

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NOS.23283 of 2017 AND 73 OF 2018

COMMON ORDER
(Per Hon'ble Sri Justice Sanjay Kumar)

As the petitioners in both these writ petitions seek to assail the order dated 10.02.2017 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), in O.A.No.317 of 2017, they are amenable to disposal by way of this common order.

In W.P.No.23283 of 2017, an additional prayer is made to set aside the consequential Government Memo dated 26.05.2017 and the proceeding dated 02.06.2017 issued by the Commissioner of School Education, Andhra Pradesh. In W.P.No.73 of 2018, an additional prayer is made to set aside the interim order dated 22.12.2017 in O.A.No.3422 of 2017 and also the order dated 15.02.2017 passed by the Tribunal in O.A.No.337 of 2017 and O.A.No.350 of 2017 and batch. A further prayer was made therein to set aside the consequential reversion order issued *vide* the proceedings dated 29.11.2017 of the District Educational Officer, Guntur District.

The petitioners in W.P.No.23283 of 2017 are third parties to O.A.No.317 of 2017 but they seek to assail the order dated 10.02.2017 passed therein while the petitioners in W.P.No.73 of 2018 are also third parties to the said O.A. but are the applicants in O.A.No.3422 of 2017.

By order dated 29.11.2017 passed in W.P.No.23283 of 2017, this Court granted interim suspension of the order dated 10.02.2017 passed by the Tribunal in O.A.No.317 of 2017 in view of the decision of the Supreme Court in DEEPAK AGARWAL V/ s. STATE OF UTTAR PRADESH¹. A similar interim order was passed on 03.01.2018 in W.P.No.73 of 2018.

¹ (2011) 6 SCC 725

Vacate stay petitions were filed in both the writ petitions by the unofficial respondents to vacate the said interim orders. On 06.11.2018, this Court took note of the submission of the learned counsel appearing for the vacate stay petitioners that the authorities were proposing to make promotions, ignoring the order of the Tribunal which was suspended by this Court in these writ petitions, and directed the authorities to maintain *status quo* as regards the proposed promotions, if any. These orders were passed in both the writ petitions.

Heard Sri P.Suresh Reddy, learned senior counsel appearing for Sri Ch.Jagannatha Rao, learned counsel for the petitioners in both cases, learned Government Pleader for Services, State of Andhra Pradesh appearing for the authorities, Sri P.Veerabhadra Reddy, learned counsel for the respondents/vacate stay petitioners in W.P.No.23283 of 2017 and Sri C.Sai Reddy, learned counsel for the respondents/vacate stay petitioners in W.P.No.73 of 2018.

Be it noted that the Tribunal passed a reasoned order in O.A.No.317 of 2017 on 10.02.2017. Thereafter, by order dated 15.02.2017 passed in O.A.Nos.337, 338, 350, 357, 363 and 364 of 2017, the Tribunal disposed of the said batch of O.A.s opining that they stood covered by the earlier order dated 10.02.2017 passed in O.A.No.317 of 2017. O.A.No.3422 of 2017 was thereafter filed by the petitioners in W.P.No.73 of 2018 questioning the proceedings dated 29.11.2017 issued by the District Educational Officer, Guntur District, giving effect to the order dated 10.02.2017 passed by the Tribunal in O.A.No.317 of 2017 and the order dated 15.02.2017 passed in O.A.No.350 of 2017 and batch and reverting them as Language Pandits. An interim prayer was made therein to suspend the operation of the reversion proceedings dated 29.11.2017 and to direct the authorities to continue them

in their promotional posts of School Assistants. However, by order dated 22.12.2017, the Tribunal observed that as the applicants therein had failed to avail the opportunity of submitting their explanation, if any, to the show-cause notice dated 20.10.2017 issued by the authorities prior to passing of the reversion proceedings dated 29.11.2017 and as the said reversion proceedings were issued upon considering the order dated 15.02.2017 in O.A.No.350 of 2017 and batch, it found no reason to grant any interim relief and accordingly rejected their interim prayer.

At this stage, it may be noted that the order dated 10.02.2017 passed by the Tribunal in O.A.No.317 of 2017 was subjected to challenge before this Court in W.P.Nos.22602, 24102 and 27294 of 2017. All these writ petitions were filed by third parties to the said O.A., who sought leave to challenge the order dated 10.02.2017 passed therein. However, by common order dated 03.10.2017, another Division Bench of this Court held on merits that the Tribunal had rightly passed the order dated 10.02.2017 allowing O.A.No.317 of 2017.

