

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

WRIT PETITION NO.3732 OF 2017

Between:

M. Sarveshwar Reddy

.... Petitioner

v.

\$ The State of Telangana rep. by its Principal Secretary, Home
Department, Telangana Secretariat, Hyderabad and others.

.... Respondents

DATE OF ORDER PRONOUNCED: 18.04.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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

RAMESH RANGANATHAN, ACJ

*** THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**
AND
***THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

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% Dated 18-04-2017

M. Sarveshwar Reddy

.... Petitioner

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.... Respondents

! Counsel for petitioner: Sri Vedula Srinivas

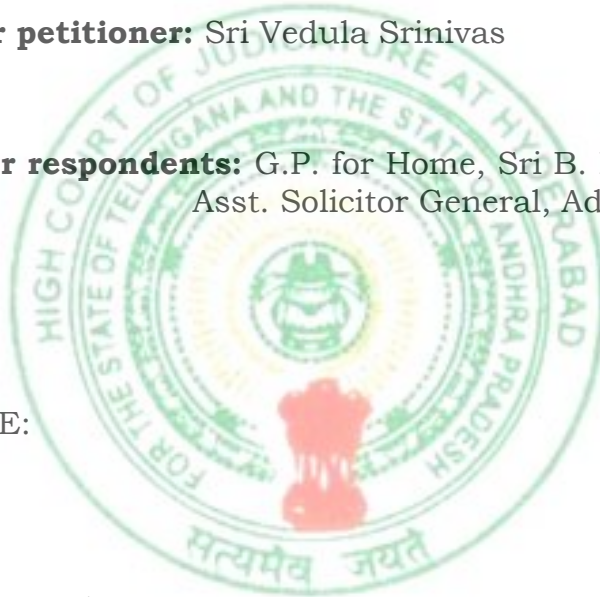
^ Counsel for respondents: G.P. for Home, Sri B. Narayan Reddy,
Asst. Solicitor General, Advocate General.

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> HEAD NOTE:

? Citations:

- 1) AIR 1997 SC 2951
- 2) (1976) 2 SCC 502
- 3) AIR 1964 SC 1585
- 4) (1985) 1 SCC 345
- 5) (2004) 6 SCC 186
- 6) 1951 AC 737
- 7) (1970) 2 ALL.E.R 294
- 8) 1971 (1) WLR 1062
- 9) 1972 (2) WLR 537
- 10) AIR 1968 SC 647
- 11) 1901 AC 495



**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT PETITION NO.3732 OF 2017

ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The petitioner, an Additional Superintendent of Police working as the Assistant Director, Co-ordination in the Telangana State Police Academy, Hyderabad has been provisionally allocated to the State of Telangana. He has also exercised his option to be finally allocated to the State of Telangana. The age of superannuation of all Government employees, in the erstwhile composite State of Andhra Pradesh, was 58 years in terms of Section 3 of the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 (hereinafter called the "1984 Act"). On the appointed day i.e., 02.06.2014, the existing State of Andhra Pradesh was bifurcated into two States in terms of the Andhra Pradesh Re-organization Act, 2014 (hereinafter called the 2014 Central Act) i.e., the State of Telangana and the State of Andhra Pradesh. While, on its coming into being, the State of Telangana extended to its government employees the benefit of three annual grade increments, the residuary State of Andhra Pradesh extended the age of superannuation of its government employees to 60 years, amending Section 3 of the 1984 Act, by the A.P. Public Employment (Regulation of age of Superannuation) (Amendment) Act, 2014 (hereinafter called the 2014 State Act) which was published in the A.P. Gazette on 27.06.2014, with retrospective effect from 02.06.2014 i.e., the appointed day when the new State of Andhra Pradesh came into existence.

Exercising the powers conferred on it by Section 101 of the 2014 Central Act, the Government of Telangana made the Telangana Adaptation of Laws Order, 2016 which was notified in G.O.Ms. No.45 Law (F) Department, dated 01.06.2016 (hereinafter called the “Order”). This order came into force with effect from 01.06.2016. Para 5 thereof stipulates that the Acts/Regulations specified in the First Schedule thereto, including the laws made thereunder and which were in force in the whole of the State of Andhra Pradesh as on the appointed day immediately before the formation of the State of Telangana, shall, until altered, repealed or amended by the competent legislature or by any other competent authority, have effect and be in force in the State of Telangana, subject to the adaptation and modifications specified in para 5, or if it is so directed shall stand repealed. Para 5(a) stipulates that the short title of every Act/Regulation specified in Column 3 of the First Schedule, and its citation by the number and year as indicated therein, shall be amended as specified in the corresponding entry in column 4 thereof, and all references to any such law, in any other law, shall stand modified accordingly. Para 5(b) stipulates that, for the words “Andhra Pradesh” wherever they occur the word “Telangana” shall be substituted therefor, and there shall also be made in any sentence, in which the said expression or any expression cognate thereto or any grammatical variation thereof occurs, such consequential amendment as the rules of grammar may require. Para 6 stipulates that all the other laws, including those made under the adapted Acts, specified in column 4 of the Second Schedule, which were in existence as on 02.06.2014, but not adapted as on the date of the order, shall be deemed to have been adapted to the State of Telangana. The First Schedule to the Order contains the Acts and

