

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

Writ Petition Nos. 40948, 40950, 42093
and 42878 of 2015 and 4451 of 2016

Between

Akkena Trinadham
and others

... Petitioners

and

The State of A.P., Rep. by its Prl. Secretary to Govt.,
Irrigation & CAD Dept., Secretariat, Hyderabad-22;
and others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 18-7-2016

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| 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 Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE ANIS

+ Writ Petition Nos. 40948, 40950, 42093
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Akkena Trinadham and others

... Petitioners

Vs.

\$ The State of A.P., Rep. by its Prl. Secretary to Govt.,
Irrigation & CAD Dept., Secretariat, Hyderabad-22;
and others

... Respondents

! Counsel for the Petitioners: M/s. M.Surender Rao,
K.G. Krishna Murthy, D.Prakash Reddy and D.V.Seetharam Murthy,
Senior Counsel; and Sri M.Ratna Reddy

Counsel for official Respondents: Government Pleader for

Services (A.P.)

Counsel for private Respondents: Sri P.Balakrishna Murthy

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> Head Note:

? Cases referred:

1. 2001 (6) ALD 87 (DB)
2. AIR 1974 SC 1755
3. AIR 1983 SC 769
4. 1996 (7) SCC 759
5. (1997) 8 SCC 372

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE ANIS**

**Writ Petition Nos. 40948, 40950, 42093 and 42878 of 2015 and 4451 of
2016**

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

All these 5 writ petitions primarily challenge a common order passed by the Andhra Pradesh Administrative Tribunal, in a batch of 3 original applications and connected miscellaneous applications filed by the Deputy Executive Engineers (DEEs) working in the Irrigation and Command Area Development Department. The writ petitions also challenge 4 consequential orders passed by the official respondents on 12-11-2015, 13-11-2015, 2-12-2015 and 15-12-2015 cancelling the in-charge arrangements in superior posts and revising the seniority lists.

2. We have heard M/s. M. Surender Rao, K.G. Krishna Murthy, D. Prakash Reddy and D. V. Seetharam Murthy, learned Senior Counsel as well as Mr. M. Ratna Reddy, learned counsel appearing for the writ petitioners, the learned Government Pleader for Services (Andhra Pradesh) and Mr. P. Balakrishna Murthy, learned counsel appearing for the private respondents.

3. **BRIEF FACTS:**

(i) A group of 11 DEEs working in the Irrigation and Command Area Development Department, who are the contesting respondents in these writ petitions, filed 3 applications in O.A.Nos.1463, 2032 and 2608 of 2014 on the file of the Andhra Pradesh Administrative Tribunal.

(ii) The reliefs sought in those original applications were:

- (a) to set aside the Seniority List of DEEs dated 22-7-2013,
- (b) to set aside the Final Seniority List of Assistant Executive Engineers (AEEs) dated 18-10-2012 relating to Batch-I and of the same date relating to Batch-II and
- (c) to set aside the 4 Final Zonal Seniority Lists of DEEs dated 22-01-2013 relating to Zones-II and III.

4. PLEADINGS BEFORE THE TRIBUNAL:

(i) The pleadings made before the Administrative Tribunal by the applicants in O.A.No.2032 of 2014 were that the first 8 out of them belonged to Zone-II and the next 3 belonged to Zone-III; that after two agitations, one in 1969 and another in 1972, for the bifurcation of the State, a solution was sought to be arrived at, with the issue of "Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, which came to be known as the Presidential Order; that the said Presidential Order was issued in exercise of the powers conferred under Article 371-D of the Constitution of India; that pursuant thereto, different parts of the erstwhile combined State were divided into 6 Zones; that after the promulgation of the Presidential Order, direct recruitment to the post of Assistant Executive Engineer was resorted to Zone-wise, with a limited opportunity even to the non-locals to participate in the process of selection; that all the posts included in the State and Subordinate Services were classified into "District Cadres", "Zonal Cadres" and "State-wide Posts"; that under the Andhra Pradesh Engineering Services Rules and Andhra Pradesh Engineering Subordinate Services Rules, the posts of AEEs and DEEs were classified as Zonal Cadre Posts, as a consequence of which direct recruitment to these posts had to be done by the Public Service Commission only Zone-wise, that the first 8 among the applicants before the Tribunal were selected in the year 1985 as AEEs in Zone-II and the next 3 candidates among them were selected to the same

posts in Zone-III, through the Public Service Commission; that whenever a person is selected for appointment through the Public Service Commission, his seniority is determined by the rank assigned to him by the Public Service Commission, as seen from the proviso to Rule 3(b) of the General Rules; that under paragraph 3 of the Presidential Order, the State Government is obliged to organise local cadres for classes of posts in the Civil Services of the State and to civil posts under the State; that under paragraph 5(i) of the Presidential Order, each part of the State for which a local cadre has been organised, shall be a separate unit for the purpose of recruitment, appointment, discharge, seniority, promotion and transfer; that each local cadre, which in the cases on hand are Zonal cadres, is constituted into a water-tight compartment for all purposes; that as a consequence, the Engineer-in-Chief will have no power or jurisdiction or authority to transfer a local candidate of a particular Zone or local cadre to any other Zone; that in very exceptional cases, the Government is entitled to transfer a person from one Zone to another, provided a provision is made as per paragraph 5(2) of the Presidential Order; that under no circumstances, a candidate directly recruited in one Zone can be transplanted into another Zone for any purpose; that even a statutory rule enabling such transfer, made in the Andhra Pradesh Health and Municipal Engineering Department was struck down by a Bench of this Court in K. Radhakrishna Reddy v. State of Andhra Pradesh 2002(1) Supp. ALD 155; that therefore it is not open to the State Government or the Engineer-in-Chief to obliterate the rank assigned to the selected candidates in a Zone, by bringing candidates selected in other Zones and thereby destroying the promotional avenues of the localities; that when employees allotted to specific Zones were found working in different Zones in contravention of the 6-Point Formula, the Government was compelled to issue G.O.Ms.No.610, General Administration Department, dated 30-12-1985 repatriating them to their original Zones; that such repatriation led to endless litigation which resulted in a Full Bench of the Tribunal passing an order dated 23-4-2012 in O.A.No.3784 of 2007 batch of cases; that the said decision was also confirmed by a Division Bench of this Court by a judgment dated

21-11-2012; that while so, the Engineer-in-Chief, by a Seniority List dated 30-3-2010 brought 38 candidates from Zone-I, 2 candidates from Zone-III, 6

candidates from Zone-IV, 36 candidates from Zone-V and one from Zone-VI into Zone-II; that this has resulted in the seniority of candidates initially selected by the Public Service Commission in the years 1978 and 1985 getting tampered with; that similarly one candidate from Zone-II, 7 candidates from Zone-IV, 20 candidates from Zone-V and 7 candidates from Zone-VI are brought into Zone-III by the said Seniority List; that the fact that the said transfers had a deleterious effect upon the Seniority List can be demonstrated by the fact that one P. Satyanarayana Raju of the 1978 batch who was assigned Rank No.113 in Zone-I was brought to Zone-II and assigned Rank No.170(a) and one P. Lakshmana Reddy whose rank was 115 was brought to Zone-II and assigned the Rank 173(a); that the Seniority List dated 30-3-2010 was issued in pursuance of a Provisional Seniority List already issued on 24-01-2007; that since the Provisional Seniority List did not tinker with the seniority of the applicants before the Tribunal, they had no grievance about the same, but the final seniority list has destroyed the same; that the seniority of the applicants before the Tribunal was altered without even putting them on notice; that once the seniority position of an individual is settled, the same cannot be altered, as has been held by a Full Bench of this Court in **U.Govinda Rao v. State of A.P.** [2002(1) ALD 347] and the judgment of the Supreme Court in **P. Sudhakara Rao v. Government of A.P.** [(2013) 8 SCC 693]; that the practice of kicking people down in the Seniority List, without even an opportunity to the affected individuals, has already been deprecated by the Supreme Court in **Union of India v. P.K. Roy**; that the impugned Seniority List tended to alter the seniority and ranking of the list of candidates selected in 1978, after a lapse of 32 years; that the Department did not even take into account the fact that some of those employees might have either moved to superior posts or even retired; that the impugned Seniority List failed to take note of the ratio laid down by this Court in **M.Syam Sundar v. Government** to the effect that the Government had no power to review and re-adjust the allotment of persons; that the seniority of the applicants before the Tribunal cannot be pushed down in their respective Zones, by dumping over and above them candidates selected for appointment in other Zones; that such dumping has resulted in accelerated promotions in the other Zones from which the transferred candidates came;

that as a consequence of such action the applicants before the Tribunal have been deprived of their rightful positions in the integrated Seniority List of DEEs for promotion to the post of Executive Engineer (EE) which is a State-wide post; that AEEs appointed in Zones-I and V much later to the applicants before the Tribunal gained accelerated promotions and have already become DEEs, EEs and Superintending Engineers (SEs); that therefore the applicants before the Tribunal have been compelled to work under their juniors; and that therefore the impugned Seniority List was liable to be aside.

(ii) The pleadings made before the Administrative Tribunal by the applicants in O.A.No.1563 of 2014 were that the *Ad hoc* Rules relating to the posts in question were amended through G.O.Ms. No.401, General Administration Department, dated 30-9-1999, which came into effect on 22-5-1999; that despite the amended *Ad hoc* Rules coming into force with effect from

22-5-1999, the Engineer-in-Chief issued a Seniority List of DEEs revising the panels of the entire period from 1975-76 to 2008-09; that since the Government already constituted a Screening Committee under G.O.Rt.No.1129, Irrigation and Command Area Development Department, dated 08-10-2012, for the consideration of the panels for promotion to first and second level Gazetted categories for the panel years 2012-13 and 2013-14, the Engineer-in-Chief could not have issued the impugned Seniority List with effect from 1975-76 up to 2008-09; and that though the Presidential Order came into operation from 18-10-1975 and the Government also issued G.O.Ms.No.694, dated 15-9-1976, fixing the cadre strength, it was not translated into action up to 2008-09 and that therefore such a failure on the part of the respondents to prepare panels at the appropriate time, taking the cadre strength as effected in various orders, has resulted in the applicants before the Tribunal not getting their dues in terms of promotion.

(iii) In O.A.No.2032 of 2014, the Deputy Director (Administration) in the office of the Engineer-in-Chief filed a counter-affidavit on behalf of the official respondents. It was contended by the official respondents in the counter-affidavit that the Final Seniority List in the cadre of DEEs was communicated by Circular Memo dated 18-10-2012, on the basis of (1) the orders passed by the Tribunal on 28-7-2008 in O.A.No.557 of 2007 and the orders of this Court

dated 18-11-2002 in W.P.No.22978 of 2008 for the implementation of Rule 16(h) of the Andhra Pradesh State and Subordinate Services Rules (2) the orders of the Tribunal dated

15-10-2009 and Government Memo dated 31-5-2010 whereby the AEEs appointed in the 2nd list of direct recruits of 1987 were placed below the candidates included in the 1st list (3) the orders of this Court dated 23-11-2001 in W.P.No.5992 of 1999 filed by U. Govinda Rao and others (4) orders issued in G.O.Ms.No.610, on the basis of Full Bench decision of the Tribunal dated 23-4-2012 (5) orders dated 27-8-2002 passed in W.P.No.23459 of 2012 batch and (6) the instructions of the Government dated 20-8-2011; that based on the Final Seniority List of AEEs, the panels for promotion to the posts of DEEs from the panel year 1975-76 onwards was placed before the Screening Committee and after the approval of the Screening Committee, the in-charge arrangements in the higher posts were regularised and even the Provisional Seniority List in the cadre of DEE had been communicated by the proceedings dated

09-11-2012; that after receiving objections, the Final Seniority List of DEEs was communicated by the proceedings dated

22-01-2013; that based upon the Final Zone-wise Seniority List of DEEs, the State-wide *Inter se* Seniority List of DEEs up to 2009 has also been finalised as per Rule 36 of the General Rules by the proceedings dated 22-7-2013; that the High Level Committee has also decided in a meeting held on 05-7-2013 to regularise the in-charge arrangements in the cadre of EEs and superior posts and that without questioning the Zone-wise Seniority List of DEEs communicated by the proceedings dated 09-11-2012 and

22-01-2013, the applicants before the Tribunal were not entitled to question the State-wide *Inter se* Seniority List of DEEs communicated on 22-7-2013.