The issue presently is whether any grounds are made out for us to take a view other than that taken by the said Division Bench.

The core question is as to whether the amendments made to the rules applicable to promotions to the posts of School Assistants would operate in relation to the vacancies which had arisen prior thereto. In consequence, the question would also arise as to whether the decision of the Supreme Court in *Y.V.RANGAIAH V/ s. J.SREENIVASA RAO*² would have application or whether the later judgment in *DEEPAK AGARWAL*² would apply. In W.P.Nos.22602 of 2017 and batch, the other Division Bench took the view that *Y.V.RANGAIAH*² would be applicable to the case and not *DEEPAK*

² (1983) 3 SCC 284

AGARWAL¹ and accordingly upheld the order dated 10.02.2017 passed by the Tribunal in O.A.No.317 of 2017.

At the outset, it may be noted that by way of G.O.Ms.No.12, School Education (Ser.II) Department, dated 23.01.2009, the erstwhile Government of Andhra Pradesh framed *ad hoc* rules, in exercise of power conferred by Sections 78 and 99 of the Andhra Pradesh Education Act, 1982 (*for brevity*, 'the Act of 1982') and the *proviso* to Article 309 of the Constitution, for the Andhra Pradesh School Educational Subordinate Service, consisting of the teachers working in Zilla Prajaparishad and Mandal Prajaparishad Schools in Andhra Pradesh. As per Rule 2 of these *ad hoc* rules, the service was to consist of the following classes and categories of posts:

Class	Category	Designation	Method of Appointment	Appointing authority
1	2	3	4	5
I	1	School Assistant (Mathematics)	i) By Direct Recruitment, or ii) By Promotion from Categories 1 to 25 of Class II, or	District Educational Officer
	2	School Assistant (Physical Science)		
	3	School Assistant (Biological Science)		
	4	School Assistant (Social Studies)		
	5	School Assistant (English)		
	6	School Assistant (Telugu)		
	7	School Assistant (Hindi)		
	8	School Assistant (Urdu)		
	9	School Assistant (Kannada)		
	10	School Assistant (Oriya)		
	11	School Assistant (Marathi)		
	12	School Assistant (Gujarathi)		
	13	School Assistant (Tamil)		
	14	School Assistant (Bengali)		
	15	School Assistant (Sanskrit)		
	16	School Assistant (Arabic)		
	17	School Assistant (Physical Education)		
	18	Headmaster of Primary School (LFL)	By promotion from Category-I of Class-II	

Class	Cate- gory	Designation	Method of appointment	Appointing authority
1	2	3	4	5
II	1	Secondary Grade Teacher	By Direct Recruitment	District Educational Officer
	2	Elementary Grade Teacher/Higher Grade Teacher	No future Recruitment	
	3	Language Pandit (Telugu)	By Direct Recruitment	
	4	Language Pandit (Hindi)	By Direct Recruitment	
	5	Language Pandit (Urdu)	By Direct Recruitment	
	6	Language Pandit (Kannada)	By Direct Recruitment	
	7	Language Pandit (Oriya)	By Direct Recruitment	
	8	Language Pandit (Marathi)	By Direct Recruitment	
	9	Language Pandit (Gujarati)	By Direct Recruitment	
	10	Language Pandit (Tamil)	By Direct Recruitment	
	11	Language Pandit (Bengali)	By Direct Recruitment	
	12	Language Pandit (Sanskrit)	By Direct Recruitment	
	13	Language Pandit (Arabic)	By Direct Recruitment	
	14	Physical Education Teacher	By Direct Recruitment	
	15	Art Teacher	By Direct Recruitment	
	16	Drawing Teacher	By Direct Recruitment	
	17	Music Teacher	By Direct Recruitment	
	18	Weaving Teacher	By Direct Recruitment	
	19	Dance Teacher	By Direct Recruitment	
	20	Carpentry Teacher	By Direct Recruitment	
	21	Textile, Printing, Tailoring Teacher	By Direct Recruitment	
	22	Sewing Teacher	By Direct Recruitment	
	23	Sewing, Tailoring & Needle work teacher	By Direct Recruitment	
	24	Drawing and Sewing Teacher	By Direct Recruitment	
	25	Agriculture Teacher	By Direct Recruitment	

