on the ground that his case was not similar to the other two and that he cannot claim the benefit of G.O.Ms.No.72, dated 20-01-2001.

(r) Since the two different judgments of this Court dated 28-10-2003, one passed in W.P.No.1216 of 2002 and another passed in common in W.P.Nos.4136 and 4137 of 2002, have attained finality, it would be useful to extract the relevant portions of both the judgments in a tabular form so that the cases of all the 3 persons namely Sambasiva Rao, Venkata Ratnam and Ram Mohan Rao, could be compared easily.

| W.P.No.1216 of 2002<br>K.Venkata Ratnam and P.Rama Mohan Rao<br>(operative portion of the judgment) | W.P.Nos.4136 and 4137 of 2002<br>Y.Sambasiva Rao<br>(operative portion of the judgment) |
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| 7. Even though the direction is only to the effect that they should be absorbed in Commercial Tax Department, the contention that is now sought to be raised is that there is no direct | 5. It is not in dispute that consequent on the closure of A.P. RICE FED, the petitioner was allotted to the Agriculture Department, where he worked in six months. Thereafter he was |

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| recruitment in the subordinate offices to the post of Senior Assistants, but they could only be absorbed at the Head Office and it is to be noted that even the direct recruitment to the post of Senior Assistant is also abolished from 1998. It is on record that as on the date of the Government issuing G.O. Ms.No.72 abolishing direct recruitment to the post of Senior Assistant, vacancies were available in the Head Office and therefore they could be absorbed in the said posts. In order to clear the stalemate, which has been created by virtue of the above G.O., we are of the view that appropriate solution has to be made so that the G.O. issued by the Government can be implemented and the interest of the unofficial respondent could be protected. In view of the fact that the vacancies in the category of Senior Assistants are available in the Head Office, as can be seen from the circular issued by the Commissioner of Commercial Tax, there should not be any difficulty for the Commissioner to absorb the petitioners as Senior Assistants in Commercial Tax Department. That would not only save the G.O.Ms.No.72 from the onslaught of the order passed by the Tribunal but also would protect the interest of the unofficial respondent in fact we had directed the learned Government Pleader to ascertain from the Commissioner of Commercial Tax as to the absorption of the petitioners in view of the circular, but he has not placed any information on this point. Therefore we are issuing the following order in the interest of the Department as well as employees. | transferred to the Commercial Tax Department in Vijayawada Division, where he continued to be working even till today. The Government rejected the case of the petitioner on the ground that he was originally appointed in Agriculture Department, and thereafter he was transferred to Commercial Tax Department by virtue of decision of Inter- departmental Transfer Committee. The A.P. Administrative Tribunal, (for short the Tribunal) also after considering the matter refused to set aside the order and rejected the case of the petitioner for absorption as Senior Assistant. We have considered the matter in extenso and find that the facts in which the petitioner is situate is different than the facts in W.P.No.1216 of 2002. There the petitioners were allotted to the Commercial Tax Department, where they have raised the dispute relating to absorption in Senior Assistant post. But here the petitioner has started claiming for Senior Assistant post after he was transferred and absorbed in the Commercial Tax Department. Therefore the petitioner cannot claim the same benefits as was done in the case of the petitioners covered by G.O.Ms.No.72, dated 20.1.2001. Under these circumstances, we do not find any ground to interfere with the order of the Tribunal.<br>6. But the situation cannot be closed at that point. Now the petitioner is brought to the main stream of the Commercial Tax Department wherein his own juniors have been granted the higher status of Senior Assistants and are being absorbed by virtue of the orders passed by the Government in |

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| 8. Under these circumstances, the Writ Petition is disposed of directing the Commissioner of Commercial Tax Department to absorb the petitioners as Senior Assistants as per the directions issued by the Government in G.O.Ms.No.72 in the Head Office at Hyderabad. Even if there are no vacancies for the present, still as and when such vacancies arise they should be absorbed as Senior Assistants in compliance of the orders passed by the Government. There shall be not order as to costs. | G.O.Ms.No.72.<br>In such a situation in order to avoid the inter-seniority dispute between the petitioner and other similarly situate persons, we leave it open to the Government to review the matter and take appropriate decision so as to protect the interest of the petitioner also.<br>The petitioner is also permitted to make a representation in this regard and the same shall be considered on the observations made by us supra. |

(s) As per the orders passed in W.P.No.1216 of 2002, the claim of Sambasiva Rao even to the benefits of G.O.Ms.No.72 was rejected by this Court. Insofar as the other two persons are concerned, all that this Court did was only to direct the Government to absorb them against future vacancies.