modifications/amendments. Serial No.96 thereunder refers to the Andhra Pradesh Public Employment (Regulation of Age of superannuation) Act, 1984, and its name stood modified, by the Order, as the Telangana Public Employment (Regulation of the Age of superannuation) Act, 1984. The adaptation made, by the Order notified in G.O. Ms. No.45 dated 01.06.2016, is only to the nomenclature of the Acts in force in the existing State of Andhra Pradesh prior to 02.06.2014; and for the words “Andhra Pradesh” the word “Telangana” has been substituted, and nothing more. Consequently it is the 1984 Act which would apply to the State of Telangana *albeit* under the name of the Telangana Public Employment (Regulation of Age of Superannuation) Act, 1984 and not as the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984.

The submission of Sri Vedula Srinivas, Learned Counsel appearing on behalf of the petitioner, is that, since the present State of Andhra Pradesh amended the 1984 Act with retrospective effect from 02.06.2014, and as the 1984 Act has been adapted by the Government of Telangana under the Order, the 1984 Act, as amended by the 2014 State Act, would apply to the State of Telangana also; and consequently all Government servants working under the State of Telangana are also entitled to be continued till they attain the age of superannuation of 60 years. Reliance is placed by him on the judgment of the Supreme Court, in **State Road Transport Corporation, Jaipur v. Smt. Poonam Pahwa**¹, to contend that the 2014 State Act, made by the residuary State of Andhra Pradesh after the appointed date i.e., 02.06.2014, would apply to the present State of Telangana as the 2014 State Act amended the 1984 Act with retrospective effect from 02.06.2014

¹ AIR 1997 SC 2951

(appointed day), and the 1984 Act has been adapted by the Government of Telangana by G.O.Ms. No.45 dated 01.06.2016. The submission, in short, is that the amendment to the 1984 Act, even though made by the A.P. State Legislature after the new State of Andhra Pradesh came into being, would apply to the State of Telangana, since adaptation of the 1984 Act, by the Order, would include adaptation of the amendments made thereto from time to time.

On the other hand, the Learned Special Government Pleader, appearing on behalf of the Learned Advocate-General for the State of Telangana,, would submit that, under Section 100 of the 2014 Central Act, all laws which were in force in the composite State of Andhra Pradesh (prior to the appointed date i.e., 02.06.2014) automatically applied to both the successor States of Telangana and Andhra Pradesh; while any amendment to these laws could only have been made by the respective legislatures of the States of Telangana and Andhra Pradesh after the appointed day, Section 101 of the 2014 Central Act conferred power on the Executive, subject to the conditions specified therein, to adapt the Acts in force in the erstwhile State of Andhra Pradesh to the new State of Telangana subject to the modifications and adaptations stipulated in the Order; after bifurcation of the erstwhile State of Andhra Pradesh, it is only a law made by the Telangana State Legislature which would apply within the territorial limits of the State of Telangana, and not a law made by the legislature of the residuary State of Andhra Pradesh on 27.06.2014, long after the appointed date i.e., on 02.06.2014, since the territorial limits for the application of the laws made by the A.P. State Legislature after 02.06.2014 would be limited only to the residuary State of Andhra Pradesh within the territories specified in Section 4 of the 2014 Central Act.

It is not in dispute that the 1984 Act, which regulated the age of superannuation of persons appointed to public services and posts in connection with the affairs of the erstwhile State of Andhra Pradesh, prescribed the age of superannuation of government employees as 58 years. The petitioner's claim is not for continuation till he reaches the age of superannuation of 58 years, but to be continued in service till he attains the age of 60 years. Section 3 of the 2014 Central Act which relates to the formation of Telangana State, stipulates that, on and from the appointed day (i.e., 02.06.2014), there shall be formed a new State as Telangana comprising of ten Districts of the erstwhile State of Andhra Pradesh other than a few Mandals in Khammam District. Section 4 of the 2014 Central Act stipulates that, on and from the appointed day (i.e., 02.06.2014), the State of Andhra Pradesh shall comprise the territories of the existing State of Andhra Pradesh other than those specified in Section 3. As the erstwhile State of Andhra Pradesh had 23 Districts, the new State of Andhra Pradesh, in terms of Section 4 of the 2014 Central Act, comprises of 13 Districts (other than the 10 districts specified in Section 3) and certain Mandals of Khammam District which were excluded from the territory of the State of Telangana under Section 3 of the 2014 Central Act.

