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

* * * *

WRIT PETITION NOs. 21795, 22378, 22442, 28954, 33229,
33244 OF 2012;
9517, 9518, 9525, 9592, 9831, 20488, 10152, 10372, 10656,
10789, 11224, 13083, 13542, 14097, 14100, 14138, 14588,
15142, 18006, 20261, 20441, 20516, 20525, 20526, 20533,
20573, 20646, 20649, 20747, 20748, 20749, 20750, 20751,
20752, 20753, 20754, 20769, 20770, 20771, 20775, 20778,
20815, 20832, 20863, 20874, 20964, 20997, 20999, 21006,
21052, 21091, 21421, 21424, 21570, 21771, 21995, 22022,
22031, 22036, 22045, 22053, 22101, 22106, 22118, 22150,
22207, 22236, 22248, 22249, 22264, 22380, 22381, 22393,
22443, 22513, 22531, 22578, 22579, 22591, 22593, 22607,
22608, 22609, 22610, 22739, 22745, 22750, 23000, 23090,
23250, 23405, 23408, 23410, 23527, 23533, 23534, 23616,
25126, 26387, 26538, 26539, 26541, 26781, 30018, 30576,
30983, 32264, 35459, 35679, 36245, 36467, 37761, 38832,
39362, 39401 OF 2013;
3064, 4325, 4336, 4406, 4426, 5995, 6627, 6675, 6683, 7240,
8064, 8066, 8709, 9927, 10424, 11237, 12175, 13068, 17284,
17707, 19180, 22033, 22034, 22035, 22036, 22037, 22038,
22740, 25821, 26068, 28996, 31304, 31436, 33322, 33550,
34005, 34831 OF 2014;
10441, 12443, 13034, W.P.(SR) NOs.13046, 17521, 17718,
17736, 39884, W.P.NOs.20298, 21972, 21976, 21984, 31334,
36798, 36972, 36982, 37194, 37214, 37215, 37220, 37229,
37427, 38290, 38291, 38354, 38365, 38402, 38413, 38423,
38428, 38510, 38882, 39382, 39387, 39391, 39397, 39560,
39604, 39610, 39633, 39657, 39661, 39674, 39683, 39720,
39730, 39777, 39812, 39834, 39900, 39908, 39914, 39950,
39952, 40006, 40357, 40372, 40499, 40582, 40626, 40810,
40833, 40841, 40887, 40888, 41136, 41216, 41226, 41366,
41438, 41954, 41957, 42806, 42855 OF 2015;
690, 926, 1155, 1157, 2388, 2971, 7250, 12194, 14245, 14304,
18554, 21362, 43653 OF 2016;
40713 OF 2017;
24272, 24761, 35320, 35851, 36703, 36965, 37378, 37775,
37937, 38407, 38467, 38746, 38751, 38846 OF 2018
WITH
WPMP No.37915 of 2014
&
Review WPMP (SR) No.163900 of 2014 in W.P.No.23328 of 2013
ALONG WITH
WPMP No.44066 of 2014 in WPMP (SR) No.180627 of 2014
in W.P No.22739 OF 2014
AND
WPMP No.41976 of 2014 in WPMP (SR) No.180578 of 2014
in W.P.No.23226 OF 2014

W.P.No.21795 of 2012:

Between:

P. Divya and others ... Petitioners

and

M.D., APPGCL, HYD and others ... Respondents

ALONG WITH A BATCH OF CASES
(TOTAL 263 CASES)

Date of Judgment Pronouncement: 9th NOVEMBER, 2018

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

_____
SANJAY KUMAR, J

_____
M. GANGA RAO, J

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

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< Gist:

> Head Note:

! Counsel for petitioners : Sri A.Satya Prasad on behalf of
Sri Peeta Raman,
Sri G.V.Shivaji,
Sri Chandraiah Sunkara and
Sri N.M.Krishnaiah

^ Counsel for TSGENCO : Sri G.Vidya Sagar on behalf of
Smt. K.Udaya Sri

^ Counsel for APGENCO : Smt.K.Aruna

? CASES REFERRED:

1. (1983) 2 SCC 33
2. AIR 1967 SC 884
3. (1981) 1 SCC 449
4. (2004) 5 SCC 263
5. 2012 (5) ALD 71 (DB)
6. W.P.No.20544 of 2017 and W.P.(PIL) No.149 of 2017 Dt.18.09.2018
7. AIR 1985 SC 167
8. AIR 2015 SC 176
9. (1974) 4 SCC 335
10. (1995) 3 SCC 486
11. (2007) 11 SCC 522
12. (2008) 4 SCC 171
13. (2013) 11 SCC 309
14. (2017) 4 SCC 357
15. Civil Appeal Nos.8345-8346 of 2009 Dt.13.09.2017
16. (1997) 9 SCC 527

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

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WPMP No.41976 of 2014 in WPMP (SR) No.180578 of 2014
in W.P.No.23226 OF 2014

COMMON ORDER

(*Per* Sri Justice Sanjay Kumar)

BACKGROUND:

The Andhra Pradesh Power Generation Corporation Limited, Hyderabad (APGENCO), as it then was, issued Notification No.01/CGM(HR)/ 2010 dated 05.01.2011 inviting applications from eligible candidates for direct recruitment to 1086 vacancies, comprising 130 backlog vacancies and 956 general vacancies, in the posts of Junior Plant Attendant in its service. Contract labour and land losers were also eligible to aspire for this direct recruitment, subject to their fulfilling the conditions prescribed. These vacancies were at the power generating stations of the APGENCO in Krishna, Guntur, Nalgonda, Khammam, Warangal, Karimnagar, Nizamabad, Mahaboobnagar, Kadapa and Visakhapatnam Districts in the erstwhile combined State of Andhra Pradesh. As the post of Junior Plant Attendant is a district cadre post, the Notification made it clear that each of the power generating stations in the districts would be the unit of appointment. Where more than one generating station was situated in a particular district, candidates were required to give their preference in the order of their choice (not more than three generating stations). Clause 5 of the Notification provided that the selection list would be drawn up in two parts. It reads as under:

> 5. District/Local (Power Generating Station): The selection list will be drawn in two parts. The first part will comprise 20% of the posts consisting of combined merit list of "Local" as well as "Non-Local" and the same will be drawn from the state wide merit list. The remaining second part will comprise the balance 80% of the posts consisting of "Locals" only which will be drawn from the District Wide merit list in which the Generating Station is situated and the posts will be filled up duly following the Rule of Reservation.

