

**HONOURABLE THE CHIEF JUSTICE
HONURABLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HONOURABLE SRI JUSTICE P.NAVEEN RAO**

Writ Petition Nos.40157 of 2017; 1314, 3870, 4022, 4251, 7259, 19831, 25648, 33398, 33494, 37152, 38645, 41102, 44277 of 2018; 17215 & 17788 of 2019

WP No.40157 of 2017:

#Mallesh Korukoru, s/o Laxmaiah,
Aged about 23 years, un-employee,
R/o. H.No.198, Brahmanapally,
Madgula mandal, Ranga Reddy District,
earlier Mahabubnagar District,
Telangana State and others

....Petitioners

Vs.

\$ The State of Telangana,
rep. by its Principal Secretary to Govt.,
Health Medical and Family Welfare Department,
Telangana Secretariat, Hyderabad and others.

.... Respondents

DATE OF ORDER PRONOUNCED : **18.09.2020**

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

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.... Respondents

!Counsel for the petitioners :

Sri S.Satyam Reddy, Senior counsel for Smt. K.V.Rajasree in Writ Petition No.40157 of 2017, 1314 of 2018, 7259 of 2018;
Sri Laxmaiah Kanchani in Writ Petition No.3870 of 2018;
Sri G.V.Shivaji, in W.P.No.4022 of 2018;
Sri Chandraiah Sunkara in W.P.No.4251 of 2018;
Smt B.Rachna in W.P.No.19831 of 2018;
Sri J.Sudheer in W.P.No.25648 of 2018;
Sri K.Anantha Rao in W.P.No.33398 of 2018;
Sri S.Mujib Kumar in W.P.No.33494 of 2018;
Sri A.Jagannadha Rao in W.P.No.37152 of 2018;
Sri Anand Kumar Kapoor in W.P.No.38645 of 2018;
Sri A.Jagannadha Rao in W.P.No.41102 of 2018;
Sri Anand Kumar Kapoor in W.P.no. 44277 of 2018;
Sri Ch.Venkat Raman in W.P.No.17215 of 2019; and
Sri Anand Kumar Kapoor in W.P.No.17788 of 2019

Counsel for the Respondents:

Govt.Pleader for Services III for respondents 1,2 & 4; Sri D.Balakishan Rao, Standing Counsel for TSPSC for respondent no.3; Smt. Rachana S.Waddepalli, Standing counsel for TSVVP for respondent no.5; Smt. K.Udaya Sri, counsel for respondents 6 to 10 in Writ Petition No.40157 of 2017;

Sri G.Vidyasagarm, senior counsel for Smt. K.Udaya Sri for respondent no.1; Sri Prabhakar Chikkudu for respondents 2 to 4; Sri S.Lakshmana Reddy, Senior counsel for Sri S.Rahul Reddy for respondents 5 to 30 in W.P.No.1314 of 2018;

Sri R.Vinod Reddy, standing counsel for TSSPDCL for respondents in Writ Petition 3870 of 2018;

Sri G.Vidyasagar, senior counsel for Smt. K.Udaya Sri for respondents 1 and 2, and Sri V.Mallik for respondents 3 to 10 in Writ Petition No.4022 of 2018;

Advocate General for respondents 1 to 3 and Sri D.Bala Kishan, SC for TSPSC for respondent no.2 in W.P.No.4251 of 2018;

Sri G.Vidyasagar, senior counsel for Smt. K.Udaya Sri for respondent no.1 and Sri Chikkudu Prabhakar for respondent no.2 in W.P.No.7259 of 2018;

G.P. for Energy for respondent no.1 and Sri Zakir Ali Danish for respondent no.2 in W.P.No.19831 of 2018;

Sri G.Vidya Sagar, senior counsel for smt. K.Udaya Sri for respondent in W.P.No.25648 of 2018;

Sri D.Bala Kishan Rao, SC for TSPSC for respondent no.1 and G.P. for Services-II for respondents 2 and 3 in W.P.No.33398 of 2018;

G.P. for Services-I for respondents 1 to 5 in W.P.No.33494 of 2018;

Sri G.Vidya Sagar, senior counsel for Smt. K.Udaya Sri for respondents 1 and 2 and G.P. for Labour for respondent no.3 in W.P.No.37152 of 2018;

G.P. for Medical Health and Family Welfare for respondents 1 and 2, Smt. Rachana S.Waddepalli for respondent no.3, and Sri D.Bala Kishan, SC for TSPSC in W.P.No.38645 of 2018;

Sri G.Vidya Sagar, senior counsel for smt. K.Udaya Sri for respondents in W.P.No.41102 of 2018;

GP for General Admn., for respondents 1 to 3, Smt. Rachana S. Waddepalli for respondent no.4 and Sri D.Bala Kishan Rao, SC for TSPSC in W.P.No.44277 of 2018;

GP for Medical Health & Family Welfare for respondents 1 to 3, Smt. Rachana S.Waddepalli for respondent no.4 and Sri D.Bala Kishan Rao, SC for TSPSC for respondent no.5 in W.P.No.17215 of 2019;

GP for Medical Health & Family Welfare for respondents 1 to 3, Smt. Rachana S.Waddepalli for respondent no.4 and Sri D.Bala Kishan Rao, SC for TSPSC in W.P.No.17788 of 2019.

<Gist :

>Head Note:

? Cases referred:

(1973) 1 SCC 500
 (2002) 5 SCC 111
 (2006) 4 SCC 1
 (2011) 3 SCC 436
 (2017) 11 SCC 421
 (2019) 6 SCC 362
 (2018) 6 SCC 446
 2019 SCC Online SC 1303
 (1976) 4 SCC 226
 (2003) 5 SCC 511
 2014 (1) RLW 478 (Raj.)
 2014 SCCC Online Raj 1340
 1995 Supp (2) SCC 235
 (2012) 8 SCC 203
 (2003) 7 SCC 83
 (1995) 3 SCC 401
 1980 Supp SCC 206
 (1992) 2 SCC 26
 (1967) 2 SCR 70 : AIR 1967 SC 993
 1999 (9) SCC 201
 (2018) 4 SCC 372
 (1986) 2 SCC 679
 (2004) 2 SCC 150
 (2011) 2 SCC 575
 AIR 1951 SCC 41
 (1980) 3 SCC 393
 (1980) 3 SCC 402
 1972 SCC Online Kerala 198
 2018 (11) SCC 688
 (2010) 9 SCC 247
 (2018) 8 SCC 238
 AIR 1968 SC 349
 (1981) 4 SCC 159
 (2008) 9 SCC 242
 (2009) 4 SCC 753
 (2019) 2 SCC 404
 (2015) 11 SCC 493
 (1991) 3 SCC 47
 (2020) 2 SCC 582
 (2019) 10 SCC 49
 (2010) 3 SCC 104
 (2000) 7 SCC 719
 (2008) 7 SCC 231
 (1995) 2 SCC 762
 1993 Supp (1) SCC 525: 1993 SCC (L&S) 290
 (2018) 13 SCC 560
 (2019) 2 SCC 404
 (2006) 9 SCC 623

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**WRIT PETITION NOs.40157 of 2017; 1314, 3870, 4022, 4251, 7259,
19831, 25648, 33398, 33494, 37152, 38645, 41102, 44277 of 2018;
17215 & 17788 of 2019**

COMMON ORDER:

On 15-12-2018, a series of writ petitions, challenging the grant of, or non-grant of weightage marks to the contract employees, by the State government, or by different Power Utilities Companies, were listed before a learned Division Bench. The Learned Division Bench noticed that there are two conflicting decisions of two learned Division Benches on the issue whether weightage marks could be given to those employees who have worked on contractual basis, in the organization, where regular recruitments are about to commence or not? The contradictory views were expressed in a judgment dated 03-06-2014, passed in W. A. No. 110 of 2014, and in a judgment dated 05-01-2017, passed in W. P. No. 41724 of 2016. Without framing the points of reference, by its order dated 15.12.2018, the learned Coordinate Bench directed the Registry to place these writ petitions before a Larger Bench for a comprehensive and conclusive adjudication. Hence, these writ petitions before this Full Bench.

2.1. The historical background:

In 2011-2012 Transmission Corporation (TRANSCO), Generation Corporation (GENCO), Northern Power Distribution Company Limited (NPDCL) and Southern Power Distribution Company Limited (SPDCL) (for brevity, hereinafter referred to as 'the Power Utilities Companies'), issued notifications for filling up vacancies for the posts of Sub-Engineer, Lineman and Junior Lineman. The notifications prescribed the selection procedure i.e. out of total of

100 marks, 45 marks were earmarked for service rendered on contractual basis, thereby leaving only 55 marks for the written examination. The grant of maximum of 45 marks, as weightage marks, depended on the length of service rendered, i.e. 2 ½ marks would be given for every half year of service as contract worker in the organization. The decision to grant weightage marks was based on a Settlement arrived between the Managements and the employees on 18.12.2010 under Section 12 (3) of the Industrial Disputes Act.

2.2. However, the open market candidates challenged the apportionment of 45 marks as weightage marks to the service rendered on contract basis before this Court in W.P.No.3753 of 2012 and batch of writ petitions. The petitioners therein contended that no such weightage marks could be given to a group of candidates, for it would make the selection totally one sided. Hence, the grant of weightage marks was arbitrary and discriminatory.

2.3. However, by order dated 09-12-2013, a learned Single Judge, upheld the grant of weightage marks. But while upholding the weightage principle, the learned Single Judge also opined that prescribing 45 marks out of total of 100 towards contract service was very high. Therefore, the learned Single Judge reduced the weightage marks from 45 to a maximum of 20 marks, with 2 marks for every completed year of contract service.

2.4. Aggrieved by the order dated 09-12-2013, the Power Utilities, and some of the private respondents in the writ petitions, filed a series of writ appeals, namely W.A.Nos.110 of 2014 and a batch of other writ appeals before a learned Division Bench. By judgment dated 3.6.2014, the learned Division Bench partly allowed the writ appeals: while upholding the view taken by learned Single judge on weightage to contract service, the learned Division Bench directed to assign one (1) mark for every six months of completed service, instead of two marks for one year of service. (Henceforth, the said Division Bench shall be referred to as the 'First Division Bench' and Judgment rendered by the First Division Bench as 'the First Division Bench Judgment' for short).