(iv) In O.A.No.1563 of 2014, the Assistant Secretary to Government filed a counter affidavit, contending *inter alia*, that as per the Government Memo dated 22-11-2007, the provisional seniority list of Deputy Executive Engineers published in Gazette No.464 A, dated 17-11-2001 for those promoted/recruited during the period from 18-10-1975 to 31-12-1982 had to be finalized and final seniority list notified; that under G.O.Rt.No.1129, dated 8-10-2012, a Screening Committee was constituted for considering the

panels for promotion to the first and second level Gazetted Categories for the Panel years 2011-12 and 2013-14 for regularising the in-charge arrangements; that therefore, it became necessary to review the panels of Deputy Executive Engineers from 1975-76 up to 1998-99; that the vacancies approved by the Screening Committee for the period from 1975-76 to 1998-99 were taken into consideration in the panel review; that a provisional seniority list in the cadre of Deputy Executive Engineer from 1976-77 panel year to 2006-07 panel year was communicated and a final seniority list was communicated; that while doing so, the applicants before the Tribunal, who were placed as In-charge Deputy Executive Engineers during the period 2004-05 to 2006-07 got an advantage and were considered for temporary promotion for the Panel Years 2003-04 and 2004-05; that the applicants before the Tribunal not only reaped the benefit of such promotions in the previous panel years, but also got the arrears and hence they cannot object to the same; that the Engineer-in-Chief did not revise the vacancies or cadre strength of Deputy Executive Engineers of each zone at any stage; that consequent upon the repatriation of candidates in terms of G.O.Ms.No.610, the review of the panels of Deputy Executive Engineers was done to the extent of substituting with the other eligible candidates in the vacancies caused due to repatriation from that zone as upheld by the Full Bench of the Tribunal by its order dated 23-04-2012 in O.A.No.6236 of 2008 and confirmed by this Court by judgment dated 20-11-2012; that as a matter of fact, the applicants before the Tribunal got benefited and got advantage over the candidates of all other zones due to the review of the panels; that all the applicants before the Tribunal have been given temporary promotion to the post of Deputy Executive Engineers either with effect from the date on which they got in-charge arrangements or from a date even prior to the date on which they got in-charge arrangements, as seen from the table given in the counter affidavit; that there were several disputes relating to seniority some of which were settled in the decisions rendered in **G.S. Venkata Reddy's** case, **U. Govinda Rao's** case, **G. Ramachandra Raju's** case etc; that due to the pendency of all those disputes in various forums, promotions from the cadre of Deputy Executive Engineer up to the cadre of Chief Engineer from the panel year 2001-02 to the panel year 2013-14 could not be taken up and Screening Committee/DPC could not be convened except in the case of 1975

SQT batch; that due to the above, the department adopted in-charge arrangements for a large number of vacancies during the year 2001 to 2012 for all cadres from Deputy Executive Engineer to Chief Engineer; that the in-charge arrangements made to various posts were 2350 for Deputy Executive Engineers, 1343 for Executive Engineers, 634 for Superintending Engineers and 112 for Chief Engineers; that out of the persons, who had these in-charge arrangements, 80% had already retired; that after many of the disputes got settled, the zone-wise final seniority list of Assistant Executive Engineers appointed after 18-10-1975 was prepared under the proceedings dated 18-10-2012; that the said zone-wise final seniority list was published in the website after disposing of the objections to the provisional seniority list published on 10-09-2012; that due to the enormity of the problem of in-charge arrangements, the Government issued G.O.Rt.No.1129, dated 08-10-2012 constituting a Screening Committee to regularize the in-charge arrangements from 2001 onwards; that after finalization of the seniority list of Assistant Executive Engineers, the panels for the posts of Assistant Executive Engineers, Assistant Engineers and Draftsman for the panel years 1975-76 to 2013-14 were placed before the Screening Committee on various dates from 08-11-2012 to 21-10-2013; that thereafter all in-charge arrangements were regularized notionally by the proceedings dated 9-11-2012; that the applicants before the Tribunal, who belong to Zone-II and III were appointed after 1985; that they could not get promotions as Deputy Executive Engineers on par with their batch of candidates in other zones, due to the appointment of a large number of candidates in Zones-I, IV, V and VI during the period 1975-76 to 1984-85 in violation of the Six Point Formula; that therefore, the Government decided to repatriate them to their respective local cadres; that the department, therefore, implemented G.O.Ms.No.610 and repatriated about 376 Assistant Executive Engineers to their native zones under para-5 of the Presidential Order and repatriated 98 Assistant Executive Engineers as per para-4 of the Presidential order; that the applicants had not chosen to challenge the zone-wise final seniority list of Deputy Executive Engineers communicated by the proceedings dated 22-1-2013 and hence, a challenge to the seniority list dated 22-7-2013 is not maintainable; that the seniority list under challenge is nothing but integration of all persons working in Zones-I to VI in accordance with the Rule 36 of the General Rules; that

more than 1000 Engineers who held the post of Executive Engineers, Superintending Engineers and Chief Engineers had already retired in the scale of pay of the post of Deputy Executive Engineers and hence, the present position will benefit them and that therefore there are no merits in the Original Application.

5. WHAT IS REFLECTED IN THE SENIORITY LISTS IMPUGNED BEFORE THE TRIBUNAL ?

(i) As we have indicated earlier, O.A.No.2032 of 2014 was filed challenging the seniority list dated 18-10-2012. O.A.No.1563 of 2014 was filed challenging the seniority list dated 22-07-2013. Now let us have a look at both the seniority lists to see what formed the basis for those seniority lists.

(ii) In the proceedings dated 18-10-2012, it is stated that the provisional list of Assistant Executive Engineers was communicated to all the individuals on 06-08-2009, duly calling for objections. The objections were disposed of with necessary replies to the individuals and the final seniority list was placed on the website. Thereafter, following the Court orders, in *R. Venkata Ramudu, U. Govinda Rao and others, G. Ramachandra Raju* etc., certain modifications to the final seniority list dated 30-03-2010 were made. Thereafter, the batch-wise provisional seniority list of AEEs from 1978 Public Service Commission General Recruitment, 1978 recruitment and 1984 recruitment were published on 10-09-2012. To the said list, 181 objections were received. After disposing of the objections, the final seniority list of batch-I from 1978 general recruitment batch was published.

(iii) The Circular Memo dated 18-10-2012 enclosing the final seniority list contains a reference to 9 items. 2 out of those 9 items contain a reference to the High Court orders, 2 refer to Andhra Pradesh Administrative Tribunal orders, 4 refer to Circular Memos and one refers to the Supreme Court order in *R. Venkata Ramudu's* case.

(iv) Similarly, the seniority list dated 22-07-2013 states that the Zone-wise final seniority list of DEE from 1975-76 to 2008-09 panel year was communicated after examining and disposing of the objections received. Therefore, the Memo dated 22-07-2013 states that all DEEs of Zones I to VI who have been promoted/directly recruited/appointed by transfer during the

period from 1975-76 to 2008-09 have been integrated in accordance with Rule 36 of the General Rules.

(v) The proceedings dated 22-07-2013 also contain a reference to 12 items. Out of them one is a Government order, three are minutes of the Screening Committee and others are the proceedings of the Engineer-in-Chief.

(vi) The contents of the seniority lists before the Tribunal do not make any reference to any repatriation, but merely seek to implement the various orders either of the Tribunal or of this Court or of the Supreme Court. The impugned seniority lists do not also contain a reference to any Government Order other than the one in G.O.Rt.No.1129, dated 8-10-2012. Therefore, it is clear that no Government orders formed the basis of both the seniority lists.

6. FINDINGS AND CONCLUSIONS REACHED BY THE TRIBUNAL:

(i) It appears that at the time when the Original Applications O.A.Nos.1563 and 2032 of 2014 came up for admission, the Tribunal granted an interim order of status quo on

4-3-2014 and 20-3-2014. But subsequently, the said interim order was modified by another order dated 28-4-2014 to the effect that all promotions effected during the pendency of the Original Applications will be subject to the final outcome of the applications.

(ii) The stand taken by the official respondents before the Tribunal, in the form of counter affidavits was summarized by the Tribunal in para-9 of its judgment. In simple terms, the stand taken by the official respondents as summarized by the Tribunal in para-9 of its order was that the impugned seniority lists were issued after bringing the selected AEEs of Zone-I, IV, V and VI into Zones II and III and that the modifications happened because of the alteration of the selection process with regard to the local and non-local candidates and the amendment of G.O.Ms.No.674, General Administration Department, dated 20-10-1975 through G.O.Ms.No.8 General Administration Department dated 8-1-2002 and G.O.Ms.No.124 General Administration Department dated 7-3-2002.

(iii) It is significant to note that ***the official respondents did not make a reference to G.O.Ms.No.8 dated 8-1-2002 and G.O.Ms. No.124 dated 7-3-2002 either in the impugned seniority lists or in their counter affidavits.*** Therefore, it is clear that a reference to these Government orders,

could have been made only in the course of the arguments.

(iv) The moment a reference was made to G.O.Ms.No.8 and G.O.Ms.No.124, the course of further arguments before the Tribunal appear to have proceeded on the basis of the decision of the Supreme Court in M. Surender Reddy v. Government of A.P., wherein the scope of G.O.Ms.No.124, General Administration Department dated 7-3-2002 was in question.

(v) Once the decision of the Supreme Court in M. Surender Reddy was cited, the learned Government Pleader appearing before the Tribunal appears to have conceded that the law laid down therein was squarely applicable to the facts of the case. The concession given by the learned Government Pleader that the cases before the Tribunal were covered by the decision of the Supreme Court in M. Surender Reddy, is recorded by the Tribunal in para 12 of the order of the Tribunal.

(vi) As a consequence, the Tribunal proceeded on the footing, as seen from the para-13 of its order that there was no dispute about the fact that the impugned seniority lists were issued in the light of the Government orders G.O.Ms.No.674 dated 20-10-1975, G.O.Ms. No.8 General Administration Department dated 8-1-2002 and G.O. Ms.No.124, General Administration Department, dated 7-3-2002. This resulted in the entire discussion from paragraphs 13 to 18 of the judgment of the Tribunal proceeding only on the question as to whether G.O.Ms.No.124 is prospective or retrospective in nature. Therefore, as expected, the Tribunal allowed the applications filed by the unofficial respondents herein, holding that the alteration of the seniority position by applying G.O.Ms.No.124 in respect of recruitments that had taken place before 1999 was illegal.

7 THE MYTH AROUND G.O.MS.NO.124:

(i) Since the entire discussion (of course without any pleading) before the Tribunal seems to have been revolved around G.O.Ms. No.124 and the decision of the Supreme Court in M. Surender Reddy, let us now see the import of the said Government order and the decision of the Supreme court.

(ii) It appears that on 21-12-1999, the Andhra Pradesh Public Service Commission issued an advertisement to fill up certain Executive and Non-Executive posts belonging to 27 categories under Group-II Services of the State. The selection for Executive posts was to be made on the basis of a

written examination followed by an interview. The selection for Non-Executive posts was to be made only on the basis of interview. After the advertisement, the State Government withdrew from the selection, 141 posts of Assistant Section Officers. In the written examination for Executive posts, 269 candidates were short listed and after interviews 104 were selected in December, 2000. But pursuant to an order of the Tribunal in O.A.No.7443 of 2000 challenging the withdrawal from the advertisement of 141 posts of Assistant Section Officers, an additional set of candidates were included for Non-Executive posts. Thereafter, on the basis of an order passed by the High Court, 973 Executive posts were included in the advertisement.