Clause 7 stipulated the educational qualifications for eligibility to the effect that candidates were required to possess SSLC/ SSC/ 10th Class with ITI in Electrician/ Fitter/ Mechanist/ Wireman/ Welder/ Turner/ Mechanic (Diesel)/ Instrument Mechanic/ Draughtsman (Mechanical)/ 2 Year Vocational Course in Electrician Trade. The cut-off date for reckoning the above eligibility compliance was fixed as 01.01.2011. Clause 9 detailed the selection procedure and, to the extent relevant, it reads as under:

> '9. Selection Procedure:
>
> A. Criteria for preliminary evaluation:
> Total Marks = 100.
> Weightage Marks:
>
> (i) 30 Marks will be allocated against marks obtained in the qualifying examination of ITI (Marks Secured in ITI X 30/ Total Marks in ITI).
>
> (ii) Weightage up to 10 Marks will be given for Passing of qualifying examination of ITI up to the date of notification @ 2 Marks for each completed year of passing. Fraction of months will be ignored.
>
> (iii) Service Weightage to contract labour worked in Power Generating Stations of APGENCO:
>
> - Service for more than 6 months ... 10 Marks
> - Service for less than 6 months ... 5 Marks
>
> ... ...
>
> B. 25 Marks for Written Test: Based on the marks secured as per the criteria mentioned in "A" above, a combined merit list of all trades shall be drawn and the candidates in the ratio of 1:20 will be called for "Written Test" duly following the rule of reservation. Any candidate carrying equal marks under 1:20 ratio shall also be called for the said written test. The written test comprising of 25 marks consisting of 50 multiple choice questions and each question carrying "half" mark on Power Plant Related Topics of Thermal/Hydel Generating Stations.
>
> C. 25 Marks for Trade Test: Based on the marks secured as per the criteria mentioned in "A" & "B" above, a combined merit list of all trades shall be drawn and the candidates in the ratio of 1:3 will be called for "Trade Test relating to respective Trades" duly following the Rule of Reservation.
>
> D. There will be no interview.
> ... ...

E. Final Selection of the candidates: Based on the criteria mentioned at "A" to "C" above, selection will be made based on "State Wide Combined Merit List of all Trades" against 20% of posts meant for non-locals/locals and will be allotted to Project/Power Generating Stations as per their rank secured in the said merit list of all trades by giving "Project" preference for allotment of non-local/local candidates against the vacancies available. Selection will also be made based on the "District Wide Combined Merit List of all Trades" against 80% of posts meant for locals and allotted to Project/Power Generating Stations as per their rank secured in the said merit list of all trades and "Project" preference for allotment of local candidates against the vacancies available, duly following the Rule of Reservation.

... ...'

Clause 10 provided that reservation to local candidates was applicable as provided in the rules/regulations as amended from time to time and in force on the date of the notification. Candidates claiming reservation as 'local candidates' were to obtain the required study certificate (from Class IV to X) or Residence Certificate in the prescribed proforma. Clause 11 defined a 'local candidate' and the said definition is on the same lines as set out in para 7 of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (*for brevity*, 'the Presidential Order').

Supplemental Notification No.01/CGM(HR)/2011 dated 17.10.2011 was then issued by the APGENCO taking note of the fact that while the recruitment process, as per the earlier Notification dated 05.01.2011, was in progress the then Government of Andhra Pradesh sanctioned 669 additional posts in the cadre of Junior Plant Attendant to meet the manpower requirement of power generating stations of the APGENCO and calling for applications for direct recruitment to the 1086 vacancies already notified on 05.01.2011 and the 669 new general vacancies, totalling 1755 vacancies in all. Candidates who had already applied in response to the Notification dated 05.01.2011 were not required to apply

afresh, but in the event they had applied without possessing the requisite qualification of SSC/ITI as on 01.01.2011 but acquired such qualification after 01.01.2011 or if they gained experience in the power generating stations of the APGENCO as contract labour after 01.01.2011, they were required to apply again in response to the later notification. The conditions of eligibility however remained the same. The cut-off date for satisfying the eligibility criteria was fixed as 01.10.2011. The revised break up of vacancies was detailed in this Notification as under:

309 general vacancies and 29 backlog vacancies in Dr.Narla Tatarao Thermal Power Station in Krishna District; 17 general vacancies in Nagarjunasagar Tail Pond Dam in Guntur District; 42 general vacancies in Nagarjunasagar Hydro Electric Scheme, Main Dam, in Nalgonda District; 23 general vacancies in Pulichintala Hydro Electric Scheme in Nalgonda District; 161 general vacancies and 9 backlog vacancies in Kothagudem Thermal Power Station (O&M) and 26 backlog vacancies in Kothagudem Thermal Power Station-V in Khammam District; 449 general vacancies in Kakatiya Thermal Power Project in Warangal District; 58 general vacancies and 3 backlog vacancies in MHES/Peddapalli in Karimnagar District; 4 backlog vacancies in Ramagundam Thermal Power Station in Karimnagar District; 19 general vacancies and 4 backlog vacancies in MHES/Pochampad/Nizamsagar in Nizamabad District; 41 general vacancies in Priyadarshini Jurala Hydro Electric Scheme in Mahaboobnagar District; 177 general vacancies and 53 backlog vacancies in Rayalaseema Thermal Power Project in Kadapa District and 25 general vacancies in Srisailam Right Bank Hydro Electric Scheme in Kurnool District. 230 local Scheduled Tribe general vacancies were notified in Kothagudem Thermal Power Station-V and VI in Khammam District; 20 local Scheduled Tribe

general vacancies were notified in Lower Sileru Hydro Electric Scheme in Khammam District; 36 local Scheduled Tribe general vacancies and 2 local Scheduled Tribe backlog vacancies were notified in Srisailam Left Bank Hydro Electric Scheme in Mahaboobnagar District; and 20 local Scheduled Tribe general vacancies were notified in Upper Sileru Hydro Electric Scheme in Visakhapatnam District.

However, the essential clauses in the earlier notification dated 05.01.2011, extracted *supra*, more or less remained unchanged and were reproduced in the later Notification dated 17.10.2011.

Candidates in the merit list of all trades in the ratio of 1:20 were called for the Written Test, as per Clause 9 B in the later Notification dated 17.10.2011. The Written Test was held on 18.12.2011. Based on the marks secured as per the criteria mentioned in Clause 9 A & B, extracted *supra*, a combined merit list of all trades was again drawn up and candidates in the ratio of 1:3 were called for the Trade Test held on 13.04.2013. The names of selected candidates were declared on 01.07.2013 and the list of provisionally selected candidates was displayed in the website of the APGENCO on the same day. In all, 1200 general candidates and 305 land losers, totalling 1505 candidates, were selected. Upon verification of certificates, the number of selected candidates dwindled to 1013 general candidates and 298 land losers. By Memo dated 03.10.2013, the Managing Director of the APGENCO directed the Chief Engineers/Chief General Managers (HR)/Superintending Engineers to issue appointment orders to these selected candidates.

HISTORY OF THIS LITIGATION:

The cases on hand, arising in the context of the aforestated direct recruitment, can be broadly divided into two categories. Initially, cases

were filed calling in question the Notifications dated 05.01.2011 and 17.10.2011 issued by the APGENCO raising one or the other or all of the following issues. Cause for grievance, in some cases, was the extension of the Presidential Order to the selections sought to be made under the Notifications dated 05.01.2011 and 17.10.2011, whereby priority was given to candidates who were locals in the districts where the power generating stations of the APGENCO were situated. The challenge was, in effect, aimed at Clause 5 of the notifications. In some cases, the grievance was to the effect that land losers who did not possess the requisite qualifications as on the cut-off date were also considered. One other grievance which was canvassed in some of the cases was with regard to women reservation being given effect to as a vertical reservation in the context of 33.33 % reservation for women candidates. It is significant to note that the Notification dated 05.01.2011 specifically provided that applications for the posts of Junior Plant Attendant were invited only from eligible male candidates but the Supplemental Notification dated 17.10.2011 stated to the contrary that applications were invited from all eligible candidates. A consequential direction was sought in this set of cases to set aside the 100 point roster followed by the APGENCO in the context of women reservation. Another grievance which finds mention in some cases was with regard to the manner in which weightage marks were given to contract labour working in the power generating stations of the APGENCO. Challenge in this regard was made to Clause 9 A (iii) of the notifications. Be it noted that service for more than six months earned a candidate 10 marks, while service for less than six months secured him 5 marks. The complaint in this set of writ petitions was that such service weightage ought to have been extended to contract

labour on the strength of each year's service instead of drawing a line between more or less than a mere six months.

