

IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADERSH

WRIT PETITION No.36293 of 2016

Between:

P. Ranjan Kumar,

.....Petitioner

And:

The High Court of Judicature at Hyderabad, for the
State of Telangana and the State of Andhra Pradesh
and 7 others

..... Respondents

JUDGMENT PRONOUNCED ON : 23-03-2017

HON'BLE SRI JUSTICE : V. RAMASUBRAMANIAN

AND

HON'BLE Ms. JUSTICE : J. UMA DEVI

1. Whether Reporters of local
Newspapers may be allowed to see
the Judgments? : Yes/No
2. Whether the copies of judgment
may be marked to Law Reporters/
Journals? : Yes/No
3. Whether their Ladyship/Lordship
wish to see the fair copy of the
judgment? : Yes/No

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

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

+Writ Petition No.36293 of 2016

% 23-03-2017

P. Ranjan Kumar

.... Petitioner

AND

The High Court of Judicature at Hyderabad for the
State of Telangana and the State of Andhra Pradesh
And 7 others

.... Respondents

! Counsel for petitioner: Mr. P.V. Krishnaiah,

^ Counsel for respondent: Mr. S. Sriram, learned standing counsel

< Gist:

> Head Note:

? Cases referred:



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

Reserved on: 14-03-2017 & Delivered on: 23-03-2017

Coram:

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

Writ Petition No.36293 of 2016

Between:

P. Ranjan Kumar, S/o Surya Prakash Rao,
Aged 50 years, II Addl. District & Sessions
Judge, Jagityal, Karimnagar District, Telangana

... Petitioner

Vs.

1. The High Court of Judicature at Hyderabad for the State of Telangana and the State of A.P., represented by its Registrar General, High Court Premises, Hyderabad.
2. The High Court of Judicature at Hyderabad for the State of Telangana and the State of A.P., represented by its Registrar (Vigilance), High Court Premises, Hyderabad.
3. The State of Telangana, represented by its Chief Secretary, Secretariat Buildings, Hyderabad.
4. The State of Andhra Pradesh, represented by its Chief Secretary, Secretariat Buildings, Velagapudi, Guntur District, Andhra Pradesh.
5. The State of Telangana, represented by its Principal Secretary, (L.A. & J) SCF Department, Secretariat Buildings, Hyderabad.
6. The State of Andhra Pradesh, represented by its Principal Secretary, (L.A. & J) SCF Department, Secretariat Buildings, Velagapudi, Guntur District, Andhra Pradesh.
7. The State of Telangana, represented by its Principal Secretary, Social Welfare Department, Secretariat Buildings, Hyderabad.

8. The State of Andhra Pradesh, represented by its Principal Secretary, Social Welfare Department, Secretariat Buildings, Velagapudi, Guntur District, Andhra Pradesh.

... Respondents

For Petitioner : P.V. Krishnaiah

For Respondents : 1) S. Sriram learned standing counsel for the High Court



**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMADEVI**

Writ Petition No.36293 of 2016

ORDER: *(per V. Ramasubramanian, J.)*

The petitioner who was promoted to the post of District Judge (Entry Level) by the proceedings dated 01-8-2015 and 04-9-2015 has come up with the present writ petition seeking notional/retrospective promotion with effect from the date of availability of vacancies earmarked for Scheduled Castes candidates under the 100 point roster.

2. Heard Mr. P.V. Krishnaiah, learned counsel for the petitioner and Mr. S. Sriram, learned Standing Counsel for the respondents.

3. The petitioner was initially appointed as a Junior Civil Judge by the method of direct recruitment on 06-05-1994. He was promoted as Senior Civil Judge on 21-07-2005 and as District Judge (Entry Level) on 28-09-2015. His promotion to the post of District Judge (Entry Level) was under G.O.Ms.No.17, dated 01-08-2015 and G.O.Ms.No.42, dated 04-09-2015, under the 65% quota earmarked for promotion from the category of Senior Civil Judges on the basis of merit-cum-seniority. His grievance is that after the amendment to the Andhra Pradesh State Judicial Service Rules, 2007, under G.O.Ms.No.49 Law (L.A&J-Home-Courts-C) Department, dated 23-05-2013, a reservation is available in the matter of promotion to the post of District Judge (Entry Level) and

that therefore he should have been considered under the vacancies that arose after the amendment.