Section 100 of the 2014 Central Act relates to the territorial extent of laws, and stipulates that the provisions of Part II (Sections 3 to 11) shall not be deemed to have affected any change in the territory to which the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and any other law in force immediately before the appointed day extends or applies, and the territorial references in any such law to the State of Andhra Pradesh shall, until otherwise provided by the competent Legislature or other competent authority, be

construed as meaning the territories within the existing State of Andhra Pradesh before the appointed day. Consequently all laws, which were in force in the erstwhile State of Andhra Pradesh (including the 1984 Act) continued to apply in both the successor States of Andhra Pradesh and Telangana after the appointed day ie., 02.06.2014. After the A.P. State Legislature made the 2014 State Act, the government employees working in the present State of Andhra Pradesh are governed by the provisions of the 1984 Act as amended by the 2014 State Act.

Section 101 of the 2014 Central Act relates to the power to adapt laws and stipulates that, for the purpose of facilitating the application, in relation to the State of Andhra Pradesh or the State of Telangana, of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority. The Explanation to Section 101 stipulates that the expression “appropriate Government” in Section 101 means, as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law, in its application to a State, the State Government. Consequently, with respect to a law relating to a matter in the State List, (List II of the VII Schedule to the Constitution), the appropriate Government, under Section 101 of the 2014 Central Act, is the State Government.

Article 245(1) of the Constitution provides that, subject to the provisions of the Constitution, the legislature of a State may make laws

for the whole or any part of the State. The power of the Legislature of the State of A.P. to make laws is confined only to the territorial limits specified in Section 4 of the 2014 Central Act. Article 246(3) of the Constitution stipulates that the Legislature of the State shall have exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the VII Schedule. It is primarily the State legislature in whom power to make laws regulating the recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State, is vested. Entry 41 of List II of the Seventh Schedule confers power, without any fetter, to legislate for State public services. (**N. Lakshmana Rao v. State of Karnataka**²; **Gurdev Singh Sidhu v. State of Punjab**³). Entry 41 of the List II relates to State Public Services, and the 2014 State Act is referable to this entry. Consequently the 2014 State Act, made by legislature of the new State of A.P, would extend only to the territorial limits specified in Section 4 of the 2014 Central Act, and not beyond.

Article 309 of the Constitution provides that the Acts of the State Legislature may regulate the recruitment and conditions of service appointed to public services and posts in connection with the affairs of the State. Even under Article 309, the Act of the A.P. State Legislature would regulate the conditions of service of persons appointed to the public services of that State. It is also evident, from Sections 3-A(1) & (2) of the 2014 State Act, that the enhanced age of superannuation of 60 years is applicable only to government employees finally allotted to the present State of A.P. While the law, which was in force in the existing

² (1976) 2 SCC 502

³ AIR 1964 SC 1585

State of Andhra Pradesh before the appointed day i.e., 02.06.2014, continued to remain in force in both the successor States thereafter in view of Section 100 of the 2014 Central Act, the power to amend such a law has been conferred, in terms of Articles 245(1) and 246(3) of the Constitution, only on the respective State Legislatures. The law made by the Legislature of the erstwhile State of Andhra Pradesh, and which was in force on the appointed day i.e., 02.06.2014, could only have been amended by the Legislature of the State of Telangana within the territories mentioned in Section 3, and by the Legislature of the successor State of Andhra Pradesh within the territories referred to in Section 4 of the 2014 Central Act. It is only because of Section 101 of the 2014 Central Act, has the State Government (the Executive) been conferred the power to make such adaptations and modifications of the law in force in the erstwhile State of Andhra Pradesh as on 02.06.2014.

The limitations prescribed in Section 101 of the 2014 Central Act, for exercise of power by the Executive, is (1) the power should be exercised before expiration of two years from the appointed day ie on or before 01.06.2016. If the Government of Telangana had failed to issue G.O.Ms. No.45 dated 01.06.2016, it would then have been disabled thereafter from making any adaptations and modifications of the pre-existing law, and the power to amend a pre-bifurcation law would have been available only to the Telangana State Legislature. The mere fact that the Government of Telangana exercised its powers under Section 101 of the 2014 Central Act to make adaptations and modifications in the 1984 Act, which was in force in the existing State of Andhra Pradesh before 02.06.2014, does not make the 2014 State Act, (a law made by the Legislature of the successor State of Andhra Pradesh), applicable in the State of Telangana. On or after 02.06.2014,

the power to make laws applicable to its respective territories is conferred on the respective State Legislatures. While any amendment to the 1984 Act by the Legislature of the residuary State of Andhra Pradesh would apply to the territories specified in Section 4, such amendment would have no application to the State of Telangana or in the territories referred to in Section 3 of the 2014 Central Act. We may not be understood to have held that the Telangana State Legislature cannot amend the 1984 Act to enhance the age of superannuation from 58 to 60 years. All that we have observed is that a law made by the new State of Andhra Pradesh does not have extra-territorial operations, and does not extend to the territories of the present State of Telangana i.e., the territories referred to in Section 3 of the 2014 Central Act.

