

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

Writ Petition No.45199 of 2016

Between

B.S. Jag Jeevan Kumar, S/o.B.K. Sham Rao,
Aged 53 years, Chairman,
Industrial Tribunal cum Presiding Officer,
Labour Court, Warangal District

... Petitioner

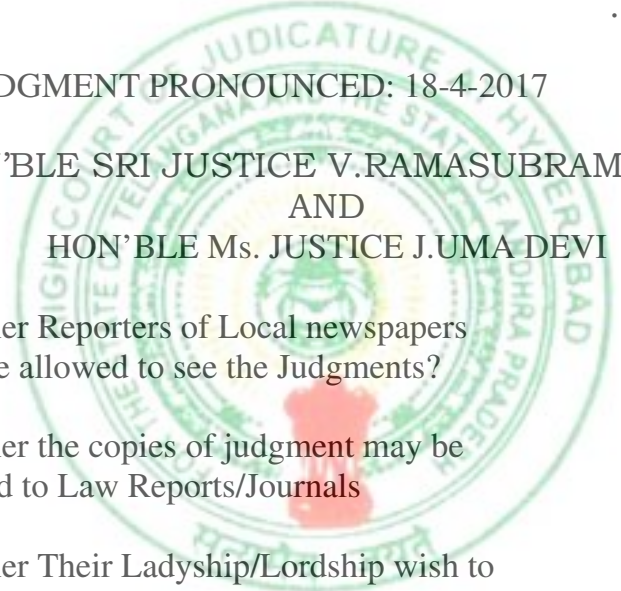
and

High Court of Judicature at Hyderabad
for the State of Telangana and
the State of Andhra Pradesh, Hyderabad,
Rep. by its Registrar (Vigilance)

... Respondent

DATE OF JUDGMENT PRONOUNCED: 18-4-2017

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

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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 Ms. JUSTICE J.UMA DEVI

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B.S. Jag Jeevan Kumar, S/o.B.K. Sham Rao,
Aged 53 years, Chairman,
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Labour Court, Warangal District

... Petitioner

Vs.

\$ High Court of Judicature at Hyderabad
for the State of Telangana and
the State of Andhra Pradesh, Hyderabad,
Rep. by its Registrar (Vigilance)

... Respondent

! Counsel for the Petitioner: Mr. G.Vidya Sagar,
Senior Counsel

Counsel for Respondent: Mr. Abhinand Kumar Shavili,
Standing Counsel for High Court

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> Head Note:

? Cases referred:

1. (2002) 4 SCC 247
2. (2002) 5 SCC 1
3. (2013) 3 SCC 658
4. (2008) 17 SCC 703
5. AIR 1990 SC 1607
6. AIR 2003 SC 2000
7. (1995) 5 SCC 625
8. (1995) 2 SCC 745
9. (1999) 2 SCC 330

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

Delivered on : 18-4-2017

Coram :

Honourable Mr. Justice V.RAMASUBRAMANIAN
and
Honourable Ms. Justice J.UMA DEVI

W.P.No.45199 of 2016

B.S. Jag Jeevan Kumar, S/o.B.K. Sham Rao,
Aged 53 years, Chairman,
Industrial Tribunal cum Presiding Officer,
Labour Court, Warangal District

... Petitioner

Vs.

High Court of Judicature at Hyderabad
for the State of Telangana and
the State of Andhra Pradesh, Hyderabad,
Rep. by its Registrar (Vigilance)

... Respondent

For the Petitioner : Mr. G.Vidya Sagar,
Senior Counsel

For the Respondent : Mr. Abhinand Kumar Shavili,
Standing Counsel for High Court

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.45199 of 2016

Order: (per V. Ramasubramanian, J.)

Contending that seniority in the cadre of District Judges has not been fixed in accordance with Rule 13(a) read with Schedule-A of the Andhra Pradesh State Judicial Service Rules, 2007, a promotee District Judge has come up with the present writ petition.

2. Heard Mr. G.Vidya Sagar, learned Senior Counsel for the petitioner and Mr. Abhinand Kumar Shavili, learned Standing Counsel for the respondent/High Court.