Consequential directions were sought in these cases to set aside the selection list declared on 01.07.2013 which was placed on the website on 02.07.2013 (*sic*, 01.07.2013). Significantly, though a prayer was made in most of the cases to set aside the selection list dated 01/02.07.2013, none of the selected candidates were impleaded. In W.P.No.25126 of 2013, one J.Prashanthi was impleaded as a respondent but there was no prayer to set aside her selection. Further, notice was not even ordered to her. Challenge in this writ petition was only to the action of the APGENCO in applying the Presidential Order to the selection undertaken pursuant to the Notification dated 17.10.2011 and the issue of women reservation was not raised. Similarly, in W.P.No.26387 of 2013, Siddipeta Praveen Kumar and Pitla Shivaram, two selected candidates, were impleaded but again, there was no prayer to set aside their selections. Challenge in this writ petition was to the application of the Presidential Order to the selection process undertaken *vide* the Notifications dated 05.01.2011 and 17.10.2011 and in following the 100 point roster in respect of women reservation, treating such reservation as a vertical reservation. Again, no notice was ordered to them and they are not before this Court. Siddipeta Praveen Kumar and P.Sridhar, two selected candidates, were impleaded as respondents in W.P.No.36245 of 2013, but again there was no prayer to set aside their selections. They were duly served with notice but did not enter appearance. Challenge in this writ petition also was to the extension of the Presidential Order to the selections undertaken *vide* the Notifications dated 05.01.2011 and 17.10.2011 and to the issue of women reservation. In W.P.No.36467 of 2013, Pitlam Praveen Goud, a selected

candidate, was impleaded as a respondent. However, notice was not ordered to him. Challenge in this writ petition was again to application of the Presidential Order to the subject selections. In W.P.No.6675 of 2014, Siddipeta Praveen Kumar and P.Sridhar were impleaded as respondents, but no notice was ordered to them. The issues in this writ petition were in the context of the Presidential Order being applied to the subject selections and women reservation. The very same selected candidates were also impleaded as respondents in W.P.No.10424 of 2014, but no notice was ordered to them. Challenge in this writ petition also was to the extension of the Presidential Order to the subject selections and weightage marks given to contract labour. No direction was sought to set aside the selection of the impleaded respondents. Pitlam Praveen Goud was again impleaded as a respondent in W.P.No.28996 of 2014. No challenge was laid to his selection and no notice was ordered to him. The issue raised in this writ petition was with regard to the Presidential Order being extended to the subject selections.

Be it noted that most of these cases were filed after completion of the selection process. However, a few writ petitions were filed prior to the conduct of the Trade Test and a few before the declaration of the names of the selected candidates, raising the issue of reservation for local candidates and also the issue of weightage marks. In some of these cases, interim orders were granted by a learned Judge of this Court to the effect that selection and appointment to the posts of Junior Plant Attendant should be finalised by the APGENCO without insisting upon production of a local candidate certificate and going strictly by merit. Vacate stay petitions were filed by the APGENCO in all such cases where interim orders were passed. Only in W.P.No.33229 of 2012, the interim

order was made absolute on 18.12.2014. In some of the cases, interim orders were passed by this Court directing the APGENCO to permit the petitioners therein to appear for the Trade Test. The result of such test was also directed to be announced. One such interim order was made absolute on 05.12.2014 in W.P.No.33244 of 2012.

At this stage, it may be noted that 6 out of the 52 petitioners in W.P.No.14100 of 2013 withdrew from the case and the writ petition was dismissed as withdrawn in so far as they were concerned. It may also be noted that in a lot of these cases, mostly filed by Sri Peeta Raman, learned counsel, amendment petitions were filed seeking to enlarge the scope of the prayer in the writ petition and also insert additional pleadings in the writ affidavits. These amendment petitions were directed at including a challenge to Regulations 22 and 22-B in Part-II and Regulation 22(i) in Schedule III in Part-II of the Andhra Pradesh State Electricity Board Service Regulations (APSEB Service Regulations), which were made applicable to the APGENCO. However, none of these amendment petitions were even numbered and were therefore never ordered. Having failed to take steps to get these amendment petitions taken up at the appropriate stage for consideration, it is too late in the day for the petitioners therein to press these petitions or for this Court to pass any orders thereon now.

The second category of cases are those in which Regulations 22 and 22-B in Part-II and Regulation 22(i) in Schedule III in Part-II of the APSEB Regulations were subjected to challenge apart from Clause 5 (wrongly shown as Clause 15 in some cases) and Clause 9 A (iii) of the subject notifications. No interim orders were passed in this set of cases.

It may however be noticed that W.P.No.23328 of 2013 in this set of cases was dismissed for default on 07.08.2013. Review of the said order

was sought with a delay of 416 days by the petitioner therein *vide* Review WPMP (SR) No.163900 of 2014. WPMP No.37915 of 2014 was filed by him to condone the said delay. The WPMP is ordered as the very same issue arises for consideration in the other cases. In consequence, Review WPMP (SR) No.163900 of 2014 is granted and the said case is also taken up for hearing on merits.

Similarly, W.P.No.22739 of 2014 was dismissed for default on 14.08.2014. WPMP No.44066 of 2014 was filed to condone the delay of 18 days in the presentation of the restoration petition in WPMP (SR) No.180627 of 2014. These miscellaneous petitions are ordered on the same reasoning. W.P.No.23226 of 2014 was also dismissed for default on 14.08.2014. The petitioner therein filed WPMP No.41976 of 2014 to condone the delay of 17 days in seeking restoration *vide* WPMP (SR) No.180578 of 2014. Both these miscellaneous petitions are also ordered.

W.P.(SR) Nos.13046, 17521, 17718, 17736 and 39884 of 2015 were not numbered owing to the delay of 165 days, 158 days, 158 days, 158 days and 123 days respectively in their representation. WPMP No.31359 of 2015 in W.P.(SR) No.13046 of 2015; WPMP No.31871 of 2015 in W.P.(SR) No.17521 of 2015; WPMP No.31869 of 2015 in W.P.(SR) No.17718 of 2015; WPMP No.31343 of 2015 in W.P.(SR) No.17736 of 2015; and WPMP No.31387 of 2015 in W.P.(SR) No. 39884 of 2015 were filed for condoning the said delay in representation. All the WPMPs are ordered.

Some of the cases in this batch did not even see the light of day and were straightaway clubbed with the pending cases. As the issue raised in these cases is the same as in the others, the said cases are also taken up for disposal at the admission stage itself.