4. The Registry of the High Court has filed a counter affidavit contending, *inter alia*, that after the Constitution 85th Amendment Act, 2001, the Government of Andhra Pradesh issued G.O.Ms.No.5, Social Welfare (SW.ROR.1) Department, dated 14-02-2003 for the implementation of the rule of reservation in promotions in favour of Scheduled Castes and Scheduled Tribes in all categories of posts in all departments. Immediately, the Administrative Committee of the High Court resolved on 28-01-2005 to seek the views of the other High Courts with respect to the implementation of the rule of reservation in promotions in Judicial Services.

5. In the meantime, the Andhra Pradesh Judicial Service Rules, 1962 were replaced by the Andhra Pradesh Judicial Service Rules 2007 under G.O.Ms.No.119, Law (L.A. & J-SC.F) Department, dated 02-08-2008. These Rules were deemed to have come into force with effect from 01-01-2007. The Andhra Pradesh State Judicial Service was to comprise of 3 categories of posts, namely, District Judges, Senior Civil Judges and Civil Judges under Rule 3 of these Rules. Under Rule 4 (2) (b), appointment to the category of District Judges was to be made (1) by direct recruitment, (2) by transfer strictly on the basis of merit through a limited departmental competitive examination and (3) by recruitment by transfer from among the Senior Civil Judges.

6. Rule 7 of the 2007 Rules stipulated that Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996,

in so far as they relate to Scheduled Castes, Scheduled Tribes and Backward Classes, Women and one percent for Physically handicapped [Orthopaedically Handicapped (lower portion of the body)] persons shall apply to the appointments to be made by a direct recruitment. In other words, the 2007 Rules permitted reservation only in the matter of direct recruitment.

7. However, in the year 2011, two writ petitions came to be filed in W.P.Nos.31599 and 34134 of 2011. While one was by the Dalit Advocates' Welfare Association, the other was by an individual, by name Dammalapati Guruvaiah Chaudhary. The prayer made in those 2 writ petitions was to direct the respondents to make suitable amendments to the Andhra Pradesh State and Judicial Services Rules, 2007, so as to provide for reservation for Scheduled Castes and Scheduled Tribes for appointment to the post of District Judge by the method of transfer from among Senior Civil Judges. These 2 writ petitions were filed on the strength of a resolution passed by the Full Court of this Court on 13-12-2010 to extend the benefit of reservation even to the method of recruitment by transfer.

8. In the aforesaid writ petitions, the Registry of the High Court took a stand that a request for amendment of the Rules was pending with the Government, for certain clarifications. Therefore, a Bench of this Court disposed of W.P.Nos.31599 and 34134 of 2011 by an order dated 19-12-2012 directing the State of Andhra Pradesh to take steps, to implement the resolution of the Full Court, as communicated by the Registry of the High Court to the Government vide letter dated 31-12-2010.

9. Accordingly, the Government issued G.O.Ms.No.49, Law Department, dated 23-05-2013, inserting the words “**and Scheduled Castes and Scheduled Tribes in so far as it relates to recruitment by transfer**”, towards the end of the existing Rule 7 of the 2007 Rules.

10. Thereafter, the petitioner in the present writ petition made a representation on 26-06-2013 seeking promotion on the basis of reservation. Since there was no response to the representation, the petitioner came up with the above writ petition.

11. The only stand taken by the Registry of the High Court in the counter affidavit filed by them is that the purport of the amendment to Rule 7 under G.O.Ms.No.49 was only to extend the benefit of reservation only for the vacancies that fall under the 10% quota to be filled up by the method of recruitment by transfer. In other words, the stand taken by the Registry is that there is no provision in the Andhra Pradesh State Judicial Services Rules, 2007, even after the issue of G.O.Ms.No.49, dated 23-05-2013, to provide for reservation in promotion. The Registry of the High Court contends that recruitment by transfer is not the same as that of promotion and that therefore the petitioner is not entitled to the relief prayed for.