2.5. Since SPDCL was aggrieved by the said Judgment of the learned First Division Bench, it filed a review petition, namely WAMP No.4158 of 2014 in W.A.No.110 of 2014. By order dated 26.12.2014, the review petitions were disposed of. The learned First Division Bench granted the liberty to take up selection process in accordance with law in the present area of operation after formation of the new State of Telangana. Since the SPDCL was still aggrieved by the said order, it filed a Special Leave Petition, namely SLP (C) No.8266 of 2015 before the Hon'ble Supreme Court. However, the Apex Court dismissed the SLP by order dated 11.05.2015.

2.6. Similarly, the private candidates also filed review petition, namely WAMP No.110362 of 2015, in W.A.No.110 of 2014 and batch. The Review Petitions were disposed of by the learned First Division Bench by its order dated 13.10.2017. The Division Bench modified its earlier order to the limited extent of directing the Power Utilities to conduct fresh written examination. The Division Bench also issued further clarification. However, the issue of weightage marks for contract service was left untouched. Hence, the part of the judgment dealing with grant of weightage marks attained finality.

3.1. On the other hand, prior to formation of the State of Telangana, in the combined State of Andhra Pradesh, the Agricultural Department evolved a policy to award weightage marks for experience towards service rendered on contract basis, while holding the selection process for regular recruitment. The percentage of marks varied from time to time. However, after the formation of the State of Telangana, while the Government prescribed revised method of selection, it did not provide for weightage marks for the service rendered on contract basis in the Department. Since the employees working on contract basis were aggrieved by the omission on the part of the State in not providing weightage marks to the contract employees, they filed W.P.No.41724 of 2016 and three other writ petitions before a learned Division Bench. By judgment dated 05.01.2017, the learned Division Bench (henceforth, the said Division Bench shall be referred to as 'the Second Division Bench' and the Judgment

rendered as ‘the Second Division Bench Judgment’, for short) held that the Telangana State and Subordinate Service Rules (hereinafter referred to as ‘the General Rules’) do not prescribe procedure of selection. Hence, the earlier administrative decision prescribing weightage for contract service cannot be elevated to the status of law. Therefore, the previous policy decision of the combined State of Andhra Pradesh is inapplicable to the new State. In fact, it is permissible for the new State to formulate its own policy. Moreover, the contention that having rendered long years of service, the employees have a legitimate expectation, was negated by the learned Second Division Bench. The learned Second Division Bench opined that in matters of this nature, the principle of legitimate expectation has no application. However, the learned Second Division Bench ordered that if a contract employee secures the same marks as that of an open market candidate, the contract employee can be preferred.

3.2. In order to understand the reason in support of the view taken by the learned Second Division Bench, it is useful to extract the relevant paragraphs of the Second Division Bench judgment. Paragraphs-25 and 35 of the judgment read as under:

25. The only right that a person has, be it a temporary employee appointed under Rule 10 (a) (i) or a contract employee appointed under Rule 9 or an outsider, is to be considered for appointment to a Civil post or a post in Civil Services of the State. The only guarantee given by the Constitution is a right to be considered along with others. If all persons, who aspire to get into Government service, are subjected to a uniform procedure of selection, no candidate can complain that his legitimate expectation was defeated by prescribing a uniform method of short listing candidates for selection based purely upon merit. The doctrine of legitimate expectation has no relevance in the matter of prescription of a procedure for selection.

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35. Whenever persons appointed on temporary basis came up with claims for regularization, the Courts have always directed those temporary employees to participate in a regular process of selection, after granting relaxation in the upper age limit to the extent of the services rendered by them. In so far as the petitioners herein are concerned this contingency has not arisen since all of them were allowed to write the examination. Therefore, if at all any concession can be granted to them, it could only be to take the services rendered by them in the past as a preferential criteria, if two persons are found to be of equal merit in the written examination conducted by the Public Service Commission. In other words, if a candidate

who participated in the process of selection from the open market and a candidate who has worked as contract employee have secured equal marks in the written examination and both of them come within the zone of consideration, a preferential treatment may be given to the person who had already rendered service as a contract employee. This is only the concession that can be granted to the petitioners. Other than that, their challenges to G.O.Ms.No.108 and to the procedure of selection are devoid of merit and the writ petitions are liable to be dismissed.

4. It seems that the earlier decision of the learned First Division Bench in W.A. No. 110 of 2014 and batch, dated 03-06-2014, concerning recruitment in Power Utilities, was not brought to the notice of the learned Second Division Bench.

5. Thus, in the recruitment in Power Utilities the learned First Division Bench upheld the decision of the employer to grant weightage to the contract service rendered by such employees, but reduced the weightage marks. But on the other hand, the learned Second Division Bench upheld the decision of the Government not to extend the weightage to the contract service. The learned Second Division Bench incidentally did hold that preference can be given to the existing contract employees if they secure same merit on par with the open market candidates. It also recognized that the contract employee is entitled to age relaxation by counting the contract service. In other words, while upholding Government's decision not to assign marks for contract service, it also recognized that contract employees, as a class, are distinct from others; they can be extended certain concessions.

6.1. Furthermore, in 2017 and 2018, the Power Utilities Companies issued a series of recruitment notifications: on 28.12.2017 TSTRANSCO issued Notification No.04/2017 recruitment to 1100 vacancies in the post of Junior Linemen; Notification No.05/2017 was issued calling for applications to make recruitment to 174 vacancies in the post of Sub-Engineer. Moreover, on 24.05.2018, TSNPDCL also issued a notification, namely notification No.2 of 2018, calling for applications to fill 497 vacancies in the post of Sub-Engineer (Electrical). But while TSTRANSCO earmarked 20% marks to contract

service/service rendered on outsourcing basis in the selection process, the TSNPDCL did not provide such weightage. The non-grant of weightage marks by TSNPDCL has prompted some aggrieved persons to approach this court. More about this later.

6.2. Simultaneously, the State Government also set in motion the recruitment process. On 08.11.2017, the TSPSC issued notification no.57 of 2017 inviting applications to make recruitment to 1115 vacancies in the post of Staff Nurse in the Government service, and 81 vacancies in the post of Staff Nurse in the Telangana State Vaidya Vidhana Parishad. Further, on 18.12.2017, the TSPSC issued another notification, namely notification no.67 of 2017, inviting applications for filling up 200 vacancies in the post of Lab Technician Grade-II. Out of these 200 vacancies, 103 vacancies were in the Department of Public Health and Family Welfare, 88 in the Directorate of Medical Education, and 09 vacancies in the Telangana Vaidya Vidhana Parishad.

6.3. On 25.01.2018, the government issued notification No.4 of 2018 for filling up 238 vacancies in the post of Pharmacist Grade-II. Out of 238 vacancies, 125 vacancies were earmarked for the Directorate of Public Health & Family Welfare, 58 for the Directorate of Medical Education, and 55 vacancies for the Telangana Vaidya Vidhana Parishad. Further, on 28.02.2018 the government issued another notification, namely Notification No.1/A/2018 for filling up 62 vacancies in the post of Medical Officer (Ayurveda). For filling up of all these vacancies, the government had granted the benefit of weightage marks to the employees who have been rendering contract services.

7. Aggrieved by the grant of, or by the non-grant of weightage marks either by the government, or by the Power Utilities Companies, a series of writ petitions were filed before this Court. When these writ petitions came up for consideration before a learned Coordinate Division Bench, the Division Bench (henceforth, the said 'Division Bench' shall be referred to as 'the Third Division Bench' for short) *prima facie* opined that there is conflict of opinion in the decisions of the two Division Benches, noted above. Thus, the learned Third

Division Bench referred the writ petitions to a larger Bench to resolve the conflict of opinion.

8. While referring to the Larger Bench, the learned Third Division Bench has not expressed its opinion either about the grant of weightage marks, or about its apportionment. Moreover, it has neither recorded the points of conflict it saw, between the two judgments of the First and Second Division Benches, nor the points of reference. It has merely directed that the conflicting judgments be referred to a Larger Bench.

ISSUES FOR CONSIDERATION:

9. At the first blush, a co-joint reading of the two judgments delivered by the two learned Division Benches do not seem to indicate any contradiction between them. For, both the learned Division Benches have upheld the power of the employer to grant, or not to grant the benefit of the weightage marks. According to the learned First Division Bench, the Power Utilities Companies/employer do have the power to prescribe the weightage marks, but within a reasonable limit. On the other hand, according to the learned Second Division Bench, the petitioners cannot claim, as of right, the right to receive weightage marks. Thereby, the learned Second Division Bench implied that the employer has the power not to grant the benefit of weightage marks. Thus, both the learned Division Benches recognize the power of the employer to grant, or not to grant the weightage marks.

10. However, a close scrutiny of the two judgments reveals that there are, indeed, contradictions between the two judgments. There are contradictions on the following points: Whether the law permits the grant of weightage or not? If yes, whether the provision granting such a power to the employer (State or Power Utilities Companies) is an enabling provision or not? Whether the provision of law casts a duty on the employer, which equally bestows a corresponding right on an employee, to claim weightage points in his/ her favor? To what extent weightage can be prescribed out of total marks in the

direct recruitment selection process? And what is the scope of power of relaxation?

11. A few writ petitions, namely in W.P. Nos. 38645 of 2018, 44277 of 2018, W.P. No. 17788 of 2019 and W.P. No. 17215 of 2019, have also raised the issue of the Constitutional validity of Rule 31 of the General Rules, and about the extent of its object and scope. Although these issues do not emanate from the decisions of the two Learned Division Benches, but as the issue of the Constitutional validity and its usage is of fundamental importance, the issue is being taken up by this Full Bench. For, unless these twin issues are adjudicated upon, the other issues, mentioned above, would be decided in a legal vacuum.

12. In the above background, the Full Bench is required to answer the following legal issues:

- i) Whether power to relax vested in the Government under Rule 31 of Telangana State and Subordinate Service Rules, 1996 (the General Rules) is constitutionally valid or not?
- ii) As part of selection process for direct recruitment, whether the employer has power to apportion marks towards the service rendered by a person on temporary basis or not?
- iii) If yes, whether such power is an enabling power, which cannot be claimed as of a right by the employee?
- iv) To what extent marks for the contract service/ service on outsourcing basis can be prescribed out of total marks for selection?

