

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

WRIT PETITION No.14147 OF 2018

Between:

Ambati Narsaiah & 23 others .. Petitioners

v.

The State of Telangana, Rep, by its Principal Secretary,
Home Department, Secretariat, Hyderabad & 8 others .. Respondents

AND

WRIT PETITION No.20303 OF 2018

Between:

Gorre Madhu .. Petitioner

v.

The State of Telangana, Rep. by its Principal Secretary,
Home Department, Secretariat, Hyderabad & 18 .. Respondents

DATE OF ORDER PRONOUNCED: 17-08-2018

SUBMITTED FOR APPROVAL:

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE S.V. BHATT

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

THOTTATHIL B. RADHAKRISHNAN, CJ

*** HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

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HON'BLE SRI JUSTICE S.V. BHATT

+ WRIT PEITION Nos.14147 AND 20303 OF 2018

% Date: 17-08-2018

Ambati Narsaiah & others .. Petitioners

v.

\$ State of Telangana & others .. Respondents

! Counsel for the Petitioners : Sri G. Vidya Sagar, Sr. Counsel
in both the Writ Petitions for Sri M. Srikanth

^ Counsel for respondent Nos.1 & 2 : Sri S. Sharath Kumar,
in both the Writ Petitions Special Government Pleader

Counsel for respondent Nos.3 to 9 : Sri D. Prakash Reddy,
in W.P. No.14147 of 2018 and Senior Counsel
respondent Nos.3 to 19 in for Sri V. Maheswar Reddy
W.P. No.20303 of 2018

< **GIST:**

> **HEAD NOTE:**

? **CASES REFERRED:**

C/15

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION Nos.14147 AND 20303 OF 2018

COMMON ORDER(ORAL): (Per The Hon'ble The Chief Justice Sri Thottathil B. Radhakrishnan)

These Writ Petitions are instituted challenging two Government Orders i.e., G.O. Ms. No.122 dated 03.11.2017 and G.O. Ms. No.133 dated 28.12.2017 issued by the Government of Telangana State through the Home (Legal) Department, the contents of which are virtually same. As per those Government Orders, an ad-hoc Rule has been made whereby the deputations tenure specified in the proviso after Clause (c) to Rule 6 of Telangana Police (Civil) Service Rules, 1998, issued in G.O. Ms. No.137, Home (Pol.E) Department, dated 01.06.1998, as amended from time to time, and as adapted in G.O. Ms. No.55, Home (Legal) Department, dated 12.05.2016, is exempted for promotion of Sub Inspectors and Inspectors for the panel years 2014-15, 2015-16, 2016-17 and 2017-18.

2. We have heard Sri G. Vidya Sagar, learned senior counsel, appearing for Sri M. Srikanth, learned counsel for the petitioners, Sri D. Prakash Reddy, learned senior counsel, representing the impleaded respondents, who are among the beneficiaries of ad-hoc rule, as well as Sri S. Sharath Kumar, learned Special Government Pleader appearing for the State of Telangana.

3. The learned senior counsel for the petitioners argued that the impugned ad-hoc rule is one which can be seen to be repeatedly brought in, to protect the interest of those who can be treated as continuously working as Inspectors of Police without discharging any duties and responsibilities in various specialized units viz., Intelligence, C.I.D., Intelligence, A.C.B., DSRB, CCRB, DSB, CSB, Railways and Training Institutions which is a requirement in terms of the amendment to the Andhra Pradesh Police (Civil) Service Rules 1998 (G.O. Ms. No.137) brought as per G.O. Ms. No.171 dated 27.07.20001. Such continuous relief being given to one sector is at the peril of those juniors who are otherwise entitled to be promoted, they having already performed duties and responsibilities in those specialised units and such situation results in deprivation of their constitutional eligibility, to be considered for promotion in accordance with Rules 1998, as amended, as per G.O. Ms. No.171, which are made and issued by the Government in exercise of the power under the proviso to Article 309 of the Constitution of India. Making reference to different aspects of the situation and the practical impact of such exclusion, it is argued that the situation is one which leads to arbitrariness thereby infracting Article 14 of the Constitution.