3. The petitioner was appointed as a Civil Judge (Junior Division) on 01-7-1988. He was promoted as Senior Civil Judge on 06-5-2002. He was later promoted on temporary basis as District Judge with effect from 23-9-2009. Subsequently, by an order in G.O.Ms.No.133, Law Department, dated 05-12-2012, the petitioner was promoted on regular basis under the 65% quota reserved for promotion to the post of District Judges.

4. In *All India Judges' Association v. Union of India*¹, the Supreme Court issued various directives, one of which related to the issue of seniority. Paragraph-29 of the said decision reads as follows:

¹ (2002) 4 SCC 247

“29. Experience has shown that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. For over three decades a large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotes and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle “merit-cum-seniority”, 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in *R.K. Sabharwal v. State of Punjab* (1995) 2 SCC 745. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in *R.K. Sabharwal* case as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate

rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003.”

5. Pursuant to the directives issued by the Supreme Court in *All India Judges’ Association* case, the Government of Andhra Pradesh issued under G.O.Ms.No.119, Law Department, dated 02-8-2008, a new set of Special Rules known as Andhra Pradesh State Judicial Service Rules, 2007. These Rules were deemed to have come into effect from 01-01-2007.

6. Rule 13 of these Rules provides the stipulations relating to fixation of inter se seniority. This Rule 13 reads as follows:

“13. Seniority:

- (a) **District Judges:** Seniority of the persons appointed to the category of District Judges by direct recruitment as well as recruitment by transfer shall be fixed as per the forty point roster prescribed in Schedule-A.
- (b) **Civil Judges:** Seniority of the persons appointed to the category of Civil Judges by direct recruitment as well as recruitment by transfer shall be fixed as per the twenty point roster prescribed in Schedule-B.
- (c) **Inter se seniority:** Whenever two or more persons are appointed simultaneously to the service, the appointing authority may at the time of passing, an order of appointment fix the inter se seniority as per the order of merit.”

7. Since Rule 13(a) which deals with the issue of seniority of persons appointed to the category of District Judges by 3 different methods, makes a reference to a 40-point roster prescribed in Schedule-A, it is necessary to have a look at Schedule-A. Schedule-A contains a 40-point

roster. In the 40-point roster, the roster points 1, 5, 9, 13, 17, 21, 25, 29, 33 and 37 are intended for direct recruitment. Roster point Nos.2, 6, 10, 14, 18, 22, 26, 30, 34 and 38 are the slots intended for accelerated promotion. The remaining roster points are intended for vacancies to be filled up by regular promotion.

8. It must be pointed out at this stage that when the 2007 Rules were issued, the ratio for direct recruitment, accelerated promotion and regular promotion were fixed respectively at 25%, 25% and 50%. However, the Rules were subsequently amended to modify the ratio into 25% for direct recruitment, 10% for accelerated promotion through limited departmental competitive examination and 65% for promotion on the basis of seniority cum merit depending upon suitability. At this stage, we should also point out that under the new Rules, the method of recruitment under the 10% quota as well as 65% quota are wrongly termed as “recruitment by transfer” instead of as “promotion” and hence steps are being taken to rectify the same. Though this issue has no connection to the dispute on hand we are recording the same for the purpose of clarity.

9. On 29-3-2016, the Registry of the High Court issued a provisional seniority list. This provisional seniority list gave separate seniority lists for the years 2010, 2012, 2013, 2014 and 2015. Only those appointed as District Judges pursuant

to notifications issued on or after 01-01-2007 alone were included in the said seniority list.

10. The petitioner who was appointed on temporary basis with effect from 23-9-2009 was not included in the seniority list for the year 2010. But his name was included at the first place in the seniority list for the year 2012, in view of the fact that the petitioner was appointed as a District Judge on regular basis under the 65% quota earmarked for regular promotion, only under G.O.Ms.No.133, dated 05-12-2012. In other words, the services rendered by the petitioner on temporary basis from 23-9-2009 were not counted for the purpose of reckoning his seniority.

11. But the petitioner appears to have reconciled himself to this position, in view of the two decisions of the Supreme Court, one in *Brij Mohan Lal v. Union of India*² and another in *Debabrata Dash v. Jatindra Prasad Das*³.