(t) Thereafter, the Government issued two orders in G.O.Ms.Nos.880 and 881, Revenue Department, dated 25-6-2007. By G.O.Ms.No.880, the Government directed the absorption of Y.Sambasiva Rao as Senior Assistant with effect from 29-11-1993. By G.O.Ms.No.881, the Government directed the absorption of K.Venkata Ratnam and Ram Mohan Rao as Senior Assistants with effect from 24-02-1994. The operative portions of both these Government Orders are presented in a tabular column for easy appreciation.

| Operative portion of G.O.Ms.No.880 | Operative portion of G.O.Ms.No.881 |
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| 9. Accordingly Government herein direct that Sri Y. Sambasiva Rao, Senior Assistant be absorbed as Senior | 8. Accordingly Govt. hereby direct that Sri K. Venkataratnam, Sr. Asst. be absorbed as Sr. Asst. in the O/o Commissioner of |

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| Assistant in the O/o Commissioner of Commercial Taxes, Hyd. w.e.f. 29-11-1993 in the applicable scale of Rs.2195-4560 i.e. the date on which the individual joined as Junior Assistant in Government Department, with a condition that he should pass all relevant tests within a period of two years from the date of issue of these orders. | Commercial Taxes, Hyderabad w.e.f. 24-2-1994 in the applicable scale of Rs.2195-4560 i.e. the date on which the individual joined as Junior Assistant in CT Department. And also direct that Sri P. Ramamohan Rao, Formerly Asst. Manager, Ricefed, presently working as Sr. Asst.<br>O/o Commercial Tax Officer, Ambajipeta, Kakinada division, be absorbed as Sr. Asst. in the Kakinada Division w.e.f. 24-2-1994 in the applicable scale of Rs.2195-4560 i.e. the date on which the individual joined as Junior Asst. in CT Department with a condition that they should have passed all relevant departmental tests within a period of two years from the date of issue of these orders for regularization of their services. |

(u) Challenging G.O.Ms.No.880, dated 25-6-2007, one Mr. R.S.R. Anjaneya Sarma, who is the writ petitioner in W.P.No.6640 of 2014 filed an application in O.A.No.4893 of 2008, contending that the grant of such a benefit to Sambasiva Rao, upset the position of Junior Assistants directly recruited in the Commercial Taxes Department. Similarly, one Mr. K.V.S. Prasad, who is the writ petitioner in W.P.No.6650 of 2014 filed an independent application in O.A.No.5337 of 2008 on the file of the A.P. Administrative Tribunal challenging G.O.Ms.No.881, by which K.Venkata Ratnam was granted the benefit. One lady by name S.V. Pavana Sarvani filed an application in O.A.No.1246 of 2010 on the file of the A.P. Administrative Tribunal challenging both G.O.Ms.Nos.880 and 881, by which benefits were granted to Sambasiva Rao and Venkata

Ratnam. One more person by name C.V.S. Ravi Kumar, who is the writ petitioner in W.P.No.6658 of 2014 filed a separate application in O.A.No.2950 of 2012 on the file of the Tribunal challenging G.O.Ms.No.880.

(v) All the 4 applications namely O.A.Nos.4893 of 2008, 5337 of 2008, 1246 of 2010 and 2950 of 2012 challenging G.O.Ms.Nos.880 and 881, dated 25-7-2007 were taken up together by the A.P. Administrative Tribunal along with one separate application filed by Y.Sambasiva Rao challenging a charge memo issued against him. By a common order dated 29-01-2014 the Tribunal dismissed all the 4 applications challenging G.O.Ms.Nos.880 and 881. As a consequence, these two Government Orders G.O.Ms.Nos.880 and 881, dated 25-6-2007, granting the benefit of absorption in the post of Senior Assistant to all the 3 individuals with retrospective effect from the dates of their original absorption as Junior Assistants, were upheld by the Tribunal.