CATEGORISATION OF CASES:

13. Based on the prayers in the writ petitions, and the submissions urged by the learned counsel, the kaleidoscope of writ petitions, listed before the Full Bench, can be classified broadly into two divisions:

A. Division-I: Recruitment to Government service;

B. Division -II: Recruitment to Power Utilities Companies.

Division-I can further be sub-classified into four categories as under:

i) Category-I: Challenge is to the constitutional validity of Rule 31 of the Telangana State and Subordinate Service Rules, 1996 (the General Rules), which vests power in the Governor to relax any of the rules. The challenge is also to the validity of G. O. Ms. No. 166, dated 09.09.2017, issued by the Health, Medical and Family Welfare (B1) Department. There is also a challenge to the recruitment notifications issued by the government (Writ Petition Nos.38645 of 2018, 44277 of 2018, 17215 of 2019, 17788 of 2019);

ii) Category-II: (A) Pertain to challenging the validity of G. O. Ms. No. 166, dated 09.09.2017, issued by the Health, Medical and Family Welfare (B1) Department, by which Rule 9 (b) of the Telangana State and Subordinate Service Rules, 1996 (the General Rules) was relaxed, and weightage of marks to contract service was prescribed. (B) Pertaining to challenging the validity of G. O. Ms. No. 216, General Administration (Ser. A) Department, dated 09.09.2017, by which, the scheme of examination was formulated. (C) Recruitment notifications, issued on different dates, mentioned hereinabove, are also under challenge. (Writ Petition Nos.40157 of 2017, 4251 of 2018.)

iii) Category III: The petitioner is aggrieved by denial of weightage to the contract service rendered as Staff Nurse in the Residential Schools/ Colleges in the recruitment Notification No. 57 of 2017. (W.P. No. 33398 of 2018).

Division II can also be sub-divided into three sub-categories as under:

i) Category-I: The petitioners are aggrieved by the grant of weightage marks, for service rendered on contract basis, by the Power Utilities Companies in the recruitment process. (Writ Petition Nos.1314 of 2018, 7259 of 2018, and 3870 of 2018);

ii) Category-II: The challenge is to the omission of not extending weightage to the contract service in the recruitment undertaken by the Power Utilities Companies for the service rendered by employees on contract basis in another Power Utility of the Telangana State. (W.P. Nos. 19831 of 2018, 25648 of 2018, 41102 of 2018, and 37152 of 2018).

iii) Category-III: The petitioners are those who had once worked for the Power Utilities Companies in the combined State of A.P. Presently, they continue to work in Andhra Pradesh. But as they would like to apply under the recruitment notification issued by the Power Utilities Companies of Telangana, they are aggrieved by the non-grant of weightage marks to them for the service rendered by them in the combined State of Andhra Pradesh. (W.P. No. 4022 of 2018)

SUBMISSIONS OF LEARNED COUNSEL:

14. The submissions made by learned counsel are recorded under two Divisions, classified hereinabove.

15. DIVISION-I -- STATE GOVERNMENT SERVICE

Category I:

(I) Challenging the constitutional validity of Rule 31 of the General Rules, and the exercise of power under the said provision, and challenging the validity of the G.O. Ms. No. 166, dated 09.09.2017, in W.P. Nos. 38645 of 2018, 44277 of 2018 and W.P. No. 17788 of 2019, Mr. Anand Kumar Kapoor has raised the following contentions:

1. Rule 31 of the General Rules bestows a power upon the Governor to relax the operation of any provision contained in General or Special Rules. However, the said provision arms the Governor with carte-blanche power to relax any or every rule. The power is unguided, uncontrolled, and unbridled. Therefore, Rule 31 of the General Rules is both against the Constitutional norm, and the Rule of Law. For

both mandate that a power bestowed upon an authority must be prescribed, and controlled. The power must be exercised within well defined limits. A limitless power leads to arbitrary exercise of power. And arbitrary exercise of power is anathema to the Constitution of India. Hence, Rule 31 of the General Rules is unconstitutional.

2. The words “*to be appointed*” used in Rule 31 of the General Rules has nothing to do with the recruitment process.
3. Even if the power to relax needs to be exercised, it can be exercised only qua an individual, and not qua a class of persons. Therefore, the exercise of power of relaxation in favour of the contract employee is illegal.
4. The primary requirement to extend the relaxation under Rule 31 of the General Rules is that it must be just and equitable, in the public interest, and in order to remove undue hardship. These parameters are not reflected in the order granting relaxation. Further, assuming that power is available to grant relaxation, such decision must be supported by reasons as to why Rule 9(b) of the General Rules requires relaxation. For, there must be application of mind before exercising the power to grant relaxation. Furthermore, the jurisdictional fact has to be established. This is missing in the present case. It is, thus, apparent that the relaxation was not preceded by application of mind. Therefore, the entire exercise is *ex-facie* illegal.
5. According to the learned counsel, all the aspirants for public employment form a single homogenous class. There cannot be any division in the same class. Therefore, all candidates, who intend to participate in the selection process, should be subjected to same procedure of selection. The only criterion applicable, to make recruitment to public employment, is based on the merit obtained by

the candidates in the recruitment examination. However, the grant of the weightage marks contravenes the very concept of merit. By granting the weightage marks in favor of the contract employees, merit is being replaced by demerit, and vice versa.

6. Moreover, G. O. Ms. No. 166, dated 9.9.2017, divides the homogeneous group into three different classes: (i) fresh open market candidates; (ii) candidates older in age and acquiring educational qualifications earlier; (iii) candidates working on contract/outsourcing basis. But there cannot be distinction among the candidates, competing for public employment, depending on service rendered on temporary basis, or otherwise, and conferring weightage marks for contract service to a group of persons. Therefore, grant of weightage marks prescribes an unequal treatment of the candidates competing for public employment. Such a classification offends the equality clause enshrined in Articles 14 and 16 of the Constitution of India. Hence, the impugned G. O. is invalid in law.
7. He further submits that if selection were to be made based on performance of 100% marks, the assessment has to be same for all the candidates participating in the recruitment process. In the cases on hand, out of 100% marks, fresh open market candidate performance is assessed only to 70% of the total marks, whereas the assessment of candidate, though hailing from open market, but older in age and acquiring qualification earlier, is based on 80% of the total marks, meanwhile the assessment of contract employee is on total marks i.e., 100%. The selection procedure, thus, has three parameters to determine merit: (i) fresh market candidates: 70%; (ii) candidates not in employment with older eligibility qualifications: 80%; (iii) candidates already in contract employment: 100%. However, the performance against 70% / 80% cannot be equated with the performance against 80% and/ or 100%. Moreover, in such

selection process, a contract employee gets more than 100% marks. Such a trifurcation defeats the concept of equality. For, there cannot be a tailor made procedure for valuation of merit to suit a particular group of people as against others. According to the learned counsel, whenever homogenous group is to be divided into separate classes, there has to be a nexus with intelligible differentia for such division. But, the criterion chosen has no nexus to the object sought to be achieved i.e., merit. Hence, the grant of weightage marks violates Art. 14 of the Constitution of India.

8. Furthermore, equality of opportunity, enshrined in Art. 16 of the Constitution of India, pre-supposes to select persons on equal parameters. However, the grant of weightage marks creates different levels of playing fields. Thus, it is in violation of Art. 16 of the Constitution of India.
9. In support of his contentions, the learned counsel has relied on (i) **Nagpur Improvement Trust and another Vs. Vithal Rao and others**¹, (ii) **Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and others**², (iii) **Secretary, State of Karnataka and others Vs. Umadevi (3) and others**³, and (iv) **State of Orissa and another vs. Mamata Mohanty**⁴.

(II). Mr. Ch. Venkat Raman, the learned counsel for the petitioners in W.P. No. 17215 of 2019, has adopted the arguments raised by Mr. Kapoor. Therefore, the contentions raised by Mr. Venkat Raman are not being recorded, and dealt with.

Category II:

¹ (1973) 1 SCC 500

² (2002) 5 SCC 111

³ (2006) 4 SCC 1

⁴ (2011) 3 SCC 436

(I) Challenging the grant of weightage marks in the different recruitment notifications issued by the Government, and appearing for the learned counsel, Mrs. K. V. Rajasree in W. P. No. 40157 of 2017, Mr. Satyam Reddy, Senior Advocate, has raised the following contentions:

1. In direct recruitment, granting weightage to a class of people would change the complexion of competition. For, it would tilt the balance in favour of the contract employees. By demonstrating the merit determined by the Government, the learned Senior Counsel points out that though an open market candidate may perform exceptionally well in the written examination, still the contract employee would steal a march over the open market candidate. Thus, the contract employee would occupy top slot by virtue of marks awarded for contract service. Consequently, an open market topper candidate in the written examination in the district would not get selected. Since an undue advantage is being given to the contract employees, it is an unequal competition. Thus, the weightage of marks to contract service employees offends Articles 14 and 16 of the Constitution of India.
2. Moreover, if marks assigned to the contract service employees were converted into points, it would actually work out to be awarding 45 marks. He submits that even assuming that awarding of marks to contract service is permissible, the grant of such high percentage/marks, would amount to unequal treatment and is arbitrary. Such a grant of weightage marks is in violation of Arts. 14 and 16 of the Constitution of India.
3. He further submits that computing work experience gained by these contract employees, who entered Government service through the backdoor, would be conferring premium on such illegal appointments.

4. While stating that there is no conflict in the two decisions, the learned Senior Counsel submits that the view taken by the Second Division Bench ensures equality of opportunity in public employment.
5. He also submits that the method of selection adopted by respondents is directly in violation of the judgment of the Hon'ble Supreme Court in the case of **Umadevi** (supra).

(II). W.P.No.4251 of 2018 also falls under the Category II mentioned hereinabove. While adopting the submissions made by the learned counsel Mr. Anand Kumar Kapoor, Mr. Chandraiah Sunkara, the learned counsel for petitioners in W.P.No.4251 of 2018, has made the following submissions:

1. Admittedly the contract employment was made under Rule 9 of the General Rules. However, Rule 9(b) of the General Rules prohibits counting of such service "*for any purpose*". Therefore, the service rendered on contractual basis cannot be counted for the regular selection. Hence, the question of relaxation of provision in Rule 9(b) of the General Rules, and permitting such contract employees to compute the contract service for the purpose of awarding of marks in the selection, smacks of arbitrariness; it is an illegal exercise of power. Thus, unconstitutional.
2. Many eligible and qualified persons had opted out of such employment as employment was on contractual basis, and was confined to one year. Therefore, only less meritorious persons were appointed on contractual basis. Merely because the Government chose to extend the contract employment year after year, without resorting to regular recruitment, no undue advantage can be given for such service.
3. The scheme of weightage of marks to the contract service is nothing but an indirect mode of granting regularization; the same is impermissible. By doing so, merit is compromised. Moreover, such a selection process

would amount to resorting to regularization of backdoor entries by assigning high marks for the contract services. Such a process directly violates the principles annunciated by the Supreme Court in the case of **Umadevi** (supra). Thus, weightage is not permissible for the contract service.

