

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

Interlocutory Application Nos.2 of 2019

in

Writ Petition No. 507 of 2019

Interlocutory Application No.3 of 2019

in

Interlocutory Application No.1 of 2019

in

Writ Petition No.507 of 2019

and

Writ Petition No.507 of 2019

COMMON ORDER: (*Per* Sri Justice M.S.Ramachandra Rao)

The petitioner has questioned G.O.Rt.No.232 Revenue (SER-I) Department dt.08.06.2018 issued by the State of Telangana (1st respondent) relaxing Rule 16(h) of the Telangana State and Subordinate Service Rules, 1996 (for short, 'the Rules') in favour of the 8th respondent in the Writ Petition.

2. The Writ Petitioner was appointed as a Dy. Collector on 21.01.2007 by way of Direct Recruitment. Her probation commenced on 21.01.2007 and her probation was declared on 18.09.2007. She was later appointed by transfer to the Indian Administrative Service in the State of Telangana.

3. The 8th respondent's father Late K.S. Vyas belonged to the Indian Police Service (I.P.S.). He was martyred in an attack by Maoists. The 8th respondent was appointed on compassionate grounds

as a Dy. Collector of Group-I (Executive Service) w.e.f. 19.09.2005. He is presently working as Asst. Secretary in the Office of the Chief Commissioner of Land Administration, State of Telangana. The 8th respondent possesses qualification of Master in Science at the time of his appointment. The 8th respondent was required to pass fourteen (14) Departmental Tests within the period of probation. He passed all the tests except the Criminal Judicial Test, which he cleared on 11.11.2012, but this was after the extended period of probation ended.

4. According to 8th respondent, he could not pass the Criminal Judicial Test during the period of probation as his mother suffered prolonged critical illness and also had a fall from a flight of stairs; and his father's untimely death and his mother's prolonged illness caused severe depression to him.

5. Initially, the State Government issued G.O.Rt.No.340 dt.12.03.2014 extending the period of probation till the date of acquiring requisite qualification. Thereafter, his date of commencement of probation was altered to 06.02.2011 vide G.O.Rt.No.563 dt.14.05.2014 and date of declaration of probation was indicated as 05.02.2013 in terms of Rule 17(b) of the above Rules.

6. The Government of Andhra Pradesh communicated a final Seniority List in the Dy. Collector cadre, after bifurcation of the composite Andhra Pradesh State into the State of Telangana and the residuary State of Andhra Pradesh, vide proceedings No.SER-I (1) /

1956 / 2015 dt.10.04.2017. In the said seniority list, the petitioner was placed at Serial No.312 duly assigning the date of seniority as 21.01.2007 and 8th respondent was placed at Serial No.449 assigning date of seniority of 06.02.2011.

7. Thereafter, the Government of India DoPT vide Order No.28(3)(a)/2015 dt.29.12.2017 communicated list of employees allocated to the State of Andhra Pradesh and the State of Telangana in Annexures I and II respectively. In the final allocation, the petitioner is placed at Serial No.11 and the 8th respondent at Serial No.43 and both were allocated to the State of Telangana.

8. The 8th respondent, on coming to know that similarly situated employees who passed Departmental Tests belatedly were accorded relaxation of Rule 16(h) of the Rules by the Government in exercise of its power under Rule 31 of the Rules, submitted an application on 09.01.2018 to the Government to grant such relaxation in his case also. In the said application, he stated that he had put in more than 12 years of dedicated service without blemish; he was discharging his duties with sincerity, honesty, care, devotion and respect; during his entire length of service, there were no instances when any adverse remarks were made or recorded against him at any point of time; when he joined the service, he was put on probation for two years, i.e., from 19.09.2005 to 18.09.2007 as mandated by the applicable service rules and he was required to pass fourteen (14) Departmental Tests; he cleared all of them within the time except the Criminal Judicial Test

which he passed on 11.11.2012 due to some harrowing circumstances and testing times that he had to go through during that period; as he could not pass the Departmental Tests within the prescribed period of two years, his probation was extended; the date of commencement of his probation was fixed at 06.02.2011 and the date of declaration of probation was fixed at 05.02.2013; in **R. Venkata Ramudu and another vs. State of Andhra Pradesh and others**¹, the Supreme Court had upheld relaxation of Rule 16(h) by the State Government in exercise of power under Rule 31 of the Rules; and therefore he should also be granted the said benefit and the State should declare that his probation would commence from the date of his joining as Dy. Collector, i.e., 19.09.2005 and the date of declaration of his probation ought to be 18.09.2007.