(iii) After the issue of the advertisement for selection, the Government issued G.O.Ms.No.124 General Administration Department dated 7-3-2002. By the said order, the Government amended paragraphs 3 and 4 of Annexure-II and paragraph 3 of Annexure III of G.O.Ms.No.763, dated 15-11-1975.

(iv) For the purpose of easy appreciation, we present in a tabular form paragraphs 3 and 4 of Annexure II and paragraph 3 of Annexure III both before and after their amendment under G.O.Ms.No.124.

Before amendment under G.O. Ms.No.124	After amendment under G.O.Ms.No.124
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<u>Annexure II</u> <u>Para 3 and 4:</u> - 3. The number of reserved in the aggregate in favour of local candidates in relation to all the concerned local areas (Zones) shall be determined; this number shall be the prescribed percentage of the total vacant posts, any fraction of a post being counted as one, provided that there shall be at least one unreserved post. 4. The number of posts reserved in the aggregate in favour of local candidates of all the concerned local areas (Zones) having been determined as provided under paragraph 3, the number of such reserved posts allocated in favour of the candidates of each of the local areas shall then be determined. For this purpose the number of reserved posts shall be allocated amongst the local candidates of the concerned local areas in the ratio prescribed in the Presidential Order. While allocating the reserved posts fractions of a post shall be adjusted by counting the greatest fraction as one and if necessary also the greater of remaining fractions as another and where the fractions to be so counted be selected by reason of fractions being equal, the selection shall be by lot. There shall, however, be as far as possible at least one post allocated for the local candidates in respect of each local area.	<u>Annexure II</u> <u>Para 3:</u> 3. The Provisional list shall be divided into two parts. The first part shall comprise 30% of the posts consisting of combined merit lists of locals as well as non-locals and the remaining second part shall comprise the balance 70% of the posts consisting of locals only and the posts shall be filled duly following the rule of reservation.
<u>Annexure III</u> <u>Para 3</u> - 3. The number of posts reserved in favour of local candidates in relation to the local area in respect of each category of post in each of the local cadres shall be determined; this number in each case being the prescribed percentage, applicable to the relevant category, of the vacant posts to be filled by direct recruitment in respect of that category, any fraction of a post being counted as one; provided that there shall at least be one post un-reserved in each cadre.	<u>Annexure III</u> <u>Para 3:</u> 3. The Provisional list shall be divided into two parts. The first part shall comprise 40% of the posts consisting of combined merit lists of locals as well as non-locals and the remaining second part shall comprise the balance 60% of the posts consisting of locals only and the posts shall be filled duly following the rule of reservation. -

(v) The rationale behind the issue of G.O.Ms.No.124 was stated in para 1 of the said Government order. It was stated therein that as per G.O.Ms.No.8 dated 8-1-2002, first 20% of the posts for direct recruitment should be filled up following the combined merit list of local and non-locals and the remaining 80% of the posts shall be filled up only by locals and that while filling up the posts, the special representation under Rule 22 of the General Rules should also be followed directly.

(vi) The recruitment to 27 categories of posts sought to be made pursuant to the advertisement dated 28-12-1999, got embroiled in a controversy before the Tribunal and before this Court until the advent of G.O.Ms.No.124 dated 7-3-2002 for various reasons. The moment G.O.Ms.No.124 was issued, another controversy was raised as to whether the amendment issued thereunder should be followed or not for the ongoing recruitment. The Tribunal directed the Public Service Commission to recast the merit list by implementing G.O.Ms.No.124. The said decision was affirmed by the High Court, resulting in more meritorious candidates getting appointed to lower Non-Executive posts and less meritorious candidates getting appointed to higher Executive posts. Therefore, the decision of the Tribunal, as confirmed by this Court, was taken to Supreme Court in M. Surender Reddy.

(vii) Two issues were taken up for consideration by the Supreme Court in M. Surender Reddy. They were as follows:

- 1) Whether G.O.Ms.No.124 is retrospective in nature in order to make it applicable to the posts for which selection process has already started pursuant to 1999 advertisement; and
- 2) Whether the entire selected list has to be reviewed, if G.O.Ms.No.124 is retrospective, resulting in the appointments already made during the period between 2001 and 7-3-2002 getting disturbed.

(viii) For finding an answer to the above questions, the Supreme Court undertook a journey into the provisions of the Presidential Order 1975, the various Government orders issued from time to time and the question as to whether or not a legislation could be made with retrospective effect taking away the vested rights. Eventually, the Supreme Court held that the State Government cannot pass any order amending a procedural law regarding reservation in the matter of selection to posts with retrospective effect, once

the procedure for selection started and that the Presidential Order 1975 did not empower the State Government to give retrospective effect to G.O.Ms.No.124. After so laying down the law in paragraphs 27 and 28, the Supreme Court issued a direction in paragraph 31 of the report to fill up the rest of the posts including the posts of Municipal Commissioner Grade III, Assistant Commercial Tax Officer and Assistant Labour Officers in the executive cadre and Assistant Section Officers in Non-Executive cadre, as per the Presidential order 1975 and as per the Government orders in force as on the date of issue of the advertisement in 1999.

(ix) A careful look at G.O.Ms.No.124 as well as the controversy surrounding the same as settled by the Supreme Court in M. Surender Reddy would show that the dispute therein related entirely to a selection that commenced with the issue of an advertisement dated 28-12-1999 for filling up about 27 categories of posts, some of which were executive and some of which were non-executive. G.O.Ms.No.124 had nothing to do with the selections made before 28-10-1999. It did not also have anything to do with recasting of the allotments earlier made to different zones or to the question of reallocation or repatriation of candidates which happened up to the date of issue of the advertisement.

(x) As we have stated earlier, the seniority list dated 22-7-2013 contains a reference to about 11 items in the reference column. The seniority list dated 18-10-2012 contains a reference to 9 items in the reference column. None of them relate to G.O.Ms. No.124. There is not even any remote reference in any of the impugned seniority lists, to G.O.Ms.No.124. Even the counter affidavits filed by the official respondents before the Tribunal do not contain a reference to G.O.Ms.No.124. Therefore, we do not know at the outset as to how G.O.Ms.No.124 was pulled out of the hat in the course of arguments before the Tribunal with the wave of a magic wand, so as to make the decision making process of the Tribunal to be influenced by the said Government order and the decision of the Supreme Court in M. Surender Reddy relating thereto.

(xi) It would have been sufficient for us to dispose of the present writ petitions on the sole ground that the Tribunal had decided the fate of two seniority lists on the basis of a Government order that did not apparently form the basis of the impugned seniority lists. But we had not been given

such a luxury, by the learned counsel on both sides, who took pains to make elaborate submissions on the historical background against which the dispute on hand has to be looked at. Therefore, we shall now take up that exercise. But before we do so, we may have to bring on record some subsequent events that have happened.

8. SUBSEQUENT EVENTS:

(i) As we have stated elsewhere, the contesting respondents in these writ petitions, secured an interim order of status quo, from the Tribunal at the time of admission of their Original Applications O.A.No.1563 and 2032 of 2014. But this status quo order was subsequently vacated by the Tribunal. As against the vacation of the interim order of status quo, the Original Applicants before the Tribunal (who are the contesting respondents herein) filed writ petitions in W.P.Nos.16875 and 16876 of 2014. While ordering notice in these two writ petitions, a Division Bench of this Court passed an order on 23-06-2014 suspending the final seniority lists dated 18-10-2012 and 22-07-2013.

(ii) Contending that despite the orders of this Court dated 23-06-2014 suspending both the impugned seniority lists, the Engineer-in-Chief proceeded to grant Full Additional Charge arrangements to some persons, the contesting respondents in these writ petitions came up with a Contempt Case in C.C.No.814 of 2015. It appears that the contempt petition was filed on 22-04-2015. But even before the Contempt petition came up for admission, the Administrative Tribunal passed final orders in O.A.No.1563 and 2032 of 2014 on 29-04-2015. Therefore, in all fairness, the contesting respondents herein should have stopped pursuing the contempt and started working out their remedies pursuant to the final orders passed by the Tribunal.

(iii) But, unfortunately, the contesting respondents herein pursued the contempt petition and a notice before admission was ordered in Contempt petition on 8-6-2015. On 4-9-2015 the contempt petition was admitted and a statutory notice was ordered. On 9-10-2015 this Court directed the official respondents to comply with the interim order dated 23-6-2014 and purge the contempt. Unable to bear the heat generated under their seats by the contempt proceedings, the Government issued G.O.Rt.No. 705 and 709 respectively dated 12-11-2015 and 13-11-2015 cancelling the in-charge

arrangements granted in superior posts. Thereafter, the Engineer-in-chief issued a provisional seniority list dated 2-12-2015 purportedly for implementing the interim orders passed by this court in W.P.No.16875 of 2014 inviting objections thereto. This provisional seniority list was followed by a final seniority list dated 15-12-2015.

(iv) But in the meantime, persons aggrieved by the final orders of the Tribunal dated 29-4-2015 came up with the present batch of writ petitions. While entertaining the first of these writ petitions W.P.No.40948 of 2014, a Bench of this Court granted an interim order of status quo ante. This order of status quo ante was granted on 15-12-2015.

(v) Thus on one hand, the contesting respondents in these writ petitions built up pressure from September 2015 onwards, upon the official respondents through a Contempt Petition to comply with an interim order passed on 23-06-2014, despite the final disposal of the original applications by the Tribunal on 29-04-2015. On the other hand, the writ petitioners obtained an interim order of status quo ante with reference to the final order of the Tribunal.

(vi) However, without being aware of the interim order of status quo ante passed on 15-12-2015 by this Court, the Engineer-in-Chief issued proceedings on the very same date namely 15-12-2015, revising the final Zone-wise seniority list of Assistant Executive Engineers, of Zones I, II, IV, in respect of candidates selected by the Public Service Commission during the period from 1978 to 2001.

(vii) Fortunately, the writ petitioners had not moved any contempt petitions against official respondents for having issued the proceedings dated 15-12-2015 despite the interim order of status quo ante.

(viii) We have taken note of these subsequent events, since the learned counsel appearing for the contesting respondents raised before us a very strange argument and the same cannot be met without bringing on record these developments.

(ix) Having taken note of the subsequent developments, we shall now proceed to consider the rival contentions.

9. THE CONTENTIONS OF THE WRIT PETITIONERS:

The main grounds of attack of the writ petitioners, to the impugned order of the Tribunal and the seniority lists issued pursuant thereto, are as

follows:

- 1) that the Original Applications filed before the Tribunal were not within time and yet the Tribunal entertained the applications without even an application for condonation of delay;
- 2) that the Original Applications ought to have been dismissed by the Tribunal, for non-joinder of the persons who were likely to be affected by any order passed by the Tribunal upsetting the impugned seniority lists;
- 3) that the position of the writ petitioners vis-a-vis the contesting respondents in the impugned seniority lists, was as a result of the repatriation of some of the candidates to Zones II and III under paragraph 5 (2) (c) of the Presidential Order and hence, the seniority automatically stood protected;
- 4) that the arrangement of persons in the impugned seniority lists was never claimed to have happened as a result of G.O.Ms.No.124, but the Tribunal was misled into thinking so;
- 5) that the decision of the Supreme Court in M. Surender Reddy had no relevance to the issue on hand, as the appointment of the writ petitioners were not governed by G.O.Ms.No.124;
- 6) that the repatriation of persons appointed in other Zones to Zones II and III, in terms of Para 5 (2)(c) of the Presidential Order was opposed both by the repatriatees and the locals in an earlier round of litigation, but the Tribunal as well as this Court and the Supreme Court upheld the repatriation to be in public interest;
- 7) that once the repatriation in terms of Para 5 (2)(c) is upheld, the protection of seniority that formed part and parcel of such repatriation cannot be assailed collaterally in a subsequent proceedings;
- 8) that the Original Applicants before the Tribunal cannot seek to upset the decision rendered in the previous round of litigation relating to repatriation, by making a limited challenge to the seniority list;
- 9) that in any case the Tribunal ought to have seen that the position of the writ petitioners in the impugned seniority list was far ahead of the applicants before the Tribunal at least by more than 1000 ranks

and hence there was no proximity of cause for the applicants before the Tribunal;

- 10) that in any event, after the coming into effect of The Andhra Pradesh Reorganisation Act, 2014 with effect from 2-6-2014, those who were repatriated from Zones V and VI to other Zones cannot be brought back to the original zones, in view of the prohibition under the third proviso to Section 77 of the Act 6 of 2014.