(III) No submissions were made by Mr. K. Anantha Rao or any other counsel on his behalf in W.P.No.33398 of 2018. Petitioners in the said writ petition are working as Staff Nurses in Social Welfare Residential Institutions and claim that the weightage of service should also be extended to the contract service rendered in Social Welfare Residential Institutions while making recruitment to the post of Staff Nurse in Government service.

(IV) On the other hand, Mr. G. Vidya Sagar, the learned Senior Counsel, appearing for Ms. Uday Sri, the learned counsel for impleaded respondents in W.P.No.40157 of 2017, has raised the following counter-arguments:

1. Rule 9 of the General Rules permits the government to hire employees on contractual basis. However, Rule 9(b) of the General Rules prohibits the grant of any preferential right on the basis of such contractual appointment. Rule 9 (b) of the General Rules, thus, is an obstacle in providing preferential right to the contract employees while considering their cases for regular selection. If the rigors of Rule 9 of the General Rules were not relaxed, grave prejudice would be caused to the contract employees who have rendered long and unblemished service. In the facts of these cases, such power is being exercised validly.
2. Defending the constitutionality of Rule 31 of the General Rules, and the exercise of power under the said provision, the learned Senior Counsel submits that sweeping power is vested in the Governor to relax the rigors of any rule if the application of the said rule would cause undue hardship to a person, or class of persons. Thus, the power to grant relaxation can be exercised in favour of an individual or class of persons.

Unless power of relaxation is available to the Governor, the Governor can neither redress a serious grievance arising out of application of a rule, nor remove any injustice caused to an individual or a class of persons. Thus, Rule 31 of the General Rules is constitutionally and legally valid.

3. In the case of **Umadevi** (supra) the Hon'ble Supreme Court has also permitted regularization of temporary employment, if such employment continued for ten years or more; the services could be regularized by formulating a scheme. Moreover, as the contract employees have undergone process of selection, their employment cannot be said to be "backdoor entry". Furthermore, even according to **Umadevi** (supra), weightage to the service rendered on temporary basis is permissible. To give effect to the law laid down by the Hon'ble Supreme Court in **Umadevi** (supra), power to relax conferred under Rule 31 of General Rules is validly exercised.
4. Further, extending the weightage to the contract service rendered by contract employees is a policy decision. When power is validly vested in the Governor, and such power is exercised by the State for the stated objective, the scope of judicial review is a limited one. In the facts of these cases, the power has been exercised validly. Hence, unless patent illegality is pointed out, the Court cannot interject the policy decision of the Government.
5. Rule 9 and Rule 31 of the General Rules are beneficial piece of legislation. The power to relax a rule has been vested in order to ameliorate the condition of those who might be subjected to an injustice. Therefore, the said provisions should be applied to cases of hardship. Hence, in the present case, considering the plight of the contractual appointees, the power has been exercised validly.
6. Further, according to the learned Senior Counsel, on 16.11.2010, a common notification was issued for recruiting Staff Nurses; according to

the notification there were 1592 regular vacancies, and 759 contract vacancies.

7. A reading of paragraphs 5 and 9 of the notification would show that 70% marks was apportioned to written examination, 20% marks for contract service, and 10% marks for seniority. Impleaded respondents applied in response to the said notification and were selected, but their appointments were made on contract basis. Since they had undergone a selection process, their appointments cannot be dubbed as “backdoor entry”. But it was only for administrative convenience that their appointments were treated as contract appointments.
8. He further submits that recruitment rules are silent about the method of selection by direct recruitment. Since the Rules did not prescribe any procedure for direct recruitment, vide G. O. Ms. No.166 dated 09.09.2017, the Government notified the guidelines. These guidelines are valid, for they do not contravene the recruitment rules. He further pleads that the marks are assigned to the contract service as the employer was satisfied with the service rendered by the contract employees.
9. According to the learned Senior Counsel, giving weightage to experienced persons passes the twin tests required under Article 14 of the Constitution of India i.e., reasonable classification between two groups, and nexus to the object sought to be achieved. The decision of the Governor answers the twin tests as there is valid classification, and there is nexus to the object sought to be achieved.
10. He further submits that in **Sachivalaya Dainik Vetan Bhogi Karamchari Union, Jaipur vs. State of Rajasthan and others**⁵, the Hon’ble Supreme Court observed that the case of **Umadevi** (supra) did

⁵ (2017) 11 SCC 421

not deal with the question of weightage, but only with the mode of recruitment.

11. He further pleads that the employer is best suited to decide the requirements of what a candidate should possess according to the needs of the employer, and the nature of work. As held in **Maharashtra Public Service Commission v. Sandeep Sriram Warade and others**⁶, such an administrative policy decision is not amenable to judicial review, as it is not in violation of any constitutional law or rights.
12. In support of his contentions, the learned Senior Counsel **has relied on** (i) **State of Rajasthan and others vs. Archana etc.** in SLP (C) No.39720 of 2013 dated 29.11.2016; (ii) **M.P.S.C. vs. Sandeep Shriram Warade and Ors** (supra); (iii) **Thahira P. vs. Administrator, Union Territory of Lakshadweep and others**⁷ and (iv) **Kerala State Beverages (M & M) Corporation Limited vs. P.P.Suresh & others**⁸.

(V) Mr. Sanjeev Kumar, the learned Special Government Pleader, appearing for the learned Additional Advocate General for the State Government, has also raised the following counter-arguments:

1. The contract employees had undergone regular process of selection; they have been rendering satisfactory services for number of years. Therefore, the Government decided to grant relaxation of Rule 9(b) of the General Rules, and compute the contract service in the process of selection for recruitment to the post of Multi-Purpose Health Assistant/Lab Technician, Grade-II/Staff Nurse. The Government is justified in giving preference to the contract employees over the open market candidates. For, while the former have both experience of and knowledge about the requirements of the job, the latter are raw hands. Thus, the Government

⁶ (2019) 6 SCC 362

⁷ (2018) 6 SCC 446

⁸ 2019 SCC Online SC 1303

is justified in assigning weightage marks to the contract service in the process of selection.

2. The decision to accord weightage to the contract service neither offends Articles 14 and 16 of the Constitution of India, nor is in violation of the principles laid down by the Supreme Court in **Umadevi** (supra) as sought to be contended by the learned counsel appearing for the petitioners. For, unless the contract service is also reckoned in the recruitment process, greater injustice would be caused to the contract employees.
3. Moreover, unless a person renders six months of service, he would not be assigned any weightage. Any period of service which is less than six months would not carry any weightage. Before computing the contract service, the performance of the candidate would also be assessed. During the course of service, if a contract employee was terminated for indiscipline, or for any other delinquency, he would not be awarded marks for the contract service. Further, for the service rendered in “hardship conditions”, such as in tribal and rural areas, a higher weightage is given to the candidate. Moreover, considering the possibility of a contract employee working for a given period in the tribal/rural area, and later on moving from tribal area to rural area/urban area, or from rural area to urban area, the marks are being awarded proportionately to the extent of service rendered in the tribal/rural/urban areas. If the service in any area is falling short of six months, the same would be excluded. He further submits that the gap period in contractual service is not counted for weightage. Therefore, according to the learned Special Government Pleader, the welfare scheme is worked out on due consideration of various parameters. It is a nuanced scheme, and not a general scheme, where relevant parameters have been considered. Thus, it is legally valid exercise of power.

4. Further, only after applying its mind to various factors, Rule 9(b) of the General Rules was relaxed; the weightage principle was worked out. Hence, it cannot be said that the weightage principle is applied without application of mind.
5. Furthermore, before exercising the power of relaxation, the parameters laid down in Rule 31 of the General Rules were strictly adhered to.
6. Moreover, this is not the first time that the Government has extended the weightage to the contract service: the same was applied in the recruitments made in the years 2007, 2008 and 2010. At that time also, 20% marks out of 100 marks were earmarked for contractual service. Thus, no new scheme is being created; it is, in fact, an old practice which is being followed.
7. Lastly, all the contract employees were qualified; they had undergone a process of selection before being employed on contract basis. Hence, their appointment is not an illegal one.
8. In order to buttress his contention that awarding of marks for contract service in the process of recruitment is permissible, the learned Special Government Pleader has relied on: (i) **Government of Andhra Pradesh and others vs. Sri D.Janardhana Rao and another**⁹; (ii) **Santosh Kumar vs. State of A.P. and others**¹⁰; (iii) **Archana v. State of Rajasthan & Ors.**¹¹; (iv) **Secretary, State of Karnataka and others vs. Umadevi (3) and others** [(2006) 4 SCC 1]; (v) **Sachivalaya Dainik Vetan Bhogi Karamchari Union, Jaipur vs. State of Rajasthan and others** [(2017) 11 SCC 421]; (vi) **Dinesh Kumar Sharma vs. State of Rajasthan**¹²; (vii) **V.N.Sunanda Reddy and others vs. State of A.P. and others**¹³; (viii) **Satyabrata Sahoo and others vs. State of Orissa and**

⁹ (1976) 4 SCC 226

¹⁰ (2003) 5 SCC 511

¹¹ 2014 (1) RLW 478 (Raj.)

¹² 2014 SCC Online Raj 1340

¹³ 1995 Supp (2) SCC 235

others¹⁴; (ix) State of M.P and others vs. Gopal D.Tirthani and others¹⁵; (x) Union of India and others vs. Dinesh Kumar Saxena and others¹⁶; (xi) Devi Prasad and others vs. Government of Andhra Pradesh and others¹⁷; (xii) Dr Snehelata Patnaik and others vs. State of Orissa and others¹⁸.

9. He has also placed on record a judgment of a learned Single Judge in W.P.Nos.3753 of 2012 and batch, dated 09.12.2013, the judgment of First Division Bench in W.A.No.110 of 2014 and batch, dated 03.06.2014, and the judgment of the Second Division Bench in W.P.No.417254 of 2016 and batch, dated 05.01.2017.

