

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

WRIT PETITION NOS.25498 AND 25502 OF 2016

W.P.No.25498 of 2016:

Ahmed Abdul Samee and another .. Petitioners

Vs.

The State of Andhra Pradesh rep. by its
Special Chief Secretary, Panchayat Raj
And Rural Department and others .. Respondents

W.P.No.25502 of 2016:

B.Prem Kumar and others .. Petitioners

Vs.

The State of Andhra Pradesh rep. by its
Special Chief Secretary, Panchayat Raj
And Rural Department and others ... Respondents

DATE OF JUDGMENT PRONOUNCED: 04.04.2017

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**

1. Whether Reporters of Local newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to
see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

N.BALAYOGI, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI
+ WRIT PETITION NO S.25498 AND 25502 OF 2016**

% DATED 4th APRIL, 2017

W.P.No.25498 of 2016:

Ahmed Abdul Samee and another .. Petitioners
Vs.
\$ The State of Andhra Pradesh rep. by its
Special Chief Secretary, Panchayat Raj
and Rural Department and others .. Respondents

W.P.No.25502 of 2016:

B.Prem Kumar and others .. Petitioners
Vs.
\$ The State of Andhra Pradesh rep. by its
Special Chief Secretary, Panchayat Raj
and Rural Department and others .. Respondents

<Gist:

>Head Note:

! Counsel for petitioners in W.P.No.25498 of 2016	: Sri D. Prakash Reddy & Sri D.Ramakrishna
^Counsel for respondents 1 & 2 in W.P.No.25498 of 2016	: Government Pleader for Services (Andhra Pradesh)
^Counsel for respondents 3 to 10 and 19 in W.P.No.25498 of 2016	: --
^Counsel for respondents 11 & 12 in W.P.No.25498 of 2016	: Government Pleader for Services (Telangana)
^Counsel for respondents 13 to 18 in W.P.No.25498 of 2016	: Dr. K.Lakshmi Narasimha

- ! Counsel for petitioners : Sri M.Ratna Reddy
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- ^Counsel for respondents 1 & 2 : Government Pleader for
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- ^Counsel for respondents 3 to 9 : --
and 18 in W.P.No.25502 of 2016
- ^Counsel for respondents 10 & 11 : Government Pleader for
in W.P.No.25502 of 2016 Services (Telangana)
- ^Counsel for respondents 12 to 17 : Dr. K.Lakshmi Narasimha
in W.P.No.25502 of 2016

? CASES REFERRED:

1. 2013 (3) ALT 538
2. 2005 (2) ALT 9 (DB)
3. (2015) 8 SCC 410
4. W.P.No.40948 of 2016 and batch decided on 18.07.2016



THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

WRIT PETITION NOS.25498 AND 25502 OF 2016

C O M M O N O R D E R
(Per Sri Justice Sanjay Kumar)

These two writ petitions arise out of the order dated 30.04.2015 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity, 'the Tribunal'), in O.A.No.407 of 2011. The said O.A. was filed by respondents 13 to 18 in W.P.No.25498 of 2016/respondents 12 to 17 in W.P.No.25502 of 2016. Ahmed Abdul Samee and P.Y.Ramachendram, petitioners in W.P.No.25498 of 2016, were arrayed as the fifth and fourth respondents respectively in this O.A. B.Prem Kumar, P.A.Venugopal and B.Vinay Kumar, petitioners in W.P.No.25502 of 2016 were shown as respondents 7, 9 and 10 respectively therein. N.Narasimhulu was the third respondent in the O.A. However, as there was no cause of action against him, he is a formal party to the writ petitions. Similarly, it emerged that there was no cause of action against D.Malleshwara Rao and D.Ramesh Chander, respondents 6 and 8 in the O.A. Thus, they are also formal parties. M.Ashok Reddy, respondent 11 in the O.A., against whom an adverse order was passed by the Tribunal, did not choose to challenge the same. As this Court does not propose to go into the validity of the order in so far as he is concerned, it is not necessary to put him on notice or afford him an opportunity of hearing.

Heard Sri D.Prakash Reddy, learned senior counsel representing Sri D.Ramakrishna, learned counsel for the petitioners in W.P.No.25498 of 2016; Sri M.Ratna Reddy, learned counsel for the petitioners in W.P.No.25502 of 2016; Dr.K.Lakshmi Narasimha, learned counsel for respondents 13 to

18 in W.P.No.25498 of 2016/respondents 12 to 17 in W.P.No.25502 of 2016, the applicants in the O.A.; and the learned Government Pleaders for Services appearing for both the States.

As comprehensive arguments were advanced by the learned counsel encompassing the entire gamut of the controversy, the writ petitions are taken up for final disposal.

It is an admitted fact that the petitioners in these two writ petitions did not enter their appearance in O.A.No.407 of 2011 before the Tribunal and file their counters. The O.A. was decided on the strength of the pleadings of the applicants therein and the counter-affidavit filed by the Government of the erstwhile combined State of Andhra Pradesh through its Engineer-in-Chief, Panchayat Raj Engineering Department. However, pursuant to the final order passed by the Tribunal in the O.A. and the contempt case instituted thereon, the authorities issued proceedings adverse to the petitioners herein. They, therefore, filed these writ petitions.

O.A.No.407 of 2011 was filed with a long-winded and multifaceted prayer, extracted *verbatim* hereunder:

'In view of the reasons mentioned above, it is prayed that this Hon'ble Tribunal may be pleased to:

- i. Call for records pertaining to the impugned Proceedings No. G O Ms No 397 PR & RD dated 23-10-08, passed by 1st Respondent and quash the same as such in so far it pertains to private respondents are concerned, and consequently,
- ii. Pertaining to the impugned Proceedings of confirmed seniority list of AEE PR vide No. Memo No.Ser.VI(2)00009/2005 dated 15-10-13, passed by 2nd Respondent placing the private Respondents at serial No. 155 in so as it pertains R.4, 79 in so as it pertains R 5; 81 in so as it pertains R 7; 156 in so as it pertains R 9; 108 in so as it pertains R 10; and, 80 in so as it pertains R 11 are concerned as illegal, contrary to law, and unconstitutional and consequently set aside the same as such and consequently,
- iii. Set aside the Objections attended Memo No. Ser.VI(2)/00009/2005 dated 4-11-13 passed by the 2nd Respondent as contrary to law, illegal and consequently