12. We have carefully considered the rival submissions.

13. As we have stated earlier, the Special Rules for the Andhra Pradesh State Judicial Service, 2007, were issued under G.O.Ms.No.119 Law Department, dated 02-08-2008 in supersession of all the existing Rules on the subject. These Rules were issued in

exercise of the power conferred by Articles 233, 234, 235 and 237 read with the proviso to Article 309 and the proviso to Clause (3) of Article 320 of the Constitution.

14. The word “Promotion” was defined under Rule 2 (l) of the 2007 Rules to mean the appointment of a member of any category in the service to a higher category in the service carrying higher scale of pay. The expression “Recruitment by transfer” is defined in Rule 2 (m) to mean the appointment of a person, who, at the time of his first appointment thereto is either a confirmed member or any approved probationer in any other category of the service or any other service through the process of inviting applications from all eligible and qualified candidates.

15. Under Rule 3, the Andhra Pradesh State Judicial Service was to comprise of 3 categories of posts, namely, (1) District Judges, (2) Senior Civil Judges and (3) Civil Judges.

16. Rule 4 of the Rules, which provides for appointment to all the 3 categories of posts, prescribes the method of appointment to these posts under sub-rule (2). Sub-rule (2) of Rule 4 as it originally stood under the 2007 Rules, reads as follows:

- “2) **Method of appointment:** a) Appointment to the class of Selection Grade and Super Time Scale shall be made on promotion on the basis of merit-cum-seniority, from among the permanent cadre of District Judges.
- b) Appointment to the category of District Judges shall be made:
- i) By direct recruitment
 - ii) By transfer strictly on the basis of merit through a limited departmental competitive examination (accelerated recruitment by transfer), and
 - iii) By recruitment by transfer from among the Senior Civil Judges.

Provided that 25% of the cadre strength shall be filled up by direct recruitment from among the eligible Advocates on the basis of written and viva voce tests as prescribed by the High Court;

25% of the cadre strength shall be filled up by means of recruitment by transfer on the basis of merit through departmental competitive examination (Accelerated recruitment by transfer) as prescribed by the High Court from among the category of Senior Civil Judges who have put in not less than five years of qualifying service, and

50% of the cadre strength shall be filled up by recruitment transfer from among the category of Senior Civil Judges on the basis of merit-cum-seniority and by conducting a suitability test as prescribed by the High Court in order to ascertain and examine the legal knowledge of the candidates and to assess their continued efficiency with adequate knowledge of case law.

c) Appointment to the category of Senior Civil Judges shall be by promotion from the category of Civil Judges, who have put in not less than five years of qualifying service, selected by the High Court on the basis of merit-cum-seniority.

d) (i) Appointment to the category of Civil Judges shall be by direct recruitment from among the eligible Advocates on the basis of written and viva voce tests as prescribed by the High Court and

(ii) Recruitment by transfer on the basis of written and viva voce tests as prescribed by the High Court from among the confirmed members or approved probationers of

- i) Categories 5 and 6 of Division-I and Categories 1 to 4 of Division-II of the Andhra Pradesh High Court Service;
- ii) Categories 1 to 6 of The Andhra Pradesh Judicial Ministerial Service;
- iii) Assistant Public Prosecutors, Senior Assistant Public Prosecutors, Additional Public Prosecutors Grade-II of A.P. State Prosecution Service;
- iv) Section Officers in the Law Department of the Secretariat;
- v) Section Officers in the Legislature Department; and
- vi) Managers of the Offices of the Advocate General; Government Pleaders; Public Prosecutors; Editor, I.L.R.,

Provided that one out of every five vacancies in the cadre shall be filled up by means of recruitment by transfer.”