10. CONTENTIONS OF THE CONTESTING RESPONDENTS:

Defending the order of the Tribunal, it is contended by Mr. P. Balakrishna Murthy, learned counsel for the private respondents;

- 1) that the writ petitions have now become infructuous in view of the fact that a fresh seniority list has been issued on 15-12-2015;
- 2) that the writ petitioners cannot assail an order of the Tribunal, which simply follows the law laid down by the Supreme Court in M. Surender Reddy, as the binding effect of the same even upon this Court is beyond any pale of doubt;
- 3) that in any case all the writ petitions deserve to be dismissed in view of the latest development viz., the direction issued by the Supreme Court in **D. Vishnu Murthy v. Government of Andhra Pradesh** in Civil Appeal No.4142 of 2004, dated 18-2-2016, directing the Government to rework the entire issue;
- 4) that the writ petitioners cannot bank upon Para 5 (2)(c) of the Presidential Order, as the same does not provide for repatriation;
- 5) that if persons had been appointed in any zone, in violation of the ratio fixed under the Presidential Order, those appointments are illegal, void and *non-est* in law and that therefore, such appointments would not confer any benefit much less the benefit of seniority;
- 6) that the Presidential Order, 1975 confers a power of review to be exercised only once but not more, with an additional embargo relating to the time in which such review could be undertaken and hence the repatriation of candidates from one zone to another could not have been done under Para 13 of the Presidential Order;
- 7) that the limited scope of the power of review under Para 13 of the Presidential Order, has already been explained by a Division Bench of this Court in **M. Shyam Sunder and others v. Government of**

A.P.^[1];

- 8) that the Presidential Order, 1975 makes a clear distinction between the allotment of persons to zones and transfer of persons from any local cadre to another, respectively under Paragraphs 4 and 5 and that the allotment itself was to have been done in terms of Para 4 (3) after the constitution of the Committees;
- 9) that the allotment once made in terms of Para 4 of the Presidential Order cannot be modified except on a review in terms of Para 13 within 12 months and that too only once;
- 10) that the petitioners in W.P.Nos.40948, 40950 and 42878 of 2008, were repatriated to Zone I and hence, they are not even affected by the decision of the Tribunal and cannot be considered as persons aggrieved;
- 11) that the question of impleading anyone in the Original Applications before the Tribunal did not arise, as the impugned seniority lists were challenged entirely on pure questions of law and the question relating to impleadment is well settled in the decision of the Supreme Court in **General Manager, South Central Railways v. A.V.R. Siddanthi**^[2];
- 12) that the writ petitioners cannot rely upon Para 5 (2)(c) of the Presidential Order, as no provision was made by the State, as envisaged thereunder for effecting transfers;
- 13) that the Para 5 (2)(c) of the Presidential Order does not speak about repatriation at all.

11. MAINTAINABILITY OF WRIT PETITIONS AND INFRUCTUOUSNESS:

(i) Before considering the rival contentions made on the merits, it would be appropriate at the threshold to deal with the two preliminary contentions raised by Mr. P. Balakrishna Murthy, learned counsel for the contesting respondents. His first contention is that after the issue of a new seniority list dated 15-12-2015, a challenge to the order of the Tribunal is not maintainable. His next contention is that after the decision of the Supreme Court in **D. Vishnu Murthy** dated 18-2-2016 all issues have to be reworked afresh and hence the very seniority lists assailed before the Tribunal are no longer in existence.

(ii) Both the above contentions are to be stated only to be rejected. As we have narrated in our discussion in Para 8, the contesting respondents herein put pressure upon the Government through a Contempt Petition in C.C.No.814 of 2015, filed as against an interim order passed by this Court again arising out of an interim order passed by the Tribunal. It is only in pursuance of the order passed in the Contempt Petition that arose out of an interim order that the Government issued a seniority list dated 15-12-2015. We have come of age long ago to accept the proposition that something done under pressure of contempt arising out of an interim order would make the main case itself infructuous or as not maintainable.

(iii) As we have stated in Para 8, the Administrative Tribunal granted an interim order to maintain status quo, while admitting the applications O.A.Nos.1563 and 2032 of 2014. This order was modified subsequently by the Tribunal to the effect that any promotions effected during the pendency of the Original Applications will be subject to the final order passed by the Tribunal in the Original Applications. This modification ordered on 28-4-2014 by the Tribunal became the subject matter of the writ petitions in W.P.Nos.16875 and 16878 of 2014. In these two writ petitions, a Division Bench of this Court granted an interim order dated 23-6-2014 suspending the order of the Tribunal dated 28-4-2014.

(iv) It would be useful to record the interim reliefs sought by the contesting respondents herein, in their writ petitions W.P.Nos.16875 and 16878 of 2014. The interim relief sought by them was as follows:

“to suspend the orders of the A.P. Administrative Tribunal dated 28-4-2014 in and direct the respondents not to effect any further promotions to the posts of Executive Engineers based on the State wide integrated seniority list of Deputy Executive Engineers”.

(v) Thus the contesting respondents herein actually sought two interim prayers in their Miscellaneous Petitions in W.P. Nos.16875 and 16878 of 2014. The first part of the prayer was to suspend the operation of the interim order of the Tribunal dated 28-4-2014. The second part of the prayer was to direct the official respondents not to effect further promotions based upon the impugned State-wide seniority list.

(vi) But the interim order passed by this Court on 23-6-2014 in W.P.Nos.16875 and 16878 of 2014 was to the following effect:

“there shall be interim suspension as prayed for. Notice.”

(vii) Thus, the second part of the interim relief sought by the contesting respondents in their previous writ petitions was not granted by this Court on 23-6-2014. Despite the same, the contesting respondents came up with a Contempt Petition in C.C.No.814 of 2015.

(viii) The main ground on which the Contempt Petition was filed was that the In-charge arrangements and Full Additional Charge arrangements were made in violation of the interim orders. The grant of In-charge arrangements and Full Additional Charge arrangements, were not expressly prohibited by the interim order passed on 23-6-2014. But, however, this Court issued statutory notice and compelled the official respondents to do something that was not borne out of the interim order.

(ix) As a result, a fresh seniority list dated 15-12-2015 was issued. As a matter of fact even if the Contempt Petition is taken to be maintainable despite the grant of only one relief, the contempt would have been purged merely by cancellation of In-charge arrangements and Full Additional Charge arrangements. We do not know how the seniority list itself was recast pursuant to contempt.

(x) Fortunately, the fresh seniority list dated 15-12-2015 contains a reference to 4 items, the first of which is the final order of the Tribunal dated 29-4-2015 in O.A.Nos.1563 and 2032 of 2014. The second reference is to the interim order passed in the Contempt Petition by this Court. Therefore, we can possibly take it that the revised seniority list dated 15-12-2015 was issued pursuant to the final order of the Tribunal dated 29-4-2014. If so, there is no question of a challenge to the final order of the Tribunal becoming infructuous merely because of the implementation of the order of the Tribunal. An execution can never make the decree not amenable to a challenge in appeal.

(xi) The contentions based upon the decision of the Supreme Court in **D. Vishnu Murthy** case dated 18-2-2016 is also wholly unsustainable. What was in question before the Supreme Court in **D. Vishnu Murthy** was the decision of the Government to exclude from the purview of the Public Service Commission, all temporary appointments made to the Engineering Services of the State Government in different Departments, as on 9-8-1979 and the

reconciliation of the disputes between such temporary appointees who also got selected later through Public Service Commission but were given the option to choose either the regularisation or the selection through Public Service Commission, for the purpose of revising the seniority. Therefore, the decision issued in **D. Vishnu Murthy** for redoing certain things, to set right the anomaly with regard to the second option given to the temporarily appointed candidates, who also got selected through Public Service Commission, has nothing to do with the issue on hand.

(xii) As a matter of fact, if the decision of the Supreme Court in *D. Vishnu Murthy's* case is understood, as argued by the learned counsel for the contesting respondents to contain a mandate to redo the whole seniority list, then it follows as a corollary that even the judgment of the Tribunal and the seniority list dated 15-12-2015 prepared pursuant thereto have now become redundant and should go. If the contention on the basis of the decision in *D. Vishnu Murthy's* case is accepted, it is the exercise undertaken by the contesting respondents herein which has now become futile and infructuous. Therefore, we have no hesitation in rejecting the contention that the challenge to the order of the Tribunal does not survive in view of the decision of the Supreme Court in *D. Vishnu Murthy's* case. Unless the cloud created by the order of the Tribunal is removed, even the decision of the Supreme Court in *D. Vishnu Murthy* cannot be implemented in true spirit. Hence, the preliminary contentions of the contesting respondents about the maintainability and infructuousness of the writ petitions are rejected.

12. CONTENTIONS OF THE WRIT PETITIONERS REGARDING NON-IMPLEADMENT AND LIMITATION:

(i) Just as we have disposed of the preliminary contentions of the contesting respondents regarding the maintainability of the writ petitions, we shall now take up the preliminary contentions of the writ petitioners with regard to the very maintainability of the Original Applications filed by the contesting respondents before the Tribunal.

(ii) The maintainability of the Original Applications filed by the contesting respondents herein before the Tribunal, is questioned on the grounds of limitation and non-impleadment of necessary and proper parties. Let us now take up the question as to whether the applications filed before

the Tribunal were barred by time or not.

(iii) O.A.No.1563 of 2014 was filed apparently in February, 2014 challenging a seniority list dated 22-7-2013. Therefore, the said application was obviously filed within one year from the date of the impugned seniority list and hence could not be treated as barred by time.

(iv) O.A.No.2032 of 2014 appears to have been filed in March, 2014. The challenge as it was originally made in the said application was to the Circular Memo dated 30-3-2010. But the prayer was amended to include a challenge to the Circular Memo dated 18-12-2012 containing the final seniority list. According to the contesting respondents an application for condonation of delay was filed and the same was allowed. Therefore, we will take it that this application was also not barred by time.

(v) In so far as the objection relating to non-impleadment of necessary and proper parties is concerned, the contention of Mr. P. Balakrishna Murthy, learned counsel for the contesting respondents is that the challenge before the Tribunal was not to the placement of individuals in the seniority list, but only to the principles of law on the basis of which the placement of all persons was made in the seniority list. Therefore, it is contended on the basis of the decision of the Supreme Court in **the General Manager, South Central Railway v. A.V.R. Siddhanthi** (2 supra), which was followed in **A. Janardha v. Union of India**^[3] and also **V.P. Shrivastava v. State of Madhya Pradesh**^[4] that there was no necessity to implead any one in those applications before the Tribunal.

(vi) In order to test the above contentions, let us look at the pleadings in the Original Applications.