THE REGULATIONS:

The APSEB Service Regulations were framed by the erstwhile Andhra Pradesh State Electricity Board in exercise of power under Section 79(c) of the Indian Electricity (Supply) Act, 1948. The Regulations are in existence as on date as Section 185(2) of the Electricity Act, 2003, saves any rule, notification etc., made under the provisions of the Electricity (Supply) Act, 1948, notwithstanding its repeal. These Regulations were adopted by the APGENCO upon its formation. The Regulations are divided into three parts. Part-II thereof applies to all employees, including those employed on contract and on deputation. Regulation 22 in Part II deals with reservations and it reads as under:

> '22. Reservation of appointments by direct recruitment, by promotion and recruitment by transfer:- Where special regulations lay down that the principle of reservation of appointments shall apply to appointments by direct recruitment to any service, class or category or by promotion from a lower category in the same service or by transfer from another service, such appointments shall be made on the basis of regulations for reservation of appointments by direct recruitment or by promotion and/or transfer made by the State Government in respect of their own service (vide Schedule III):
>
> (i) Provided that the provision of RECRUITMENT BY TRANSFER mentioned in the above regulation shall apply for appointment to the post to which provision for recruitment by transfer is available in Annexure-I referred to in Regulation 6(a) of Andhra Pradesh State Electricity Board Service Regulations Part-III, in so far as it relates to the reservation of appointments in favour of Schedule Castes and Scheduled Tribes.
>
> (ii) Provided that the Andhra Pradesh State Electricity Board shall be competent to approve, in special cases, exemptions from the operation of the rules, for reservation of appointments.'

Regulation 22-B in Part II reads as under:

'22-B Special Provisions regarding appointment by direct recruitment for following spirit of Presidential Orders:

(i) While making direct recruitment to the following cadres in Chief Engineer/TL&SS Zones, preference shall be given to the local candidates by observing the spirit of Presidential Order duly following the other conditions mentioned in Service Regulations.

Sl. No.	Service	Cadre	Percentage of reservation of posts in respect of local candidates.
1	Engineering Service	Assistant Engineer	60%
2	Accounts Service	Junior Accounts Officer	70%

(ii) The posts in the Corporate Office may be treated as outside the purview of local area.

(iii) The districts falling within the Chief Engineers/TL&SS Zones are as follows:

ZONE	Districts covered
Hyderabad Zone	Hyderabad, Ranga Reddy, Mahaboobnagar, Medak and Nalgonda.
Warangal Zone	Warangal, Nizamabad, Adilabad, Karimnagar and Khammam.
Kadapa Zone	Kadapa, Chittoor, Anantapur and Kurnool.
Vijayawada Zone	Krishna, Guntur, Prakasam and Nellore.
Visakhapatnam Zone	Visakhapatnam, Vizianagaram, Srikakulam, East Godavari and West Godavari.

Schedule III (Sub-Regulation 22) appended to Part II deals with Special Representation. Sub-Regulation 22(i) deals with preference being given to local candidates. It reads as under:

'Regulation 22(i):

Preference to the Local Candidates:

While making direct recruitment to the following cadres, preference shall be given to the local candidates by observing the spirit of Presidential Order duly following the Rules of Reservation made by the State Government from time to time.

I. Engineering Service	Sub-Engineer
II. Accounts Service	a) LDC
	b) Typist
III. General Service	Office Sub-ordinate.

Part-III of the Service Regulations deals with constitution of the services under the APGENCO. Regulation 1 in this Part categorises the services into three classes. Admittedly, as on the date of issuance of the Notifications dated 05.01.2011 and 17.10.2011, the posts of Junior Plant Attendant did not form part of the services as set out in Part-III of the Service Regulations. Long prior to the promulgation of these Service Regulations, what later came to be known as the Andhra Pradesh Electricity Department Operation Sub-ordinate Service Rules had come into force on 01.01.1948. The posts covered by these Rules constituted the Operation Sub-ordinate Service cadre. The post of Helper was one of the posts in this cadre. The qualification and experience prescribed for appointment to this post as per these rules was 'ability to read and write with one year practical experience either in operation and maintenance and/or construction work'. B.P.Ms.No.1048 dated 23.09.1989 was issued by the erstwhile Board amending the qualification prescribed for the post of Helper. Thereby, the minimum qualification was stipulated as a pass in SSLC/SSC/10th Class with a pass in ITI, preferably with Electrician Trade, or Vocational Course in Electrical Trade. Thereafter, B.P.(P&G_Per.). Ms.No.466 dated 30.12.1991 was issued by the erstwhile Board noting that sufficient candidates with the prescribed qualification were not available and providing for candidates with the following qualifications to be considered if sufficient candidates possessing the qualification prescribed in B.P.Ms.No.1048 dated 23.09.1989 were not available. The substituted qualifications were as under:

i. SSLC/SSC/10th Class with ITI Wireman Trade.
ii. SSLC/SSC/10th Class with ITI Lineman Trade.
iii. SSLC/SSC/10th Class with ITI Instrument Mechanic Trade.
iv. SSLC/SSC/10th Class with ITI Fitter Trade.

By Memo No.DP/DM-1/A2/762/94-I dated 23.10.1994, the erstwhile Board approved the re-designation of the post of Helper in the O&M/Construction Establishment. Thereby, in Operation Circles/TLC/ Construction Circles, the post of Helper was re-designated as Junior Lineman while in Generation Stations/Projects, the post of Helper was re-designated as Junior Plant Attendant. The Memo however made it clear that there would no change in the functions, duties and service conditions etc., attached to these posts.

It is of significance to note at this stage that letter dated 24.04.2007 was addressed by the Principal Secretary to Government, Public Enterprise (III) Department, Government of Andhra Pradesh, to the APGENCO. Therein, the Government stated that the 'spirit of the Presidential Order' could be observed while making direct recruitment in the local cadre appointments to offices under public sector undertakings. Thereupon, the APGENCO issued G.O.O.No.186/CGM(A)/2007 dated 05.07.2007 stating that after duly examining the matter at the Board level and upon careful consideration, the APGENCO had decided to observe the 'spirit of the Presidential Order' while making direct recruitment in the local cadre appointments in APGENCO. In the Operation and Maintenance Department of the APGENCO, amongst various other posts, the post of Junior Plant Attendant was also mentioned, stating that it should be treated as a district cadre post and the level of operation should be the station level. Thereafter, G.O.O.No.276/JS(Per)/2008 dated 02.09.2008 was issued by the APGENCO effecting certain modifications to the earlier G.O.O.No.186 dated 05.07.2007, but essentially retaining the priority and reservation sought to be given to local candidates in direct recruitment to district cadre posts.

ARGUMENTS AND CONTENTIONS:

Sri A.Satya Prasad, learned senior counsel, led the arguments for the petitioners. He appeared on behalf of Sri Peeta Raman, learned counsel. Arguments were also advanced by Sri G.V.Shivaji, Sri Chandraiah Sunkara and Sri N.M.Krishnaiah, learned counsel. In opposition, Sri G.Vidya Sagar, learned senior counsel, appeared on behalf of Smt.K.Udaya Sri, learned counsel for the Telangana State Power Generation Corporation Limited (TSGENCO), the successor-in-interest of the erstwhile APGENCO in the State of Telangana. Smt.K.Aruna, learned counsel for the present APGENCO, the successor-in-interest of the erstwhile APGENCO in the new State of Andhra Pradesh, adopted the arguments of Sri G.Vidya Sagar, learned senior counsel, and also made submissions independently.