17. The ratio of 25% : 25% : 50% as provided under the proviso to Rule 4 (2) (b) was subsequently amended to 25% : 10% : 65%. Nevertheless the terminology used for appointment under the 10% quota reserved for selection on the basis of merit through departmental competitive examination as well as under the 65% quota on the basis of merit-cum-seniority and suitability remained the same as “Recruitment by Transfer”. A careful look at Rule 4 (2)

of the A.P. State Judicial Service Rules would show that the expressions (1) Direct Recruitment (2) Recruitment by transfer and (3) Promotion are used in specific contexts. For the purpose of easy appreciation, they can be presented in a tabular column:

Expression used	For movement From ---- To
1. Direct Recruitment	1) From members of the Bar to the category of District Judges 2) From members of the bar to the category of Civil Judges
2. Promotion	1) From District Judges entry level to District Judges Selection Grade 2) From District Judges Selection to District Judges super Time Scale 3) From Civil Judges to Senior Civil Judges
3. Recruitment by Transfer	1) From Senior Civil Judges through limited departmental competitive examination under 10% quota 2) From Senior Civil Judges on the basis of merit-cum-seniority and suitability under the 65% quota 3) From certain categories of posts in the A.P. High Court Service to the post of Civil Judges; 4) From certain categories of posts in the A.P. Judicial Ministerial Service to the post of Civil Judges; 5) From the posts of Assistant Public Prosecutors etc., in the A.P. State Prosecution Services to the post of Civil Judges; 6) From the Section Officers in the Law Department of the Secretariat to the post of Civil Judges; 7) From the Section Officers in the Legislature Department to the post of Civil Judges; 8) From the Posts of Managers of the Offices of the Advocate General, Government Pleaders, Public Prosecutors etc., to the post of Civil Judges

18. A careful perusal of the nomenclature used in Rule 4 (2) of the 2007 Rules would indicate that in some places, a wrong nomenclature has been used contrary to the definitions of the expressions “Promotion” and “Recruitment by transfer” respectively under Rule 2 (l) and 2 (m). This is apart from the linguistic debacle in the very definition of the expression “Recruitment by transfer” under Rule 2 (m).

19. ***From time immemorial, the word “Promotion” is always understood to be a movement from a lower category of post to a higher category of post within the same service. The expression “Recruitment by transfer” has always been understood to be a movement from one category of post in one service to another category of post in another service carrying either a higher status or higher responsibilities, together with or without a higher Scale of Pay.***

20. But unfortunately, the expression “Recruitment by transfer” as defined in Rule 2 (m) of the A.P. State Judicial Service Rules, 2007, takes within its purview (1) a movement from one category of post in a service to any other category of post in the same service as well as (2) a movement from one category of post in a service to another category of post in any other service through the process of inviting applications from all eligible and qualified candidates.

21. As we have stated earlier, the Andhra Pradesh State Judicial Service, as per the 2007 Rules comprises of only 3 categories of posts namely: (1) District Judges, (2) Senior Civil Judges and (3) Civil Judges. Prior to the issue of 2007 Rules, the

Subordinate Judiciary in the State of Andhra Pradesh comprised of (1) State Higher Judicial Service governed by a set of Rules issued under G.O.Ms.No.1556 Genl. Admn. (Special.A) Department, dated 10-10-1958 and (2) State Judicial Service governed by another set of Rules issued under G.O.Ms.No.2207 Home (Personnel.A) Department dated 04-12-1962.

22. Prior to the issue of the A.P. State Judicial Service Rules, 2007, (by which all posts in the Subordinate Judiciary were integrated into one single service), there were two different services, as pointed out earlier namely (1) State Higher Judicial Service and (2) State Judicial Service. The State Higher Judicial service comprised of the following categories of posts: (1) District and Sessions Judge First Grade; (2) District and Sessions Judge Second Grade including Chairman, A.P. Sales Tax Appellate Tribunal, Chief Judge, City Civil Court, Additional Chief Judge of City Civil Court, Chief Judge of Court of Small Causes, Chief Metropolitan Magistrate in a Metropolitan Area, Chief Judicial Magistrate in Districts, Chairman of Tribunal for Disciplinary Proceedings and Presiding Officers of Labour Courts and Additional District and Sessions Judges.