(VI) Supplementing the submissions of learned Special Government Pleader, the learned Government Pleader for Services-II, Mr. Nayakwadi Ramesh has raised the following arguments:

1. The contractual appointment was made after following the due process. During the selection process even the roster principle was applied. Thus, those appointments cannot be termed as “backdoor entry”. At the time of initial appointment weightage principle was extended; even for regular recruitment the same weightage principle is adopted. Since it is within the power of the State to grant such a weightage, the awarding of marks to the contract service is legally justified.

16. DIVISION II: POWER UTILITIES COMPANIES SERVICE:

Category I:

(I) While appearing for the petitioners in W. P. No. 1314 of 2018 and W. P. No. 7259 of 2018, for those who are aggrieved by the grant of weightage marks, Mr. S. Satyam Reddy, the learned Senior Counsel, has reiterated his contentions against granting of weightage marks in the Power Utilities

¹⁴ (2012) 8 SCC 203

¹⁵ (2003) 7 SCC 83

¹⁶ (1995) 3 SCC 401

¹⁷ 1980 Supp SCC 206

¹⁸ (1992) 2 SCC 26

Companies, as was urged by him against the weightage to contract service in the recruitment to Government service. Hence, they are not being reiterated here.

(II) In W.P.No.3870 of 2018, the petitioner is challenging awarding 20 marks as weightage to the contract service in Notification No.04/2017, dated 28.12.2017. This notification was issued by TSTRANSCO to make recruitment to 1100 vacancies of Junior Linemen.

(III) W. P. 3870 Of 2018 is on identical footing as the previous two writ petitions argued by Mr. S. Satyam Reddy, the learned Senior Counsel. Mr. Laxmaiah Kanchani, the learned counsel for the petitioners in W.P. No. 3870 of 2018 has therefore echoed the arguments of Mr. S. Satyam Reddy. Hence, the arguments of Mr. Kanchani are not being reproduced.

(IV) However, on the other hand, Mr. Laxma Reddy appearing for Mr. S. Rahul Reddy, the learned Counsel representing the respondents, working on contract basis/outsourcing basis in Power Utilities Companies, in W.P. No.1314 of 2018, has raised the following counter-arguments:

1. There is no conflict of opinion between the judgments of the two Division Benches. Both emphasized the employer's prerogative to extend, or not to extend the weightage to contract service.
2. The weightage for contract service is incorporated in the Settlement arrived under Section 12(3) of the Act, 1947; it is binding on Power Utilities Companies. This Settlement is not challenged. Without challenging the validity of the Settlement, the petitioners cannot maintain the writ petitions. The right flowing out of Settlement under Section 12(3) of the Act, 1947 is superior to the individual claim of equality. It flows out of right to life enshrined in Article 21 of the Constitution of India. (He would submit that) The contract workers have toiled hard to serve the employer. They possessed the qualification, gained work experience in the same job, worked on nominal wages, and

have rendered long unblemished service. Therefore, certainly they have a right to be preferred for the regular selection compared to open market candidate. Such a preference would not be in violation of Article 14 of the Constitution of India. On the contrary, if weightage for the contract service was not given, it would offend Articles 14 & 16 as un-equals cannot be treated as equal; it would also violate Article 21 of the Constitution of India.

3. The contract workers and open market candidates form two separate classes. There is intelligible differentia between these groups. Thus, it is not only permissible to classify them on this basis, but also to extend different treatment to the different groups. Hence experience can be a criterion to differentiate between the two groups. According to the learned Counsel, un-equals cannot be treated as equals, for it would violate Articles 14 and 16 of the Constitution of India. Moreover, the State Power Utilities Companies have unique assignment and have monopoly: they are involved in generation, transmission and distribution of electricity. Thus, similar nature of work may not be available in private sector.
4. There is no prerogative of the State / its instrumentality to prescribe method of selection. The second Division Bench judgment also recognized this aspect.
5. Furthermore, giving weightage is a policy decision of an employer. Thus, the writ Court cannot interfere in policy decisions. The jurisdiction of the Court is confined to the quantum of marks allotted to contract service. He would submit that as held by this Court in the First Division Bench judgment, 20% of weightage marks is reasonable.
6. Moreover, the Government Departments, governed by Article 309 of the Constitution of India, are different from public undertakings such as the Power Utilities Companies, which are governed by the Industrial

Disputes Act. Therefore, the judgment of the Second Division Bench is clearly inapplicable to the present case. For, TSTRANSCO and TSNPDCL are governed by Section 12(3) of the Industrial Disputes Act.

7. With regard to awarding of marks for contract service, the learned Counsel has extensively referred to orders of learned Single Judge, the judgment of the First Division Bench, the Hon'ble Supreme Court, and in the review petition filed against the First Division Bench judgment. Hence, the validity of Settlement has stood the test of judicial scrutiny.
8. In order to buttress his pleas, the learned Counsel has relied on the following decisions: i) **Transmission Corporation, A.P. Ltd., and others vs. P. Ramachandra Rao and another** [(2006) 9 SCC 623], ii) **Vasapu L. Kumar v. ONGC Field Operations Union** [2018 SCC Online Hyd 1: (2018) 1 ALT 505 (DB)], iii) **Judgment of this Court in Writ Appeal No.20544 of 2017 and WP (PIL) No.149 of 2017.**

(V) Similarly, Mr. Prabhakar Chikkudu, the learned counsel for the respondents, in W.P. Nos.1314 and 7259 of 2018, has raised the following counter-contentions:

1. The persons governed by the Settlement dated 18.12.2010 are certainly entitled to claim weightage. Since Article 14 of the Constitution of India does not prohibit reasonable classification, granting weightage to service already rendered would not offend the said Article. He, thus, defends the weightage to contract service.
2. He has relied upon the following citations: i) **K. V. Rajalakshmiah Setty and another vs. State of Mysore and another**¹⁹, ii) **Shyam Lal vs. ch. Charan Singh, Haryana Agrl. University**²⁰, iii) **Karnataka Live Band Restaurants Association vs. State of Karnataka and others**²¹.

¹⁹ (1967) 2 SCR 70 : AIR 1967 SC 993

²⁰ 1999 (9) SCC 201

²¹ (2018) 4 SCC 372

Category II:

Petitioners in W.P.Nos.19831, 25648, 37152 and 41102 of 2018 are those who are working on the post of Diploma Operator or Artisans-Grade I, on contractual basis, in TSTRANSCO. They have applied for the post of Sub-Engineer in TSNPDCL. However, in the notification No. 02/2018, issued by TSNPDCL, it has not granted the benefit of weightage for the contract service rendered by a contractual employee. Thus, the petitioners have challenged the legality of recruitment notification, namely Notification No. 2/2018, whereby the benefit of grant of weightage marks has been denied by TSNPDCL.

17. Before we record the submissions of the different learned counsel appearing in the various writ petitions, it is imperative to first narrate the factual matrix of the case. It is as under:

a) In the combined State of Andhra Pradesh, the generation, transmission, and distribution of electricity were initially under the Andhra Pradesh Electricity Board. Subsequently, the Board was disbanded, and reorganized into different Companies. These companies took over the task of generation, transmission and distribution of electricity throughout the State. While APGENCO dealt with the generation of electricity, APTRANSCO, with transmission of electricity. Moreover, four different companies were formed, for distribution of electricity. These companies catered to the needs of different regions of the State. Thus, these companies were called, (i) The Northern Power Distribution Company Ltd., (ii) The Southern Power Distribution Company Ltd., (iii) The Eastern Power Distribution Company Ltd., and (iv) The Central Power Distribution Company Ltd.

b) For several years these Power Utilities Companies resorted to employment on contract basis or on outsourcing basis. Though, the contractors were changed, but the employees continued to work for the

Power Utilities Companies. There was lot of unrest in the work force against continuing them on contract basis. The Trade Unions resorted to strike as a means to protest against exploitation of workers in this manner. Finally, the Managements of the Power Utilities Companies entered into settlement to resolve the Industrial Dispute and to buy peace. The Memorandum of Settlement, dated 18.12.2010, arrived under Section 12 (3) of Industrial Disputes Act, envisaged the assignment of weightage to contract service in the regular recruitment.

c) Clause-1 of the Memorandum of settlement reads as under:

Demand No.	Demands (As per Lr., dt.27.10.2010)	Record of the Discussions (As on 18.12.2010)
1	Filling up of all the existing vacancies in the initial cadres such as Watchmen, JLM, Driver, LDC, Typist and Sub-engineers etc., with the existing contract labour working in the APTRANSCO and four DISCOMs.	Agreed to fill up all the vacancies after obtaining necessary approval of Government of A.P. Modalities will be worked out duly giving suitable sufficient weightage up to a maximum of 45 marks to the contract labour already working in the utilities.

d) Further, while carving out ten districts of Telangana geographical area from the combined state of Andhra Pradesh, with effect from 2.6.2014, the State of Telangana was formed as a separate State. Consequently, the Power Utilities Companies were also divided, and new companies were established in the Telangana State. These companies are: (i) The Generation Corporation of Telangana Limited (TSGENCO), (ii) The Transmission Corporation of Telangana Limited (TSTRANSCO), (iii) The Northern Power Distribution Company of Telangana Limited (TSNPDCL) and (iv) The Southern Power Distribution Company of Telangana Limited (TSSPDCL). Thus, these companies were established as independent entities which severed their relationship from the earlier Power Utilities Companies of the combined State of Andhra Pradesh. Hence, these newly formed Power Utilities Companies of Telangana have

their own workforce, consisting of both permanent and temporary employees.

e) After formation of separate Power Utilities Companies in the State of Telangana, the Trade Unions raised demand for absorbing the contractual workers, or outsourcing personnel, within the Power Utilities Companies. One settlement was reached on 14.06.2016, and another settlement was signed on 01.12.2016. However, neither of these two settlements speak about the grant of weightage marks. Therefore, these settlements are not germane to the controversy before this Court.

f) It is, thus, clear that the Managements agreed to grant weightage of marks to contract service in the direct recruitment. Accordingly, in the recruitment notifications which followed the above Settlements, 45 marks were apportioned for the contract service. As mentioned above, these notifications were challenged before the learned First Division Bench. As also mentioned hereinabove, the learned First Division Bench confirmed the order of the learned Single Judge and upheld both the grant of the weightage marks, and the reduction of the marks from 45 to 20%.

g) Furthermore, as mentioned hereinabove, TSTRANSCO issued the recruitment notification, namely Notification No. 04/2017, calling for application for the post of Junior Linemen. Similarly, it also issued Notification No. 05/2017, for inviting applications for the post of Sub-Engineer. In both these notification, TSTRANSCO has granted the benefit of weightage marks to the temporary employees in contract service. However, when TSNPDCL issued its recruitment notification, namely Notification No. 2/2018, dated 24-05-2018, for the post of Sub-Engineers, it did not grant any benefit of weightage marks to the temporary employees in contract service. The petitioners have applied to TSNPDCL for recruitment for the post of Sub-Engineer. However, they

are not being given the benefit of weightage marks for the temporary service rendered by them on the post of Artisans in TSTRANSCO. Therefore, the above noted writ petitions have been filed for challenging the non-grant of weightage marks by TSNPDCL.