9. By the impugned G.O.Rt.No.232 Revenue (SER.I) Department dt.08.06.2018, in exercise of power conferred on it under Rule 31 of the Rules, the 1st respondent accepted the request of the 8th respondent and decided to relax Rule 16(h) of the Rules in his favour and modified G.O.RT.No.563 dt.14.05.2014 declaring that that his probation would commence from the date of his joining as Dy. Collector, i.e., 19.09.2005 and the date of declaration of his probation would be 18.09.2007.

¹ (2016) 16 SCC 464

The events pending Writ Petition :

10. On 22.01.2019, while issuing notice to the respondents, this Court granted interim stay of the consequences of G.O.Rt.No.232 dt.08.06.2018.

11. I.A.No.2 of 2019 is filed by the 8th respondent and I.A.No.3 of 2019 is filed by 1st respondent to vacate the said interim order.

12. Heard Sri P.V. Krishnaiah, Counsel for the petitioner, the learned Government Pleader for Services (II), for 1st respondent; and Sri L. Ravichander, learned Senior Counsel appearing for Sri V. Ravichandran, counsel for 8th respondent.

Contentions of Petitioner

13. Counsel for petitioner contended that under Rule 31 only the Governor can exercise the power to grant relaxation of Rule 16(h) or any other Rule, and that there is nothing to show that the Governor had independently applied his mind and decided to grant relaxation to the 8th respondent and so, the order is vitiated.

It is further contended by the petitioner that the State ought not to have granted such relaxation of Rule 16(h) to the 8th respondent, altering his date of commencement of probation and date of declaration of probation and the petitioner's seniority would be affected thereby. She contended that she was shown senior to the 8th respondent in the seniority list published on 28.04.2017 by the Government of Andhra Pradesh; that 8th respondent, though allocated to the State of Telangana, could not get appointment to the Indian

Administrative Service, like the petitioner, despite getting appointed on compassionate grounds on 19.09.2005; and the 1st respondent had no power and authority to entertain any representation from 8th respondent with regard to his request to relax Rule 16(h) and altering his date of commencement of probation from 06.02.2011 to 19.09.2005 and date of declaration of probation from 05.02.2013 to 18.09.2007. According to her, prior to 01.06.2014, only the State of Andhra Pradesh was competent to deal with the service matters of Dy. Collectors and therefore any issue prior to 01.06.2014 cannot be dealt with by the State of Telangana in terms of the A.P. Reorganization Act, 2014.

She contended that by virtue of the impugned action of the 1st respondent, the 8th respondent would get seniority w.e.f. 19.09.2005 in the cadre of Dy. Collector and would also claim to be included in the final seniority list issued by the State of Andhra Pradesh on 28.04.2017 below one A. Kumaraswamy (who was assigned seniority w.e.f. 03.09.2005) and above one I. Prakash Kumar (who was assigned seniority w.e.f. 30.09.2005) and the 8th respondent would now be placed between both of them who are assigned Serial Nos.276 and 277 by jumping from Serial no.449. He would thus become senior to 172 persons who are seniors to him as of now. She contended that the State cannot unsettle the settled seniority and it ought not to have granted any relaxation by re-opening the settled seniority even if the 8th respondent made representation.

It is her contention that the application of 8th respondent dt.9.1.2018 itself is belated and ought not to have been entertained by 1st respondent.

The counsel for the petitioner also contended that there are no reasons assigned in G.O.Rt.No.232 Revenue (SER.I) Department dt.08.06.2018 issued by the 1st respondent and there is a violation of Articles 14, 16 and 21 of the Constitution of India.

Contentions of the 1st respondent

14. The 1st respondent filed a counter refuting the said contentions and supporting its exercise of power under Rule 31 and issuing G.O.Rt.No.232 dt.08.06.2018.