12. However, the petitioner filed objections on 11-4-2016 and 13-4-2016 to the provisional seniority list dated 29-3-2016 contending that the seniority list has been prepared in contravention of the principles laid down in para-29 of the decision of the Supreme Court in *All India Judges' Association* case. But since there was no response to the objections filed by the petitioner, the petitioner came up with the above writ petition seeking a *mandamus* to direct the

² (2002) 5 SCC 1

³ (2013) 3 SCC 658

respondents to fix the seniority of District Judges in accordance with Rule 13(a) read with Schedule-A of the Rules and also to post Principal District and Sessions Judges, strictly in accordance with the said seniority.

13. The contention of Mr. G.Vidya Sagar, learned Senior Counsel appearing for the petitioner, is that when Rule 13(a) of the Rules requires seniority to be maintained in accordance with 40-point roster and when such a rule had its origin to a judgment of the Supreme Court, it was not open to the Registry of this Court to tamper with the 40-point roster by introducing the concept of year of recruitment. In the impugned seniority list, the Registry has included the names of all persons appointed in the year 2010, as against the roster points to which they could be fitted. It is seen from the impugned seniority list that in the year 2010, direct recruitment to 21 vacancies of District Judges took place. 17 posts were filled up under the 10% quota for accelerated promotion. Therefore, in the impugned seniority list, the names of 38 persons alone were shown as persons recruited in the year 2010. Their names were shown as against the roster points in 4 different cycles. The last of the persons in the said seniority list was shown as serial No.162, which was virtually roster point No.2 in the 5th cycle.

14. After indicating the seniority of 38 persons recruited in the year 2010 as aforesaid, the Registry went to the next portion of the seniority list where all persons recruited in the

year 2012 were accommodated from serial No.161 onwards up to serial No.225. This is how the petitioner herein who was promoted under the 65% quota in the year 2012 was accommodated at serial No.163, which was virtually roster point No.3 in the 5th cycle.

15. The objections of the petitioner and the stand taken by the Registry can be well understood only if we reproduce the impugned seniority list from serial Nos.1 to 225. Hence, it is reproduced as follows:

“PROVISIONAL SENIORITY LIST OF DISTRICT JUDGES APPOINTED PURSUANT TO NOTIFICATIONS ISSUED UNDER THE 2007 RULES:

For the year 2010

Method of Recruitment	Date of Notification	Number of Vacancies notified	Number of posts filled
Direct Recruitment (25% quota)	19.08.2010	18	21
Accelerated recruitment by transfer (10% quota)	10.08.2010	17	17
Recruitment by transfer (65% quota)	Notification was not issued 134 District Judges were already promoted on Regular basis whereas 50% cadre strength (165) of District Judges arises at 83. From 20.04.2010 as per G.O.Ms.No.31 dated 15.11.2011 the cadre strength of 65% shall be filled by promotion. Roster is also changed		

Roster Point No.	Method of Recruitment	Name of the Officer
1.	Direct Recruitment	Sri Y.Lakshmana Rao
2.	Accelerated recruitment by transfer	Sri G.Venkata Krishnaiah
3.	Recruitment by transfer	
4.	Recruitment by transfer	
5.	Direct Recruitment	Sri Moulana Junaid Ahmed
6.	Recruitment by transfer	
7.	Recruitment by transfer	
8.	Recruitment by transfer	
9.	Direct Recruitment	Smt. G.Sunitha
10.	Recruitment by transfer	
11.	Recruitment by transfer	
12.	Accelerated recruitment by transfer	Sri P.V. Ramana Rayalu
13.	Direct Recruitment	Sri G.Srinivas
14.	Recruitment by transfer	
15.	Recruitment by transfer	