- iv. Set aside the Revised Confirmed Seniority list of Graduate DEE, PR Zone VI issued by the 2nd Respondent vide Memo No.Ser.VI(1)/6971/13 dated 16-11-13 to the extend of placement of the above private Respondents at serial No.167 in so as it pertains R.4, 90 in so as it pertains R 5;; 94 in so as it pertains R 7;; 168 in so as it pertains R 9;; 123 in so as it pertains R 10; and, 93 in so as it pertains R 11 is concerned and consequently,
- v. Set aside the State wide Confirmed Integrated Seniority list of Graduate Deputy Executive Engineers, issued by the 1st Respondent vide Memo No G(1)9622/2013 dated 14-12-13, in so far as Zone VI is concerned, to the extent of placement of the private Respondents at serial No. 765 in so as it pertains R.4, 432 in so as it pertains R 5;; 442 in so as it pertains R 7;; 766 in so as it pertains R 9;; 364 in so as it pertains R 10; and, 441 in so as it pertains R 11 are concerned, and consequently
- vi. Direct the official respondents to prepare a fresh seniority lists after deleting the names of these private respondents from the seniority lists of AEE and DEE to the extent of Zone VI is concerned, and consequently
- vii. Review the promotion made to the higher posts DEE, Executive Engineers and SE and CE and consequently;
- viii. And consequently and to pass such order or orders as deem fit and proper in the interest of justice pending disposal of the main O.A. and to pass such other order or orders as it may deem fit and proper in the circumstances of the case, and consequently;
- ix. pass such order or orders as deem fit and proper in the interest of justice.'

The averments in the O.A were to this effect: The applicants were appointed as Assistant Executive Engineers in Zone-VI in the year 1989, except for the second applicant who was appointed in 1988. They were thereafter promoted as Deputy Executive Engineers. By way of the impugned G.O.Ms.No.397 dated 23.10.2008, the Government transferred respondents 3 to 11 in the O.A. to Zone-VI though they were initially selected in Zones-I, II, IV and V. These respondents were appointed as Assistant Executive Engineers during the year 1986 and though they belonged to Zone-VI, they were allotted to different zones as non-local candidates. In the year 1986, 34 vacancies had been notified in the posts of Assistant Executive Engineers in Zone-VI and all 34 vacancies were filled up. The authorities therefore could not transfer respondents 3 to 11 in the O.A. to Zone-VI after a gap of

23 years on the ground that they were natives of that zone. By such transfer, the number of persons selected during 1986 stood increased from 34 to 40, which is impermissible, and respondents 3 to 11 became their seniors by virtue of such transfer. If such transfer was permitted, equal number of persons had to be transferred from Zone-VI, failing which the cadre strength would be disturbed. It was only when the seniority list of Deputy Executive Engineers was communicated on 04.12.2009 that the applicants found that respondents 3 to 11 in the O.A. were shown above them and came to know of the impugned G.O.

By way of the fresh grounds raised by them after amendment of the O.A., the applicants reiterated that in the year 1986, the Government had notified 34 vacancies in Zone-VI in the posts of Assistant Executive Engineers and 34 candidates were selected by the Andhra Pradesh Public Service Commission and duly appointed. These 34 vacancies pertained to both 60% local and 40% non-local categories in terms of the Presidential Order. Ahmed Abdul Samee was appointed in Zone-IV and was shown under local quota. P.Y.Ramachendram was selected in Zone-II with 224 marks under BC-A quota under non-local category. One G.Venumadhav with 213 marks was the last BC-A candidate selected and appointed in Zone-VI. Therefore, if P.Y.Ramachendram had to be accommodated in Zone-VI, G.Venumadhav had to be sent out, but both were retained in terms of the impugned G.O. B.Prem Kumar was selected under non-local quota in Zone-V as he could not be selected in Zone-VI due to low marks. Similarly, P.A.Venugopal and B.Vinay Kumar were selected in Zone-V under non-local quota. P.A.Venugopal secured 203 marks under BC-A category and the lowest mark secured by a BC-A appointee in Zone-VI was 213.

B.Vinay Kumar was selected under non-local quota in Zone-V under BC-D category with 258 marks. As the BC-D appointees in Zone-VI had secured 255.5 and 237 marks, B.Vinay Kumar could not have been accommodated unless one of them was replaced.

Not a single non-local candidate was appointed in Zone-VI and therefore, there was no scope to re-allot the unofficial respondents from their zones to Zone-VI. Contrary to this factual and legal position, the Government issued G.O.Ms.No.397 dated 23.10.2008 doing so. The applicants also complained that no notice was given to them before issuance of the G.O. They claimed that such re-allotment was illegal and that the unofficial respondents could not be shown above them merely because they belonged to the 1986 batch. The applicants asserted that, at best, the unofficial respondents in the O.A. could have been allotted to Zone-VI with effect from the date of the G.O. They accordingly prayed for the various reliefs set out *supra*.

In his counter-affidavit filed in the O.A., the Engineer-in-Chief, Panchayat Raj Engineering Department, deposing on behalf of the Government and himself, stated as under:

The unofficial respondents were appointed as Assistant Executive Engineers in different zones during 1986. In so far as Zone-VI is concerned, he stated that only 21 Assistant Executive Engineers actually joined service in that year. The applicants were stated to be Assistant Executive Engineers selected during 1989 and appointed in Zone-VI. Adverting to the orders issued in G.O.Ms.No.610 dated 30.12.1985, the Engineer-in-Chief stated that thereunder, non-locals identified as having been appointed in deviation of the Presidential Order were directed to be transferred from such units of appointment and guidelines for their

repatriation were issued *vide* G.O.Ms.No.674 dated 07.09.2007. Such non-local employees were to be repatriated to their respective local cadres by transfer under Para 5(2)(c) of the Presidential Order and such employees were entitled to protection of their seniority as their transfer was made in public interest. Accordingly, the Government issued G.O.Ms.No.397 dated 23.10.2008 for repatriating non-local employees in the Panchayat Raj Department, who were found to have been appointed in deviation of the Presidential Order, to their respective local cadres. The unofficial respondents were said to be covered thereby.

The Engineer-in-Chief further stated that G.O.Ms.No.442 dated 10.11.2008 was issued exempting unofficial respondents 6 and 8 in the O.A., duly permitting their retention. They were therefore not transferred to Zone-VI pursuant to G.O.Ms.No.397 dated 23.10.2008. He further stated that N.Narasimhulu, the third respondent, was initially appointed in Zone-I as an Assistant Executive Engineer in 1986 and was transferred at his own request to Zone-VI without protection of seniority. He was accordingly shown below the last regular candidate of the 1989 batch. He was therefore not shown over and above the applicants in the seniority list. Ahmed Abdul Samee was stated to have been appointed as an Assistant Executive Engineer in Zone-IV in 1986, while P.Y.Ramachendram was appointed in Zone-II, and both of them were repatriated to Zone-VI. Similarly, B.Prem Kumar, P.A.Venugopal and B.Vinay Kumar, who were appointed as Assistant Executive Engineers in Zone-V in 1986, were repatriated to Zone-VI. He further stated that as per the revised seniority list of Assistant Executive Engineers of Zone-VI dated 15.10.2013, the seniority list of Deputy Executive Engineers of Zone-VI was revised

and confirmed under Office Memo dated 16.11.2013. He asserted that the unofficial respondents in the O.A. were shown at appropriate places in terms of their seniority in the repatriated local cadre and, thereby, no injustice was done to the applicants.