(w) Aggrieved by the dismissal of their original applications, and the upholding of the Government Orders G.O.Ms.Nos.880 and 881, the 3 original applicants before the Tribunal namely R.S.R. Anjaneya Sarma, K.V.S. Prasad and C.V.S. Ravi Kumar have come up with the above writ petitions W.P.Nos.6640, 6650 and 6658 of 2014.

(x) In the meantime, the Government issued show cause notices dated 30-11-2007 proposing to alter the seniority of Senior Assistants in the Department, as a consequence of retrospective absorption of those 3 individuals in the post of Senior Assistants. Therefore, challenging the order of the Tribunal as well as challenging G.O.Ms.Nos.880 and 881 and the consequential show cause notice for revision of seniority, a few individuals regularly appointed in the Department of Commercial Taxes joined together and came up with the 4th writ petition W.P.No.7394 of 2014. Therefore, this writ petition was also tagged along with the other 3 writ petitions W.P.Nos.6640, 6650 and 6658 of 2014.

4. The main grievance of the writ petitioners is that they were selected and directly recruited in the Department of Commercial Taxes and that to the detriment of persons already working in the Department, the unofficial respondents cannot be granted absorption in a higher post with retrospective effect, especially after the method of direct recruitment to such higher post had already been abolished in 1998.

5. The main contentions of the unofficial respondents who are the beneficiaries of the impugned Government Orders G.O.Ms.Nos.880 and 881 are (1) that at the time of their absorption from A.P. Rice Fed Limited to the Department of Commercial Taxes, they were holding the post of Assistant Manager in the pay scale of Rs.770-1025 and hence their absorption into the post of Senior Assistant that carried a scale of pay of only Rs.530-850 was justified despite being less damaging and (2) that the only reason why the Government as well as the Tribunal granted the benefit to them was that a person by name Chandramouli who was similarly placed like

them was absorbed in a higher post in the Registration Department under G.O.Ms.No.421, dated 19-5-1997.

6. Apart from the above two contentions, raised in general by all the unofficial respondents, it is also contended by Mr. K.G. Krishnamurthy, learned Senior Counsel appearing for two of them, that the writ petition W.P.No.7394 of 2014 was not even maintainable, in view of the fact that the writ petitioners therein had not even gone to the Tribunal challenging G.O.Ms.Nos.880 and 881. If the petitioners in W.P.No.7394 of 2014 were aggrieved by the consequential show cause notice dated 30-11-2007, they must have approached the Tribunal, as it was a fresh original cause of action, in respect of which they are not entitled to come up before this Court by way of a writ petition, in view of the law laid down by the Supreme Court in L. Chandra Kumar.

7. We have carefully considered the above submissions.

8. We will first take up the issue of maintainability of W.P.No.7394 of 2014.

9. Technically Mr. K.G. Krishnamurthy, learned Senior Counsel for some of the contesting respondents, is right in contending that the petitioners in W.P.No.7394 of 2014 ought to have challenged G.O.Ms.Nos.880 and 881, dated 25-6-2007 first before the Tribunal. If the writ petitioners in W.P.No.7394 of 2014 are aggrieved by the show cause notice dated 30-11-2007 issued in pursuance of G.O.Ms.Nos.880 and 881, then they should have gone only before the Tribunal to challenge the same.