(vii) It is true that in O.A.No.1563 of 2014, the contesting respondents herein did not deal specifically with the repatriation or seniority position of any individuals. But in their application in O.A.No.2032 of 2014, the contesting respondents herein made out a specific grievance with regard to the certain named persons. Paragraph 6 (e) of the application in O.A.No.2032 of 2014 filed by the contesting respondents herein is extracted as follows for easy appreciation:

“.....The applicants respectfully submit that the 1st respondent through the impugned seniority list dt. 30.3.2010 has brought 38 selected 1978 candidates by the A.P.P.S.C. of Zone-I, two

candidates of Zone-III and six from Zone-IV, 36 candidates from Zone-V and one from Zone VI and the Zone II and lavishly indulged in assigning different ranks and altered drastically the seniority positions of initially selected candidates of 1978 and 1985 of APPSC. Similarly, in regard to Zone-III, brought one candidate of Zone-II, seven candidates of Zone-IV, 20 candidates of Zone-V and seven candidates of Zone-VI, into the Zone-III. To illustrate one P. Satyanarayana Raju, Asst. Executive Engineer selected by the APPSC in the year 1978 in Zone-I who was assigned rank 113 by the APPSC in the said was brought into Zone-II and assigned by the 1st respondent Rank 170 (a), P. Lakshmana Reddy, A.E.E., who got the rank 115 was brought to Zone-II with re-assigned rank of 173 (a) and so on. The above only is the illustrative but not exhaustive and the applicants are filing a detailed statement for perusal of the Hon'ble Tribunal."

(viii) Therefore, it is not as though the applicants before the Tribunal were either ignorant of the individual placements in the seniority list or were not aggrieved by such individual placements. The applicants before the Tribunal (contesting respondents herein) have made specific reference to certain individuals and a group of persons upon whose transfer or repatriation, their own seniority position underwent a drastic change, forcing them to go before the Tribunal. Therefore, at least a few of them should have been impleaded before the Tribunal in a representative capacity. The failure of the applicants before the Tribunal to implead at least a few individuals about whom they had made out a specific grievance in Para 6 (e) of O.A.No.2032 of 2014, was actually fatal to their case.

(ix) More over the reliance placed on the decisions of the Supreme Court in **A.V.R. Siddhanthi**, **A. Janardhana** and **V.P. Shrivastava** is actually misplaced. A challenge to a seniority list could be made from three different perspectives. They are: (A) on pure question of law, say for instance, when a challenge to a statutory rule or an executive instruction is made; (B) on pure question of fact, raised on the basis of service particulars of the individuals; and (C) on a mixed question of law and fact.

(x) It is only in cases falling under the first category, that the question of impleading any aggrieved individual does not arise. If a case falls under the second and third categories, impleadment of necessary parties is mandatory. Even in cases where a challenge is made to a rule or an executive order that confers a benefit upon a recognized class of persons such as degree holders or diploma holders, the impleadment of at least some

of the said class of persons in a representative capacity may be indispensable.

(xi) Therefore, the writ petitioners are right in their contention that the failure of the applicants before the Tribunal to implead them as parties was unjustified.

(xii) Though our finding that the non-impleadment of necessary and proper parties before the Tribunal was fatal to the case of the contesting respondents, will provide a short cut to us to dispose of the writ petitions by allowing them and remitting the matter back to the Tribunal, we do not wish to do so considering the long history of the litigation. Therefore, we have decided to take up the contentions on merits also.

13. MAIN CONTENTIONS:

In paragraphs 9 and 10 above, we have indicated broadly the main contentions of the writ petitioners as well as the respondents respectively. These contentions can be grouped under 5 different headings viz.,

- A) those revolving around Para 5 (2) (c) of the Presidential Order;
- B) those revolving around the question of repatriation, allotment and transfer;
- C) those revolving around the power of review available under Para 13 of the Presidential Order;
- D) those revolving around G.O.Ms.No.124; and
- E) those revolving around the provisions of the Andhra Pradesh Reorganisation Act, 2014.

14. A BRIEF HISTORICAL PRELUDE:

(i) Before dealing with the contentions of the petitioners and the respondents, a small historical prelude may be necessary for a better understanding of the problem on hand.

(ii) Two agitations, one in 1969 and another in 1972, known respectively as the Telangana agitation and Jai Andhra agitation rocked the State. Since the agitation took a violent turn, President's Rule was imposed in the State on 10-1-1973. Normalcy was restored when a Six Point Formula was arrived at by and between the leaders of the two regions. The Six Point Formula provided for:

- 1) accelerated development of the backward areas of the State;
- 2) Institution of uniform arrangements throughout the State enabling

adequate preference to local candidates in the matter of admission to Educational Institutions;

- 3) Preferential treatment to a specified extent in the matter of direct recruitment to Non-Gazetted (other than some posts) posts and corresponding posts under the local bodies and the posts of Tahsildars, Junior Engineers and Civil Assistant Surgeons;
- 4) Setting up of a high-power Administrative Tribunal for dealing with the grievances of those in public employment;
- 5) An amendment of the Constitution in a manner conferring enabling powers on the President, so that the implementation of the formula did not lead to further litigation and consequent uncertainty; and
- 6) The discontinuance of the Mulki Rules and Regional Committee.

(iii) With a view to implement the Six Point Formula, the Constitution (32nd Amendment) Act, 1973 was enacted. By this amendment, clause (1) of Article 371 was omitted and two new Articles viz., Article 371 D and 371 E were inserted.

(iv) Clause (1) of Article 371 D empowered the President to provide, by order, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education. The order so made by the President under clause (1), may require the State Government to organise any class or classes of posts in the civil services of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order, the persons holding such posts to the local cadres so organised. The Presidential Order could also specify any part or parts of the State to be regarded as the local area for direct recruitment to posts in any local cadre. Clause 10 of Article 371 D declared that the provisions of Article 371 D and any order made by the President shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force.

(v) In exercise of the power conferred by clauses (1) and (2) of Article 371 D, the President of India issued an order known as "The Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975. The order was published in the Gazette of India on

18-10-1975 and republished in the State under G.O.Ms.No.674, General Administration Department dated 20-10-1975.

(vi) Paragraph 2 (c) of the Presidential Order, 1975 defined a local area to mean the local area specified in paragraph 6 for direct recruitment to posts in such local cadre. Paragraph 2 (e) defined local cadre to mean any local cadre of posts under the State Government organised in pursuance of paragraph 3. Para 2 (f) defined a local candidate, in relation to any local area, to mean a candidate, who qualifies under paragraph 7 as a local candidate in relation to such local area. The expression "Special Gazetted Category" was defined under Para 2 (j) to mean any gazetted category specified in the Third Schedule.

(vii) In paragraph 6 of the Presidential Order, every District became a local area for direct recruitment to posts equivalent to the category of Lower Division Clerk or posts lower in status as well as in terms of the scale of pay than that of a Lower Division Clerk. Similarly, paragraph 6 of the Presidential Order also declared every zone to be a local area for direct recruitment to posts belonging to any Non-Gazetted category as well as to the categories of Tahsildars, Assistant Executive Engineers, Assistant Agricultural Officers, Inspectors of Police, Motor Vehicle Inspectors etc.

(viii) In other words, Districts became water tight compartments in relation to certain posts. A cluster of Districts formed into zones, became water tight compartments in relation to certain categories of posts.

(ix) The posts of Assistant Executive Engineers and Deputy Executive Engineers in the Irrigation Wing of the Public Works Department were included in the Third Schedule to the Presidential Order, thereby making them specified gazetted categories of posts. Therefore, by virtue of paragraph 3 (4) of the Presidential Order, these posts, being specified gazetted category posts, had to be organised into a separate cadre in each zone.

(x) Paragraph 8 of the Presidential Order mandated that 80% of the posts to be filled up by direct recruitment in any local cadre comprising of posts equivalent to or lower than that of lower division clerk should be reserved in favour of local candidates in relation to the local area. Similarly, a reservation of 70% of the posts to be filled up by direct recruitment was made in favour of local candidates in relation to the local area, in respect of posts belonging

to non-gazetted categories or those carrying a pay higher than that of the lower division clerk. In so far as the categories of Tahsildars, Assistant Executive Engineers etc., are concerned, the reservation under paragraph 8 was restricted to 60%.

(xi) It is of relevance to note that though a reference is normally made to G.O.Ms.No.674, dated 20-10-1975, whenever the Presidential Order, 1975 is referred to, what was done by G.O.Ms.No.674 was merely to republish the Gazette of India dated 18-10-1975 by which the Presidential Order was published by the Central Government. This aspect has to be borne in mind since some of the Government Orders that were issued subsequently by the State of Andhra Pradesh, were not really the Presidential Orders.

(xii) Pursuant to the Presidential Order 1975, the Government of Andhra Pradesh issued G.O.P.No.728 General Administration Department dated 1-11-1975. The purported object of this order was to enlist the steps to be taken by the departments for the implementation of the provisions relating to organisation of local cadres. The steps envisaged under Para 9 of G.O.Ms.No.728, dated 1-11-1975 were:

- 1) Identification of the categories to be localised and drawing up of a scheme of localisation;
- 2) Determining the cadre strength of the different local areas;
- 3) Allotment of personnel amongst different cadres;
- 4) Amendment of Service Rules.

(xiii) Following G.O.Ms.No.728, several such orders were issued, about which we are not now concerned.

(xiv) After 10 years of the issuance of the Presidential Order, objections were raised with regard to certain allotments made in terms of Para 4 of the Presidential Order, by the Telangana non-gazetted officers union. Therefore, after holding discussions with the representatives of the Union, the Government of Andhra Pradesh issued G.O.Ms.No.610 General Administration Department dated 30-12-1985. As per Para 5 (1) of the said Government Order, the employees allotted after 18-10-1975 to Zones V and VI in violation of the zonalisation of the local cadres under the Six Point Formula were to be repatriated to their respective zones by 31-3-1986 by creating supernumerary posts. It is of relevance to note at this juncture that the combined State of Andhra Pradesh was divided into six zones. It

appears that after bifurcation of the State, Zones I to IV fall within the State of Andhra Pradesh and Zones V and VI fall within the State of Telangana.

(xv) The Presidential Order 1975 itself came to be amended for the first time under a Government of India Notification dated 13-12-2001, which was republished by the Government of Andhra Pradesh under G.O.Ms.No.2 General Administration Department, dated 3-1-2002. Since the said amendment relates to School Education Department and School Education Subordinate Services, it is not necessary to have a look at the same.

(xvi) Closely on the heels of the first amendment to the Presidential Order, the Government issued G.O.Ms.No.8 General Administration Department, dated 8-1-2002 substituting new paragraphs 3 and 4 for the existing paragraphs 3 and 4 under Annexure II to the Government Order G.O.Ms.No.763 dated 15-11-1975. As a matter of fact, the percentage of the reservation for the local candidates was already clearly earmarked in Para 8 of the Presidential Order 1975 and Annexure I of G.O.P.No.763 merely listed the procedure for implementation of such reservation. But somehow a confusion was created with regard to the method of working out the percentage of reservation and this seems to have led to the amendment under G.O.Ms.No.8, dated 8-1-2002. Actually, it is a misnomer to call G.O.Ms.No.8 as an order of amendment, as it was more in the nature of clarification.

(xvii) Closely following G.O.Ms.No.8, the Government issued G.O.Ms.No.124 General Administration Department dated 7-3-2002, amending paragraphs 3 and 4 of Annexure II and amending Para 3 of Annexure III of G.O.P.No.763, dated 15-11-1975.

(xviii) For the purpose of easy understanding, it shall be pointed out at the cost of repetition that paragraph 8 of the Presidential Order 1975 provided for a reservation up to 80% in respect of certain posts, 70% in respect of certain posts and 60% in respect of certain posts in favour of local candidates. Annexure I, II and III of G.O.Ms.No.763, dated 15-11-1975 merely prescribed the procedure for implementation of these three categories of reservations. While Annexure I dealt with recruitment to a single local cadre, Annexure II dealt with recruitment to categories of posts for which a multi-zonal cadre was organised and Annexure III dealt with cases where multiple cadre recruitment was to be made.