Before advertizing to the relevant factual aspects and the merits of the matter, it would be necessary to take a look at the chequered history preceding this litigation.

Article 371D was inserted in the Constitution of India *vide* the Constitution (Thirty-second Amendment) Act, 1973 with effect from 01.07.1974. Clause (1) of this Article reads as under:

‘The President may, by Order made with respect to the State of Andhra Pradesh provide, having regard to the requirements of the State as a whole, 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, and different provisions may be made for various parts of the State.’

In exercise of this power, the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975, was promulgated by the President of India. Hence, the abridgement - the Presidential Order. Para 3 of this Order required the State Government to organize classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State. This was in furtherance of the Six-Point Formula evolved by the leaders of the erstwhile combined State of Andhra Pradesh in consultation with the Central leaders in 1973, so as to give preference to local candidates in the matter of direct recruitment and also to improve their promotion prospects, by organizing service cadres on appropriate local basis. For this purpose, the erstwhile State of Andhra Pradesh was divided into six zones under the Second Schedule to the Presidential Order, in

terms of Paras 2(1)(m) and 8(4) thereof. Reservation in the matter of direct recruitment was effected under Para 8 of the Presidential Order, providing for 80%, 70% and 60% respectively of the posts to be filled by direct recruitment, as the case may be, to be reserved for local candidates in relation to the local area in respect of such cadre for which direct recruitment was undertaken.

G.O.P.No.763 dated 15.11.1975 was issued by the then Government of Andhra Pradesh prescribing the procedure to be followed while selecting local candidates in terms of the Presidential Order. Annexure I thereto prescribed the procedure for implementing 80% reservation in favour of local candidates under the Presidential Order in respect of posts for which single cadre recruitment i.e. recruitment of candidates to a single local cadre was to be made. As per this procedure, the provisional seniority list on the basis of relative merit of all eligible applicants was to be drawn up, duly incorporating reservations in favour of Scheduled Castes, Scheduled Tribes, Backward Classes, Physically Handicapped persons etc., and such a provisional selection list was to be scrutinized to ascertain the number of local candidates finding a place therein. If the number of local candidates finding place in the provisional list equaled or exceeded the number of posts reserved in favour of local candidates, such provisional list was deemed to be the final selection list. However, if on scrutiny it was found that the number of local candidates finding place in the provisional selection list fell short of the number of posts reserved for local candidates, the local candidates not already included in the provisional selection list were to be arranged in order of merit in a separate list called the remainder list. Thereafter, candidates other than local candidates finding a place in the provisional

selection list were to be successively eliminated in the reverse order from the bottom of such list and replaced by local candidates selected in order of merit from the remainder list, ensuring that other prescribed reservations were not disturbed. This process of successive elimination of non-local candidates and their replacement by local candidates was to be continued until the number of local candidates in the provisional selection list equaled the number of posts reserved for such candidates. At that stage, the provisional selection list, as so modified, was deemed to be the final selection list. Annexure II dealt with the procedure for implementation of 70% local reservation in respect of posts for which multi-zonal cadres were organized. The methodology was however the same as prescribed in Annexure I. Annexure III prescribed the procedure for implementation of 60% local reservation in cases where multiple-cadre recruitment was made. The methodology was the same as set out in Annexure I.

However, the procedure prescribed in G.O.P.No.763 dated 15.11.1975, in so far as it related to Annexure I, was modified by the Government *vide* G.O.Ms.No.8 dated 08.01.2002. Thereunder, the Government decided that while filling up the posts under direct recruitment in relation to posts for which local reservation is 80%, the first 20% of posts should be filled following the combined merit list of locals and non-locals and thereafter, the remaining 80% of the posts should be filled by locals only. Paras 3 & 4 of Annexure I to G.O.P.No.763 dated 15.11.1975 were accordingly substituted by providing that the provisional list should be divided into two parts. The first part would comprise the first 20% of the list, while the second part was to comprise the balance 80%. In case the provisional list did not contain non-local candidates in the second

part, the list should be approved. If however on the scrutiny referred to in Para 3, it was found that there were non-local candidates in the second part, then those candidates were to be removed and replaced by local candidates ensuring that the rule of reservation was followed. The Government further stated therein that in respect of Annexures II and III to G.O.P.No.763 dated 15.11.1975, orders would be issued separately.

Thereafter, G.O.Ms.No.124 dated 07.03.2002 was issued on the same lines in relation to the procedure prescribed under Annexures II and III to G.O.P.No.763 dated 15.11.1975, relating to 70% and 60% local reservations respectively. Thereunder, the Government referred to G.O.Ms.No.8 dated 08.01.2002 relating to the amendment of Annexure I of G.O.P.No.763 dated 15.11.1975 and issued amendments to the procedure prescribed in Annexures II and III thereto. In so far as Annexure II is concerned, existing Paras 3 and 4 were to be substituted by Para 3 which provided that the provisional list should be divided into two parts. The first part was to comprise 30% of the posts consisting of the combined merit lists of locals as well as non-locals and the second part was to comprise the balance 70% of the posts consisting of locals only and the posts were to be filled up duly following the rule of reservation. As regards Annexure III, the existing Para 3 was substituted with a new paragraph which provided that the provisional list should be divided into two parts. The first part should comprise 40% of the posts consisting of the combined merit list of locals and non-locals and the second part comprised the balance 60% of posts consisting of locals only and the posts had to be filled up duly following the rule of reservation.

When it came to actual implementation of the Presidential Order, the record bears out the fact that grave irregularities were committed. The Government took note of the complaints made by the Telangana Non-Gazetted Officers Union in this regard and entered into an agreement with it on 07.12.1985. In terms of the said agreement, G.O.Ms.No.610 dated 30.12.1985 was issued for rectifying violations in implementation of the Presidential Order and the Six-Point Formula in Zones-V and VI, broadly requiring employees allotted after 18.10.1975 to these zones in violation of the Six-Point Formula to be repatriated to their respective zones.