10. But unfortunately for the unofficial respondents, the dismissal of W.P.No.7394 of 2014 on the ground of maintainability would only be an exercise in futility. The reasons are two-fold. The first is that the writ petitioners in W.P.No.7394 of 2014 have not only challenged G.O.Ms. Nos.880 and 881 and the show cause notice dated 30-11-2007, but they have also challenged the common order of the Tribunal passed in 4 original applications. The second is that the common order of the Tribunal upholding G.O.Ms.Nos.880 and 881 is already under challenge in the first 3 writ petitions. Therefore, the issue about the validity of G.O.Ms.Nos.880 and 881 has to be decided in any case by this Court in the first 3 writ petitions. Hence, we do not wish to indulge in the futile exercise of rejecting one writ petition so as to enable the petitioner therein to go before the Tribunal and dealing with 3 other writ petitions on the same issue. If we do not do that, the writ petitioners may go back to the Tribunal and create one more round of litigation. In a matter of this nature, the parties have deliberately disallowed any finality from being reached. The history of the litigation which we have narrated earlier would show that from 1994 onwards, the unofficial respondents have been litigating. The earliest of the applications was filed by K.Venkata Ratnam in O.A.No.5887 of 1995. From the year 1995, the unofficial respondents have repeatedly litigated until they succeeded in the year 2007.

11. It is interesting to note that the unofficial respondents lost their claim before the Tribunal as well as before this Court on merits in the first few rounds of litigation. But by getting some innocuous

orders from this Court for a consideration of their representation to be treated on par with one of their colleagues (M.Chandramouli) who went to the Registration Department, the unofficial respondents infused life into a dead cause and ultimately succeeded. Therefore, we will not allow one more round of litigation by dismissing W.P.No.7394 of 2014 on the ground of maintainability, giving scope for the next round of litigation.

12. Having rejected the objection relating to maintainability of one of the 4 writ petitions on hand, let us now take up the core issue for consideration. If out of the mass of facts poured over hundreds of pages before us, we segregate the chaff from the grain, it will be clear that the core issue to be decided in these writ petitions is as to whether the 3 unofficial respondents, namely, K.Venkata Ratnam, P.Rama Mohan Rao and Y.Sambasiva Rao are entitled to absorption in the Department of Commercial Taxes in the post of Senior Assistant with effect from 29-11-1993 and 24-02-1994 respectively or not.

13. We have already extracted the Government Orders G.O.Ms.Nos.880 and 881, dated 25-6-2007 by which these 3 unofficial respondents were granted the benefit. The facts as stated in those 2 Government Orders are not today in dispute. From the operative portions of both the Government Orders which we have extracted earlier, it is clear that all these 3 individuals were originally appointed only as Junior Assistants in the Department of Commercial Taxes. Paragraph 9 of G.O.Ms.No.880 makes it clear that Y.Sambasiva Rao joined as Junior Assistant on 29-11-1993.

Paragraph 8 of G.O.Ms.No.881 makes it clear that K.Venkata Ratnam and P.Rama Mohan Rao joined only as Junior Assistants in the Commercial Taxes Department on 24-02-1994.

14. The most fundamental principle of law that we should remember in cases of this nature is that whenever a State-owned Corporation is wound up, the only right that the employees of such Corporation has, is to be paid all terminal benefits. Merely because the Government was considerate towards them, it does not mean that the employees of the Andhra Pradesh Rice Fed Limited had a right to be absorbed into Government service. The nod given by the Government to absorb all the 34 employees of the A.P. Rice Fed Ltd including the 3 unofficial respondents in this batch of cases, was out of mercy and not out of any legal right. It must be remembered that direct recruitment to the post of Junior Assistant in the State Government, was to be by a process of selection conducted by the Public Service Commission. Giving an exemption to such a method of recruitment prescribed by statute, the Government sympathetically considered the cases of all the 34 employees of a liquidated Corporation and absorbed them in different departments, in the post of Junior Assistants. After gaining entry as Junior Assistants, the 3 unofficial respondents started making a claim for appointment to higher posts. Those claims were rejected at the earliest point of time by the Tribunal. The order of the Tribunal was also confirmed by this Court. However, a small leverage was given to the unofficial respondents to make a representation. It is by taking undue advantage of such a leverage, the unofficial respondents

successfully won over the Government to grant them the benefit of the post of Senior Assistants.