Sri A.Satya Prasad, learned senior counsel, raised the following issues. APGENCO is a Government company and is neither the 'State' nor a 'local authority' under the State. The Presidential Order therefore has no applicability whatsoever to the APGENCO but it is indirectly sought to be smuggled in by 'observing the spirit' thereof. Therefore, the post of Junior Plant Attendant, which is not a civil post, does not come within the ambit of the Presidential Order. Regulation 22-B in Part-II and Sub-Regulation 22(i) in Schedule III to Part-II of the Regulations, which speak of following and observing the 'spirit of the Presidential Order' are therefore illegal and *ultra vires* in so far as they permit application of the Presidential Order to the subject selections for the posts of Junior Plant Attendant. Locals of the district cannot be given priority or primacy in the selections and the State should be treated as one unit for determining the merit of competing candidates. As power generating stations are not

located in all districts, it is unjust and discriminatory on the part of the APGENCO to give priority to only those who are locals in the districts where such stations are located.

On the issue of weightage marks, Sri A.Satya Prasad, learned senior counsel, would point out that Memo No.GM(HR)/DS(Ser.)/AS(L)/PO.KI/1366/2001 dated 09.11.2001 was issued by the APGENCO in the context of absorption of contract labour as Mazdoors and it was stipulated therein that weightage marks should be computed at the rate of 1½ marks for each completed year of experience and 1 mark for experience of six months and above, subject to a maximum of 15 marks. By comparison, he would contend that stipulating weightage marks of 10 or 5 depending on whether the service of the contract labour was more or less than six months is arbitrary as those who rendered 10 years of such service would get 10 marks on par with those who had put in just 7 months also. He would therefore assert that Clause 9 A (iii) in the Notifications dated 05.01.2011 and 07.10.2011 is unsustainable as it is wholly arbitrary and unfair to more experienced contract labour.

Sri G.V.Shivaji, learned counsel, would point out that by order dated 27.06.2013 passed in W.P.No.14100 of 2013, this Court directed that the APGENCO should strictly go by the merit ranking of the 52 petitioners therein without insisting upon production of any local candidate certificate and finalise the selection and appointment to the posts of Junior Plant Attendant. He would state that as the APGENCO failed to abide by this order, Contempt Case No.1694 of 2013 was filed, wherein counter-affidavit dated 30.01.2014 was filed by the APGENCO, speaking through its Chief General Manager (HR) at Hyderabad, stating that the selection list was prepared by 28.06.2013, being the date on

which the interim order was received, but it was only on the midnight of 30.06.2013 that the said list was published on the internet. He would further point out that the Chief General Manager stated that after knowing of the passing of the interim order, as the APGENCO kept 63 posts vacant there was no violation of the said interim order. Sri G.V.Shivaji, learned counsel, would therefore assert that as publication of the selected candidates list on 01.07.2013 was after the APGENCO came to know of the interim order, the said list cannot be sustained and that this Court would be justified in setting it aside on this short ground.

Sri G.Vidya Sagar, learned senior counsel, on the other hand, would point out that the first Notification dated 05.01.2011 permitted submission of applications up to 31.01.2011, while the second Notification dated 17.10.2011 permitted submission of applications from 20.10.2011 to 10.11.2011. He would further point out that the Written Test was held on 18.12.2011, but W.P.No.21795 of 2012, the earliest case in this batch, was filed long thereafter on 17.07.2012. Learned senior counsel would point out that in the first instance, this Court passed an interim order on 31.08.2012 in W.P.No.22378 of 2012, which was filed on 23.07.2012, permitting the APGENCO to conduct the Trade Test but directing it not to finalise the selection or announce the results until further orders. However, by the later order dated 25.04.2013 passed in W.P.No.22378 of 2012, this Court took note of the fact that the Trade Test had been conducted and that the petitioners therein were also permitted to appear for the same and vacated the earlier order, granting liberty to the APGENCO to finalise the selections and announce the results. Separately, interim orders were passed permitting the petitioners in several cases, who were district non-locals, to appear for the Trade Test. The Trade Test

was held on 13.04.2013 and all the petitioners who had secured interim orders were duly permitted to appear therefor. An order on the same lines was passed on 02.04.2013 in W.P.No.28954 of 2012, whereby this Court directed the APGENCO to subject the petitioners therein to the Trade Test and also publish their result. This Court further directed the APGENCO to finalise selection and appointment to the posts of Junior Plant Attendant strictly going by the merit ranking without insisting upon production of local candidate certificates from the petitioners. Learned senior counsel would point out that this Court did not make any observation as to the status of the appointments to be made pursuant to finalisation of the selections and therefore, there was no clause incorporated in any of the appointment orders that such appointments were subject to the result of this batch of cases. He would further point out that most of the appointed candidates joined service but none of them were impleaded in these cases nor was any amendment sought in the prayers therein to set aside their selection and appointment. He would state that above 500 petitioners figure in this batch of cases and assert that they cannot seek their own selection and appointment without challenging the selections and appointments already made.

On the issue of weightage marks, the learned senior counsel would point out that Memorandum of Settlement 22.12.2010 was arrived at by the APGENCO with the Andhra Pradesh Electricity Employees Union under Section 12(3) of the Industrial Disputes Act, 1947, before the Additional Commissioner of Labour and Conciliation Officer, Government of Andhra Pradesh, wherein Demand No.18, pertaining to absorption/regularisation of contract labour while filling up the posts of Junior Plant Attendant, was also considered and it was resolved that service weightage marks for

contract labour should be fixed at a maximum of 10 marks, whereby 5 marks should be allotted for less than six months service while 10 marks should be allotted for more than six months of service. Learned senior counsel would assert that it was in the light of this binding settlement that Clause 9 A (iii) was incorporated in the Notifications dated 05.01.2011 and 17.10.2011. Learned senior counsel would reiterate that the very first writ petition to be filed on 17.07.2012 was W.P.No.21795 of 2012, long after the Written Test was held on 18.12.2011. Learned senior counsel would assert that all the petitioners in this batch of cases came before this Court, challenging either clauses in the subject notifications or the Regulations, only after participating in the selection process and contend that they are estopped from raising any challenge thereafter to the selections, in the light of the law laid down by the Supreme Court and this Court.

On the challenge to the Regulations, learned senior counsel would assert that Regulation 22 and Regulation 22-B in Part-II and Regulation 22(i) in Schedule III to Part-II of the APSEB Service Regulations had no application whatsoever to the post of Junior Plant Attendant as the said post did not form part of the services covered by the said regulations. He would assert that the challenge made to these regulations in the context of the selections and appointments made to the posts of Junior Plant Attendant is completely without basis. He would further assert that the notifications were self-contained procedural manuals and therefore, there was no necessity to extend the aforestated regulations, which had no application on their own, to the subject posts of Junior Plant Attendant. He would state that due to the peculiar circumstances obtaining in the erstwhile State of Andhra Pradesh and the Government's directive to

follow the spirit of the Presidential Order, the notifications were issued reflecting priority for local district candidates.