But again, there was no proper implementation of these measures. Accordingly, in 2001, the Government constituted a One-Man Commission (The Girglani Commission) to receive representations and sort out the anomalies in implementation of G.O.Ms.No.610 dated 30.12.1985 and to take follow-up action for rectification of defects, anomalies and irregularities in implementation of the Presidential Order and to suggest remedial measures in matters relating to public employment. The Girglani Commission submitted its report on 02.09.2004. The recommendations contained therein were considered and accepted by the Government and pursuant thereto, the Government directed that a review be conducted of direct recruitments made from 1975 onwards to ensure that the Presidential Order was strictly implemented. That is how G.O.Ms.No.674 dated 07.09.2007 came to be issued. Therein, the Government of Andhra Pradesh took note of the above facts and the fact that the procedure prescribed for implementation of local reservations under G.O.P.No.763 dated 15.11.1975 was revised under G.O.Ms.No.8 dated 08.01.2002. The Government also recognized that the procedure required to be

followed for filling up posts by direct recruitment through open competition, consistent with the provisions of the Presidential Order, was that the required posts should be filled first on the basis of merit and only after filling these posts, the remaining posts were to be reserved for local candidates (80% or 70% or 60%, as the case may be) and should be filled up exclusively with them. It was stated that review of appointments made had shown that appointment of non-locals in certain units of appointment in the recruitments conducted in the specified years were not in accordance with the percentages and procedures as prescribed. The Government therefore decided that 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, should be repatriated to the respective local cadres to which they would otherwise belong. The Government further directed that after such specific identification, non-locals should be repatriated to their local cadres by transfer under Para 5(2)(c) thereof, duly protecting their seniority as such transfers were being made in public interest.

In furtherance of this policy decision, G.O.Ms.No.397 dated 23.10.2008 was issued in relation to the Panchayat Raj and Rural Development Engineering Department. Perusal thereof reflects that both G.O.s, i.e., G.O.Ms.No.610 dated 30.12.1985 and G.O.Ms.No.674 dated 07.09.2007, find reference therein at Serial Nos.1 and 4 respectively. In the body of the G.O., the Government referred to its decision to transfer non-locals who had been put in position in units of appointment in deviation of the Presidential Order and its instructions to identify such excess non-locals in every unit of appointment and to repatriate them to their

respective local cadres. Reference was made to the directions in G.O.Ms.No.674 dated 07.09.2007, requiring such non-locals, identified by respective departments by reviewing direct recruitments made from 1975 onwards, to be repatriated to the local cadres to which they otherwise belong. Reference was also made to the fact that the Engineer-in-Chief, Panchayat Raj, Hyderabad, had been requested under letters dated 25.11.2007, 20.05.2008 and 25.08.2008 to review direct recruitments since 1975 in accordance with the provisions of the Presidential Order and to furnish information in the prescribed proforma. The Engineer-in-Chief, Panchayat Raj, Hyderabad, in turn, furnished proposals for repatriation of certain Assistant Executive Engineers/Deputy Executive Engineers appointed through the Public Service Commission/Employment Exchange, by reviewing appointments in terms of the directions in G.O.Ms.No.674 dated 07.09.2007, under his letters dated 20.12.2007, 12.02.2008, 19.08.2008, 28.08.2008 and 15.09.2008. Having considered these proposals, the Government decided to repatriate certain excess non-locals to their respective local cadres, as they were found to have been appointed in deviation of the Presidential Order. This repatriation was effected by the Government in exercise of power under Para 5(2)(c) of the Presidential Order and the employees shown in the Annexure to the G.O. were repatriated, in public interest, to their respective local cadres in existing clear vacancies or otherwise on deputation/other duty, pending creation of supernumerary posts. Repatriated employees were held entitled to protection of seniority as their transfers were made in public interest. The Annexure to this G.O., in relation to Assistant Executive Engineers who were repatriated, demonstrated that 50

such Engineers were repatriated from Zone-I, 15 from Zone-II, 15 from Zone-III, 55 from Zone-IV, 52 from Zone-V and 46 from Zone-VI, in all, 233. Ahmed Abdul Samee finds mention at Sl.No.1 in the Annexure pertaining to Zone-IV and he was repatriated to Zone-VI. P.Y.Ramachendram finds mention at Sl.No.1 in Zone-II and he was repatriated to Zone-VI. B.Prem Kumar, P.A.Venugopal and B.Vinay Kumar find mention in Zone-V at Sl.Nos.4, 12 and 7 respectively and they were also repatriated to Zone-VI.

Earlier, O.A.No.3784 of 2007 and batch were filed by various employees aggrieved by G.O.Ms.No.674 dated 07.09.2007 in so far as it protected seniority of repatriated employees in their local cadres. This O.A. was decided by a Full Bench of the Tribunal on 23.04.2012. These points were framed for consideration therein:

- ‘1. Whether Go.Ms.No.610 dt.30.12.1985 and Go.Ms.No.674 dt.7.9.2007 in particular para-5, violate the provisions of the Presidential Order contained in Go.Ms.No.674 dt.20.10.1975?
2. Whether the amendments issued by way of substitution as per GO.Ms.No.8 Edn., dt.8.1.2002 and GO.Ms.No.124 dt.7.3.2002 are prospective or retrospective in operation?
3. Whether the Government invoke the provisions contained in Para-5 of the Presidential Order for effecting transfers in furtherance of GO.Ms.No.610 dt.30.12.1985 and GO.Ms.No.674 dt.7.9.2007 and whether the action of the respondents is in violation of principles of Natural Justice?
4. Whether the action of the respondent Government in issuing the repatriation orders amount to tinkering with the rankings assigned by the selecting authorities like Andhra Pradesh Public Service Commission and District Selection Committees?
5. Whether the vested right of promotion of the applicants is sought to be taken away?’

The Tribunal answered these points as under:

- i) G.O.Ms.No.610 dt.13.12.1985 and G.O.Ms.No.674 dt.7.9.2007 and the consequential repatriation orders passed by the respondent State are not violative of any of the provisions of the Presidential Order.
- ii) The amendments issued by way of substitution as per GO.Ms.No.8 dt.8.1.2002 and GO.Ms.No.124 dt.7.3.2002 are undoubtedly retrospective in operation.

iii) Invoking the provisions of paragraph-5 of the Presidential Order need not be preceded by any notice or observance of principles of natural justice.

iv) The action of the respondents in issuing consequential repatriation orders in furtherance of GO.Ms.No.610 dt.30.12.85 does not amount to tinkering with the ranking assigned by the selecting bodies like Andhra Pradesh Public Service Commission or any other selection committees.

v) Finally, the right of promotion is not at all a vested right.'

Aggrieved by the said order dated 23.04.2012 passed by the Tribunal, W.P.No.13273 of 2012 and batch were filed before this Court. By judgment dated 21.11.2012, reported in **M.VENKATA SEKHAR V/s. PRINCIPAL SECRETARY TO GOVERNMENT, P.R. & R.D. DEPT.**¹, this Court dismissed all the writ petitions except those pertaining to teachers. Perusal of the order reflects that all the petitioners were repatriated as they were erroneously selected to the vacancies meant for local candidates. The Division Bench framed the following points for consideration.