(xix) In simple terms, Paragraphs 3 and 4 of Annexure I of G.O.P.No.763, dated 15-11-1975 were relatable to Para 8 (1) of the Presidential Order, paragraphs 3 and 4 of Annexure II of G.O.Ms.No.763 were relatable to Para 8 (2) of the Presidential Order and paragraph 3 of Annexure III of G.O.Ms.No.763 was relatable to Para 8 (3) of the Presidential Order.

(xx) Keeping in mind the above historical background of the law, let us have now look at the historical background of facts.

(xxi) In the year 2001, the Government constituted a One Man Commission to sort out the anomalies in the implementation of G.O.Ms.No.610 dated 30-12-1985. The Commission known as Girglani Commission submitted a report on 21-9-2004. On the basis of the report, a review of direct recruitments made after 1975 was conducted. Based upon the review the Government issued G.O.Ms.No.674 dated 7-9-2007 ordering the repatriation of non-local candidates appointed in deviation of the Presidential Order, to their respective local cadres. Paragraphs 6 and 7 of the said Government Order are reproduced as follows:

“ 6. Government have now decided that the non-local candidates appointed in deviation of the Presidential Order, as identified by the respective departments by reviewing the direct recruitments made from 1975 onwards be repatriated to their respective local cadres to which the candidates would otherwise belong to.

7. After such specific identifications, non-locals who had been appointed in deviation shall be repatriated to their respective local cadres by transfer. The transfers shall be ordered in public interest as provided under Para 5(2)(c) of the Presidential Order.”

(xxii) Challenging the said order of repatriation, persons who were so repatriated filed a batch of cases before the A.P. Administrative Tribunal in O.A.No.3784 of 2007 etc. Apart from the persons who were repatriated by G.O.Ms.No.674, even those already working in the zones into which these repatriatees were to land up, also filed applications opposing strangers landing upon their territory.

(xxiii) By a judgment dated 23-4-2012, a Full Bench of the A.P. Administrative Tribunal dismissed all the applications and upheld the repatriation orders. The said order of the Tribunal was also confirmed by a Division Bench of this Court by a judgment dated 21-11-2012 in W.P.No.13273 of 2012. It is stated that the Hon'ble Supreme Court refused to

interfere with the said judgment of this Court, by dismissing the Special Leave Petitions.

(xxiv) As a result, the fate of several orders of repatriation such as G.O.Ms.No.674, dated 7-9-2007, G.O.Ms.No.246, dated 7-12-2007, G.O.Ms.No.15, dated 4-2-2008, G.O.Ms.No.178, dated 27-10-2008 and G.O.Ms.No.106 dated 22-6-2009 became sealed.

(xxv) After the dust raised by the orders of repatriation thus settled down, the Department got down to the task of preparation of seniority lists, since the department never saw a seniority list or a regular panel for promotion in the past about 40 years. Thus came the seniority lists dated 18.10.2012 and 22.07.2013. Immediately upon the issue of these seniority lists, a fresh round of litigation commenced, with the unofficial respondents herein going before the Tribunal. This in brief is the past history. Keeping this in mind, let us now take up for consideration, the contentions of the parties, which we have grouped in para 13 above.

15. CONTENTIONS REVOLVING AROUND PARA 5 (2) (C) OF THE PRESIDENTIAL ORDER

- (i) The first contention of the learned counsel for the contesting respondents is that Para 5(2) of the Presidential Order does not at all speak about repatriation and hence the invocation of the same is wholly untenable.
- (ii) Technically, the respondents are right. Para 5 of the Presidential Order does not use the expression “repatriation”. Para 5 of the Presidential Order reads as follows:

“Local Cadres and Transfer of Persons:- (1) Each part of the State, for which a local cadre has been organised in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters as may be specified by the State Government, in respect of that category of posts.
(2) Nothing in this order shall prevent the State Government from making provision for
(c) the transfer of a person from one local cadre to another local cadre where no qualified or suitable person is available in the latter cadre for where such transfer is otherwise considered necessary in the Public Interest.”

But the Government Orders by which repatriation took place, use the expression “repatriation”. It may be relevant to extract the terminology used in the Government Orders in a tabular form:

G.O.Ms.No.	Relevant paragraph	Terminology used
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674	Para 6	Repatriation
	Para 7	Repatriation by transfer
246	Para 4	Repatriation
	Para 5	Repatriation and transfer
15	Para 4	Repatriation
	Para 5	Repatriation and transfer
178	Para 4	Repatriation
	Para 5	Repatriation and transfer
106	Only one paragraph	Withdrawals from Zones V & VI and reallocation

(iii) Therefore, it is clear that all the aforesaid Government Orders except G.O.Ms.No.106, used only the term “repatriation” either along with or without the word “transfer”. G.O.Ms.No.106 alone used the expressions “withdrawal and transfer”.

(iv) But, all the Government Orders invoked only Para-5(2)(c) of the Presidential Order, though Para-5(2)(c) of the Presidential Order does not use the expression “repatriation”. All clauses viz., (a) to (d) of Para-5(2) of the Presidential Order speak only about the transfer and they do not speak about repatriation. The expressions “repatriation” and “transfer”, in Service Jurisprudence, have different connotations. Both these expressions are not defined in the General Rules viz., The Andhra Pradesh State and Subordinate Services Rules, 1996. Therefore, we may have to fall back upon the normal meaning assigned to these expressions.

(v) Ordinarily, deputation and repatriation go together. Deputation precedes repatriation. As a consequence, deputation is always considered to be the product of a tripartite agreement as pointed out in **STATE OF PUNJAB v.INDER SINGH**^[5]. Both these terms viz., deputation and repatriation are used in relation to foreign service, the terms and conditions of which are regulated by Fundamental Rules 110 to 114.

(vi) In the cases on hand, the Government Orders by which some persons were purportedly repatriated to different zones, did not relate either to cases of deputation to any foreign service and consequential repatriation. Therefore, the Government Orders G.O.Ms. Nos.674, 246, 15 and 178 have

all used a wrong expression.

(vii) But, today, there is no point in highlighting the above mistake, as the situation is not now capable of any redemption, for two reasons viz., (a) none of the Government Orders G.O.Ms.Nos.674, 276, 15, 178 or 106 is under challenge before us and (b) that an attempt earlier made by two opposite groups of persons affected directly by those Government Orders failed miserably in the earlier round of litigation. Therefore, despite the fact that the Government Orders used an expression alien to Para-5(2) of the Presidential Order, nothing can be done about it today. Hence, the contention of Mr. P.Balakrishna Murthy, learned counsel for the contesting respondents that Para-5(2)(c) of the Presidential Order could not have been invoked but wrongly invoked, cannot stand in the light of the previous decision, right or wrong, which has attained finality.

(viii) The next contention of Mr. P.Balakrishna Murthy, learned counsel for the contesting respondents is that Para-5(2) of the Presidential Order is only an enabling provision which entitles the State Government to create a provision for the transfer of a person and that so long as no provision is made, the abstract power contained therein cannot be invoked. But this argument is just hyper-technical.

(ix) If we keep aside the question of repatriation for a minute, and simply go by the language employed in Para-5(2) of the Presidential Order, we could easily appreciate that Para-5(2) deals with the power of the State Government to transfer a person from any local cadre to any office or establishment to which the Presidential Order does not apply. It also speaks about the power of the Government to transfer a person from a local cadre comprising of posts in an office exercising territorial jurisdiction over one part of the State to any other local cadre.

(x) But, the power of the Government to transfer a person from one office to another and from one jurisdiction to another is always recognised to be incidental to the power of appointment. The power to appoint includes the power to transfer. By virtue of the Presidential Order, as well as by virtue of the specific provisions in Clauses (a) and (b) of Rule 38 of The Andhra Pradesh State and Subordinate Services Rules, the power of transfer was curtailed and limited to the territorial jurisdiction of the local cadres and to the unit of appointment. It is that restriction and limitation which stood removed

by Para-5(2) of the Presidential Order.

(xi) Para-5(2) of the Presidential Order has to be understood as a recognition of the power of the Government. The requirement to make a provision for the exercise of such a power, is merely to ensure that such a power is guided by established procedures. Any provision in a Statute conferring or recognising a power on the part of the Government and enabling the Government to make provision for the exercise of such a power, has to be understood as one intended to enable the Government to frame guidelines for the exercise of such power.

(xii) In the cases on hand, the orders transferring a group of persons from some zones to other zones, were triggered by the reports of the One Man Commission to the effect that appointments had taken place in a few zones, in violation of the Presidential Order fixing a ratio. Therefore, the Full Bench of the Administrative Tribunal as well as a Division Bench of this Court had held these transfers (denoted as repatriation), as a necessity born out of past mistakes on the part of the Government. As a matter of fact, the Division Bench of this Court has recorded in para 46 of its judgment in W.P.No.13273 of 2012 batch of cases the submission of the learned Additional Advocate General, appearing for the State to the effect that no non-local was ousted from service on the ground that he had been appointed illegally in violation of the Presidential Order and that therefore, the non-locals cannot complain of any prejudice when their seniority is also protected by the impugned orders. Therefore, irrespective of whether a provision had been made or not in terms of Para-5(2) of the Presidential Order, the transfer of all persons covered by G.O.Ms.Nos.674, 246, 15, 178 and 106, have received a seal of approval from this Court.

(xiii) The next contention of the contesting respondents that Para-5(2)(c) of the Presidential Order could have been invoked only under two contingencies viz., (1) where no qualified or suitable person is available in a cadre and (2) where such transfer is otherwise considered necessary in public interest, cannot anymore be raised in view of the categorical opinion delivered by the Division Bench of this Court in W.P.No.13273 of 2012 batch of cases, dated 21-11-2012. This Court has answered the very same issue in para 52 as follows:

“52. Para-5(2)(c) consists of two parts. The first part says that

Government can transfer a person from one local cadre to another local cadre where no qualified or suitable person is available in the latter cadre. Then the second part which is separated by the disjunctive 'or' from the first part says that Government can order such transfer i.e. from one local cadre to another where such transfer is otherwise considered necessary in the public interest (emphasis supplied). It can be said that this expression 'public interest' used in the second part of Para-5(2)(c) can be said to be of wide amplitude and indicates that Government can in the public interest transfer any employee from one local cadre to another. ...
... ..”

(xiv) Again in para 61, the Division Bench of this Court held as follows:

“61. In our opinion, in a situation like this, the Government can act in public interest under Para-5(2)(c) and make the transfers which it has made in order to maintain the balance in local cadres and to bring about harmony among local candidates and non-local candidates throughout the State for implementing the Presidential Order. None of the petitioners have complained that they are locals in the local cadres in which they appointed. Thus the impugned transfers can be said to be permissible on the public interest ground under Para-5(2)(c).”

(xv) Once it is found (1) that the transfer or repatriation of some persons from some zones to others had taken place in exercise of the power conferred under Para-5(2) of the Presidential Order,

(2) that such transfers also received a seal of approval from the Tribunal as well as this Court and the Supreme Court, in a batch of cases filed by both the rival groups and (3) that any order under Para-5(2)(c) of the Presidential Order confers the benefit of protection of seniority, it is unavoidable to conclude that the position so settled by this Court cannot now be unsettled at the instance of a new group of persons. As rightly contended by all the learned Senior Counsel appearing for the writ petitioners, the transfers of some persons from a few zones to others were upheld by this Court, on the ground among others that those transferees had nothing to lose when their seniority also stood protected. Therefore, if the reliefs sought by the contesting respondents are to be granted, it would take away a benefit which formed parcel of a detriment, that came to be upheld by this Court, only on the ground that such detriment and benefit went hand-in-hand together. In such circumstances, the contention of the writ petitioners that without challenging their repatriation or transfer, their position in the seniority list alone cannot be challenged and that once the challenge to the orders of repatriation failed, the challenge to the seniority should also fail, has to be upheld. Accordingly, it is upheld.