Smt. K.Aruna, learned counsel, produced a copy of the letter dated 24.04.2007 addressed by the Principal Secretary to Government, Public Enterprises (III) Department, Government of Andhra Pradesh, to the Managing Director of the APGENCO, amongst others, whereby he informed him of the Minutes of the meeting held by the Chief Secretary on 18.04.2007 on extension of G.O.Ms.No.610 dated 30.12.1989 to public sector undertakings in the State. In this meeting, it was decided that the 'spirit of the Presidential Order' could be observed while making direct recruitment for appointment to the offices under public sector undertakings in the State. In consequence, the Principal Secretary to Government then addressed letter dated 01.06.2007 to the Special Chief Secretary to Government, Energy Department, Government of Andhra Pradesh, requesting that the Boards of the companies under his administrative control may be asked to consider revision of the prescribed rules governing their recruitment procedure with a view to adopt the 'spirit of the Presidential Order' in recruitments which were to be undertaken henceforth. It was on the strength of these communications that the APGENCO issued G.O.O.No.186 dated 05.07.2007, referred to *supra*, and the subsequent G.O.O.No.276 dated 02.09.2008. Learned counsel would therefore state that there was no illegality in the procedure followed by the APGENCO.

In reply, Sri A.Satya Prasad, learned senior counsel, would assert that imbibing the 'spirit of the Presidential Order' was not an option available to a Government company as it did not squarely fall within the ambit of the said Presidential Order and the steps taken by the APGENCO

in this regard were violative of Article 16(2) of the Constitution apart from Article 371D. He would inform this Court that the TSGENCO has now issued T.G.O.O.No.202/CGM(HR)/2015 dated 27.08.2015, amending Regulation 22 in Part-II of the APSEB Service Regulations, whereby it is presently sought to be extended to the Operation and Maintenance services, including the posts of Junior Plant Attendant, providing for 80% reservation in respect of local candidates leaving only 20% to open competition. He would submit that merely because the petitioners subjected themselves to the selection process, they ought not to be non-suited when an illegality was being perpetrated upon the Constitution by a State instrumentality. He would further argue that when the selection itself was tainted by such illegality, the question of giving an opportunity of hearing to the selected and appointed candidates does not arise. He would point out that several writ petitions had already been filed and were pending before this Court by the time appointment orders were issued and therefore, such appointments would, in any event, be subject to the result of those writ petitions. He would point out that even as per the submissions made on behalf of the TSGENCO and the APGENCO, there are vacancies available as on date in the posts of Junior Plant Attendant and submit that such vacancies could be offered to the petitioners herein, who would otherwise have been within the zone of consideration if not for the fact that they were treated as non-locals in the districts where the power generating stations were situated.

Sri G.V.Shivaji, Sri Chandraiah Sunkara and Sri N.M.Krishnaiah, learned counsel, would add that having violated the interim orders passed by this Court in several cases, prior to publication of the selection list, the APGENCO cannot be permitted to take advantage of its own contumacious

conduct and present a *fait accompli* to this Court by stating that the selection and appointment process has concluded. Sri G.V.Shivaji, learned counsel, would point out that appointing authorities were issued Memo dated 03.10.2013, requesting them to issue appointment orders to the selected candidates and therefore, the said date could be adopted as a cut-off date and the candidates who approached this Court before that date could be allowed to avail the benefit of being considered for the left over vacancies.

CONSIDERATION:

Women Reservation being in excess and the issue of unqualified contract labour being considered for selection:

In so far as the issue of women reservation is concerned, though some of the petitioners raised this grievance, no worthy arguments were advanced before this Court on that point. Further, in the only writ petition in which a selected woman candidate was impleaded, the issue of women reservation was not even raised and she was not put on notice. That being so, this Court is not inclined to consider the issue on merits as no affected woman candidate is before it. The same is the case with the issue of unqualified contract labour. Though the issue was raised in some of the cases, neither were any arguments advanced on this aspect nor were any actual details of unqualified candidates being selected and appointed produced. This aspect is also eschewed from consideration.

Weightage marks:-

Section 18(3) of the Industrial Disputes Act, 1947, reads as under:

> (3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3-A) of section 10A or an award of a Labour Court, Tribunal or

National Tribunal which has become enforceable shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.'

In terms of the aforestated statutory provision, the Memorandum of Settlement dated 22.12.2010 was binding on not only those who were already employed in the APGENCO, i.e., the existing contract labour for whom the Union was espousing the cause for absorption in service, but also later employees. It is therefore not open to the petitioners who raised the issue of weightage marks, being existing contract labour employed in the APGENCO to challenge the settlement arrived at in the conciliation proceedings between the APGENCO and the Union resulting in the aforestated Memorandum of Settlement. This issue is therefore beyond the pale of challenge.

Application of the 'spirit of the Presidential Order' to the selection:

Article 371D of the Constitution was inserted therein by the Constitution (Thirty-second Amendment) Act, 1973, with effect from 01.07.1974, and applied to the erstwhile State of Andhra Pradesh. It was intended to give effect to certain safeguards in the matter of employment

opportunities for residents of Telangana region. Thereby, the President of India was empowered to provide, by order, for equitable opportunities and facilities to denizens in different parts of the erstwhile State of Andhra Pradesh in matters of public employment and education. It is in exercise of this power that the Presidential Order came to be issued. However, the Presidential Order applies only to posts in the civil services and classes of civil posts under the State and its local authorities. Apart from this, Article 16(3) of the Constitution empowers the Parliament to make law prescribing residence within a State as a requirement for employment or appointment to an office under the Government of that State or under any local authority within that State. In the cases on hand, it is nobody's case that Article 16(3) of the Constitution has application. Further, it may be noted even the Parliament can make law thereunder keeping in mind residence in the entire State and not in particular districts thereof.

The issue is whether the prescription of a reservation for local district candidates in the subject selections can find protection by extension of the 'spirit of the Presidential Order'. To do so, the pre-requisite would be that the post of Junior Plant Attendant must qualify as a post in the civil service of the State or be a civil post under the State or its local authorities.

At this stage, it would be useful to advert to curial wisdom on this aspect of the matter.

In STATE OF GUJARAT V/ s. RAMAN LAL KESHAV LAL SONI[1], a Constitution Bench considered the issue as to whether members of the Gujurat Panchayat Service were Government servants. In this context, the

[1] (1983) 2 SCC 33

Constitution Bench observed that it is a question of fact in each case as to whether a person is a servant of the State or not.

Earlier, in STATE OF ASSAM V/s. SHRI KANAK CHANDRA DUTTA[2], the question before a Constitution Bench was whether a Mauzadar was a person holding a civil post under the State. Observing that there was no formal definition of 'post' and 'civil post', the Constitution Bench concluded that it was a post on the civil as distinguished from the defence side of the administration, that is, an employment in a civil capacity under the Union or a State. It was observed that a person who holds a civil post under a State holds 'office' during the pleasure of the Governor of the State, except as expressly provided by the Constitution. It was further observed that a post under the State would mean a post under the administrative control of the State. As the State had the power and the right to select and appoint a Mauzadar and also had the power to suspend or dismiss him, as he was a subordinate public servant working under the supervision and control of the Deputy Commissioner, receiving by way of remuneration a commission on collections and sometimes a salary, there was a relationship of master and servant between the State and him. He was accordingly held to be the holder of a civil post under the State.