23. In contrast, the State Judicial Service comprised of the following categories of posts namely (1) Senior Civil Judges; (2) Junior Civil Judges and (3) Judicial Magistrate of First Class.

24. Since the entire Subordinate Judiciary was split into two different services namely (1) Judicial Service and (2) Higher Judicial Service prior to the issue of 2007 Rules, there were only two

methods of recruitment under Rule 2 of the A.P. State Higher Judicial Service Rules, 1958 namely (1) transfer from among Civil Judges in the State Judicial Service and (2) Direct Recruitment from Bar, in so far as the posts falling under category- II namely District and Sessions Judges Second Grade were concerned. But in so far as the post of District and Sessions Judge First Grade falling under Category I of the State Higher Judicial Service was concerned, the only method of appointment was by promotion from category-II to I namely from District and Sessions Judge Second Grade to District and Sessions Judge First Grade.

25. The Andhra Pradesh State Judicial Service Rules 1962 defined expressions “Promotion” as well as “Recruitment by transfer” in the right perspective under Rule 2 (4) and Rule 2 (16). A comparison of the definitions of the expressions “promotion” and “recruitment by transfer” under the 1962 Rules with the 2007 Rules may be useful for a better understanding and hence, they are presented in a tabular column.

Definitions under the 1962 Rules	Definitions under the 2007 Rules
1) Rule 2 (14) :Promotion means -- (i) the appointment of a Judicial Second Class Magistrate as a Junior Civil Judge or the appointment of a Junior Civil Judge as a Senior Civil Judge by the High Court, in accordance with these rules;	Rule 2 (l): Promotion means the appointment of a member of any category in the service to a higher category in the service carrying higher scale of pay.
2) Rule 2 (16) : Recruitment by Transfer:-- A Candidate is said to be “recruited by transfer” to the service when at the time of his first appointment thereto he is either a full member or an approved probationer in the Andhra Pradesh High Court Service or in any other service;	Rule 2 (m): “Recruitment by transfer” means appointment of a person; who at the time of his first appointment thereto is either a confirmed member or any approved probationer in any other category of the service or any other service through the process of inviting applications from all eligible and qualified persons;

26. A comparison would show that the definition of the expression "Recruitment by transfer" under the 1962 Rules was the most appropriate and it was in tune with the definition of the expression as contained in the General Rules for Andhra Pradesh State and Subordinate Services, 1996. Rule 2(5) of the Andhra Pradesh State and Subordinate Services Rules, 1996 defines recruitment by transfer as follows:

Appointment or recruitment by transfer:- A candidate is said to be appointed or recruited by transfer to a service :-

- (a) if, at the time of his first appointment thereto he is an approved probationer in the Andhra Pradesh High court Service or A.P. Legislature Service or in any other service, the rules for which prescribed a period of probation for members thereof; or
- (b) in case at the time of his first appointment thereto he is the holder of a post which has been included in another services but for which no probation has been prescribed, if he has put in that post, satisfactory service for a total period of two years on duty within a continuous period of three years.

Rule 2(26) of the Andhra Pradesh State and Subordinate Services Rules, 1996 defines promotion as follows:-

Promotion:- "Promotion" means the appointment of a member of any category or grade of service or a class of service to a higher category, grade, of such service or such class of service.

27. But unfortunately, the definition of the expression "Recruitment by transfer" under Rule 2 (m) of the 2007 Rules included within its purview, the appointment of a person from any other category either of the same service or of any other service. This confusion in the definition has been carried into the second and third parts of the proviso to Rule 4 (2) (b) of the Rules 2007. This is why the accelerated promotion provided to Senior Civil Judges

through a limited departmental competitive examination under the 10% quota is stated to be a recruitment by transfer. Similarly, the appointment of Senior Civil Judges on the basis of merit-cum-seniority after the assessment of the suitability under the 65% quota is also treated as a recruitment by transfer.