16. CONTENTIONS REVOLVING AROUND THE QUESTION OF
REPATRIATION, ALLOTMENT AND TRANSFER:

(i) Taking advantage of the fact that the repatriation orders (we choose to call them repatriation orders, as per the terminology used in those orders) and taking advantage of the language employed in Para-5(2)(c) of the Presidential Order, it was contended by Mr. P.Balakrishna Murthy, learned counsel for the contesting respondents, that the Presidential Order does not speak about or provide for repatriation. The Presidential Order provides for organisation of local cadres under Para-3, allotment of persons to local cadres under Para-4, the reservation for local candidates in the matter of direct recruitment under Para-8 and the power of review available to the Government under Para-13. Para-5(2) reserved the power for the Government to make provisions for the transfer of persons. But, the Presidential Order in entirety does not deal with repatriation. Therefore, the contention of the learned counsel for the contesting respondents is that the very repatriation of few persons from one zone to another was illegal. If a person had been appointed in a zone in excess of the quota reserved to be filled up under the Open Category, the appointment of such a person, according to the learned counsel for the contesting respondents, was illegal and void and that such appointments will not confer any benefit upon those individuals including the benefit of protection of seniority. In other words, the contention is that if the original appointment of a person is illegal, his continuance in office is illegal, his transfer or repatriation, by whatever name called, is also illegal and hence the assignment of seniority is also automatically illegal.

(ii) We have carefully considered the above submissions. We only wish that the above arguments were raised by someone, in the previous batch of writ petitions, W.P.No.13273 of 2012, to have the repatriation orders set aside in full. If in the previous round of litigation, the orders of repatriation had been set aside, persons who were repatriated and persons in whose territory the repatriated persons landed up, would have been happy. But, this did not happen. Therefore, it is not possible for us to reopen all over again, on the grounds raised by all these respondents, the issue of validity of the repatriation orders.

(iii) It is true that Para-4 of the Presidential Order speaks only about

the allotment. But, from the language of Para-4, it appears that the provisions thereto applied only to those who were already in service on the date of issue of the Presidential Order. This is why Para-4(1) begins with the words “persons holding posts”. Para-4 may not have application to direct recruitments made after the promulgation of the Presidential Order, since every recruitment made after the issue of the Presidential Order, is supposed to follow the reservations stipulated in Para-8. Therefore, neither the petitioners nor the contesting respondents can rely upon Para-4 of the Presidential Order.

(iv) Paragraph 5 of the Presidential Order comprises of two parts. The first part as found in sub-para (1) of Para-5 merely contains a declaration that each part of the State for which a local cadre has been organised in respect of any category of posts, shall be a separate unit for the purposes of recruitment, appointment, discharge, seniority, promotion and transfer in respect of that category of posts. The second part of Para-5 as contained in sub-para (2) reserves the power of the Government notwithstanding what is contained in sub-para (1), to effect transfers. Four different types of transfers are contemplated under sub-para (2) of Para-5. They are: (1) Transfer from any local cadre to any office or establishment to which the Presidential Order does not apply or vice versa, (2) Transfer from local cadre comprising posts in any office or establishment exercising territorial jurisdiction over a part of the State to any other local cadre comprising posts in such part, (3) Transfer from one local cadre to another local cadre for want of qualified or suitable persons in the latter cadre or when the transfer is otherwise considered necessary in public interest and (4) Transfer from one local cadre to another local cadre on a reciprocal basis, subject to the transferee being assigned seniority with effect from the date of his transfer.

(v) The need for the recognition of the power of the Government under Para-5(2) of the Presidential Order to do something that flows from the very power of appointment and which is always considered to be inherent, appears to have arisen on account of a provision contained in The Andhra Pradesh State and Subordinate Services Rules. Rule 38(a) of these Rules, enables a member of a State Service or a class of a State Service to be posted to any post borne on the cadre of such service or class of service anywhere in the State. But, the proviso circumscribes what is contained in

Rule 38(a) by stipulating that such postings and transfers shall be limited to the territorial jurisdiction of the local cadres specified in accordance with or in pursuance of the Presidential Order, where applicable or to the units of appointment specified in the Special Rules.

(vi) Similarly, Rule 38(b) of these Rules also limits the power to transfer and post a member of a Subordinate Service, only within the unit of appointment specified in the Special Rules and subject to the provisions of the Presidential Order.

(vii) It is this limitation and restriction which is imposed in Clauses (a) and (b) of Rule 38 of the General Rules, that is sought to be lifted by Para-5(2) of the Presidential Order. The power that flows out of Para-5(2) takes care of all contingencies where the transfer of a person may be necessary from one local cadre to an office beyond the reach of the Presidential Order or to an area beyond the territorial jurisdiction of the local area or to another local cadre.

(viii) Therefore, the label affixed on the action of the Government under the Government Orders G.O.Ms.Nos.674, 246 etc., may be defective, but the contents are well within the framework of Para-5(2) of the Presidential Order. At least that is what the judgment of this Court says in W.P.No.13273 of 2012, which has attained finality.

(ix) It is true that illegal appointments cannot confer any service benefits, as contended by the learned counsel for the contesting respondents. But, the said contention cannot be applied to the fact situation on hand at least for two reasons. They are:

(1) The Government itself did not choose to brand these appointments as illegal or void appointments, but chose to treat them only as irregular appointments. This is why the earliest Government Order G.O.Ms.No.610, dated 30-12-1985, directed under Para-5(1), the creation of supernumerary posts in the zones to which persons were sent on transfer or repatriation or whatever it is. The candidates who were sent on repatriation were fully qualified for appointment, they were selected for appointment only through Public Service Commission and their selection was in accordance with the rank secured by them. Therefore, it is a misconception to think that their appointments were illegal. The Government itself did not think so. Since irregular appointments can always be regularised, the Government treated

persons appointed in excess of the percentage prescribed by Para-8 of the Presidential Order as irregular appointees and sent them to the zones in which they would have otherwise been recruited. Therefore, it is wholly wrong to say that these appointments were illegal appointments.

(2) In any case, it is not open to the contesting respondents to contend that the very appointment of the writ petitioners was illegal and that therefore such illegal appointments cannot confer any benefit upon them. This is due to the fact that the contesting respondents herein did not ever challenge the repatriation of the writ petitioners. The contesting respondents could not also have challenged the repatriation of the writ petitioners herein.

The petitioners in W.P.Nos.40948 and 40950 of 2015 were all appointed in Zones-IV, V or VI and were all repatriated only to Zone-I. They did not land up either in Zone-II or Zone-III in which the contesting respondents are working. Though the petitioners in W.P.No.42093 of 2015 were repatriated to Zones-II and III, the repatriation took place in December, 2007 or June, 2008.

The contesting respondents herein did not go to the Tribunal either immediately or even belatedly, to challenge the very repatriation on the ground that the illegal appointments cannot continue to bear fruit.

(x) Therefore, the contention that the Presidential Order does not provide for repatriation or that the illegal appointments cannot confer any benefit, cannot hold water. At the most, the appointment of the writ petitioners in Zones-IV, V or VI, in excess of the percentage fixed under Para-8 of the Presidential Order, could be termed as irregular and what the Government chose to do was to regularise the irregularity.

17. CONTENTIONS REVOLVING AROUND THE POWER OF REVIEW:

(i) The next contention of the learned counsel for the contesting respondents is that once an allotment is made under Para-4 of the Presidential Order, the same can be reviewed only once and that too only within a period of 12 months, under Para-13. In the cases on hand, the appointments made from 1975 to 2001 are sought to be reviewed, beyond the period of limitation prescribed under Para-13 of the Presidential Order. In support of this contention that the power of review is available only once and that too within the period of limitation, the learned counsel for the contesting

respondents placed reliance upon the decision of the Division Bench of this Court in **M.Syam Sundar** (para 56).

(ii) But, we are afraid that the contention revolving around Para-13 is wholly misconceived. As we have pointed out elsewhere, Para-4(1) of the Presidential Order provides for allotment of persons already holding posts, to be allotted to local cadres, after the organisation of all posts into such cadres. Para-3(1) enjoins upon the State Government to organise classes of posts in the Civil Services of the State, into different local cadres. It is only after such organisation as required under Para-3 that the allotment of persons to different local cadres under Para-4 was to take place.

(iii) Para-13 has a direct nexus to Paragraphs 3 and 4. The power of review under Para-13 has to be understood in correlation to Paragraphs 3 and 4. Paragraphs 3, 4 and 13 constitute a composite scheme. The scheme is as under:

(1) Within 18 months of the commencement of the Presidential Order, the State Government should organise under Para-3(1), all classes of posts into different local cadres.

(2) After such organisation, the allotment to the local cadres has to take place under Para-4(1), in accordance with the principles and procedure prescribed under the remaining paragraphs of Para-4.

(3) Persons affected by the original order of allotment are entitled to make a representation under Para-4(4).

(4) All appointments and promotions so made, are declared to be provisional by Para-13, with a power conferred upon the Government to review the same within 12 months of the organisation of local cadres under Para-3.

Paragraph-13 of the Presidential Order reads as follows:

“Certain appointment and promotions to be Provisional:- appointment or promotion made after the commencement of this Order or order made in pursuance of the provision to paragraph 3, as the case may be any before any local cadre has been organised under the provisions this order or any other made in pursuance of the provision to paragraph 3, to any post which is required to be included in such cadre shall provisional and shall, within a period of twelve months after such organisation, be reviewed and readjusted in accordance with the provisions of this order.”

(iv) As seen from the language employed in Para-13, it has

a correlation only to Paragraphs-3 and 4 and not to the direct recruitments made specifically to a local cadre, after the organisation of local cadres. There is a particular phrase in Paragraph-13 that makes this position very clear. This phrase is “before any local cadre has been organised under the provisions of this order or any order made in pursuance of the provisions of Paragraph-3.”

(v) Therefore, Paragraph-13 relates to a power of review available to the Government immediately after the organisation of local cadres under Para-3 and the allotment of persons under Para-4. Paragraph-13 does not correlate to direct recruitments made to local cadres, long after the organisation of local cadres.

(vi) As a matter of fact, the contesting respondents, by their argument revolving around Para-13, have attempted to create an illusion as though the repatriation was done under Para-13 and that the same was not within the parameters of Para-13.

The Government never took a stand that the repatriations ordered in these cases were under Para-13. Even the orders of repatriation did not refer to Para-13.

(vii) The argument that what could not have been done directly under Para-13, cannot be done indirectly under any other provisions of the Presidential Order, does not appeal to us. The Government had invoked Para-5(2)(c) of the Presidential Order to transfer persons from some zones to others. No fetters similar to those found in Para-13 are placed upon the Government under Para-5(2). Therefore, this is not a case of the Government attempting to do indirectly what they cannot do directly. Hence, Para-13 has no application to the fact situation and the contentions revolving around Para-13 are liable to be rejected.

18. CONTENTION REVOLVING AROUND G.O.Ms.No.124:

(i) As we have pointed out earlier, the one and only ground on which the Administrative Tribunal allowed the original applications of the contesting respondents herein is that the Supreme Court has declared in **M.Surender Reddy** that G.O.Ms.No.124 is only prospective.

(ii) But, as we have pointed out elsewhere, (1) none of the Government Orders G.O.Ms.Nos.674, 246, 15 or 106 make any reference to G.O.Ms.No.124 and (2) the counters filed by the Government before the

Tribunal in O.A.Nos.1563 and 2032 of 2014 do not at all make a reference to G.O.Ms.No.124. Therefore, we are surprised as to how G.O.Ms.No.124 was pulled out of thin air, in the course of the arguments before the Tribunal, both by the learned counsel appearing for the original applicants and by the learned Government Pleader, to set at naught the orders of repatriation.