'(1) Whether G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 are *ultra vires* the Presidential Order?

(2) Whether the Presidential Amendment Order of 2001 and G.O.Ms.No.2 are prospective in operation from 02.06.2001, and if so, what is their effect on G.O.Ms.No.674 of 2007 with regard to posts of Teachers?

(3) Even if G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 are valid, whether the transfers of the petitioners are vitiated for not giving opportunity to them in the circumstances pleaded by the petitioners and whether OAs should be remanded on that ground for deciding their individual cases?

(4) What is the relief to be granted?'

The Division Bench specifically dealt with the issue as to whether G.O.Ms.No.8 dated 08.01.2002 and G.O.Ms.No.124 dated 07.03.2002 could be applied to selections made previously so as to identify non-locals appointed in the vacancies meant for local candidates so as to transfer them back to their local cadres, as ordered in G.O.Ms.No.674 dated 07.09.2007. Reference was made to the judgment of this Court in **P.MURALIDHAR V/s. A.P. PUBLIC**

¹ 2013 (3) ALT 538

SERVICE COMMISSION², wherein the validity of G.O.Ms.No.124 dated 07.03.2002 was upheld. The Division Bench observed that the Government could be said to have acted in accordance with law in applying the new methodology prescribed in G.O.Ms.No.8 dated 08.01.2002 and G.O.Ms.No.124 dated 07.03.2002 to the previous selections so as to undertake repatriation in terms of G.O.Ms.No.674 dated 07.09.2007. As the Government resorted to exercise of power under Para 5(2)(c) of the Presidential Order only to set right irregular appointments made earlier in various local cadres, the action of the Government in applying the new selection methodology prescribed in G.O.Ms.No.8 dated 08.01.2002 and G.O.Ms.No.124 dated 07.03.2002 was held to be valid. It was observed that the Government had the power to apply the said procedure even retrospectively through G.O.Ms.No.674 dated 07.09.2007. The Division Bench therefore held that G.O.Ms.No.610 dated 30.12.1985 and G.O.Ms.No.674 dated 07.09.2007 were not *ultra vires*. The cases relating to teachers were allowed as their local reservation was earlier 70%, which was converted to 80% in the year 2001, but repatriations in terms of G.O.Ms.No.674 dated 07.09.2007 were taken up by applying 80% local reservation.

Petitions for Special Leave to Appeal (Civil) Nos.37227 of 2012 and batch were filed against this judgment before the Supreme Court. By order dated 05.05.2014, the Supreme Court dismissed the Special Leave Petitions holding thus:

‘Learned counsel for the petitioners seeks withdrawal of special leave petitions.

Special leave petitions are permitted to be withdrawn and they are dismissed as such. Pending I.A.(s), if any, stands disposed of.

REMAINING MATTERS :

² 2005 (2) ALT 9 (DB)

Having regard to the impending formation of two states Andhra Pradesh and Telangana w.e.f. 2.6.2014, the controversy raised in this group of matters does not deserve to be gone into on merits as zone formation in united Andhra Pradesh will not survive.

Special leave petitions are, accordingly, dismissed.'

However, by order dated 04.08.2014 passed in I.A.No.2 of 2014 in Petition for Special Leave to Appeal (Civil) No.38559 of 2012 filed by one K.Raghu Rami Reddy, the Supreme Court recalled the order dated 05.05.2014 in so far as he was concerned and Special Leave Petition (Civil) No.38559 of 2012 was restored. Dr.K.Lakshmi Narasimha, learned counsel, would inform this Court that thereafter the said case was disposed of permitting K.Raghu Rami Reddy to approach this Court by way of a review petition in relation to the judgment dated 21.11.2012 in so far as it pertained to W.P.No.15496 of 2012. Be that as it may.

Another case which has impact upon the present adjudication that needs to be adverted to is **P.MURALIDHAR²**. On 28.12.1999, the then Andhra Pradesh Public Service Commission undertook recruitment to fill up 27 categories of posts in Group-II services of the State which got delayed. Some of the candidates filed O.A.s before the Tribunal seeking implementation of G.O.Ms.No.124 dated 07.03.2002 and the same were allowed directing the authorities to recast the merit list duly implementing the said G.O. Aggrieved thereby, writ petitions came to be filed before this Court. The writ petitions were dismissed by this Court on 27.12.2004 affirming the finding of the Tribunal that the selection process had to be in accordance with G.O.Ms.No.124 dated 07.03.2002. This Court however held that the said G.O. would have to be implemented excluding appointments made in 2001 and 2002. The matter thereupon went before the Supreme

Court in Civil Appeal No.5099 of 2006 and batch. By judgment dated 18.02.2015, reported in ***M.SURENDER REDDY V/s. STATE OF ANDHRA PRADESH***³, the Supreme Court allowed the appeals.

Therein, the following two questions were framed:

‘(a) Whether G.O.Ms.No.124 dated 7-3-2002 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

(b) If the said G.O.Ms is retrospective, whether it is required to review the entire select list disturbing the appointments already made during the period between 2001 and 7-3-2002.’

Perusal of the judgment reflects that though reference was also made therein to G.O.Ms.No.8 dated 08.01.2002, which preceded G.O.Ms.No.124 dated 07.03.2002 and related to Annexure I of G.O.P.No.763 dated 15.11.1975, the Supreme Court ultimately held that only G.O.Ms.No.124 dated 07.03.2002 was prospective and was not applicable to the process of selection started pursuant to the advertisement of 1999. In this context, the Supreme Court observed that in the absence of any express or necessarily implied provision in it, a statute normally affects rights prospectively and that a statutory provision is held to be retrospective either when it is so declared by express terms, or the intention to make it retrospective clearly follows from the relevant words and the context in which they occur. The Supreme Court further observed that in any case, the State Government could not pass an order amending procedural law regarding reservation in the matter of selection to posts with retrospective effect once the selection began. Significantly, the Supreme Court did not look into either G.O.Ms.No.610 dated 30.12.1985 or G.O.Ms.No.674 dated 07.09.2007. Thus, as matters stand, only

³ (2015) 8 SCC 410

G.O.Ms.No.124 dated 07.03.2002 is held to be prospective and is not applicable to selections and appointments made earlier.