(I) **Ms. B. Rachna**, the learned counsel, for petitioners in W.P.No.19831 of 2018, has raised the following contentions:

1. The petitioners were working as the Diploma Operators in TSTRANSCO. In TSTRANSCO, four grades of Artisans were created; the Diploma Operators were absorbed as Artisans. Thus, presently the petitioners are working as Artisans Grade-I. The educational qualifications for a Diploma Operator in TSTRANSCO, and for a Sub-Engineer in TSNPDCL are the same. Moreover, the nature of duties and responsibilities undertaken by the former and the latter are also the same. The petitioners have rendered long service ranging from seven to fifteen years in TSTRANSCO. Thus, the experience gained by them cannot be ignored while they apply for recruitment in TSNPDCL. Therefore, TSNPDCL is not justified in denying the benefit of weightage marks to the petitioners for their temporary service rendered by them in TSTRANSCO.

2. The grant of weightage marks neither offends the equality clause in Article 14 of the Constitution of India, nor violates the decision of the Hon'ble Supreme Court in **Umadevi** (supra). For awarding of marks for temporary service, the mode of entry into service is irrelevant. While the learned counsel has defended the grant of weightage marks to the contract employees, she has pleaded for the extension of the benefit to the petitioners.

3. The work rendered by the Diploma Operator in TSTRANSCO and the Sub-Engineer in TSNPDCL is same. Therefore, the Diploma Operators (now called Artisans) should be granted weightage of marks for the service rendered as Diploma Operator in TSTRANSCO. According to the learned counsel, while earlier the same organization extended the benefit of weightage to the contract

employees, but now the same is being denied to them. Thus, the benefit is being denied illegally. Hence the power to grant the benefit is being exercised arbitrarily. The omission is not only illegal, but is also unsustainable.

(II). On the other hand, Mr. J. Sudheer, the learned counsel for petitioners in W.P. No.25648 of 2018, has pleaded as under:

1. TSNPDCL is bound by the Settlement arrived under Section 12(3) of the Industrial Disputes Act, 1947 (for short, 'Act, 1947'). According to the Settlement dated 18-12-2010, all the Power Utilities Companies had agreed to grant the benefit of weightage to the temporary employees on contractual basis. Thus, even TSNPDCL is bound by the said Settlement. Therefore, it cannot wriggle out of its commitments made in the Settlement. Thus, the denial of weightage marks in the impugned notification issued by TSNPDCL is patently illegal.

2. The benefits of Settlement were not only extended earlier, but in the earlier round of litigation, the Company had also defended the weightage for contract service. The weightage to contract service is across the board; no sub-classification is permissible. Thus, there is no justification in denying the weightage of contract service rendered by petitioners as Artisans/Diploma Operators in TSRANSCO.

3. Moreover, non-extension of weightage to the Artisans working in TSTRANSCO is discriminatory, unfair, and arbitrary. The differentia sought to be brought out by TSNPDCL to create a sub-classification is invalid. The petitioners are holding Diplomas in Electrical discipline. The petitioners, who are working as Artisans in TSRANSCO, perform the same set of functions and duties as the Sub-Engineer in TSNPDCL. Therefore, whether an employee is called a Diploma Operator/ Artisan, or a Sub-Engineer, the work output of the former is the same as that of the latter. In fact, the material filed by TSNPDCL about the job profile to distinguish between a Diploma Operator/ Artisan, and a

Sub-Engineer is not authentic, as it is contrary to actual work entrusted to the petitioners.

4. Further, the contract employees are a homogenous group. Merely because, petitioners are designated as Diploma Operators, and some of them are later appointed as Artisans, cannot take away their right to compute contract service in the selections to the post of Sub-Engineer in TSNPDCL. Moreover, the discretion exercised by TSNPDCL is unbridled. Therefore, it offends the equality clause enshrined in Art. 14 of the Constitution of India.

5. Furthermore, in the Settlement arrived under Section 12(3) of the Act, 1947, what is mentioned is “power utilities”. Therefore, it is binding on all the Power Utilities Companies. This was also the understanding of these power utilities Companies all along. Moreover, Clause 4(a) of the Settlement also makes it applicable to future recruitment. While so, for the first time now, the Power Utilities Companies have carved a separate group from amongst the homogeneous group, i.e., contract employees/ employees working on outsourcing basis, extending the weightage of marks to contract service only to Junior Linemen, but denying the same to the post of Sub-Engineer. Such mini-classification, amounts to hostile discrimination; it falls foul of Article 14 of the Constitution of India.

6. There is intelligible differentia between a contract employee, and an open market candidate. Hence, unlike should not be treated alike. Therefore, it is always permissible for an employer to prefer a person who has gained experience, working in the same or similar post, over an inexperienced person. Hence, there is no illegality in providing weightage for contract service. In fact, if such a weightage were not granted, it would be offending Article 14 of the Constitution of India.

7. Moreover, the two Division Benches were not dealing with the same issue. For, the issue for consideration before the First Division Bench was implementation of memorandum of Settlement in the Power Utilities

Companies. However, the issue for consideration before the Second Division Bench was an application of the principle of legitimate expectation. Thus, the issues in both the decisions are distinguishable. Hence, there is no conflict of opinion between the two decisions.

8. In support of his contentions, the learned counsel has relied on **Comptroller and Auditor-General of India, Gian Prakash, New Delhi and another v. K. S. Jagannathan and another**²² and **Union of India and another v. S.B. Vohra and others**²³.

(III) Mr. Chandraiah Sunkara, the learned Counsel, appearing on behalf of Mr. A. Jagannadha Rao, the learned Counsel for the petitioners in W. P. Nos. 37152 and 41102 of 2018, has raised a single contention, namely that the memorandum of Settlement, dated 18.12.2010, is binding on all the Power Utilities Companies. Clause-I of the Settlement, quoted above, is wide in its scope: the employees working in any Power Utility Company can compete in any other Power Utility. In terms thereof, the Artisans working in TSTRANSCO are, indeed, entitled to weightage of temporary service. In order to buttress his pleas, the learned counsel has extensively referred to Sections 18 and 19 of the Industrial Disputes Act, 1947.

(IV). On the other hand, defending the Power Utilities Companies, Mr. G. Vidya Sagar, the learned Senior counsel, has raised the following submissions:

1. The recruitment notification, dated 15.12.2011, was a combined notification of the then AP TRANSCO, and (4) four other DISCOMS. It prescribed 45 marks towards contract service. It did not make any distinction with reference to the employment in a Power Utility Company. Thus, all the employees were eligible to compete in all the Power Utilities Companies. However, in the batch of writ petitions challenging the recruitment notification, the learned Single Judge reduced the marks for contract service to 20%, and extended the weightage to the contract service rendered in the same Power

²² (1986) 2 SCC 679

²³ (2004) 2 SCC 150

Utility Company and in the same post. The decision of the learned Single Bench was upheld by the First Division Bench, and by the Hon'ble Supreme Court. Thus, the present recruitment notification is in compliance with the said directions. Therefore, the Power Utilities Companies have to accord marks to contract service, and to confine the computation of contract service to the service rendered in the concerned Power Utility Company. Moreover, in the review petitions filed by the Power Utilities Companies, against the First Division Bench Judgment, the First Division Bench granted the permission to go for fresh recruitment. Thus, the present recruitment is, in fact, a continuation of the notification of 2011.

2. Further, the Company is bound by the Settlement dated 18.12.2010 subject to the directions of this Court.

3. Furthermore, during the selection of the temporary employees, eligibility criteria was prescribed, the eligibility was scrutinized, a selection process was followed. Only after all the factors were weighed, were the employees appointed on temporary basis. Even when the outsourcing contractors were changed, the temporary employees continued to work. Hence, such employees have been working for a large number of years. Moreover, their employment is not contrary to the law as laid down by the Hon'ble Supreme Court in **Umadevi** (supra). In order to support the grant of weightage marks, the learned Senior Counsel has relied on Paragraph-53 of **Umadevi** (supra) judgment. The learned Senior Counsel has also relied on **Sachivalaya Dainik Vetan Bhogi Karamchari Union** (supra).

4. However, the learned Senior Counsel emphasized that the nature of work undertaken by Diploma Operator in TSTRANSCO is quite different from the work rendered in DISCOMS. According to the learned Senior Counsel, while in TSTRANSCO, they worked as Sub-Station Operator, in DISCOMS, they neither work in the sub-station, nor perform any similar work. Moreover, there are no Diploma Operators in DISCOMS. Therefore, the service rendered in TSTRANSCO is not considered for awarding weightage marks for contract

service in TSNPDCL. Further, This decision is also in accordance with the learned First Division Bench Judgment.

5. Moreover, the methodology of conferring weightage, only to the outsourced contract workers working in the TS Power Utility as on the date of the notification, is legally justified. It does not violate Articles 14 and 16 of the Constitution of India. For, the benefit of contract service can be considered only for those who are working as contract workers in the concerned Power Utility; it cannot be granted generally.