It contended that after final allocation of employees in the cadre of Dy. Collectors, the 8th respondent, who was allocated to the State of Telangana had given representation on 09.01.2018 to the 1st respondent for relaxation of Rule 16(h) and the 1st respondent was alone entitled to consider the same and grant relaxation.

It is contended that the issue is not one prior to 01.06.2014 as is alleged by the petitioner, since the representation of the 8th respondent was given on 09.01.2018 after the bifurcation of the composite State of Andhra Pradesh w.e.f. 02.06.2014 into the States of Telangana and the residuary State of Andhra Pradesh; and therefore, only the State of Telangana (1st respondent) was entitled to consider 8th respondent's representation and grant relaxation.

It is contended that the *non obstante* clause in Rule 31 empowers the Governor to relax any Rules and so, the plea of petitioner that there cannot be re-opening of settled seniority, cannot be accepted.

It is further contended that as per Rule 24 of the General Rules, the Government alone has power to review the panels; if DPC, during review, recommends the inclusion of name of any individual in the panel, notices are to be issued to the persons likely to be affected due to the revision; and before the said stage is reached, the petitioner has filed this Writ Petition at the stage of grant of relaxation of Rule 16(h) to 8th respondent vide G.O.Rt.No.232 dt.08.06.2018 on a mere apprehension, and the Writ Petition is thus premature.

It is stated that at the stage of grant of relaxation, Rule 31 does not contemplate issuance of any notice by the 1st respondent to any third party, and therefore, there was no necessity to issue any notice to the petitioner.

It is also contended that 8th respondent's representation was examined and a decision was taken by the 1st respondent to grant relaxation of Rule 16(h) to him.

Contentions of 8th respondent

15. The 8th respondent filed a counter stating that the principle that 'settled seniority cannot be unsettled after long lapse of time' would not be applicable to the facts of the present case, inasmuch as, even as per the averments made in the affidavit filed in support of the Writ

Petition, the seniority list was finalized only in April, 2017 and his application to Government seeking relaxation of Rule 16(h) was made on 09.01.2018 and that prior to the said list, there was no valid seniority list in existence.

He contended that the contention of petitioner that no notice was issued to affected parties before issuing order of relaxation dt.08.06.2018 is also without any merit, inasmuch as, the Supreme Court, in a case dealing with granting of relaxation, was pleased to hold that no notice need be given; that unlike in Rules 24 and 25 of the Rules, no notice was contemplated before according relaxation, and even issuance of notice would be an empty formality inasmuch as the circumstances set out in his representation would not vary.

According to him, Rule 31 of the aforementioned Rules confers power of relaxation even in cases of individuals where application of rule or rules is likely to cause undue hardship, and thus, there is no dispute about the *factum* of existence of power, and it is not an isolated case of granting relaxation.

The 8th respondent further contended that in respect of several employees, orders of relaxation were being issued and similar benefit had been extended in his case also, and copies of orders of several such others are filed; that it is not the case of petitioner that undue favour was shown to him; and the Government took a well-considered decision basing on the material on record.

He alleged that petitioner is already appointed to I.A.S. and she suffers no prejudice as there are many officers who find their names below that of petitioner; that in service matters, it would not be open to petitioner to espouse the cause of others *a la* Public Interest Litigation.

He contended that options exercised will not undergo any change, as he had opted and was allotted to State of Telangana only; that once the seniority list is drawn and staff is allocated to respective States, the State of Andhra Pradesh would cease to have any power; that if such an argument like that of the petitioner has to be countenanced, forever and even after bifurcation, the Government of Telangana would be denuded of power to take any independent decision; that after 02.06.2014, the Government of Andhra Pradesh ceased to exercise power in respect of matters relating to State of Telangana be it service or otherwise; that it would be irrational to contend that Government of Andhra Pradesh has to consider and exercise power of relaxation in respect of an employee who is on the rolls of the Government of Telangana, and that too, after the formation of separate States.

The consideration by the Court

16. Before we deal with the contentions of the parties, we shall refer to the relevant rules including Rule 16(h) and Rule 31 of the Telangana State Subordinate Service Rules, 1996.