In SOM PRAKASH REKHI V/s. UNION OF INDIA[3], the Supreme Court observed that the Bharat Petroleum Corporation Limited was a limb of the Government, being an agency of the State, but that conclusion would not mean that for the purpose of Article 309 or otherwise, the said Government company would be a State.

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[2] AIR 1967 SC 884
[3] (1981) 1 SCC 449

In DR.GURJEEWAN GAREWAL V/s. DR.SUMITRA DASH[4], the Supreme Court affirmed that a person cannot be said to be holding a civil post under the State merely because his salary was paid from the State fund or because the State exercises a certain amount of control over the post. On this basis, the Post Graduate Institute of Medical Education & Research, Chandigarh, was stated to be not a 'State' for the purpose of Article 311 and the employees therein did not hold civil posts.

In S.KESAVA RAO V/s. CHAIRMAN AND MANAGING DIRECTOR, APSPDC LTD., TIRUPATHI, CHITTOOR DISTRICT[5], a Division Bench of this Court had occasion to deal with the post of Junior Lineman in the service of the Transmission Corporation of Andhra Pradesh Limited and its four distribution companies. The Division Bench categorically held that the APSEB Service Regulations i.e., Parts I, II and III thereof, did not deal with appointment to the post of Junior Lineman and various other posts in the Operation and Maintenance services. Referring to the fact that the post of Helper under the Andhra Pradesh Electricity Department Operation Subordinate Service Rules, which came into force on 01.01.1948, was re-designated as Junior Lineman, the Division Bench dealt with the case in terms of the said rules and the notifications issued in the context thereof. However, the issue arising presently in relation to the district local candidate reservation did not fall for consideration before the Division Bench in that case.

In P.ANIL KUMAR V/s. THE TELANGANA STATE POWER GENERATION CORPORATION LIMITED, VIDYUTH SOUDHA, HYDERABAD[6], a Division Bench of this Court was considering the issue of employment in the Transmission Corporation of Telangana Limited and

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[4] (2004) 5 SCC 263
[5] 2012 (5) ALD 71 (DB)
[6] W.P.No.20544 of 2017 and W.P.(PIL) No.149 of 2017 Dt.18.09.2018

its distribution companies. The Division Bench observed that it is doubtful whether appointment to posts in these organisations could be elevated to the status of public employment governed by Article 16 of the Constitution and concluded that appointment to a post or absorption in a post in these organisations could not be equated to an office under the State.

Applying these principles, the post of Junior Plant Attendant cannot be categorized as a post in the civil services or a civil post under the State or in a local authority. No doubt, the APGENCO qualifies as a State instrumentality for the purpose of bringing it within the ambit of Article 226 of the Constitution, but it cannot be lost sight of that the APGENCO is essentially a corporate entity and, at best, it can be called a public sector undertaking. Employment in its service therefore does not fulfil the requirements to attract the Presidential Order.

It may also be noted that Article 371D of the Constitution is an exception to the general rule that residence cannot be the basis for providing public employment opportunities and has its roots in the peculiar circumstances that were prevailing in the then State of Andhra Pradesh. In exercise of power conferred by the said Article, the President of India promulgated the Presidential Order. However, the said Presidential Order has to be construed strictly and has application only to civil services and/or the holder of a civil post in the State Government or its local authorities. We have already held that by no stretch of imagination can the APGENCO, a Government Company as defined under Section 617 of the Companies Act, 1956, be considered the 'State' or a 'local authority' for the purposes of the Presidential Order. That being so, merely because the State Government thought it appropriate to issue a directive in the context of G.O.Ms.No.610 dated 30.12.1989, which was

again linked directly to the Presidential Order, the question of 'observing and implementing the spirit of the Presidential Order' in the APGENCO cannot be said to be a legally valid exercise. It is time for the APGENCO to realize its errors in this regard and take corrective measures.

We need say no more.

Challenge to the Regulations:

In so far as the challenge to the Regulations is concerned, we find merit in the submission of Sri G.Vidya Sagar, learned senior counsel, that none of the said Regulations had application to the post of Junior Plant Attendant in the service of the APGENCO at the relevant point of time. The subsequent amendment to Regulation 22 admittedly had no retrospective effect and is therefore of no relevance. At that time, this post was covered by the Service Rules of 1948 and was not governed by the APSEB Service Regulations. Regulation 22-B specifically mentioned the posts to which it applied i.e., the cadres of Assistant Engineer in the Engineering Service and Junior Accounts Officer in the Accounts Service. The said Regulation was therefore not applicable to the post of Junior Plant Attendant in the APGENCO which did not even find mention in the constitution of the service set out in Part-III of the APSEB Regulations. Sub-Regulation 22(i) in the III Schedule to Part-II also specifically mentioned extension of the spirit of the Presidential Order to the cadres of Sub-Engineer in Engineering Service; LDC and Typist in Accounts Service; and Office Sub-ordinate in General Service. The challenge to Regulations 22 and 22-B in Part-II and Sub-Regulation 22(i) in the III Schedule to Part-II of the APSEB Regulations is therefore without basis in so far as the subject posts are concerned and as the said challenge was made only under the assumption that the local district reservation in the Notifications

dated 05.01.2011 and 17.10.2011 was based on the said Regulations, there is no necessity for this Court to consider the validity of the said Regulations.

Whether failure to implead selected and appointed candidates has an adverse impact on the maintainability of these writ petitions:

It may be noted that in PRABODH VERMA V/s. STATE OF U.P.[7], the Supreme Court observed that a High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it in a representative capacity, if their number is too large to join them as respondents individually.

Even if the aforestated principle is to be applied to the cases on hand, it may be noted that only in one out of this batch of over 250 cases, two candidates, who were impleaded as respondents, were served but even in those cases, their appointment was not subjected to challenge and it may have been reason enough for them not to enter appearance before this Court. That being so, this Court must necessarily hold that affected parties are not sufficiently represented.

The principle laid down in SECRETARY, TAMIL NADU PUBLIC SERVICE COMMISSION V/s. A.B.NATARAJAN[8] , relied upon by the learned counsel for the petitioners, is not applicable to the cases on hand. In that case, an advertisement was given in the newspapers indicating the pendency of the writ petition before the Court so as to enable selected candidates to appear before the Court. The appointment letters also gave

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[7] AIR 1985 SC 167
[8] AIR 2015 SC 176

sufficient indication of the fact that litigation challenging the appointments was pending in the High Court. It was in these circumstances that the Supreme Court held that the writ petition ought not to have been dismissed on the ground of non-joinder of selected candidates.

Equally inapplicable is the principle laid down in THE GENERAL MANAGER, SOUTH CENTRAL RAILWAY, SECUNDERABAD V/s. A.V.R.SIDDHANTTI[9]. Therein, the challenge was to the administrative rules of general application regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop Departments. The Supreme Court thereupon observed that the case was akin to one in which constitutionality of a statutory rule was assailed and the necessary parties to be impleaded thereto were those against whom relief was sought, and in whose absence no effective decision could be rendered. The Supreme Court further observed that the relief claimed was only against the Railway, which was impleaded, and no seniority list of the petitioners *vis-à-vis* particular individuals was challenged. In such circumstances, the employees who were likely to be affected as a result of the litigation were held to be, at most, proper and not necessary parties and their non-joinder was held to be not fatal to the writ petition.