It is therefore clear that, as per these *ad hoc* rules, Secondary Grade Teachers and also Language Pandits were eligible to be promoted as School Assistants in Languages. G.O.Ms.No.15, Education (SE-Ser.II) Department, dated 26.01.2009 was then issued by the Government of Andhra Pradesh in exercise of power conferred by Sections 78 and 99 of the Act of 1982 and the *proviso* to Article 309 of the Constitution framing the Andhra Pradesh Teachers (General Promotions and Regulation of Transfers) Rules. Rule 2 of these Rules deals with 'Panels for Promotions' and it reads thus:

'The appointing authorities shall draw panels of eligible School Assistants for appointment by transfer to the post of Headmaster Gr.II Gazetted and lists of SGTs and equivalent categories for promotion to the posts of School Assistant and equivalent categories every year duly assessing the vacancies of the respective categories from 1st September to 31st August of succeeding year, arising due to

retirement, promotions etc. 1st September of the year will be reckoned as qualifying date to determine the eligibility of candidates. The panel list shall be drawn in consultation with the Selection Committees as per Rule 6 of the A.P. State and Subordinate Service Rules, 1996 as amended from time to time and the instructions issued thereon.'

However, the Government amended Rule 2 of the aforesaid Rules by way of G.O.Ms.No.31, Education (SE-Ser.I) Department, dated 23.06.2010. This G.O. was also issued in exercise of power conferred by Sections 78 and 99 of the Act of 1982 read with the *proviso* to Article 309 of the Constitution. The substituted Rule 2 reads as under:

'2. Panels for Promotions:

The schedule for promotions for the post of Headmasters Gr.II and the School Assistants / equivalent categories will be issued by the Government / Department from time to time and the date to be reckoned for arrival of number of vacancies will also be issued by the Government/ Department as per the schedule.'

Thereafter, the Government issued G.O.Ms.No.67, Education (SE-Ser.I) Department, dated 20.11.2010, referring to G.O.Ms.No.31 dated 23.06.2010, which required it to issue the schedule for promotions from time to time, and recording that the Government had decided to effect promotions on the first working day of every month by reckoning the number of vacancies as on the 1st day of the month as per rules.

While so, G.O.Ms.No.15, School Education (Services.II) Department, dated 05.02.2017 was issued by the Government of Andhra Pradesh in exercise of power under Sections 78 and 99 of the Act of 1982 and the *proviso* to Article 309 of the Constitution amending the Andhra Pradesh School Educational Subordinate Service Rules for the posts of teachers in Mandal Prajaparisad and Zilla Prajaparisad Schools, notified *vide*

G.O.Ms.No.12 dated 23.01.2009. It would be apposite to extract the relevant portion of this G.O., as the case entirely turns upon it.

‘NOTIFICATION

In exercise of the powers conferred by Section 78 and Section 99 of the Andhra Pradesh Education Act, 1982 (Andhra Pradesh Act 1 of 1982) and proviso to article 309 of the Constitution of India and of all other powers here unto enabling, the Government of Andhra Pradesh hereby makes the following amendments to the Andhra Pradesh School Educational Subordinate Service Rules for the posts of teachers in Mandal Prajaparishad and Zilla Prajaparishad Schools in Andhra Pradesh issued in G.O.Ms.No.12, School Education (Ser.II) Dept., dated 23.01.2009 and as subsequently amended from time to time.

The amendment shall come into force with immediate effect.

AMENDMENTS

- I. In the said Rules,
In column 4 of the table, in rule 2, the following shall be substituted in respect of categories 1 to 17 of Class.I:-

“(i) By Direct Recruitment;
or
(ii) By promotion, -

(a) from the respective categories 3 to 13 of Class.II
for the categories 6 to 16 of Class.I
and
(b) from the categories 1, 2 and 14 to 25 of Class.II
for categories 1 to 5 and 17 of Class.I”
- II. The words “except city of Hyderabad” occurring in rule 9 shall be deleted.

(BY ORDER AND IN THE NAME OF THE OF GOVERNOR OF ANDHRA PRADESH)

ADITYA NATH DAS
PRINCIPAL SECRETARY TO GOVERNMENT (SE)’

In consequence, the categories of School Assistants posts in Languages notified from Serial Nos.6 to 16 in Class-I, in the table set out *supra*, have to be filled either by direct recruitment or by promotion from Language Pandits mentioned at Serial Nos.3 to 13 in Class-II, in the table set out *supra*. Secondary Grade Teachers and Elementary Grade Teachers/Higher Grade Teachers at Serial Nos. 1 and 2 in Class-II and the categories of teachers mentioned from Serial Nos.14 to 25 in Class-II are

eligible to be promoted only as School Assistants in the subjects of Mathematics, Physical Science, Biological Science, Social Studies, English and Physical Education. Secondary Grade Teachers are, in effect, excluded from the zone of consideration for promotion to the posts of School Assistants in Languages. Aggrieved thereby, some of the Secondary Grade Teachers from Anantapur District filed O.A.No.317 of 2017 before the Tribunal. Their prayer therein reads as under:

‘...to declare that by the impugned action of the respondents in not filling the vacancies of School Assistants (Hindi) existing as on 4.2.2017 i.e., prior to the amended rule issued vide G.O.Ms.No.15, Education Department, dt.5.2.2017 with the old rules of A.P. School Educational Subordinate Service Rules issued vide G.O.Ms.No.12 School Education Department, dt.23.1.2009 as illegal, arbitrary, discriminatory against G.O.Ms.No.67, Education, dt.20.11.2010, provisions of A.P. School Educational Subordinate Service Rules issued vide G.O.Ms.No.12, dt.23.1.2009 and A.P. State and Subordinate Service Rules, 1996 and the law laid down by the Apex Court and the Hon’ble High Court of Andhra Pradesh and in violation of Articles 14 and 16 of the Constitution of India and consequently hold the applicants are entitled for promotion to the vacancies of School Assistant (Hindi) existing as on 4.2.2017 with all consequential benefits and to pass such other order or orders as this Hon’ble Tribunal deems fit and proper.’

Their contention was that though vacancies were available in the posts of School Assistants in Languages as on 01.02.2017 and they were eligible to be considered for the same, the Government failed to abide by the time schedule fixed by it, *vide* G.O.Ms.No.67 dated 20.11.2010, and in the meanwhile G.O.Ms.No.15 dated 05.02.2017 came to be issued amending the rules, whereby Secondary Grade Teachers were excluded from the zone of consideration for promotion to the posts of School Assistants in Languages. They therefore claimed that they stood protected by the law laid down by

the Supreme Court in *Y.V.RANGAIAH*². Accepting their plea and agreeing with them, the Tribunal held that the applicants could not be denied consideration as per the pre-amended rules for promotion to the vacancies which arose prior to the amendment effected *vide* G.O.Ms.No.15 dated 05.02.2017. The O.A. was accordingly allowed directing the authorities to consider their cases for promotion as School Assistants in Hindi in the vacancies that arose prior to 05.02.2017, if they were otherwise eligible and qualified in terms of the pre-amended rules.

At this stage, it would be apposite to take note of the case law on the issue. In *Y.V.RANGAIAH*², Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules, 1976, mandated preparation of a panel of eligible candidates for promotion every year in the month of September. In this context, the Supreme Court held that amendment to the rules after September, 1976 without undertaking preparation of the panel for promotion would result in the amendment having no application to the vacancies which were available for effecting promotions in September, 1976. The Supreme Court therefore held that the amendment would not be applicable to the vacancies which had arisen prior to the amendment and that they would be governed by the old rules and not the amended rules.

In *DEEPAK AGARWAL*¹, the situation was different. The issue therein also related to promotions but there was no mandate that such promotions be made as per a time-schedule, as was the case in *Y.V.RANGAIAH*². Taking note of this, the Supreme Court observed that no statutory duty was cast upon the authorities to prepare a year-wise panel of eligible candidates or of selected candidates for promotion and therefore, no right was acquired by any eligible candidate to be considered for promotion on a given date. In consequence, the Supreme Court observed thus:

'26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in *Y.V.Rangaiah case*² lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.'

This being the legal position, Sri P.Suresh Reddy, learned senior counsel, would contend that as G.O.Ms.No.15 dated 05.02.2017 practically substituted the existing rule, the Secondary Grade Teachers could assert no right to be considered for promotion as School Assistants in Languages, be it in relation to vacancies that arose before or after the amendment. He would emphasise upon the use of the words 'the following shall be substituted in respect of Categories 1 to 17 of Class-I' in G.O.Ms.No.15 dated 05.02.2017. It is however to be noticed that G.O.Ms.No.15 dated 05.02.2017 also states that 'The amendment shall come into force with immediate effect'. Had it been the intention of the law makers to 'substitute' the existing Rule 2 of the Andhra Pradesh School Educational Subordinate Service Rules, thereby giving the amendment retrospective effect, there was no necessity to preface the amendment with the phrase 'The amendment shall come into force with immediate effect'. Trite to state, surplusage or superfluity cannot be attributed to the law makers when they undertake the solemn exercise of framing rules or amending them. If it had been the intention to give the