17. Rule 16 of the Rules deals with various aspects of the probation of direct recruits, such as commencement of probation (Rule 16(a)), period of probation (Rule 16(c)), passing of tests or acquiring qualifications prescribed in the Rules (Rule 16(e)). While Rule 16(e) obligates a probationer to pass the prescribed tests within the period of probation, Rule 16(f)(i) prescribes the consequences of the failure to pass the prescribed tests. It mandates, ‘the appointing authority shall by order discharge’ the probationer from service ‘unless the period of probation is extended under Sub-Rule (b) of Rule 17. Rule 16(h) states :

“16.(h)Change of date of commencement of probation : Notwithstanding anything contained in the Special Rules or sub-rules (a) and (b) of Rule 33, a probationer who does not pass the prescribed tests or acquire the prescribed special qualifications within the period of probation or within the extended period of probation under Rule 17 and whose probation is further extended by the Government by an order under Rule 31, till the date of his passing such tests or acquiring such qualifications, shall be deemed to have commenced the probation with effect from the date to be fixed by the Government, which would be anterior to a date to his passing such tests or acquiring such special qualifications, so, however, that the interval between the two dates shall be equivalent to the prescribed period of probation, whether on duty or otherwise and seniority of such probationer shall be determined with reference to the date so fixed.”

18. Rule 16(h) thus stipulates that a probationer who does not pass the prescribed test ‘shall be deemed to have commenced the probation w.e.f. the date to be fixed by the Government’. In **R.Venkata Ramudu** (1 supra), the Supreme Court held that it creates a fiction by which the date of commencement of probation is altered from the

actual date of commencement. It is in the nature of an exception to the stipulation contained in Rule 16(a) which declares that a direct recruit shall commence his probation 'from the date of his joining the duty or from such other date as may be specified by the appointing authority'.

19. Rule 17(a)(ii) stipulates that the appointing authority may either extend the period of probation or terminate the probation and discharge the probation. *Rule 17(b) authorizes the appointing authority to extend the period of probation by not more than one year of a probationer who fails to pass the prescribed test only for the purpose of enabling the probationer to pass the test.*

20. Rule 31 states as under :

"31. Notwithstanding anything contained in these rules or in the Special Rules, the Governor shall have the power to relax any rules contained in these Rules or special Rules in favour of any person or class of persons, in relation to their application to any member of service or to any person to be appointed to the service, class or category or a person or a class of persons, who have served in any civil capacity in the Government of TS in such manner as may appear to be just and equitable to him where such relaxation is considered necessary in the public interest or where the application of such rules or rules is likely to cause undue hardship to the person or class of persons concerned."

21. The above Rules were interpreted by the Supreme Court in **R. Venkata Ramudu** (1 supra) and the Supreme Court held that the occasion for the exercise of power to fix an alternate date of commencement of probation under Rule 16(h) arises in two

contingencies : where (i) a probationer does not pass the prescribed test within the prescribed period of probation, and (ii) a probationer does not pass the prescribed test within the extended period, either under Rule 17 or Rule 31, of probation. It explained that having regard to the scheme of Rules 16(h) and 17, which authorize the extension of the period of probation only by a period not exceeding one year, cases of the probationers, whose period of probation is extended beyond the period of one year, are not within the sweep of Rule 16(h); and it is here that Rule 31 enables the Government to extend the period of probation even beyond one year in contradistinction of the stipulation contained in Rule 17 for extension of period of probation by one year.

Point (A) : Whether the power under Rule 31 ought to be exercised by the Governor personally and not the State?

22. We shall now deal with the contention that only the Governor should take a decision in the matter of granting relaxation of a rule under Rule 31 and not the State of Telangana.

23. The counsel for petitioner placed reliance on the decision of the Allahabad High Court in **Z.U. Ansari vs. State of Uttar Pradesh and another**² to contend that only the Governor ought to take a decision whether or not to grant relaxation of a Rule. In that case, the service rules provided that sanction of the Governor would be necessary to initiate the departmental proceedings upon a retired

² 2014 (141 F.L.R.) 1022

employee, but sanction of a Minister was taken for initiation of departmental proceeding against a retired civil servant and such action was held to be not valid by the Allahabad High Court.