28. In other words, Rule 4 (2) (b) provides only two methods of recruitment namely (1) Direct recruitment and (2) Recruitment by transfer. It does not provide for recruitment by promotion. ***But in the strict sense of the term, the recruitment under the 10% quota through limited departmental competitive examination and the recruitment under the 65% quota, are both only promotions and not recruitment by transfer.*** At least if the appointment under the 65% quota of Senior Civil Judges has been termed as promotion and the 10% quota termed as recruitment by transfer (merely on account of the conduct of a competitive examination) one can reconcile with the nomenclature employed in the second and third parts of the proviso to Rule 4 (2) (b). But that has also been not done and by a clean sweep, the recruitment both under the 10% quota and under the 65% quota to the category of District Judges have been termed as Recruitment by transfer in Rule 4 (2) (b). It is this confusion which has led to the complication that has arisen under G.O.Ms.No.49 Law (LA & J-Home-Courts-C) Department, dated 23-05-2013.

29. Now let us take a look at Rule 7 of the 2007 Rules as amended under G.O.Ms.No.49, dated 23-05-2013. For the purpose

of easy appreciation, the amended portion of Rule 7 is shown in bold italics.

Rule 7: Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 in so far as they relate to Scheduled Castes, Scheduled Tribes, Backward Classes, Women and one percent for Physically handicapped [Orthopaedically Handicapped (lower portion of the body)] persons shall apply to the appointments to be made by direct recruitment ***and Scheduled Caste and Scheduled Tribes in so far as it relates to recruitment by transfer.***

30. If we directly go by the definition of the expression "Recruitment by transfer" as provided in Rule 2 (m) and understand the meaning of the said expression in the same manner while reading the provisos under Rule 4 (2) (b) as well as the amended Rule 7, we have to come to two inevitable conclusions namely (a) that the recruitment under the 10% quota and the recruitment under the 65% quota under the second and third parts of the proviso to Rule 4 (2) (b) are both recruitments by transfer and (b) that as a consequence, rule of reservation would apply to both, by virtue of the amendment to Rule 7 under G.O.Ms.No.49, dated 23-05-2013. But such an understanding of the Rule would tantamount to holding that the rule of reservation in respect of Scheduled Castes and Scheduled Tribes, as provided in General Rules 22 and 22-A would apply (1) to the 25% quota for direct recruitment as well as (2) to the remaining 75% quota (10% + 65%).

31. In the light of such a consequence as aforesaid that may ensue, it was contended by Mr. S. Sriram, learned standing counsel appearing for the Registry that so long as no exercise was undertaken for determining various parameters as stated by the

Constitution Bench of the Supreme Court in ***M. Nagraj and others v. Union of India and others*** (2006) 8 SCC 212, the amendment to Rule 7 cannot be understood to provide a clean sweep providing for reservation for recruitment even under the 65% quota. This contention of Mr. S. Sriram, learned standing counsel for the Registry deserved little more consideration.

32. In *M. Nagraj and others v. Union of India and others*, the constitutional validity of the 77th, 81st, 82nd and 85th amendments to the Constitution were under challenge. The 85th amendment empowered the State to provide for reservation in promotion with consequential seniority under Article 16 (4-A), if (1) backwardness, (2) inadequacy of representation, and (3) overall administrative efficiency so warranted. Therefore, it became imperative for the State to identify and measure all the three factors before providing for reservation in the matter of promotion. In paragraph 44 of its decision, the Constitution Bench held in *M. Nagraj and others v. Union of India and others* as follows:

“.....Backward Classes seek justice. General class in public employment seeks equity. The difficulty comes in when the third variable comes in, namely, efficiency in service. In the issue of reservation, we are being asked to find a stable equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system. Equity and justice in the above in the above context are hard concepts. However, if you add efficiency to equity and justice, the problem arises in the context of the reservation.”

33. After holding so in paragraph 44 of its decision, the Supreme Court held in paragraph 45 that it is the State who is in the best position to define and measure merit in whatever ways it considers it to be relevant to public employment. Ultimately, the

court pointed out in Para 46 that though vesting of the power by a constitutional amendment may be valid, the exercise of the power by the State may become arbitrary, if backwardness and inadequacy is not identified and measured by the State.