amendment retrospective effect, the Government would not have said that it would come into force with immediate effect. Therefore, the use of the word 'substituted' has to be understood in the context in which it has been used, i.e., to replace the existing categorisation in the table in Rule 2 with the proposed categorisation for making promotions to the posts of School Assistants. In that view of the matter, the decisions in GOVERNMENT OF INDIA V/ s. INDIAN TOBACCO ASSOCIATION³, ZILE SINGH V/ s. STATE OF HARYANA⁴, BHAGAT RAM SHARMA V/ s. UNION OF INDIA⁵, NATIONAL AGRICULTURAL COOPERATIVE MARKETING FEDERATION OF INDIA LTD. V/ s. UNION OF INDIA⁶, BAKHTAWAR TRUST V/ s. M.D.NARAYAN⁷, STATE BANK'S STAFF UNION (MADRAS CIRCLE) V/ s. UNION OF INDIA⁸ and S.S.BOLA V/ s. B.D.SARDANA⁹, which were cited on the issue of retrospectivity of amendments and the connotations of 'substitution' need not trouble us.

Further, even if it is accepted for a moment that the amendment was sought to be made with retrospective effect, it could not have adversely affected rights, if any, that already stood vested in eligible Secondary Grade Teachers in Languages to seek promotion to the posts of School Assistants in Languages. The question is whether Secondary Grade Teachers could claim such a vested right in the cases on hand.

The learned Government Pleader would assert that as the panel list was to be drawn up as per Rule 6 of the Andhra Pradesh State and Subordinate Service Rules, 1996 (*for brevity*, 'the Rules of 1996') in terms of Rule 2 of the Andhra Pradesh Teachers (General Promotions and Regulation

³ (2005) 7 SCC 396

⁴ (2004) 8 SCC 1

⁵ 1988 (SUPP) SCC 30

⁶ (2003) 5 SCC 23

⁷ (2003) 5 SCC 298

⁸ (2005) 7 SCC 584

⁹ (1997) 8 SCC 522

of Transfers) Rules, framed under G.O.Ms.No.15 dated 26.01.2009, preparation of the panel for promotion would only be required in September of each year. However, this argument loses sight of the fact that Rule 2 of the Andhra Pradesh Teachers (General Promotions and Regulation of Transfers) Rules was substituted by G.O.Ms.No.31 dated 23.06.2010. Thereafter, reference to Rule 6 of the Rules of 1996 in G.O.Ms.No.15 dated 26.01.2009 stood obliterated. Pursuant to the amendment of Rule 2 as per G.O.Ms.No.31 dated 23.06.2010, the Government of Andhra Pradesh issued G.O.Ms.No.67 dated 20.11.2010 recording that it had been decided to effect promotions to the posts of School Assistants and equivalent categories on the first working day of every month by reckoning the number of vacancies as on the 1st day of the month. No material has been placed before this Court to show that this time-schedule was therefore modified or annulled.

Though the learned Government Pleader would stress upon the applicability of the Rules of 1996, we find that the Special Rules framed under G.O.Ms.No.12 dated 23.01.2009 would override the General Rules framed under the Rules of 1996 in the light of Rule 1(d) of the Rules of 1996, which specifically states that if any provisions in the Rules of 1996 are repugnant to the provisions in the Special Rules applicable to any particular service, the Special Rules in respect of such service would prevail.

Learned Government Pleader would further assert that a conscious decision was taken by the Government not to make promotions to the posts of School Assistants on 01.02.2017 and therefore, the observations of the Supreme Court in *Dr.K.RAMULU V/ s. Dr.S.SURYAPRAKASH RAO*¹⁰ would be attracted. In that case, the Supreme Court found that a decision was taken not to prepare the promotion panel on valid considerations and in

¹⁰ (1997) 3 SCC 59

the meanwhile, the amended rules were brought into force. It was in these circumstances that the Supreme Court held that as the Government had taken a conscious decision not to make appointments till the amendment of the rules, the ratio in *Y.V.RANGIAH*² would not apply and the amended rules would have application to the vacancies which were consciously left unfilled. In effect, the Supreme Court found that a policy decision had been taken by the Government justifiably and therefore, no vested rights accrued to eligible candidates in terms of the pre-amended rules.