24. Admittedly, this decision was challenged in the Supreme Court and a Two-Judge Division Bench of the Supreme Court on **30.09.2016**³, referred the matter to a larger Bench since the Members of the Two-Judge Bench, disagreed with each other. Therefore, the said decision does not help the petitioner.

25. However, this issue is settled by a Constitution Bench of the Supreme Court in **Shamsher Singh vs. State of Punjab**⁴. In that case, the service of the appellant, who was on probation, was terminated by an order dt.27.04.1967 and the order of termination stated that the Governor had terminated his service. It was contended by the appellant that the Governor, as the Constitutional or formal Head of the State, can exercise powers and functions of appointment and removal of Members of the subordinate Judicial Service only *personally*. The State refuted the same contending that the Governor exercises powers of appointment and removal conferred on him by or under the Constitution like the executive powers of the State Government *only on the aid and advice of his Council of Ministers and not personally*. The Supreme Court held that our Constitution embodies generally the parliamentary or cabinet system of Government of the British model for both the Union and the States;

³ (2016) 16 S.C.C. 768

⁴ AIR 1974 S.C. 2192

the Governor is the Constitution or formal Head of the State and he exercises all his powers and functions conferred on him, by or under the constitution *on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercises its functions in his discretion*. It held that in all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his council of Ministers, he does so by making rules for convenient transaction of the business of the Government of India or the Government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. It declared that wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example, in Articles 123, 213, 311 (2), proviso (c), 317, 352(1), 356 and 360, the satisfaction required by the Constitution *is not the personal satisfaction* of the President or of the Governor, *but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government*. It overruled the decision in **Sardarilal vs. Union of India**⁵, which had taken a contrary view.

26. In the light of this settled legal position, we hold that though Rule 31 mentions that ‘Governor’ has got the power to relax any rule,

⁵ AIR 1971 S.C. 1547

it does not follow that he must personally consider the issue of relaxation of Rules for any individual employee or class of employees. He must act on the advice of the Council of Ministers. Therefore, the plea of the petitioner that only the Governor could have taken the decision under Rule 31 to grant relaxation to the 8th respondent of the applicability of Rule 16(h), is therefore rejected.

Point (b) : Whether the State of Telangana or the State of A.P. should exercise the power under Rule 31?

27. We shall next consider the plea of the petitioner about competency of the Government of Telangana to grant relaxation to the 8th respondent.

28. The 8th respondent was appointed on compassionate grounds on 19.09.2005 in the erstwhile composite State of Andhra Pradesh. After the bifurcation of the said State under the A.P. Reorganization Act, 2014 w.e.f. 02.06.2014, by virtue of Section 77(2) thereof, admittedly petitioner as well as 8th respondent were allocated by the Union of India to the State of Telangana by the Government of India vide order dt.29.12.2017. Therefore, the 8th respondent's employer became the State of Telangana only and the residuary State of Andhra Pradesh had nothing to do with him.

29. After 02.06.2014, the Government of Andhra Pradesh ceased to have any power in respect of matters relating to State of Telangana, be it service or otherwise, and the contention of petitioner that only the State of Andhra Pradesh could have considered and decided 8th

respondent's application for relaxation dt.09.01.2018 and not the State of Telangana, cannot be accepted.

Point (c) : Is the application of 8th respondent belated?

30. We shall now consider whether there is any delay on the part of the 8th respondent in making the application on 09.01.2018 seeking relaxation of Rule 16(h) by invoking Rule 31.

31. Admittedly, the final seniority list in the category of Dy. Collectors was notified by the Government of Andhra Pradesh on 10.04.2017 wherein petitioner was placed at Serial No.312 assigning date of seniority as 21.01.2007 while the 8th respondent was assigned Serial No.449 by assigning to him, date of seniority as 06.02.2011.

32. The decision in **R. Venkata Ramudu** (1 supra) came to be rendered by the Supreme Court on 27.09.2016. The allocation by the Government of India of the petitioner and 8th respondent was on 29.12.2017 to the State of Telangana. The 8th respondent's application for relaxation of Rule 16(h) was made on 09.01.2018.