As already pointed out *supra*, the earliest of these writ petitions came to be filed on 17.07.2012, long after holding of the Written Test on 18.12.2011. The latest in this batch of cases was filed as recently as on 26.10.2018. Only in a few of these cases, one or two selected candidates were made parties but even in the few that they were, they were not put on notice. Even in the one case that two of the selected candidates were

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[9] (1974) 4 SCC 335

served with notice, there was no challenge to their appointment and therefore, failure on their part to appear before this Court cannot be held against them. It may be noted that though an interim order was passed by this Court before declaration of the names of selected candidates that the APGENCO should strictly go by merit ranking without insisting upon local candidate certificates, the APGENCO did not abide by this order and went ahead and declared the names of selected candidates on 01.07.2013. Further, though in most of the cases directions are sought to set aside the selection list declared on 01.07.2013, such a prayer was made without even impleading those who found place in the said list. No doubt, the appointments, based on this selection list, were made after initiation of this litigation but given the fact that none of those appointed were brought before this Court at least in a representative capacity, this Court is disinclined to interfere with such appointments at this late stage. Not only would such interference be in flagrant violation of the principles of natural justice but would also have the effect of unsettling long settled matters as the said appointees have been in service since 2013, blissfully unaware of the threat to their employment. In such circumstances, this Court cannot interfere with either the selections or the appointments made pursuant thereto when no steps were taken to implead the selected/appointed candidates either in their entirety or in a representative capacity. In consequence, this Court holds that the writ petitions suffer from the fatal defect of non-joinder of necessary parties.

Whether the petitioners are estopped from maintaining these writ petitions, having participated in the selection process:

The fact also remains that these writ petitions were filed by candidates aggrieved by certain clauses in the notifications but were

preferred by them only after part of the selection process was over, in so far as the earlier cases filed before publication of the selected candidates list on 01.07.2013 are concerned, and the rest of them were filed after completion of the entire selection process. Significantly, the very same clauses which caused grievance to the petitioners in the later Notification dated 17.10.2011 found mention in the earlier Notification dated 05.01.2011. However, the selection process commenced long after issuance of the first Notification dated 05.01.2011, as the last date stipulated for submission of applications pursuant to the second notification was 10.11.2011. Therefore, all the candidates who responded to the earlier Notification dated 05.01.2011 were well aware of the discrimination sought to be effected by the APGENCO between those who were local candidates in the districts where the power generating stations were situated and those belonging to other districts. They were equally well aware of the service weightage marks proposed to be awarded to contract labour.

Knowing well that the APGENCO proposed to give priority to candidates who were locals in the districts in which its power generating stations were situated, the petitioners chose to participate in the Written Test. It appears that applying the ratio of 1:3, the APGENCO excluded some of the non-locals which constrained them to approach this Court prior to finalization of the selections. Having participated in the selection process up to that stage, though they had ample time to raise their grievance with regard to this 'local-nonlocal' issue, the petitioners cannot turn around and challenge the selection process later. Worse still is the situation of the petitioners in the cases which were filed after the selection process concluded. They are obviously trying to link up their cases with

the earlier cases which stood on a slightly better footing so as to get some relief, if the others do. However, in the light of the law laid down by the Supreme Court, it is not open to a candidate, having participated in a selection, to turn around and challenge the selection thereafter.

In MADAN LAL V/s. STATE OF J & K[10], the Supreme Court pointed out that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him, he cannot turn around and contend that the process of the interview was unfair or the Selection Committee was not properly constituted. In MARRIPATI NAGARAJA V/s. STATE OF ANDHRA PRADESH[11], the Supreme Court observed that candidates who appeared at an examination without demur and without questioning the validity of fixing the date were estopped from questioning the selection process.

In DHANANJAY MALIK V/s. STATE OF UTTARANCHAL[12], the Supreme Court held that, having unsuccessfully participated in the process of selection without demur, candidates are estopped from challenging the advertisement and selection on the ground that the prescribed educational qualifications were contrary to the rules.

Again, In RAMESH CHANDRA SHAH V/s. ANIL JOSHI[13], the Supreme Court observed that it is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome. In ASHOK KUMAR V/s. STATE OF BIHAR[14], the Supreme Court affirmed that candidates who failed to raise any objection to a selection process were estopped from turning around and challenging the selection once they

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[10] (1995) 3 SCC 486
[11] (2007) 11 SCC 522
[12] (2008) 4 SCC 171
[13] (2013) 11 SCC 309
[14] (2017) 4 SCC 357

were declared unsuccessful. In D.SAROJA KUMARI V/s. R.HELEN THILAKOM[15], observing that the respondent applied for the post and having taken part in the selection process he turned around and raised the issue that the posts could not be filled up by direct recruitment, the Supreme Court held this to be contrary to the settled legal position that a candidate, having taken part in the process of selection with full knowledge, could not challenge the method of recruitment thereafter.

Sri Chandraiah Sunkara, learned counsel, placed reliance on RAJ KUMAR V/s. SHAKTI RAJ[16], in support of his contention that the principle of estoppel cannot be applied against the petitioners in this batch of cases. However, perusal of the decision reflects that in that case after the examination was held and results were announced, the Government exercised power and took the post for which the examination had been held out of the purview thereof and then constituted a Selection Committee. It was in these circumstances that the Supreme Court held that the principle of estoppel by conduct or acquiescence had no application to the facts. This judgment therefore turned upon the individual facts of that case.

This being the situation, even though it is an admitted fact that several vacancies are available as on date, be it in the TSGENCO or in the APGENCO, in so far as the posts of Junior Plant Attendant are concerned, it is too late in the day for this Court to turn back the clock merely on the ground that the then APGENCO was not justified in extending the 'spirit of the Presidential Order' to the direct recruitment undertaken by it under the Notifications dated 05.01.2011 and 17.10.2011. All the more so, as most of these writ petitions came to be filed after conclusion of the

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[15] Civil Appeal Nos.8345-8346 of 2009 Dt.13.09.2017
[16] (1997) 9 SCC 527

selections pursuant to the subject notifications and declaration of the names of selected candidates on 01.07.2013. The filing of these writ petitions was therefore belated. Less belated, in so far as the cases filed before 01.07.2013 are concerned, but very much belated in so far as the rest of the cases are concerned. Employment in the APGENCO would have to be in keeping with the tenets of fairness applicable to public employment and no arrangement can be made at this late stage to accommodate any of the candidates who applied for and appeared in the selections pursuant to the subject notifications, as long back as in the years 2011 and 2013. The petitioners are therefore disentitled to relief in these belated writ petitions. The settled legal principle that a candidate cannot challenge the selection process having participated therein would also apply to them squarely.

On the above analysis, no interference is warranted by this Court. The writ petitions are accordingly dismissed. Review WPMP (SR) No.163900 of 2014 in W.P.No.23328 of 2013 is also dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

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M.GANGA RAO,J

9th NOVEMBER, 2018
Note: **L.R. copy to be marked**
B/o PGS