(V) Supplementing the submissions of the learned Senior Counsel, Mr. G. Vidya Sagar, Ms. Priyanka Singh, the learned counsel, has raised the following contentions:-

1. TSNPDCL was not party to the Settlement dated 18.12.2010 Therefore, the Settlement is not binding on TSNPDCL.
2. Moreover, the Diploma Operators in TSTRANSCO do not render the same set of duties and responsibilities as rendered by the Sub-Engineers in the TSNPDCL. Thus, the denial of marks for the contract service rendered in the TSTRANSCO for employment in the TSNPDCL stands the test of reasonable classification. In order to buttress this plea, the learned counsel has taken the Court through the educational qualifications prescribed for the post of Sub-Engineer (Electrical), the procedure of selection, and the job description. Therefore, for recruitment to the post of Sub-Engineer, TSNPDCL cannot be compelled to extend the weightage marks for service rendered in the TRANSCO as Diploma Operator.
3. Since the employer is different, the contract employees of TSTRANSCO cannot seek parity. Even the principle of legitimate expectation is not attracted in the present case.

4. She has placed reliance on the following decisions: i) **Transport & Dock Workers Union v. Bombay Fort Trust**²⁴; ii) **Sachivalaya Dainik Vetan Bhogi Karmachari Union, Jaipur vs. State of Rajasthan and others** [(2017) 11 SCC 421]; iii) **Chiranjit Lal Chowdhuri v. Union of India**²⁵.

Category-III:

(I). Mr. G. V. Shivaji, the learned Counsel for petitioners in W.P.No.4022 of 2018, has made the following submissions:

After the bifurcation of the combined State of Andhra Pradesh, the petitioners were allotted to the Power Utility of State of Andhra Pradesh. But merely because petitioners were allotted to the State of Andhra Pradesh, consequent to bifurcation of the State, the Contract/Outsourcing services rendered by them when Power Utilities Companies were common cannot be ignored. Thus, there is no justification to ignore such service. It is arbitrary and unconstitutional. Hence, the petitioners are challenging Conditions 'B' and 'C' of notification, dated 28.12.2017, to the extent of restricting consideration to contract service only in Telangana State Power Utilities Companies.

(II) On the other hand, Mr. G. Vidyasagar, the learned Senior Counsel has pleaded that after the bifurcation of the State of Andhra Pradesh and Telangana, the two States are separate entities. In fact, Power Utilities Companies in Telangana were reorganized into separate but distinct Power Utilities Companies. Therefore, the present Power Utilities Companies working in Telangana have an independent existence from the previous or current Power Utilities Companies which had functioned or are functioning in the State of Andhra Pradesh. Further, the Settlement dated 18-12-2010 does not extend the terms of the Settlement to the Power Utilities Companies of other States. Hence, even under the said Settlement, neither TSTRANSCO, nor TSNPDCL is bound to give the benefit of weightage to those who are working in Power Utility Company of another State. Lastly, the learned First Division Bench had held that the

²⁴ (2011) 2 SCC 575

²⁵ AIR 1951 SCC 41

benefit of the weightage marks would be given only to those who are working in the same Power Utility Company and on the same post. Therefore, the petitioners are not entitled to claim that the benefit of weightage should equally be extended to them.

18. Considered the submissions of the learned Counsel for the parties, perused the impugned notifications, Government Orders, examined the record, and considered the case law cited at the Bar.

19. Having recorded the contentions of all the counsel relating to both the Divisions, and relating to all the categories, we will begin our discussion firstly with the Constitutional challenge to Rule 31 of the General Rules, and then deal with the reasoning qua each category. We will answer the reference at the end of the judgment.

ISSUE NO. (i): The Constitutional validity of Rule 31 of the General Rules: the power of relaxation and relaxation of Rule 9(b) of the General Rules.

20. The service conditions of employment in Government services can be regulated by an Act of State Legislature. However, if no such enactment is made, the Government, in exercise of powers vested in proviso to Article 309 of the Constitution of India, may make rules governing the service.

21. Government discharges its functions through various departments; each department deals with particular aspect of governance. Every department has hierarchy of employees dealing with various aspects of that department. There will be specialists, and other supporting staff. Specialists may require particular or specific qualifications depending on the area of functioning of a department. But the qualifications of the supporting staff may be the same, wherever they work, irrespective of the functioning of a department. Such qualifications are applicable across the departments. Further, there are certain general conditions of service which are applicable uniformly to all the employees, i.e. to the specialists and others. Thus, broadly, the rules governing service, in a particular department, are called Special Rules. In addition, the

employees are also governed by other rules dealing with general conditions of service. These rules are called the General Rules.

22. In the Medical, Health and Family Welfare Department and in the AYUSH Department there are several Special Rules made in exercise of power under proviso to Article 309 of the Constitution of India, which deal with particular service conditions of specialist posts.

23. In exercise of power under proviso to Article 309 of the Constitution of India, the Telangana State and Subordinate Service Rules, 1996 ('the General Rules', for short) were notified. These are the General Rules; they have been referred to, hereinabove, as the General Rules. The General Rules regulate the general conditions of service; they are applicable to all services in the State where a provision is not made in the Special Rules governing a particular post. The General Rules deal with eligibility criteria for direct recruitment, tests required to be passed for recruitment, commencement of probation, conduct, extension/termination of probation, declaration of probation, seniority, promotion etc.,.

24. Rule 12 of the General Rules prescribes eligibility criteria for direct recruitment. This provision is general in nature, and is subject to requirements in Special Rules governing a particular post.

25. Rule 10 of the General Rules enables temporary appointment to any post when exigency of service requires such temporary appointment, without following the due process. Normally, Special Rules shall prevail over General Rules if there is a conflict between two provisions. However, there are certain provisions in the General Rules, which deal with specific aspects of Government service, and govern that aspect notwithstanding any other provision in the Special Rules. Rules 9 and 31 of the General Rules fall into this category. They open with non-obstante clause. Rule 9 of the General Rules enables appointment to a post by agreement or contract. Rule 31 of the General Rules

vests residuary power in the Governor to relax any service rule, special or general.

26. To appreciate the contentions with regard to the scope of power to relax and the need to grant relaxation, Rules 9 and 31 of the General Rules, have to be considered. Rules 9 & 31 read as under:

Rule 9. APPOINTMENT BY AGREEMENT OR CONTRACT:

(a) (i) Notwithstanding anything contained in these rules or special rules it shall be open to the State Government to make appointment to any post in a service, class or category, otherwise than in accordance with these rules or special rules and to provide by agreement or contract with the person(s) so appointed, for any of the matters in respect of which, in the opinion of the State Government, special provisions are required to be made and to the extent to which such provisions are made in the agreement or contract, nothing in these rules or the special rules shall apply to any person so appointed in respect of any matter for which provision is made in the agreement or contract:

Provided that in every agreement or contract made in exercise of the powers conferred by these rules, it shall further be provided that in respect of any matter in which no provision has been made in the agreement or contract, provisions of these rules or special rules relatable to the post shall apply.

(ii) The agreement or contract may inter-alia include provisions in respect of conditions of service, pay and allowances, discipline, contract period of appointment, notice period for termination of appointment by either party and other relevant matters.

(iii) The Government may, by order, prescribe the form of such agreement or contract.

(b) A person appointed under sub-rule (a) shall not be regarded as a member of the service, in which the post to which he is appointed, is included and shall not be entitled by reason only of such appointment, to any preferential right to any other appointment in that or in any other service.

Rule 31: Relaxation of rules by the Governor:

*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 a 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 Telangana 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 rule or rules is likely to cause undue hardship to the person or class of persons concerned.*

(Emphasis added)

27. A bare perusal of Rule 9 of the General Rules clearly reveals that it is applicable notwithstanding any other provision in the General Rules or Special Rules. The said provision enables the State Government to make appointment by agreement, or by contract to any post. Such appointments can be to the specialist posts, or to the supporting staff posts in a Department. In other words, Rule 9 of the General Rules creates a separate class, in public employment, which is governed by terms and conditions of contract of employment. While vesting such a power in the State Government, Sub-Rule (b) mandates that ***'person appointed under sub-rule (a) shall not be regarded as a member of the service and should not be entitled by reason only by such appointment to any preferential right to any other appointment in that or in any other service'***. In other words, this provision makes it abundantly clear to a person, accepting employment on contractual basis, that such employment does not confer on him/her any right for a preferential claim for permanent appointment for the post in which he/she is working or to any other service.

28. To the extent possible the Special Rules and General Rules deal with all aspects of employment. But, it cannot be said that the Rules would always visualize all contingencies, unforeseen circumstances, or extraordinary circumstance. There can be any number of unforeseen situations, which may require dealing with the situation in a peculiar manner. But the existing rules may not envisage how to deal with such a unique situation. Further, application of existing provision may cause undue hardship to a person, or class of persons. No Rule can be inflexible to deal with certain special contingencies, or certain peculiar aspects of service. In order to deal with the unforeseen circumstances, the residuary power is vested in the Governor of the State under Rule 31 of the General Rules. Rule 31 of the General Rules empowers the Governor to relax the rigors of any Rule or Rules, General or Special and to deal with a particular situation. Unless such power is preserved in the State, applying an inflexible rule may result in greater injustice. Thus, it is inherent to the scheme of any legislative document to vest residuary power in

appropriate authority to deal with special contingencies/circumstances. Power of relaxation *per se* can not be said as unconstitutional or contrary to rule of law.

29. Rule 31 of the General Rules, is very exhaustive and attends to various contingencies. It opens with a non-obstante clause implying thereby that the said Rule can be invoked in order to deal with a contingency not envisaged by any other General Rule, or Special Rule by relaxing rigors of an existing rule, General Rule or Special Rule. It vests the power in the Governor to relax (i) any Rule forming part of the General Rules or Special Rules; (ii) in favour of any person or class of persons in relation to their application of General Rules or Special Rules; (iii) to any member of service; or (iv) to any person to be appointed to the service, class or category; (v) to a person or class of persons who have served in any civil capacity in the Government. Such relaxation can be in the manner as may appear to be just and equitable to the Governor, if he considers necessary in the public interest, or where the application of a Rule or Rules is likely to cause undue hardship to the person, or class of persons concerned.

30. Most importantly, this Rule is not confined only to a member of a service. Instead it also extends the scope of exercise of powers to persons who are not members of service. It also talks about exercise of power where the Governor opines that it is just and equitable to grant relaxation to person or class of persons, or the public interest requires granting of such relaxation. Thus, the scope of power of relaxation is very wide.

31. However, the wide power is not an unbridled power. For, Rule 31 of the General Rules also provides enough guidance to the Governor for exercising such a vast power. Thus, it cannot be said that the power is unguided or untrammelled. Moreover, such a power is reserved to His Excellency the Governor of the State, the highest Executive Authority. Conferring such power in the Governor would mean, it requires detailed exercise by the Government

before placing the matter before the Governor. Thus, it is not a routine administrative decision.