34. In the light of the law as laid down by the Constitution Bench in *M. Nagraj*, the Supreme Court upheld in ***Suraj Bhan Meena v. State of Rajasthan*** (2011) 1 SCC 467, the decision of the Rajasthan High Court, which set aside two notifications of the State of Rajasthan providing for consequential seniority and promotion to the members of Schedule Castes and Scheduled Tribes.

35. Without multiplying authorities that reiterated the Constitution Bench decision in *M. Nagraj v. Union of India* we can straight away advert to the recent decision of the Supreme Court rendered on 09-02-2017 in ***B.K. Pavitra v. Union of India***. Paragraph 26 of the said decision is sufficient to clear air around the present controversy and hence it is extracted as follows:

“26. It is clear from the above discussion that exercise for determining inadequacy of representation, backwardness and overall efficiency, is a must for exercise of power under Article 16(4A). Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken.....”

36. Therefore, we have to reconcile the goof-up in the terminology used in the 2007 Rules, with the law declared by the Supreme Court right from *M. Nagraj* upto *B.K. Pavitra*. If so done, we

will be left with no other alternative except to understand the proviso to Rule 4(2)(b) to provide for 3 methods of recruitment namely (1) Direct recruitment to 25% of the cadre strength (2) Recruitment by transfer on the basis of the departmental competitive examination to 10% of the cadre strength and (3) Recruitment by promotion to 65% of the cadre strength on the basis of merit-cum-seniority after conducting a suitability test. In other words, the expression “Recruitment by transfer” appearing in third part of the proviso to Rule 4 (2) (b) should be read to mean “promotion” and not “recruitment by transfer”. Only then the Rules can be reconciled with the law as declared by the Supreme Court.

37. The next question that would arise for consideration is as to whether it is permissible for the Court to substitute the word “promotion” for the expression “recruitment by transfer” appearing in the third part of the proviso to Rule 4 (2) (b), especially when the same is a statutory Rule and also since the role of the Court is not to make the law but only to interpret the law.

38. Our answer to the above question would comprise of two parts. First is that in cases of this nature, it is permissible for the Court to do so in view of the law laid down by the Supreme Court in ***M/s. Afcons Infrastructure Ltd., v. Cherian Varkey Construction Co (P) Ltd.*** Faced with a situation where the literal understanding of Section 89 of the Code of Civil Procedure would result in impracticable and impossible consequences, due to the mix up of the definitions of the words “mediation” and “judicial settlement” in

clauses (c) and (d) of sub-section (2) of Section 89 of the Code, the Supreme Court held in Para 13 and 13.1 of its decision as follows:

13. The principles of statutory interpretation are well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the Legislature intended or desired. Legislative wisdom cannot be replaced by the Judge's views. As observed by this Court in somewhat different context : "When a procedure is prescribed by the Legislature, it is not for the court to substitute a different one according to its notion of justice. When the Legislature has spoken, the Judges cannot afford to be wiser." (See : [Shri Mandir Sita Ramji vs. Lt. Governor of Delhi](#) - (1975) 4 SCC 298). There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the Statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the Legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance of a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.

13.1) Maxwell on Interpretation of Statutes (12th Edn., page 228), under the caption 'modification of the language to meet the intention' in the chapter dealing with 'Exceptional Construction' states the position succinctly:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

This Court in [Tirath Singh v. Bachittar Singh](#) [AIR 1955 SC 830] approved and adopted the said approach.

39. Quoting from Justice G.P. Singh in his treatise "Principles of Statutory Interpretation, the Supreme Court indicated in *M/s. Afcons Infrastructure Ltd.*, 4 conditions to be satisfied for departing from the plain words of the statute. These conditions are (1) the existence of a clear and gross balance of anomaly; (2) the possibility of the draftsman not envisaging such an anomaly; (3) the possibility

of obviating such an anomaly without detriment to the legislative objective; (4) the susceptibility of the language used in the statute or Rules to the modification required to obviate the anomaly.