The issue is whether any such conscious policy decision was taken by the Government of Andhra Pradesh in the case on hand. The only material cited by the learned Government Pleader in support of this contention is G.O.Ms.No.144, Finance (HR.II) Department, dated 02.08.2016. Perusal of this G.O. reflects that the Government recorded therein that it had issued orders earlier, *vide* G.O.Ms.No.80 dated 02.03.2009, sanctioning the upgradation of 1500 Language Pandit posts as School Assistant (Languages) and 500 Physical Education Teacher posts as School Assistant (Physical Education) by suppressing 102 Secondary Grade Teacher posts, but thereafter, by letter dated 07.04.2016, the Commissioner and Director of School Education, Andhra Pradesh, requested for upgradation of 1450 posts of Language Pandits and 1200 posts of Physical Education Teachers as School Assistants in High Schools having a strength of 200 students and above throughout the State. Having examined this proposal, the Government accorded sanction for upgradation of 1450 posts of Language Pandits Grade-II and 1200 posts of Physical Educational Teachers working in Zilla Parishad/Government High Schools as School Assistants in High Schools having a strength of 200 students and above throughout the State.

No mention was made in the G.O. of any intention to amend the rules or to put off preparation of monthly panels for promotion to the posts of School Assistants. Be it noted that the aforestated G.O. was issued in August, 2016 but no material is placed before this Court to show that no promotion panels were drawn up in the months of September, October, November, December, 2016 and January, 2017. Further, it may be noted that G.O.Ms.No.144 dated 02.08.2016 was issued by the Finance Department and not by the School Education Department. By no stretch of imagination can it be assumed that the Finance Department wanted the School Education Department to put off the promotions till the amendment of the rules, which was to take place six months thereafter. Therefore, the contention of the learned Government Pleader that basing on the aforestated G.O.Ms.No.144 dated 02.08.2016, this Court should assume that a policy decision was taken not to fill up the posts of School Assistants by way of promotion in February, 2017, in terms of the time-schedule fixed under G.O.Ms.No.67 dated 20.11.2010, cannot be accepted.

Though the learned Government Pleader also relied on UNION OF INDIA V/ s. S.S.UPPAL¹¹, we find that that the Supreme Court held the law laid down in Y.V.RANGAIAH² to be inapplicable in that case as the facts were entirely different and there was no infraction of any rule or violation of any instruction issued by the Government, whereby Uppal was prejudicially affected. Similarly, reliance placed on RAJASTHAN PUBLIC SERVICE COMMISSION V/ s. CHANAN RAM¹² is equally misplaced. That was a case where by virtue of the amendment, the erstwhile posts of Assistant Directors ceased to exist and therefore, the ratio in Y.V.RANGAIAH² was held to be inapplicable, firstly because it was not a

¹¹ (1996) 2 SCC 168

¹² (1998) 4 SCC 202

case of promotion but of direct recruitment and secondly, as the old posts of Assistant Directors ceased to exist. The Supreme Court therefore observed that there remained no option of proceeding with the recruitment to such non-existing posts pursuant to the earlier stale advertisement. This decision has no relevance whatsoever to the case on hand.

Viewed thus, the inescapable fact is that the Government committed itself to making promotions to the posts of School Assistants on the first working day of every calendar month. 01.02.2017 was a Wednesday and was a working day. Therefore, in terms of the schedule fixed by the Government itself, the Secondary Grade Teachers in Languages who were eligible to be promoted to the vacant posts of School Assistants in Languages available as on that date acquired a vested right. That vested right could not have been altered or modified by the subsequent amendment effected on 05.02.2017, *vide* G.O.Ms.No.15 bearing the same date. The ratio laid down in Y.V.RANGAI AH² therefore squarely applied to the case on hand and not the later decision in DEEPAK AGARWAL¹. In consequence, we find ourselves in complete agreement with the view expressed by the other Division Bench in the common order dated 03.10.2017 passed in W.P.Nos.22602, 24102 and 27294 of 2017, whereby the order dated 10.02.2017 passed by the Tribunal in O.A.No.317 of 2017 was upheld. We accordingly find that these writ petitions are completely lacking in merit and that the Tribunal rightly allowed O.A.No.317 of 2017. The Tribunal was equally justified in applying the *ratio* of the said decision in its later order dated 15.02.2017 in O.A.No.337 of 2017 and batch and again, in refusing interim relief in O.A.No.3422 of 2017, *vide* order dated 22.12.2017.

In consequence, both the writ petitions are dismissed. Interim orders granted in both the writ petitions shall stand vacated. Pending miscellaneous

petitions, if any, in both cases shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M.GANGA RAO, J

11th DECEMBER, 2018

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