16.	Recruitment by transfer	
17.	Direct Recruitment	Sri S.Sasidhar Reddy
18.	Recruitment by transfer	
19.	Recruitment by transfer	
20.	Recruitment by transfer	
21.	Direct Recruitment	Smt. K.Sujana
22.	Accelerated recruitment by transfer	Sri A.Venkateswara Reddy
23.	Recruitment by transfer	
24.	Recruitment by transfer	
25.	Direct Recruitment	Sri A.Giridhar
26.	Recruitment by transfer	
27.	Recruitment by transfer	
28.	Recruitment by transfer	
29.	Direct Recruitment	Smt. Y.Renuka
30.	Recruitment by transfer	
31.	Recruitment by transfer	
32.	Accelerated recruitment by transfer	Sri A.Ravindra Babu
33.	Direct Recruitment	Smt. Rama Devi Sai
34.	Recruitment by transfer	
35.	Recruitment by transfer	
36.	Recruitment by transfer	
37.	Direct Recruitment	Sri Ch.Purushothama Kumar
38.	Recruitment by transfer	
39.	Recruitment by transfer	
40.	Recruitment by transfer	
41.	Direct Recruitment	Sri N.Narasinga Rao
42.	Accelerated recruitment by transfer	Sri V.D. Gouda
43.	Recruitment by transfer	
44.	Recruitment by transfer	
45.	Direct Recruitment	Smt. E.Thirumala Devi
46.	Recruitment by transfer	
47.	Recruitment by transfer	
48.	Recruitment by transfer	
49.	Direct Recruitment	Sri B.R. Madhusudhana Rao
50.	Recruitment by transfer	
51.	Recruitment by transfer	
52.	Accelerated recruitment by transfer	Sri G.V. Subrahmanyam
53.	Direct Recruitment	Sri D.Ramulu
54.	Recruitment by transfer	
55.	Recruitment by transfer	
56.	Recruitment by transfer	
57.	Direct Recruitment	Sri D.Tirumala Rao
58.	Recruitment by transfer	
59.	Recruitment by transfer	
60.	Recruitment by transfer	
61.	Direct Recruitment	Sri B.Sai Kalyan Chakravarthi
62.	Accelerated recruitment by transfer	Sri M.V. Ramesh
63.	Recruitment by transfer	
64.	Recruitment by transfer	
65.	Direct Recruitment	Smt. M.Babitha
66.	Recruitment by transfer	
67.	Recruitment by transfer	
68.	Recruitment by transfer	
69.	Direct Recruitment	Smt. S.Premavathi
70.	Recruitment by transfer	
71.	Recruitment by transfer	
72.	Accelerated recruitment by transfer	Sri R.Pundareekakshudu
73.	Direct Recruitment	Sri B.Papi Reddy

74.	Recruitment by transfer	
75.	Recruitment by transfer	
76.	Recruitment by transfer	
77.	Direct Recruitment	Sri G.Gopi
78.	Recruitment by transfer	
79.	Recruitment by transfer	
80.	Recruitment by transfer	
81.	Direct Recruitment	Smt. Aruna Sarika
82.	Accelerated recruitment by transfer	Sri A.Jagadeeshchandra Rao
83.	Recruitment by transfer	
84.	Recruitment by transfer	
85.	Direct Recruitment	
86.	Recruitment by transfer	
87.	Recruitment by transfer	
88.	Recruitment by transfer	
89.	Direct Recruitment	
90.	Recruitment by transfer	
91.	Recruitment by transfer	
92.	Accelerated recruitment by transfer	Sri M.Srinivasulu Reddy
93.	Direct Recruitment	
94.	Recruitment by transfer	
95.	Recruitment by transfer	
96.	Recruitment by transfer	
97.	Direct Recruitment	
98.	Recruitment by transfer	
99.	Recruitment by transfer	
100.	Recruitment by transfer	
101.	Direct Recruitment	
102.	Accelerated recruitment by transfer	Sri A.V. Pardha Saradhi
103.	Recruitment by transfer	
104.	Recruitment by transfer	
105.	Direct Recruitment	
106.	Recruitment by transfer	
107.	Recruitment by transfer	
108.	Recruitment by transfer	
109.	Direct Recruitment	
110.	Recruitment by transfer	
111.	Recruitment by transfer	
112.	Accelerated recruitment by transfer	Sri H.Chandra Sekhar
113.	Direct Recruitment	
114.	Recruitment by transfer	
115.	Recruitment by transfer	
116.	Recruitment by transfer	
117.	Direct Recruitment	
118.	Recruitment by transfer	
119.	Recruitment by transfer	
120.	Recruitment by transfer	
121.	Direct Recruitment	
122.	Accelerated recruitment by transfer	Sri G.Rama Krishna
123.	Recruitment by transfer	
124.	Recruitment by transfer	
125.	Direct Recruitment	
126.	Recruitment by transfer	
127.	Recruitment by transfer	
128.	Recruitment by transfer	
129.	Direct Recruitment	
130.	Recruitment by transfer	
131.	Recruitment by transfer	
132.	Accelerated recruitment by transfer	Sri Ch.K. Bhupathi