33. We are of the opinion that when the seniority list of Dy. Collectors was finalized only on 10.04.2017 for the first time, and the allocation by the Government of India was made only on 29.12.2017, it cannot be said that 8th respondent's application dt.09.01.2018 was belated and that by considering the same, the 1st respondent had violated the principle that 'settled seniority cannot be disturbed'. Therefore, this plea of the petitioner is also rejected.

Point (d) : Whether the petitioner is entitled to any notice before the State exercised it's power to relax rule 16(h) in favor of 8th respondent?

34. Lastly, we shall deal with the contention of the petitioner that no notice was given to her before the exercise of power by the 1st respondent granting relaxation of Rule 16(h) to the 8th respondent under Rule 31.

35. It is important to note that Rule 31 does not contemplate giving of any notice to anybody before considering an application made by any employee to relax any particular rule in his case. This aspect was dealt with by the Supreme Court in **M. Venkateswarlu vs. Government of Andhra Pradesh**⁶ and in **Santosh Kumar vs. State of Andhra Pradesh**⁷.

36. In **M. Venkateswarlu** (6 supra), Rule 47 of the A.P. State and Subordinate Service Rules, 1962 which conferred a similar power on the Governor (like Rule 31 of the 1996 Rules) was considered. That Rule also enabled the Governor to grant relaxation to an employee or class of employees if it appears to him to be just and equitable. In that case, the appellant was promoted as Dy. Tahsildar on 20.06.1984. The panel effecting from 01.07.1983 for regular promotion was to be drawn for the year 1983-84. The appellant had not completed the requisite length of service postulated by Rule 8(ii) of the A.P. Revenue Subordinate Services Rules, 1961 for regular promotion as Dy. Tahsildar. He requested for relaxation under Rule 47. The State

⁶ (1976) 4 S.C.C. 226

⁷ (2003) 5 S.C.C. 511

Government relaxed the shortfall and empanelled him for the year 1983-84 instead of 1987-88 and accordingly he was promoted on regular basis. This relaxation given to the appellant was challenged. One of the contentions was whether giving of notice to persons likely to be affected was necessary before exercising the power of relaxation under Rule 47. The Supreme Court held that the Rule *ex facie* does not contemplate any notice being given; it is not a case of considering *inter se* claim of any particular individuals; it is a case of relaxing the eligibility of a single individual as against many; and under the circumstances, the Rule did not envisage notice to all the affected persons.

37. In **Santosh Kumar** (7 supra), this principle was reiterated and the Supreme Court upheld the view of the High Court that (i) the question of considering the case of every eligible person along with the person seeking relaxation of a rule would not arise; (ii) that the order of the Government would not affect the interests (seniority) of the unofficial respondents; (iii) the impugned order did not relate to fixing the *inter se* seniority within the cadre of Sub-Inspectors; (iv) if regularization of the services of petitioners was done by relaxing the Rules under Rule 47 *happens to affect the seniority of others*, this itself does not support the plea that impugned order could not have been passed without prior notice to the unofficial respondents and others. It also held :

“16. Another important factor to be kept in mind is that a finding is recorded by the High Court that the promotion given to the respondent to the post of Sub-Inspector was against the vacancies meant for the quota of promotees. The respondent was admittedly promoted on temporary basis as OSSI prior to the recruitment of the appellant. Once his services were regularised, that too in the promotee quota, the appellant being a direct recruit cannot make any grievance. In this view it cannot be said that the appellant was an affected person for want of notice before passing the order of relaxation to question the seniority of the respondent.”

38. In the instant case also, the petitioner has already been promoted to the Indian Administrative Service as per her own pleading in 2017, while the 8th respondent is still in the cadre of Assistant Secretary and has not been conferred promotion as a Member of the Indian Administrative Service.

39. Therefore, in our considered opinion, the petitioner cannot be said to have any *locus* to challenge the grant of relaxation of applicability of Rule 16(h) to the 8th respondent by the 1st respondent under the impugned G.O.