40. In the case on hand all the above four conditions stand satisfied and hence, on the principles enumerated by the Supreme Court in *M/s. Afcons Infrastructure Ltd.*, it is permissible for the Court to substitute the word “promotion” for the expression “recruitment by transfer” appearing in the third part of the proviso to Rule 4 (2) (b), which deals with the 65% quota for recruitment from among Civil Judges on the basis of merit-cum-seniority.

41. The second reason as to why we may have this small leverage in substituting a word appearing in the statutory rule is that in so far as judicial service is concerned, the Rules are not framed by the Government merely in exercise of the power conferred by the proviso to Article 309 of the Constitution. The statutory rules, in so far as judicial service is concerned, are issued by the Government, also in exercise of the power conferred by Articles 233, 234, 235 and 237. Article 233 (1) obliges the Governor of the State not only to appoint persons but also to issue postings and promotion of the District Judges, in consultation with the High Court. The expressions used in Article 233 (1) are (1) appointments (2) postings and (3) promotion. Article 234 of the Constitution mandates the Government to make rules after consultation with the High Court. Under Article 235 the control over District Courts and Courts subordinate thereto including the posting and promotion of persons to judicial service, vests with the High Court.

42. Therefore, appointments to judicial service are not exactly akin to appointment to other public services, since the rules relating to recruitment have to be made in consultation with the High Court and the appointments, postings and promotions of District Judges have also to be made only in consultation with the High Court. Therefore, the Court has a leverage for reading the expression “recruitment by transfer” appearing in the third part of the proviso to Rule 4 (2) (b) as “promotion”, in so far as it relates to appointment under the 65% quota is concerned.

43. As a matter of fact, the definition of the expression “recruitment by transfer” under Rule 2(m) makes it clear that to be a recruitment by transfer, a process of inviting applications from all eligible and qualified candidates should have been followed. This process/procedure is followed by the High Court only for recruitment under the 10% quota and not under the 65% quota for appointment to the post of District Judges (Entry Level). Therefore, we will have to read and understand the expression “recruitment by transfer” appearing in the third part of the proviso to Rule 4(2)(b) only as ‘promotion’.

44. Once it is so done, it will be clear that the stand taken by the Registry that the rule of reservation as stipulated in G.O.Ms.No.49, dated 23-05-2013 does not relate to the 65% quota to be filled up by promotion is correct. It is confined only to direct recruitment under the 25% quota as well as recruitment by transfer under the 10% quota.

45. The consequences of our conclusion is that the benefit of the rule of reservation contained in the amended Rule 7 of the A.P. State Judicial Service Rules, 2007 would be available –

(1) for recruitment by transfer under the 10% quota for Senior Civil Judges through limited departmental competitive examination under the first part of the proviso to Rule 4 (2) (b); and

(2) recruitment by transfer from among the holders of posts in A.P. High Court Service, A.P. Judicial Ministerial Service, A.P. State Prosecution Services etc., to the post of Civil Judges.

46. This is apart from the benefit of reservation available for direct recruitment to the post of District Judges under the 25% quota and to the post of Civil Judges under the 90% quota from among the members of the Bar. In other words, the benefit of G.O.Ms.No.49, dated 23-05-2013 will not be available to the recruitment under the 65% quota from Senior Civil Judges to the category of District Judges on the basis of merit-cum-seniority. We also make it clear that if an assessment is made in relation to the triple tests laid down in *M. Nagraj v. Union of India* and a decision is taken to provide reservation even in the matter of promotion, the same can always be done so long as the tests laid down in M. Nagraj's case are satisfied.

47. Hence, we find that the petitioner is not entitled to the reliefs claimed. Therefore, the writ petition is dismissed. However, the Registry is directed to take note of anomaly in the Rules and take a remedial action.

48. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 23-03-2017

Ak/Ksn



**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMADEVI**

Writ Petition No.36293 of 2016
(Per VRS,J)



23rd March, 2017

Ksn