	transfer	
133.	Direct Recruitment	
134.	Recruitment by transfer	
135.	Recruitment by transfer	
136.	Recruitment by transfer	
137.	Direct Recruitment	
138.	Recruitment by transfer	
139.	Recruitment by transfer	
140.	Recruitment by transfer	
141.	Direct Recruitment	
142.	Accelerated recruitment by transfer	Sri G.Gopi Chand
143.	Recruitment by transfer	
144.	Recruitment by transfer	
145.	Direct Recruitment	
146.	Recruitment by transfer	
147.	Recruitment by transfer	
148.	Recruitment by transfer	
149.	Direct Recruitment	
150.	Recruitment by transfer	
151.	Recruitment by transfer	
152.	Accelerated recruitment by transfer	Smt. K.Syamala Devi
153.	Direct Recruitment	
154.	Recruitment by transfer	
155.	Recruitment by transfer	
156.	Recruitment by transfer	
157.	Direct Recruitment	
158.	Recruitment by transfer	
159.	Recruitment by transfer	
160.	Recruitment by transfer	
161.	Direct Recruitment	
162.	Accelerated recruitment by transfer	Sri V.R.K. Krupa Sagar

For the year 2012

Method of Recruitment	Date of Notification	Number of Vacancies notified	Number of posts filled
Direct Recruitment (25% quota)	15.04.2012	05	04
FTC officers-Advocates	13.08.2012	--	12
Accelerated recruitment by transfer (10% quota)	13.04.2012	01	01
Recruitment by transfer (65% quota)	03.04.2012	33	29
163.	Recruitment by transfer	Sri B.S. Jagjeevan Kumar	
164.	Recruitment by transfer	Smt. Y.Vijaya Lakshmi (Rtd)	
165.	Direct Recruitment	Sri Shaik Inthiaz Ahamed	
166.	Recruitment by transfer	Sri G.Pratap Kumar (Rtd)	
167.	Recruitment by transfer	Sri R.Niranjan	
168.	Recruitment by transfer	Sri V.Nageswar Rao	
169.	Direct Recruitment	Smt. Sunitha Kunchala	
170.	Recruitment by transfer	Sri K.V. Ramanaji Rao	
171.	Recruitment by transfer	Sri M.Venkata Rama Rao (Rtd)	
172.	Accelerated recruitment by transfer	Sri M.Gandhi	
173.	Direct Recruitment	Smt. Mantri Rama Krishna Sunitha	
174.	Recruitment by transfer	Sri B.David Raju (Expired)	
175.	Recruitment by transfer	Sri V.Venkateswar Rao	
176.	Recruitment by transfer	Sri K.Sai Mohan (Rtd)	
177.	Direct Recruitment	Sri Erugula Bhima Rao	

178.	Recruitment by transfer	Sri M.Seetharama Raju (Rtd)
179.	Recruitment by transfer	Sri V.Prabhakar Rao (Rtd)
180.	Recruitment by transfer	Sri N.Ananda Rao
181.	Direct Recruitment	Kum. C.Yamini
182.	Accelerated recruitment by transfer	
183.	Recruitment by transfer	Shaik Mohd. Ismail
184.	Recruitment by transfer	Sri Syed Lateef Ur Rahman
185.	Direct Recruitment	Sri Y.V.S.B.G. Pardha Saradhi
186.	Recruitment by transfer	Sri D.Vishnu Prasada Reddy
187.	Recruitment by transfer	Dr. K.B. Narasimhulu
188.	Recruitment by transfer	Sri K.Nageswar Rao
189.	Direct Recruitment	Sri N.Solomon Raju
190.	Recruitment by transfer	Sri I.Krishnaiah (Rtd)
191.	Recruitment by transfer	Sri R.Sudhakar Naidu (Rtd)
192.	Accelerated recruitment by transfer	
193.	Direct Recruitment	Dr. T.Srinivasa Rao
194.	Recruitment by transfer	Sri P.Lakshmi Narayana (Rtd)
195.	Recruitment by transfer	Sri M.Rajender (Rtd)
196.	Recruitment by transfer	Sri N.Rama Linga Reddy (Rtd)
197.	Direct Recruitment	Sri S.Goverdhan Reddy
198.	Recruitment by transfer	Sri A.Vara Prasada Rao
199.	Recruitment by transfer	Sri S.V. Chalapathi (Rtd)
200.	Recruitment by transfer	Sri K.Ramesh