Reliance placed by Sri Vedula Srinivas, Learned Counsel for the petitioner, on the judgment of the Supreme Court, in **Rajasthan State Road Transport Corporation**¹, is misplaced. The observations of the Supreme Court, on which reliance is placed, read thus:

“.....After giving our careful consideration to the facts and circumstances of the case and the submission made by the learned counsel for the appellant and by Dr. Dhavan, the learned Senior counsel appearing as amicus curiae in this appeal, it appears to us that the State of Haryana has adopted the Punjab Motor Accidents Claims Tribunal Rules 1964 by substituting the word 'Haryana' for Punjab in Rule 1 Clause (b) and in Rule 2 Clause (b). Such adoption in the Punjab Motor Accidents Claims Tribunal, 1964 was made on January 20, 1972. In the Punjab Motor Accidents Claims Tribunal Rules 1964, amendment was effected on June 21, 1968 by inserting Order XXI of the Code of Civil Procedure in Rule 20 framed under [Motor Vehicles Act](#), 1939. In our view, Dr. Dhavan is justified in his submission that when Haryana has adopted the Punjab Motor Accidents Rules in 1972, it must be held that it has adopted the Punjab Rules as it stood on the date of adoption, namely, January 20, 1972. Order XXI of the Code of Civil procedure has been expressly made applicable in Punjab Motor Accidents Claims Tribunal Rules by amending the Punjab Rules in June 1968 which was published in Gazette on July 12, 1968. Therefore, by adopting the Motor Accidents Claims Tribunal Rules, 1964 in 1972, it should be held that Haryana has adopted the Punjab Motor Accidents Claims Tribunal Rules, 1964 as stood amended on the date of adoption. In this connection, reference may be made to the decision of this court in Mahindra and Mahindra Vs. Union of India (1979 (2) SCC 529) and Bolani Ores Ltd. Vs. State of Orissa (1974 (2) SCC 777). In Mahindra and Mahindra's case, it has been held that if there is mere reference to a provision of statute in another without incorporation then unless a different intention clearly appears, [Section 8](#) (1) of

General Clauses Act would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if a provisions of one statue is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute.”

No provisions of the Punjab Reorganization Act, similar to Sections 100 and 101 of the 2014 Central Act, fell for consideration before the Supreme Court in **Rajasthan State Road Transport Corporation¹**. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of a Statute and that too taken out of their context. (**Amar Nath Om Prakash v. State of Punjab⁴**; **CCE v. Alnoori Tobacco Products⁵**; **London Graving Dock Co. Ltd. v. Horton⁶**; **Home Office v. Dorset Yacht Co.⁷**; **Shepherd Homes Ltd. v. Sandham⁸** **British Railways Board v. Herrington⁹**). The decision of a Court is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in it. (**State of Orissa v. Sudhansu Sekhar Mistra Hegde¹⁰**; **Quinn v. Leathem¹¹**). The judgment of the Supreme Court, in **Rajasthan State Road Transport Corporation¹**, has no application to the facts and circumstances of the present case.

We are satisfied that the provisions of the 1984 Act, as amended by the present A.P. State Legislature by the 2014 State Act, would not automatically apply to the State of Telangana. The power conferred on the Government of Telangana, under Section 101 of the 2014 Central Act, is only to adapt or modify a law in force, in the erstwhile State of A.P, prior to 02.06.2014, and not to adapt a law made

⁴ (1985) 1 SCC 345

⁵ (2004) 6 SCC 186

⁶ 1951 AC 737

⁷ (1970) 2 ALL.E.R 294

⁸ 1971 (1) WLR 1062

⁹ 1972 (2) WLR 537

¹⁰ AIR 1968 SC 647

¹¹ 1901 AC 495

by the Legislature of the residuary State of A.P. Neither could the Government of Telangana in law have adapted the 2014 State Act, nor has it in fact adapted the said law. Accepting the submission of Sri Vedula Srinivas, Learned Counsel appearing on behalf of the petitioner, would have startling consequences. It would mean that the Government of Telangana has, by adapting the 1984 Act which prescribes the age of superannuation of Government employees as 58 years, impliedly adapted the 2014 State Act made by the A.P. State Legislature on 27.06.2014 long after the State of Telangana came into existence on 02.06.2014, and has thereby enhanced the age of superannuation of all its Government employees to 60 years. Such a convoluted construction of Section 101 of the 2014 Central Act does not merit acceptance.

The petitioner is not entitled to the relief sought for in the Writ Petition. The Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 18.04.2017.

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