One last judgment which requires to be referred to is the recent judgment of a Division Bench of this Court in **AKKENA TRINADHAM V/s. THE STATE OF A.P.**⁴. This judgment arose out of the litigation relating to Deputy Executive Engineers in the Irrigation Department of the State. The issue raised was with regard to seniority of repatriated engineers in terms of G.O.Ms.No.610 dated 30.12.1985 and G.O.Ms.No.674 dated 07.09.2007. The Tribunal took note of the concession made by the State that **M.SURENDER REDDY**³ would be applicable and allowed the O.A.s holding that alteration of seniority by applying G.O.Ms.No.124 dated 07.03.2002 in respect of recruitments that had taken place before 1999 was illegal. When this order was subjected to challenge, dealing with the seniority list dated 22.07.2013, this Court observed that neither the said list nor the earlier seniority list dated 18.10.2012 made reference to G.O.Ms.No.124 dated 07.03.2002. The Division Bench expressed surprise as to how G.O.Ms.No.124 dated 07.03.2002 was 'pulled out of the hat' in the course of arguments before the Tribunal with 'the wave of a magic wand', so as to influence the decision-making process by the said G.O. and **M.SURENDER REDDY**³ relating thereto. Stating so, the Division Bench went on to deal with the merits of the matter and held that that transfer of all persons covered by various G.O.s received the seal of approval from this Court as the Government had not chosen to brand any of the appointments made in deviation of the Presidential Order as illegal but only treated them as irregular and it would be a misconception

⁴ W.P.No.40948 of 2016 and batch decided on 18.07.2016

to now brand them as illegal. The Division Bench found that none of the repatriation orders of the persons who gained seniority in the local cadres to which they stood repatriated were subjected to challenge and therefore, the question of sending such persons back to the zones in which they were originally appointed did not arise. The conclusions of the Division Bench were phrased thus:

‘(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 repatriates cannot have a grievance when their seniority was protected.

(c) By upsetting the seniority of the repatriates, 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 orders of the Tribunal setting aside the seniority list cannot be upheld.’

Diverging from the point momentarily at this stage, it may be noticed that though Sri D.Prakash Reddy, learned senior counsel, would contend that O.A.No.407 of 2011 was filed challenging G.O.Ms.No.397 dated 23.10.2008 with abnormal delay, Dr.K.Lakshmi Narasimha, learned counsel, pointed out that M.A.No.2736 of 2010 was filed therein seeking condonation of delay and by order dated 21.01.2011, the Tribunal condoned the delay on payment of costs of Rs.5,000/-.

That having been said, it is significant to note that the applicants in O.A.No.407 of 2011 did not lay a challenge to G.O.Ms.No.397 dated 23.10.2008 in its entirety or to the general

exercise of the power of repatriation by the Government thereunder. The cause for grievance was only the repatriation of the unofficial respondents to Zone-VI in the context of the adverse impact it had on the seniority of the applicants. No mention or averment was made by the applicants therein as to the procedure to be followed for implementing local reservations or the orders applicable thereto, viz., G.O.Ms.No.763 dated 15.11.1975, G.O.Ms.No.8 dated 08.01.2002 and G.O.Ms.No.124 dated 07.03.2002. Significantly, no challenge was made to the amended procedure introduced by the aforestated two later G.O.s. It appears that during the course of arguments before the Tribunal, reference was made to G.O.Ms.No.124 dated 07.03.2002 and by applying **M.SURENDER REDDY³**, the Tribunal straightaway allowed the O.A. *vide* the order dated 30.04.2015. Perusal of the said order reflects that the Tribunal specifically observed therein that it did not go into the merits of the identification of respondents 4, 5, 7, 9, 10 and 11 in the O.A. for repatriating them to Zone-VI in view of the development that occurred during the course of hearing, viz., the decision of the Supreme Court in **M.SURENDER REDDY³**. The Tribunal thereupon held that review of the appointments of respondents 4, 5, 7, 9, 10 and 11 as Assistant Executive Engineers in 1986 and their repatriation to Zone-VI under Para 5(2)(c) of the Presidential Order as per the procedure prescribed in Annexure III to G.O.P.No.763 dated 15.11.1975, as amended by G.O.Ms.No.124 dated 07.03.2002, approved in the impugned G.O.Ms.No.397 dated 23.10.2008, was bad in law as G.O.Ms.No.124 dated 07.03.2002 could not be given retrospective effect *per* **M.SURENDER REDDY³**. G.O.Ms.No.397 dated 23.10.2008 was accordingly quashed in so far as it pertained to respondents 4, 5, 7, 9, 10 and 11 and their

repatriation to Zone-VI was held invalid. The seniority lists of Assistant Executive Engineers and Deputy Executive Engineers drawn up by giving effect to their repatriation were accordingly set aside and the authorities were directed to prepare revised seniority lists in the said cadres in the Panchayat Raj Engineering Service after deleting the names of respondents 4, 5, 7, 9, 10 and 11 in Zone-VI. Pursuant to this order, the Government of Telangana issued Memo dated 12.07.2016 calling upon its Engineer-in-Chief, Panchayat Raj Engineering Department, to implement the same by repatriating respondents 4, 5, 7, 9, 10 and 11 in the O.A. to their respective zones duly following the procedure. Pursuant thereto, the Engineer-in-Chief issued proceedings dated 23.07.2016 repatriating the petitioners in these two cases and M.Ashok Reddy, respondent 11 in the O.A., to their respective zones from Zone-VI. Memo dated 23.07.2016 was also issued by the Engineer-in-Chief revising the seniority list of Assistant Executive Engineers of Zone-VI, deleting the names of the petitioners in these two cases.

Significantly, during the pendency of the O.A., the erstwhile combined State of Andhra Pradesh came to be bifurcated under the Andhra Pradesh Reorganization Act, 2014 (for brevity, 'the Act of 2014') with effect from 02.06.2014. In terms of the said bifurcation, allocation of State-cadre employees of the Panchayat Raj and Rural Development Department of the erstwhile State was undertaken by the Government of India through its Ministry of Personnel and *vide* order dated 15.12.2015, 94 State-cadre employees of the said department were allocated to the residuary State of Andhra Pradesh and 130 such employees were allocated to the State of Telangana. The petitioners in these writ petitions, holding the State-cadre posts of Executive Engineers by then, were

allocated to the State of Telangana under the aforestated order. Though in their counter filed before this Court, the applicants in O.A.No.407 of 2011 stated that they would be separately challenging the aforestated allocation order, no proof is placed before this Court of their having done so or the result thereof.