201.	Direct Recruitment	Sri G.V.N.R. Bharatha Lakshmi
202.	Accelerated recruitment by transfer	
203.	Recruitment by transfer	Sri T.Suryanarayana (Rtd)
204.	Recruitment by transfer	Sri D.Dharma Rao (Rtd)
205.	Direct Recruitment	Smt. A.Bharathi
206.	Recruitment by transfer	Smt. Y.Sujana Kumari (Rtd)
207.	Recruitment by transfer	Sri D.Sardar Mohan Rao
208.	Recruitment by transfer	Sri S.Nagarjuna
209.	Direct Recruitment	Sri Ch.Ramesh Babu
210.	Recruitment by transfer	
211.	Recruitment by transfer	
212.	Accelerated recruitment by transfer	
213.	Direct Recruitment	Sri K.Ranga Rao
214.	Recruitment by transfer	
215.	Recruitment by transfer	
216.	Recruitment by transfer	
217.	Direct Recruitment	Dr. S.S.S. Jaya Raj
218.	Recruitment by transfer	
219.	Recruitment by transfer	
220.	Recruitment by transfer	
221.	Direct Recruitment	Sri B.Srinivas Rao
222.	Accelerated recruitment by transfer	
223.	Recruitment by transfer	
224.	Recruitment by transfer	
225.	Direct Recruitment	Smt. B.Swapna

16. The contention of the learned Senior counsel for the petitioner is that instead of accommodating the petitioner at serial No.163 relating to the year 2012, his name ought to have been included at serial No.3 itself (serial No.3 in the

1st cycle). The contention of the petitioner is that neither the judgment of the Supreme Court in *All India Judges' Association* case nor Rule 13(a) contemplated splitting up of the seniority, year-wise. In other words, his contention is that irrespective of the year in which a person is recruited to the post of District Judge, he should be accommodated against a roster point reserved for the method of recruitment through which he got appointed.

17. We have carefully considered the above submissions.

18. At the outset, it should be pointed out that there is a fallacy in the contention of the petitioner. If persons recruited by 3 different methods of recruitment are to be accommodated in the 40-point roster irrespective of the year of recruitment, then a person may gain seniority over and above another person who was appointed 2 years earlier and on which date the former was not even born in the service. It is now well settled that no person can claim seniority with effect from a date on which he was not even born in the service. If the contention of the petitioner is accepted and he is placed at serial No.3 against roster point No.3 in the 1st cycle of the roster, then the petitioner will be gaining seniority over persons appointed in the year 2010, despite the fact that the petitioner was appointed in the year 2012. This is not the purport of the decision of the Supreme Court in

All India Judges' Association case. This is not also the purport of Rule 13(a).

19. After the issue of a water-tight schedule for appointments by the Supreme Court in *Malik Mazhar Sultan v. Uttar Pradesh Public Service Commission*⁴, there is rarely any chance for the quota-rota to fail. Therefore, the long line of decisions starting from *Direct Recruit Class-II Engineering Officers' Association v. State of Maharashtra*⁵, need not influence our thinking in determining the issue on hand.

20. Today, the recruitment to the category of District Judges by all the 3 methods of recruitment, take place in accordance with the schedule fixed in *Malik Mazhar Sultan*. But if in a particular year, there are no vacancies available for a particular stream (either direct recruitment or accelerated promotion or regular promotion), no recruitment under that stream can take place in that year. But in the next year vacancies may arise in that particular stream and if those officers appointed in the next calendar year under the said stream are packed in the 40-point roster, as prayed for by the petitioner, people appointed later will score a march over people appointed earlier. This is not the purport of ratio laid down in para-29 of the decision in *All India Judges' Association* case.

⁴ (2008) 17 SCC 703

⁵ AIR 1990 SC 1607

21. Accommodating the petitioner against the first available roster point in the first cycle, irrespective of the year of his appointment, would result in two absurd consequences, namely, (a) giving seniority with effect from a date before the date on which he was born in the service and (b) giving seniority to a person even before the vacancy under that particular stream arose.