15. In fact this Court had earlier taken note of the fact that direct recruitment to the post of Senior Assistant had been abolished way back in 1998. In such circumstances, the very grant of a benefit with prospective effect under G.O.Ms.No.72, dated 20.01.2001, was also completely illegal. This is why the Administrative Tribunal set aside G.O.Ms.No.72, dated 20.01.2001, at the instance of one Vijaykumar in O.A.No.3360 of 2001. When the order of the Tribunal setting aside G.O.Ms.No.72 was challenged by K. Venkata Ratnam and P. Rama Mohan Rao in W.P.No.1216 of 2002, this Court did not find fault with the Tribunal for setting aside G.O.Ms.No.72. This Court looked at the case of the unofficial respondents sympathetically and passed a via media order, just to save G.O.Ms.No.72. We have already extracted paragraphs 7 and 8 of the order in W.P.No.1216 of 2002.

16. Therefore, it is very clear that the unofficial respondents (1) were not entitled to be absorbed in a higher post than the post of Junior Assistants; (2) were denied the relief of absorption in a higher post, first by the Tribunal and then by this Court; (3) were granted a small benefit under G.O.Ms.No.72 after the unofficial respondents litigated again and again; and (4) had G.O.Ms.No.72, which was set aside by the Tribunal, saved by this Court only out of sympathy.

17. One more interesting fact is that in so far as Sambasiva Rao is concerned, this Court, in its order dated 28.10.2003 passed

in W.P.Nos.4136 and 4137 of 2002 denied him even the benefit of G.O.Ms.No.72. This order of the Division Bench has attained finality.

18. In the light of the gist of facts narrated in the preceding two paragraphs, we do not know how the Government could have rewritten the entire history under G.O.Ms.Nos.880 and 881, granting a benefit (1) that the unofficial respondents were not entitled to; and (2) especially after the Tribunal as well as this Court rejected their claim for such a benefit in two earlier rounds.

19. At the most, Venkata Ratnam and Rama Mohan Rao are entitled to the benefit of G.O.Ms.No.72 by virtue of the order of this Court dated 28.10.2003 in W.P.No.1216 of 2002. But Sambasiva Rao is not even entitled to the benefit of G.O.Ms.No.72, by virtue of the decision in W.P.Nos.4136 and 4137 of 2002.

20. Today by the orders passed in G.O.Ms.No.880 and 881, the Government had overreached the orders of this Court dated 28.10.2003 passed in W.P.Nos.1216 of 2002 and 4136 and 4137 of 2002. Therefore, the Government Orders G.O.Ms.Nos.880 and 881 were completely contrary (1) to the statutory rules, (2) to the orders passed by this Court as well as the Tribunal, and (3) to all principles of law governing the rehabilitation of persons from Corporations that are wound up.

21. On facts, as we have indicated earlier, Sambasiva Rao was absorbed only as Junior Assistant on 29.11.1993, as seen from paragraph 9 of G.O.Ms.No.880. Similarly, Venkata Ratnam and Rama Mohan Rao were absorbed only as Junior Assistants on 24.02.1994. G.O.Ms.No.72, the operative portion of which we have

extracted earlier, made it very clear that these 3 unofficial respondents should not claim any benefit from an earlier date whether it be seniority or emoluments. While so, the orders in G.O.Ms.Nos.880 and 881 had completely destroyed the spirit of G.O.Ms.No.72, even the benefit granted under which, was questioned by the Tribunal and a compromise formula advocated by this Court to save the same.

22. In view of the same, the writ petitions are liable to be allowed and the order of the Tribunal is liable to be set aside. Accordingly, all the writ petitions are allowed, the orders of the Tribunal are set aside and G.O.Ms.Nos.880 and 881, dated 25.06.2007 are set aside. The 3 unofficial respondents are not entitled to the benefit of absorption in the category of Senior Assistants either with effect from 29.11.1993/24.02.1994 or with effect from any date anterior to what was offered to them under G.O.Ms.No.72, dated 20.01.2001 with prospective effect. There will be no order as to costs.

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

**V.RAMASUBRAMANIAN, J**

**G.SHYAM PRASAD, J**

Date: 02-12-2016

Ak/Ksn

**<u>Note</u>:** L.R. Copy to be marked.

B.O./Ksn

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

**AND**

**HON'BLE SRI JUSTICE G.SHYAM PRASAD**

**Writ Petition Nos.6640, 6650, 6658 and 7394 of 2014**
(per VRS, J.)

2nd December, 2016.
(Ksn)