4. Per contra, the learned Special Government Pleader appearing for the contesting official respondents and the learned senior counsel for the impleaded respondents, argued that the situation in hand is one where the administrative ground realities of the State of Telangana called for the Government proceeding to have such an ad-hoc mechanism for exemption, to answer the need of due policing in the

State of Telangana. They pointed out that these rules including the exemption are made in exercise of power under the proviso to Article 309, and, therefore, they are not liable to be visited in judicial review unless it is established that such power, exercised constitutionally to make the rule, is vitiated by malice in law. *Ex facie* arbitrariness cannot be pleaded on the given set of facts and circumstances, it is contended.

5. G.O. Ms. No.137 was made in exercise of the powers conferred by the proviso to Article 309 of the Constitution as the Andhra Pradesh Police (Civil) Service Rules, 1998. An amendment was made to those rules as per G.O. Ms. No.145 dated 09.06.1998 on the basis of the Government's decision. That again lead to a modification through G.O. Ms. No.207 dated 01.08.1998. The resultant situation emanating out of those amendments was that the Sub Inspectors of Police and Inspectors of Police were required to work in specialised branches of police department like C.I.D., Intelligence, Training Institutions etc., for a period of two years and three years respectively, before their cases are considered for promotion to higher posts. In 2001, G.O. Ms. No.171 was issued on 27.07.2001 invoking the power under the proviso to Article 309 of the Constitution whereby a proviso was introduced after clause (b) in rule 6, as follows:

“Provided that out of such service, the person should have worked for a period of not less than three years as Sub-Inspector of Police or for two years as Inspector of Police in any of the specialised units viz., Intelligence CID, A.C.B., DSRB, CCRB, DSB, CSB, Railways and Training Institutions before being considered for

promotion to the post of Inspector of Police from Sub-Inspector of Police or Deputy Superintendent of Police from Inspector of Police as the case may be.”

6. The fact of the matter remains that the Government, from time to time, found that the afore-quoted proviso was not to be put in operation having regard to the best interest of the State and management of the police wing of the State. This appears to be the reason why, repeatedly, exercise was carried under the proviso to Article 309 of the Constitution to have a particular exclusory clause as clause (c) in rule 6 being brought in, to provide an exemption from the operation of the afore-quoted proviso. This was made on a year to year basis and all those exemptions have been made in exercise of the power under the proviso to Article 309 of the Constitution.

7. We may notice that the power to make a rule under the proviso to Article 309 of the Constitution carries with it the power to amend, alter and even delete such a rule. The power to include by way of an amendment, an ad-hoc arrangement of exemption for a particular year is also within the power to amend a rule made under the proviso to Article 309 of the Constitution. The constitutional permissibility of such an amendment being thus available, the question is whether interference through judicial review is called for.

8. We, therefore, proceed to examine further as to whether the impugned exercise is arbitrary or unreasonable that it should fall on the face of Article 14. The fact of the matter remains that the sequence of

events will show that though the Rules 1998 were amended in 2001 to bring in the proviso quoted above, the said proviso was not operated for various reasons, which are pointed out in the pleadings of the respondents. It is also a matter, admitted to some extent by the petitioners as well, that the situation was such that the said proviso was not actually operated, at least, for a few years after the said proviso came into being. The different judicial decisions that govern the State of Telangana and its actions which were subjected to judicial review after the State Reorganisation Act and also before that, would show that the different sectors of governance were undergoing different process of surveillance changes, modifications, control, regulation. All these required different modalities of handling the police force of the State. Evidently, it is within the domain of the State Government to tune the available police force to the need of the State. Viewed in this angle, reverting to the impugned amendment including the last among such amendments, we do not find that the said rule has been made in a manner which could be treated as either *mala fide* or an act which is the result of total non-application of mind or is capricious or perverse, that it demonstrates arbitrariness in law making.

9. For the aforesaid reasons, we do not find any ground to uphold the challenge levied by the petitioners to the impugned Government Orders. These writ petitions, therefore, fail.

10. In the result, these Writ Petitions are dismissed. There shall be no order as to costs.

As a consequence, the interlocutory order dated 12.07.2018 passed in these writ petitions stand vacated. Sequel thereto, Miscellaneous Petitions, if any, pending in these Writ Petitions stand dismissed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

August 17, 2018.

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