This Court finds merit in the contention of Sri D.Prakash Reddy, learned senior counsel, that in the light of the bifurcation of the erstwhile combined State of Andhra Pradesh on 02.06.2014, by which date the order dated 30.04.2015 in O.A.No.407 of 2011 was not given effect to, the question would arise as to whether the State of Telangana could have unilaterally implemented the order thereafter. It appears that C.C.No.434 of 2016 was filed before the Tribunal complaining of non-implementation of the said order. In the light of this contempt case, the State of Telangana issued Memo dated 12.07.2016 calling upon its Engineer-in-Chief, Panchayat Raj Engineering Department, to implement the order. Pursuant thereto, proceedings dated 23.07.2016 were issued by the Engineer-in-Chief, Panchayat Raj Engineering Department, Government of Telangana, repatriating the petitioners in these two writ petitions to their original zones. In so far as Ahmed Abdul Samee and P.Y.Ramachendram, the petitioners in W.P.No.25498 of 2016, are concerned, they were repatriated to Zones-IV and II respectively which fall in the residuary State of Andhra Pradesh. After the bifurcation of the erstwhile combined State and allocation of State-cadre employees of the Panchayat Raj and Rural Development Department, including the petitioners, by the Government of India, it was not open to either the Government of Telangana or its Engineer-in-Chief, Panchayat Raj Engineering Department, to unilaterally repatriate the petitioners in

W.P.No.25498 of 2016 to the residuary State of Andhra Pradesh, contrary to the allocation orders dated 15.12.2015 of the Government of India. It appears that this was done only under the threat of contempt proceedings. Giving effect to the order dated 30.04.2015 in O.A.No.407 of 2011 at this late stage in so far as these two petitioners are concerned would necessarily have to involve not only the present States of Telangana and Andhra Pradesh but also the Government of India. Significantly, the Government of India is not even a party to the litigation. Therefore, giving effect to the order against them did not arise.

The averments in O.A.No.407 of 2011 bear out that the challenge to repatriation of the unofficial respondents therein to Zone-VI was on the ground that they were not eligible to be so repatriated on various counts. Significantly, the applicants contradicted themselves on the point as to whether Ahmed Abdul Samee and P.Y.Ramachendram belonged to Zone-VI. In Para 6(b), they stated that all the unofficial respondents belonged to Zone-VI but were allotted to different zones as non-local candidates. However, Dr.K.Lakshmi Narasimha, learned counsel, contended that Ahmed Abdul Samee and P.Y.Ramachendram were local candidates of Zone-II and Zone-IV respectively, where they were selected. He placed reliance on the marks sheets obtained from the Public Service Commission in this regard. This aspect was countered by Sri D.Prakash Reddy, learned senior counsel, by placing material before this Court in evidence of Ahmed Abdul Samee and P.Y.Ramachendram being local candidates of Zone-VI, viz., the school and service record of Ahmed Abdul Samee and the service record of P.Y.Ramachendram. This issue therefore requires no further deliberation. They were local candidates of Zone-VI.

Significantly, though no mention was made in G.O.Ms.No.397 dated 23.10.2008 of G.O.Ms.No.124 dated 07.03.2002, it may be noted that G.O.Ms.No.674 dated 07.09.2007 finds reference therein. In Para 4 of the G.O., it is stated that orders were issued in G.O.Ms.No.674 dated 07.09.2007 to the effect that non-local candidates appointed in deviation of the Presidential Order, as identified by respective departments by reviewing direct recruitments made from 1975 onwards, be repatriated to their respective local cadres to which they would have otherwise belonged. Perusal of G.O.Ms.No.674 dated 07.09.2007 demonstrates that reference was made therein to G.O.P.No.763 dated 15.11.1975 and the revised procedure in terms of G.O.Ms.No.8 dated 08.01.2002. In Para 4 of the said G.O., it is also stated that the procedure required to be followed for filling up the posts by open competition, consistent with the provisions of the Presidential Order, is that all candidates would be considered adhering to the roster points as applicable and these should be filled first on the basis of merit and after filling these posts, the remaining posts are to be reserved for local candidates (80% or 70% or 60%, as the case may be) and they shall be filled up exclusively by local candidates. Reading the aforestated G.O.s together makes it is clear that though no mention was made of G.O.Ms.No.124 dated 07.03.2002 in G.O.Ms.No.397 dated 23.10.2008; it became part and parcel thereof by implication. Despite the fact that G.O.Ms.No.674 dated 07.09.2007 did not specifically refer to G.O.Ms.No.124 dated 07.03.2002, it made no difference as G.O.P.No.763 dated 15.11.1975 and G.O.Ms.No.8 dated 08.01.2002 were both specifically mentioned therein and in Para 4, the procedure required to be followed was not merely

limited to the posts covered by Annexure I to G.O.P.No.763 dated 15.11.1975 but also extended to those covered by Annexures II and III to the said G.O. This is clear from the reference made to reservations for local candidates in the context of 80% or 70% or 60%, as the case may be. Unless Annexures II and III to G.O.P.No.763 dated 15.11.1975 were covered, there would have been no reference to the posts for which local reservation was pegged at 70% or 60%. In that view of the matter, the argument of Sri D.Prakash Reddy, learned senior counsel, that G.O.Ms.No.397 dated 23.10.2008 did not take into account G.O.Ms.No.124 dated 07.03.2002 cannot be accepted. Once G.O.Ms.No.397 dated 23.10.2008 referred to G.O.Ms.No.674 dated 07.09.2007, it brought with it the procedure contemplated under G.O.P.No.763 dated 15.11.1975 and the revision thereof under G.O.Ms.No.8 dated 08.01.2002 and G.O.Ms.No.124 dated 07.03.2002.

However, as already stated *supra*, the Supreme Court did not take into consideration G.O.Ms.No.674 dated 07.09.2007, wherein reference was made to G.O.Ms.No.8 dated 08.01.2002 which amended the procedure in so far as Annexure I to G.O.P.No.763 dated 15.11.1975 was concerned. In fact, the Supreme Court ultimately rendered no finding in so far as this G.O. was concerned. It was only G.O.Ms.No.124 dated 07.03.2002, which extended the same revised procedure to posts covered by Annexures II and III to G.O.P. No.763 dated 15.11.1975 that was held to be prospective. This leads to an anomalous situation where the revised procedure under G.O.Ms.No.8 dated 08.01.2002 in relation to posts covered by Annexure I to G.O.P.No.763 dated 15.11.1975 continues to have retrospective effect but G.O.Ms.No.124 dated 07.03.2002, which extended the same

revised procedure to posts covered by Annexures II and III to G.O.P.No.763 dated 15.11.1975, is now held to be prospective. When G.O.Ms.No.674 dated 07.09.2007 was already held to be valid by this Court in **M.VENKATA SEKHAR¹** and the said G.O. required review of all the recruitments made from 1975 onwards for the purpose of repatriating employees appointed in deviation of the Presidential Order to their respective local cadres, such an exercise cannot now be held to be invalid.