40. More importantly, it is not as if for the first time any favour was conferred on the 8th respondent by the Government of Telangana. Previously, G.O.Rt.No.192 Revenue (SER.I) Department dt.13.03.2017 was issued granting relaxation of Rule 16(h) to one Narayana Reddy, probationary Dy. Collector and also vide G.O.Rt.No.193 Revenue (SER.I) Department dt.13.03.2017 to one G. Ravi, another probationary Dy. Collector and their dates of commencement of probation in the cadre of Dy. Collector as well as

the dates of declaration of probation in the cadre of Dy. Collector, were altered. Likewise, vide G.O.Rt.No.30 Revenue (SER.I) Department dt.22.07.2014, the 1st respondent had granted relaxation under Rule 16(h) to one C. Lakshmi, Dy. Collector and her date of commencement of probation and date of declaration of probation were also changed.

41. We are also satisfied that the 1st respondent, while granting relaxation to him of Rule 16(h) by exercising power under Rule 31, had taken into account the circumstances peculiar and individual to the 8th respondent and also the fact that he had passed all Departmental Tests except Criminal Judicial Test within his period of probation and that he passed even the said test on 11.11.2012. Merely because due to the severe distress he went through on account of circumstances beyond his control, he could not pass the said test within the period of probation but he passed it on 11.11.2012, he cannot be denied the benefit of relaxation.

42. In our view, the said test is not of that much relevance to the job being performed by the 8th respondent and it is also not as if he did not qualify in the said test at all. In **R. Venkata Ramudu** (1 supra), with regard to passing in an Accounts Test by a person in the cadre of Assistant Executive Engineer in the Irrigation Department, the Supreme Court also has held as under :

“45. In the context of the service such as the one to which R. Venkata Ramudu belongs, what is more relevant is the technical

qualification of the employee and the experience gained in utilising such technical qualification for the service of the State than the knowledge of Accounts, a subject which is of incidental significance. Because knowledge of accounts is relevant only for the discharge of administrative responsibilities to be shouldered by the engineers. Their essential duty is to provide skills of technical knowledge to the State. That is why the Rules prescribe an experience of 5 years as an Assistant Executive Engineer for being promoted to the next higher category of Deputy Executive Engineer. An Assistant Executive Engineer even if he passes the Accounts test within the prescribed period of probation (2 years) will not be considered for promotion till he completes 5 years of service. Therefore, we are unable to agree with the logic employed by the Tribunal and confirmed by the High Court in this regard.”

43. These observations equally apply to the 8th respondent and it cannot be said that mere delay in passing the Criminal Judicial Test within the probation period is of much importance and the 1st respondent ought not to have granted relaxation to him under Rule 31.

44. Though counsel for petitioner relied upon an unreported decision of a Division Bench of this Court in **G. Chakrapani vs. Anugukishan Rao**⁸, we are of the view that the said case dealt with how Rule 16(h) has to be applied, and the said decision would not have any relevance while considering whether relaxation of Rule 16(h) was rightly granted or not by the 1st respondent exercising power under Rule 31.

45. We therefore hold that there is no merit in the Writ Petition; the 1st respondent's action in issuing G.O.Rt.No.232 Revenue (SER.I) Department dt.08.06.2018 cannot be found fault with on any ground;

⁸ Order dt.12.11.2018 in W.A.No.1724 and 1915 of 2017

that the State of Andhra Pradesh has no role and only the 1st respondent could have exercised power under Rule 31 in regard to the 8th respondent; and since the petitioner had already been promoted as a Member of the Indian Administrative Service while the 8th respondent is still in the cadre of Assistant Secretary, the petitioner cannot claim to be aggrieved by issuance of the impugned G.O. and she has no *locus* to file this Writ Petition.

46. The Writ Petition is accordingly dismissed directing the petitioner to pay costs of Rs.10,000/- to the 8th respondent.

47. I.A.Nos.2 and 3 of 2019 are accordingly allowed, and the interim order dt.22.01.2019 in WP.No.507 of 2019 is vacated.

48. As a sequel miscellaneous petitions pending if any, in this Writ Petition, shall stand closed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 20-12-2019

Ndr