22. The only manner in which the ratio laid down in para-29 of *All India Judges' Association* case and Rule 13(a) of the Special Rules is to be understood is this. As and when a recruitment takes place, persons selected under a particular stream in that selection will be accommodated against the roster points earmarked for that particular stream in the 40-point roster. If all the 3 methods of recruitment take place almost simultaneously and if there are just 40 vacancies, all roster points from point No.1 to 40 will get filled up. If the total number of persons appointed at a particular point of time from all the 3 different streams, is greater than 40, then the Registry will have to fill up the first 40 roster points and complete the 1st cycle. Thereafter, the 2nd cycle of the 40-point roster has to be commenced and the person at roster point No.1 in the 2nd cycle will be at serial No.41 insofar as seniority is concerned.

23. As a matter of fact, one must read paragraph-29 of the decision in *All India Judges' Association* case and Rule 13(a), in tune with the principles laid down by a 3-member

bench of the Supreme Court in *Bimlesh Tanwar v. State of Haryana*⁶. Before the advent of the decision in *Bimlesh Tanwar*, the decision of a 2-member bench in *P.S. Ghalaut v. State of Haryana*⁷, was holding the field. It was decided in *P.S. Ghalaut* that roster points would also determine seniority. But the 3-member bench of the Supreme Court in *Bimlesh Tanwar* overruled the decision in *P.S. Ghalaut*. While doing so, the 3-member bench of the Supreme Court in *Bimlesh Tanwar* also took note of the directions issued in *All India Judges' Association* case. The relevant portion of the decision of the 3-member bench of the Supreme Court in *Bimlesh Tanwar*, which explained the ratio in *All India Judges' Association* case, is as follows:

"In All India Judges' Association's case [2002 (4) SCC 247], this Court was considering the matter relating to implementation of recommendations of Shetty's Commission as regard the fixation of pay scales of the Judicial officers. This Court noticed that sometimes merit suffers because of seniority. It was directed:

"We direct that recruitment to the Higher Judicial Service, i.e., the cadre of District Judges will be :

(1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test:

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.

(2) Appropriate rules shall be framed as above by the High Court as early as possible."

⁶ AIR 2003 SC 2000

⁷ (1995) 5 SCC 625

Only in relation to such promotion, the Court noticed that there exists a quota system in two different sources of recruitment in service in so far as seniority is concerned, and whence roster system is followed, the litigation in the country had been lesser. In a case where there are different sources of recruitment to a service and quota of appointment for each source of recruitment is fixed under the rules, the seniority vis--vis of different sources of recruits could be legally fixed on the basis of roster points. It was in that situation a desire was expressed that quotas be specified in relation to posts as contradistinguished from quota in relation to vacancies. This Court, therefore, directed the High Courts to amend and promulgate seniority rules in the light of the decisions in R.K. Sabharwal (supra). It was clearly laid down:

"It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003."

The said decision cannot be said to have any application whatsoever in determining inter se seniority as regards vacancies required to be filled up in the years 1989-1991.

24. It will be of interest to note that the directions contained in *All India Judges' Association* case to amend the Rules relating to seniority was in the light of the decision of the Supreme Court in *R.K. Sabharwal v. State of Punjab*⁸. But the decision of the Supreme Court in *R.K. Sabharwal* with respect to roster points vis-à-vis seniority, came to be explained by a subsequent bench of the Supreme Court in *State of Punjab v. Dr. R.N. Bhatnagar*⁹. In *R.N. Bhatnagar*, the Supreme Court drew a distinction between the roster relatable to the policy of reservation under Article 16(4) of the Constitution of India and a roster created for accommodating quota-rota between different sources of recruitment. After

⁸ (1995) 2 SCC 745

⁹ (1999) 2 SCC 330

drawing such a distinction, it was held in *R.N. Bhatnagar* as follows:

"So far as the first point is concerned, the High Court, in the impugned judgment, has heavily relied upon the Constitution Bench decision of this Court in the case of R.K. Sabharwal & Ors. (supra). Now it has to be kept in view that the Constitution Bench of this Court in the aforesaid decision Was concerned with entirely a different question, namely, as to how the roster indicating reserved points in connection with reservation of posts in a cadre to be filled in by Scheduled Caste (for short 'SC'), Scheduled Tribe (for short 'ST') and Backward Class (for short 'BC') candidates could be operated. Paragraph 4 of the Report lays down that "when a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts." In this connection, reliance was placed by the Constitution Bench on [Article 16\(4\)](#) of the Constitution of India which permits the State Govt. to make any provision for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, was not adequately represented in the services under the State, In the light of the aforesaid scheme of the Constitution, the Bench had to consider whether reservation of posts for SCs, STs and BCs when sought to be secured by way of operation of roster could permit the operation of the roster qua the posts or vacancies in the cadre. It was noted in this connection that if the roster operated on vacancies then it may happen that at a given point of time the percentage of reservation of posts for SCs, Sts and BCs may exceed the permissible percentage of reservation. In paragraph 5 of the Report it was observed that reservations provided under the impugned Government instructions permitted 16% of the posts to be reserved for members of SCs and BCs and it could be achieved by the roster to be maintained in each department. The roster had to be implemented in the form of running account from year to year. In connection with "16% of the posts,.. " to be reserved for members of SCs and BCs in promotional posts, it was held as under-

".....when recruitment to a cadre starts then 14 posts earmarked in the 100 points roster are to be filled from amongst the members of Scheduled Castes.....When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when me posts earmarked in the roster for Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive."

The aforesaid observations, which were heavily relied on by the High Court, and are also relied upon by the respondent's (writ petitioner's) counsel before us, cannot be of any assistance to the appellant-State on the facts of the present case. The result is obvious. As per [Article 16\(4\)](#) which carves out a separate field for itself from the general sweep of [Article 16\(1\)](#) which guarantees equality of opportunity in matters of appointments in Govt services to all citizens of India, the reservation for these categories in employment has to be achieved by earmarking requisite percentage of posts for the reserved category of candidates and by pitchforking these posts on roster points on requisite points roster and when such a roster takes a full cycle, posts earmarked on reserved points will enable the requisite reserved category of candidates to fill up these posts. After that is done, the roster would be treated to have achieved its purpose. Whenever a reserved candidate vacated a reserved post, the said post was liable to be filled only by a candidate belonging to the reserved category. If after the roster is first operated and thereafter it is again operated on future vacancies also, a situation may arise wherein a cadre may get reserved category exceeding permitted quota of reservation. It is to avoid this contingency that the Constitution Bench laid down in the aforesaid decision as indicated therein. So far as Rule 9 of the Rules in the present case is concerned, it has nothing to do with reservation of posts in the cadre of Professors. It is not a rule of reservation envisaged for a specified category of persons as permitted by [Article 16\(4\)](#) of the Constitution. On the contrary, it is a rule of recruitment from two different Sources, namely, in case of Professor's cadre 75% of posts had to be filled in by promotion while '25%' by direct recruitment. These two sources of recruitment permit departmental promotees and direct recruits from the open market to get absorbed in the cadre. They merely serve as two entry points for the cadre. Rule 9 deals with reservation of appointment to the posts of Professor and does not deal with reservation of posts of Professor for any special class or category of candidates. It is well settled that once recruitment is made from two sources i.e. departmental promotees and direct recruitment from open market and once the concerned candidates enter into any cadre through entry point reserved for them, they get fused and blended into one single cadre and their birth marks get obliterated.

25. Therefore, the 40-point roster created under Schedule-A to the Special Rules for A.P. State Judicial Service, 2007 and referred to in Rule 13(a) cannot be seen, explained or understood in isolation. The roster has to be understood and applied, in a manner that would not go contrary to the most fundamental principles governing seniority. The most fundamental rule relating to seniority is that a person cannot get seniority from a date anterior to the

date of his appointment to the service and he cannot gain seniority over a person appointed 2 years earlier to him, merely on the basis of the roster point.

26. Therefore, the claim of the petitioner is not legally tenable. Hence, the writ petition is liable to be dismissed and accordingly, it is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

18th April, 2017.

Ak

Note:-

L.R. Copy to be marked.

(B/o)

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.45199 of 2016
(per VRS, J.)



18th April, 2017.
(Ak)