The argument advanced by Dr.K.Lakshmi Narasimha, learned counsel, that the unofficial respondents in the O.A. who were appointed as long back as in the year 1986 in different zones cannot be benefited by being repatriated to Zone-VI at this late stage when they never raised any protest to their appointment and allocation to the other Zones, cannot be accepted. The present exercise of repatriation is not being undertaken owing to any individual complaints from the employees concerned but to give effect to the Presidential Order and the directives of the Government to undo irregularities committed in implementation thereof. Therefore, the finding of the Supreme Court in **M.SURENDER REDDY³** that G.O.Ms.No.124 dated 07.03.2002 is only prospective and cannot be made applicable to past selections and appointments made prior to its issuance would only mean that review of the appointments made since 1975 up to 07.03.2002 would have to be made in the context of the unamended procedure prescribed under G.O.P.No.763 dated 15.11.1975. Any irregularities in making appointments in terms of the said procedure had to be rectified notwithstanding the passage of time and employees who were appointed in deviation of the Presidential Order had to be repatriated to the local cadres to which they

otherwise belonged. As pointed out in **AKKENA TRINADHAM⁴**, the Government chose to treat the appointments made in violation of the Presidential Order as irregular and not illegal, warranting exercise of power under Para 5(2)(c) of the Presidential Order.

That apart, it is relevant to note that G.O.Ms.No.397 dated 23.10.2008 sought to effect repatriation of employees in the Panchayat Raj and Rural Development Department of the combined State of Andhra Pradesh from one zone to another in all six zones in exercise of power under Para 5(2)(c) of the Presidential Order. Para 5(2)(c) specifically provides that nothing in the Presidential Order shall prevent the State Government from making the transfer of a person from one local cadre to another local cadre where such transfer is considered necessary in public interest. Repatriation, in terms of G.O.Ms.No.397 dated 23.10.2008, was specifically undertaken by the Government in public interest. No challenge was made to the G.O on the ground that the element of public interest was lacking in so far as the petitioners were concerned. When it is not in dispute that they belonged to Zone-VI and were appointed, be it for whatever reason, in various other zones, it was well within the power of the Government in public interest to repatriate them to Zone-VI to which they originally belonged. As no exercise was undertaken by the Tribunal to determine as to whether their identification was based on established deviation from the original procedure prescribed under G.O.P.No.763 dated 15.11.1975, this Court cannot hazard an opinion as to whether they were actually appointed in deviation of the Presidential Order in the zones to which they were originally appointed in 1986. In any event, the power of the Government to transfer them to Zone-VI in exercise of

power under Para 5(2)(c) of the Presidential Order cannot be doubted. Merely because the applicants in the O.A. suffered loss of seniority, it is not enough to displace the presumption that repatriation of the petitioners to their local zone was in public interest. It is an admitted fact that the petitioners belonged to the 1986 batch of Assistant Executive Engineers and were therefore far senior to the applicants in the O.A., appointed in 1989/1988.

As stated *supra*, O.A.No.407 of 2011 was allowed by the Tribunal only on the strength of **M.SURENDER REDDY**³, though no challenge was laid to G.O.Ms.No.397 dated 23.10.2008 on the ground of the Government lacking the power to repatriate employees. The Tribunal practically held the G.O. itself to be invalid but limited applicability of the said finding to the unofficial respondents therein. The challenge actually laid by the applicants in the O.A. before the Tribunal was to the exercise of the power of repatriation on facts in so far as the unofficial respondents were concerned. However, the Tribunal did not even venture to go into the said issue and baldly concluded that it did not want to go into the merits as to how respondents 4, 5, 7, 9, 10 and 11 were identified for repatriation to Zone-VI. That issue was the very foundation of the challenge to such repatriation and the Tribunal ought not to have refused to go into the same. As the Tribunal did not take up this exercise, there is no adjudication on that aspect which can be examined presently. Though the said issue was sought to be raised before this Court, in terms of the marks secured by the unofficial respondents and also the availability of posts in Zone-VI in the year 1986, we are of the opinion that this exercise is not required now due to intervening circumstances. As already pointed out, during the pendency of the O.A., the erstwhile

combined State of Andhra Pradesh came to be bifurcated under the provisions of the Act of 2014. Irrespective of whether persons working in different zones in the erstwhile combined State of Andhra Pradesh were rightly appointed in terms of the Presidential Order, once the State stood bifurcated, the State-wise cadre employees of both the newly formed States had the option to seek allocation to one or the other State as per the provisions of the Act of 2014. In terms thereof, the petitioners in these two writ petitions, who were all promoted to the State-cadre posts of Executive Engineers by the appointed day, i.e., 02.06.2014, opted for the State of Telangana and accepting their options, the Government of India issued allocation orders dated 15.12.2015 allotting them to the State of Telangana. This order holds the field as on date. In the light of this development, repatriation of the petitioners to Zone-VI under G.O.Ms.No.397 dated 23.10.2008 ceased to have the same significance that it would have had, if the State had not been bifurcated.

On the above analysis, this Court holds that the order dated 30.04.2015 passed by the Tribunal in O.A.No.407 of 2011 is patently unsustainable. The said order proceeds on a premise which was never raised before it in the pleadings. On the strength of the edict of the Supreme Court as to G.O.Ms.No.124 dated 07.03.2002 being prospective only, the Tribunal straightaway allowed the O.A. without even examining the merits of the challenge raised by the applicants therein as to the repatriation of the unofficial respondents. There was also no consideration whatsoever of the validity of the exercise of power by the Government under Para 5(2)(c) of the Presidential Order in repatriating them to Zone-VI in public interest.

This Court therefore finds that the petitioners in these two writ petitions originally belonged to Zone-VI and notwithstanding the fact that they were appointed to other zones, the validity of such appointments, in terms of the same being in accordance with the Presidential Order or otherwise, remains indeterminate. There was however no issue raised with regard to their transfer to Zone-VI under Para 5(2)(c) of the Presidential Order not being in public interest. Further, even if they had continued in the zones in which they were originally appointed, as they occupied State-cadre posts on the appointed day upon bifurcation of the erstwhile combined State, they were entitled to exercise their options for allocation to one or the other newly formed State. In terms thereof, they were allotted to the State of Telangana and would, in any event, be senior to the applicants in the O.A., as such allocation would not be at the cost of their seniority.

The writ petitions are accordingly allowed setting aside the order dated 30.04.2015 passed by the Tribunal in O.A.No.407 of 2011, in so far as it pertains to the petitioners in both cases. All consequential actions taken pursuant to the said order, including the proceedings dated 23.07.2016 and the Memo dated 23.07.2016 issued by the Engineer-in-Chief, Panchayat Raj Engineering Department, Government of Telangana, are set aside.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

N.BALAYOGI, J

4th APRIL, 2017.

Note: L.R. copy to be marked
B/o PGS