(iii) The law is well settled that an administrative order under challenge, cannot be sought to be sustained by reasons extraneous to the Government Order. As a corollary, an administrative order cannot also be destroyed on the basis of a Government Order which apparently did not form the basis of such an administrative order.

(iv) Moreover, G.O.Ms.No.124, dated 07-3-2002, did not alter the percentage of reservation as stipulated in Para-8 of the Presidential Order. Therefore, even to think that G.O.Ms.No.124 altered the rules of the game, may not really be correct. As we have indicated earlier, Paragraph-8(1) provided for reservation up to 80% for direct recruitment to certain posts and the same has to be read in conjunction with Annexure-I of G.O.Ms.No.763, dated 05-11-1975. Paragraph-8(2) provides for reservation up to 70% in the matter of direct recruitment to certain other posts and this has to be read in conjunction with Annexure-II to G.O.Ms.No.763. Similarly, Paragraph-8(3) provides for reservation up to 60% of posts to be filled up by direct recruitment in respect of certain posts and this has correlation to Annexure-III of G.O.Ms.No.763.

(v) G.O.Ms.No.124 merely elaborated on Paragraphs-3 and 4 of Annexure-II and Paragraph-3 of Annexure-III of G.O.Ms.No.763. The percentage of reservation never stood modified by G.O.Ms.No.124. Moreover, the fundamental principle that reservation does not make the beneficiaries of such reservation ineligible to compete under the Open Category, is not something that cropped up as a new innovation or as a new rule of the game under G.O.Ms.No.124. By suitable amendments to Paragraphs-3 and 4 of Annexure-II and Paragraph-3 of Annexure-III to G.O.Ms.No.763, the Government Order G.O.Ms.No.124 merely sought to state the obvious viz., that reservation does not mean that the eligibility of persons belonging to reserved categories is capped to the extent of reservation. Therefore, the very basis on which the entire proceedings had gone on, in the collateral proceedings, as though G.O.Ms.No.124 sought to

change the rules of the game after the process of recruitment began in 1999, is completely flawed. Hence, the introduction of G.O.Ms. No.124 before the Administrative Tribunal as a new character in the whole drama before the Tribunal, was only a diversionary tactic which appear to have borne fruit.

(vi) At the cost of repetition, we should point out that none of the Government Orders of repatriation refer to G.O.Ms.No.124. None of the counter affidavits filed by the Government before the Tribunal referred to G.O.Ms.No.124. In any event, the amendment sought to be made by G.O.Ms.No.124 merely reiterate the very same percentage of reservation as already prescribed under Paragraph-8 of the Presidential Order. Therefore, the Tribunal ought not to have gone on the wrong track viz., G.O.Ms.No.124 to uproot the seniority list impugned before them.

19. CONTENTION REVOLVING AROUND THE A.P.

RE-ORGANISATION ACT, 2014:

(i) One argument advanced by all the learned Senior Counsel appearing for the writ petitioners is that what has already been done under the repatriation orders before the commencement of Act No.6 of 2014, cannot now be undone due to the third proviso to Section 77(2) of the Act.

(ii) Sub-section (1) of Section 77 of Act No.6 of 2014 provides that all persons serving on substantive basis before the appointed day in connection with the affairs of the existing State of Andhra Pradesh, shall provisionally continue to serve in connection with the affairs of the State of Andhra Pradesh unless required by an order of the Central Government. Sub-section (2) of Section 77 obliges the Central Government to determine the successor State to which every person shall be finally allotted for service, after consideration of the options received from the employees.

(iii) There are four provisos to sub-section (2). The first proviso talks about deputation, whenever there is any deficiency in the service of one State. The second proviso enables the employees in the local, district, zonal and multi-zonal cadres to continue to serve in that cadre. The third proviso states that if the local, district, zonal and multi-zonal cadre in which an employee is serving, falls entirely in one of the successor States, he should be deemed to be allotted to that successor State.

(iv) The 3rd proviso to section 77 (2) of the Andhra Pradesh

Reorganisation Act, 2014 read as follows:

“Provided also that the employees of local, district, zonal and multi-zonal cadres which fall entirely in one of the successor States, shall be deemed to be allotted to that successor State.”

(v) Since most of the writ petitioners in these writ petitions were first appointed in Zone-V or Zone-VI (with the exception of a few) and also since Zones-V and VI now fall within the State of Telangana, it is the contention of the learned Senior Counsel for the writ petitioners that the writ petitioners are deemed, under the third proviso, after repatriation, to be allotted to the State of Andhra Pradesh and that therefore they cannot now be brought back to the State of Telangana.

(vi) But, we do not think that this question is of any relevance. The contesting respondents herein, who were the applicants before the Tribunal, never challenged the repatriation orders. The question of sending the writ petitioners back to the zones in which they were originally appointed would have arisen only if the repatriation orders were under challenge.

(vii) The contesting respondents herein do not mind the continuance of the writ petitioners in Zones-II and III, but without seniority. Therefore, the occasion for testing the correctness of the order of the Tribunal on the touch-stone of the third proviso to Section 77(2) of Act 6 of 2014 does not arise.

20. CONCLUSION:

(i) What emerges from the above discussion, can be summed up as follows:

(a) The orders of repatriation, despite the use of a wrong terminology, had been passed under Para-5(2)(c) of the Presidential Order resulting in the transfer of some persons from some zones to others and those orders which have attained finality, carried with them, the benefit of seniority.

(b) The repatriation orders were upheld by the Tribunal and this Court, on the ground that the repatriatees cannot have a grievance when their seniority was protected.

(c) By upsetting the seniority of the repatriatees, the Tribunal has now removed the ground under the feet, of the writ petitioners and the very basis on which the earlier round of litigation came to an end.

(d) Without any pleading before the Tribunal and without any indication, either in the orders of repatriation or in the seniority list, G.O.Ms.No.124 was

pulled out of the hat and the Tribunal has fallen into the trap.

Therefore, the order of the Tribunal setting aside the seniority list cannot be upheld.

(ii) There are also two more things that we are obliged to take note of at this stage. They are:

(a) It is not the grievance of the contesting respondents herein that the writ petitioners got repatriated from Zones-V and VI and landed up on top of them in their zones. It was contended before us by Mr. P.Balakrishna Murthy, learned counsel for the contesting respondents, that as a matter of fact, persons who were on the top of the writ petitioners in terms of seniority in Zones-V and VI got repatriated to other zones, paving the way for the writ petitioners to raise above in the seniority positions within their zones. As a result, their eligibility to be promoted to the posts of Deputy Executive Engineers and Executive Engineers came early, causing an impact upon the integrated State-wide seniority. Therefore, in essence, the contesting respondents herein are actually aggrieved by what happened to the writ petitioners and others within their local cadres. What happened within their local cadres (or Zones-V and VI) is hardly a matter of concern for the contesting respondents herein.

If due to what happened within their local cadres someone gained something, persons in other cadres cannot make out a grievance. By an extension of the same logic, persons in other local cadres cannot also have a grievance if what happened within some other local cadre conferred benefit upon the persons in that cadre that eventually had an impact upon the integrated State-wide seniority list. The contesting respondents herein argued that each local cadre is a water-tight compartment. This argument by which the contesting respondents lived, is also the argument by which they are supposed to perish.

(b) One important aspect that the Tribunal has completely lost sight of, is a specific pleading made by the official respondents in their counter affidavit in O.A.No.1563 of 2004. The relevant portion of the counter affidavit filed by the Assistant Secretary to Government, Irrigation Department in O.A.No.1563 of 2014 is extracted as follows:

“In fact by reviewing the panel the applicants and seniors of their zone got benefited and got advantage over the candidates of all other zones.

Hence their contention that, the Engineer-in-Chief (AW) HOD is not

competent to regularizing the Deputy Executive Engineers since 1975-76 is not correct.

The position of applicants in the inter-se-seniority list is as follows:

Name of the Employee, Date of Birth and Zone	Date of appointment as Assistant Executive Engineer	Date of placing as in charge Deputy Executive Engineer	Date of Deputy Executive Engineer temporary promotion	<i>Position of the applicant in the inter-se- seniority list of DEE</i>
<i>K.S. Prakasha Rao (D.O.B. 10.01.1961) Zone : II</i>	<i>12.02.1986</i>	<i>29.06.2005</i>	<i>29.06.2005</i>	<i>4501</i>
<i>M.Revathi (D.O.B. 24.05.1964) Zone : II</i>	<i>16.01.1986</i>	<i>29.06.2005</i>	<i>21.08.2004</i>	<i>4412</i>
<i>G.V. Thirumala Raju (D.O.B. 31.07.1962) Zone : II</i>	<i>12.02.1986</i>	<i>29.06.2005</i>	<i>21.08.2004</i>	<i>4420</i>
<i>K.Mallikarjuna Rao (D.O.B. 20.12.1961) Zone : II</i>	<i>13.03.1986</i>	<i>06.12.2007</i>	<i>29.06.2005</i>	<i>4598</i>
<i>V.Sai Rama Prasad (D.O.B. 01.08.1962) Zone : II</i>	<i>07.04.1986</i>	<i>29.06.2005</i>	<i>29.06.2005</i>	<i>4509</i>
<i>D.Anand Kumar (D.O.B. 21.08.1961) Zone : II</i>	<i>24.01.1986</i>	<i>29.06.2005</i>	<i>21.08.2004</i>	<i>4379</i>
<i>K.V.V. Narasimha Rao (D.O.B. 30.01.1961) Zone : II</i>	<i>25.01.1986</i>	<i>06.12.2007</i>	<i>29.06.2005</i>	<i>4580</i>
<i>A.Suri Babu (D.O.B. 03.07.1961) Zone : II</i>	<i>28.02.1986</i>	<i>29.06.2005</i>	<i>21.08.2004</i>	<i>4385</i>
<i>M.Venkateswarlu (D.O.B. 11.08.1959) Zone : III</i>	<i>23.01.1986</i>	<i>21.08.2004</i>	<i>21.08.2004</i>	<i>4360</i>
<i>K.Srinivasa Murthy (D.O.B. 01.07.1960) Zone : III</i>	<i>27.02.1986</i>	<i>29.06.2005</i>	<i>21.08.2004</i>	<i>4392</i>
<i>S.A. Jabbar (D.O.B. 07.06.1958) Zone : III</i>	<i>19.06.1983</i>	<i>21.08.2004</i>	<i>21.08.2004</i>	<i>4264</i>

Therefore, it is clear that by the seniority lists impugned before the Tribunal, the applicants before the Tribunal actually gained an advantage. In other words, the very basis on which the contesting respondents herein went before the Tribunal assailing the impugned seniority lists was demolished by the tabular column presented by the counter affidavit filed by the official respondents. Unfortunately, this was not even taken note of by the Tribunal. Therefore, we are of the considered view that the order of the Tribunal cannot

be sustained. Hence, the writ petitions are allowed and the common order of the Tribunal is set aside. As a consequence, the Government orders G.O.Rt.Nos. 705 and 709 dated 12-11-2015 and 13-11-2015 and the provisional and final seniority lists dated 2-12-2015 and 15-12-2015 are also set aside. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

ANIS, J.

18th July, 2016.

Ak/Ksn

Note:-

L.R. Copy to be marked.

(B/o)

Ak/Ksn

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE ANIS

**Writ Petition Nos. 40948, 40950, 42093
and 42878 of 2015 and 4451 of 2016**

(Common Order of the Division Bench
delivered by VRS, J.)

18th July, 2016.
(Ak/Ksn)

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- [\[1\]](#) 2001 (6) ALD 87 (DB)
[\[2\]](#) AIR 1974 SC 1755
[\[3\]](#) AIR 1983 SC 769
[\[4\]](#) 1996 (7) SCC 759
[\[5\]](#) (1997) 8 SCC 372