32. The principle of law, on conferment of power of relaxation and how to exercise such power, is well settled. It need not be over-emphasized. It is sufficient to note a few of the judgments of the Hon'ble Supreme Court, and a Full Bench judgment of the Hon'ble Kerala High Court. They are as follows:-

33.1. In **S. K. Singh** (supra), Hon'ble Supreme Court held as under:

“24. It may also be noticed that the rule-making power, under the proviso to Article 309 of the Constitution has been emphasised as legislative in nature and thus, the test to determine the constitutionality of any provision of such Rule is whether the legislature was competent to enact such a provision.”

33.2. In **Amrik Singh v. Union of India**²⁶, where power of relaxation was challenged, the Hon'ble Supreme Court held in para 10:

10...It is not arbitrary because the Rule contains guidelines. Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation. There must be undue hardship and, further the relaxation must promote the dealing with the case “in a just and equitable manner”. These are perfectly sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory (sic) of the rights of anyone in this residuary power vested in the Central Government...

33.3. In **R.R. Verma v. Union of India**²⁷, Supreme Court observed, in para 4, as under:

4...Now, very wide as the range covered by the rules is, the rules can never be exhaustive. Unforeseen and complex situations often arise as will be obvious even from a bare perusal of the cases reported in the law journals arising out of “service controversies”. Very often it is found that an all too strict application of a rule works undue hardship on a civil servant, resulting in injustice and inequity, causing disappointment and frustration to the civil servant and finally leading to the defeat of the very objects aimed at by the rules, namely, efficiency and integrity of civil servants. Hence it is that the Central Government is vested with a reserve power

²⁶ (1980) 3 SCC 393

²⁷ (1980) 3 SCC 402

under Rule 3, to deal with unforeseen and unpredictable situations, and to relieve the civil servants from the infliction of undue hardship and to do justice and equity...

33.4. A Full Bench of Kerala High Court in **T. C. Sreedharan Pillai and others Vs The State of Kerala and others**²⁸, exhaustively dealt with the scope and applicability of power of relaxation and constitutional validity of such Rule. Compared to the provision in Rule 31 of the General Rules herein, Rule 39 considered by the Full Bench of Kerala High Court is not exhaustive. The Full Bench held as under:

“23. We may now summarise the conclusions that emerge from the preceding discussion. We hold that Rule 39 is valid and that it does not suffer from the vice of arbitrariness or excessive delegation. We are of the view that the said Rule does not warrant the passing of any general order with respect to any undefined or large group of persons exempting them from the operation of any existing rule or granting a relaxation of the rules in favour of such a group. The rule only authorises the authority designated therein to deal with any specific case or cases of individual officers and to pass orders in a just and equitable manner after a full application of mind of the authority to all the relevant facts and circumstances necessary for a proper determination of the question as to what would constitute justice and equity. In exercising this power it is open to the authority to relax the rigour of the rules to such extent as may be necessary to ensure justice and equity, but it cannot completely nullify the operation and effectiveness of the rules in the guise of relaxing their rigour. If, however, special circumstances do exist warranting a valid classification of the particular case or cases it will also be open to the authority exercising the power under Rule 39 to accord a special treatment in respect of such exceptional cases even by exempting the person or persons concerned from the operation of any particular rule. In saying this we consider it necessary to emphasise that such a course will be permissible only in those rare cases where very strong grounds exist justifying a valid classification of the cases of the officers in question for the purpose of Articles 14 and 16 of the Constitution. In determining what is ‘just and equitable’ the authority should take into account the over all effect that the proposed order would have in relation not merely to the particular officers whose cases are specifically dealt with by it but also to all others belonging to the same service, category or class. The mere fact that the enforcement of a rule creates hardship to an officer or a group of officers will be no ground for invoking the power under Rule 39, because it must be assumed that the possibility of the causation of any such hardship must have been duly taken into account at the time when the rule in question was made and the rule-making authority has nevertheless thought it fit to enact such a provision.”

33.5. In **A.P. Showkath Ali v. State of Kerala**²⁹, the Hon’ble Supreme Court upheld the view taken by the Full Bench of Kerala High Court in **T.C. Sreedharan Pillai** (supra) on power of relaxation vested in the Government.

34. Thus, it is too late in the day to contend that the power of relaxation should not be vested in the Governor, and the rigors of Rules should not be

²⁸ 1972 SCC Online Kerala 198

²⁹ 2018 (11) SCC 688

relaxed. It is, indeed, permissible to relax the rigors of the rules to such an extent as may be necessary to ensure justice and equity. If, circumstances warrant, where very strong grounds exist justifying a valid classification in respect of persons concerned, the power under Rule 31 of the General Rules can be exercised, to relax the operation of rigors of a rule, to mitigate the hardship to such person or class of persons.

35. From the scheme of the General Rules, it is safe to assume that the underlying object to make temporary appointment to a post in public service is to treat such appointment as temporary/stop-gap arrangement, pending regular recruitment. However, from the submissions of the learned Special Government Pleader, and the learned Senior Counsel, Mr. G. Vidyasagar, it is apparent that such employment is continued for years together, and some procedure of selection, if not the whole gamut, was followed before employing persons on contract basis. It also appears that there was reluctance on the part of the regular employees to work in tribal areas and/or rural areas. Thus, non-availability of persons from the open market, may have compelled the State Government to resort to contract employment. On the other hand, persons may have accepted the contractual employment out of sheer necessity, or desperation. Whatever may be the reason, admittedly the contractual employees have rendered long services while attending to core issue of governance, i.e., health care to the needy people.

36. Further, though there is a need for more doctors/lecturers/other supporting staff, the posts are not created on permanent basis. Even when posts are created, timely steps are not taken for filling up of these posts on regular basis. Instead, permission was granted to make temporary appointments. Therefore, there can be 'n' number of reasons for resorting to contract/temporary employment—reasons which were not envisaged either by the Special Rules, or the General Rules.

37. Admittedly, several persons were appointed as Medical Officers/Lecturers and other supporting staff in Para-medical service, such as

Multi-Purpose Health Assistants, Lab Technicians Grade-II, Staff Nurse, Pharmacist Gr. II, etc., on contract basis after following some process of recruitment. But their appointment was treated as on contract basis, initially valid for one year, and thereafter extended from time to time. They have been working against regular posts for a very long time; they have been working in arduous conditions. They are otherwise also fully qualified and eligible. These very posts are now sought to be filled up on regular basis. With a fond hope of securing public employment on permanent basis, they have been discharging service for a long time. However, their appointment is governed by Rule 9(b) of the General Rules, which prohibits computation of contract service in the regular employment.

38. Unless Rule 9(b) of the General Rules is relaxed, the long service rendered by them as contract employment would become otiose. Moreover, after having rendered considerable service, they would face the ignominy of termination of contract employment. Thus, it would certainly be inequitable and unjust to throw them out at this stage, that too, after having utilized their services in a core aspect of public service i.e., provision of health care to the needy people. Such a situation was not envisaged when Rule 9 of the General Rules was introduced. Obviously, the said Rule was intended to deal with an emergency or a stopgap arrangement. But the said Rule now operates as an obstacle for considering their contract service for the purpose of regular appointment.

39. Once special circumstances are satisfied, the power under Rule 31 of the General Rules can be exercised to relax the rigors of Rule 9 (b) of the General Rules. The rigors of Rule 9(b) of the General Rules is relaxed by G.O.Ms.No.166 dated 09.09.2017, in exercise of powers vested in the Governor under Rule 31 of the General Rules. Most importantly, the Government has not resorted to regularizing the service of the contract employees, but seeks to assign some weightage to service rendered by these contract employees in the process of regular recruitment. Weightage to experience gained in the same job in the

process of regular recruitment is valid. In the conspectus of facts and circumstances of these cases, it cannot be said that exercise of power of relaxation is arbitrary and offends Articles 14 & 16 of the Constitution of India.

40. Further, Medical Officers/Lecturers and Para-Medical staff such as, Multi-Purpose Health Assistants, Staff Nurse, Lab Technicians Grade-II, etc., working on contract basis are class by themselves. Hence, they are an identifiable group of persons. Rule 31 of the General Rules enables exercise of power of relaxation to lift rigors of any Rule in favour of a person or class of persons. We see no merit in the contention of Mr. Anand Kumar Kapoor that there is no identification of person/class of persons who are entitled to the benefit of relaxation. For, G.O.Ms.No.166 dated 09.09.2017 clearly deals with recruitment to various categories of posts, grants relaxation of Rule 9(b) of the General Rules, lifts the ban imposed on consideration of service rendered on contract, and certainly addresses grievance of employees working on contract as class of persons.

41. While taking decision to assign weightage to the contract service, Government refers to the service rules governing the posts shown in paragraph-3 of the G.O.Ms.No.166, dated 09.09.2017, such as the qualifications prescribed in the recruitment rules, scales of pay, reservation, age of eligibility, etc., and then prescribes procedure of selection, category-wise. While stating that for the posts of Administrative Officer, Assistant Librarian and Assistant Statistical Officer, selections would be as per the existing procedure followed by TSPSC, when it comes to Paramedical Ophthalmic Officer, Staff Nurse, Radiographer, Lab Technician Grade-II, Pharmacist Grade-II, Physiotherapist, and ANM/PMHA(F), the Government prescribes a separate procedure for selection and apportioned marks for contract service. It is an exhaustive order, dealing with all aspects governing the above posts, which has been promulgated after due consideration of all relevant factors. Thus, it cannot be said that Government has not applied its mind, and has mechanically relaxed Rule 9(b) of the General Rules, and extended weightage to the contract service.

42. This issue is answered as under:

(i) Rule 31 of the General Rules vesting the power of relaxation in the Governor is constitutionally valid.

(ii) Rule 31 of the General Rules is very exhaustive and deals with all contingencies;

(iii) The Rule is not unguided or unbridled. Enough safeguards have been provided against arbitrary exercise of power of relaxation;

(iv) Employees working on contract basis are clearly an identifiable group. Thus, they are a class by themselves. And the power to relax Rule 9(b) of the General Rules is exercised covering all such employees;

(v) Said power was validly exercised to remove the embargo created by Rule 9(b) of the General Rules for computation of contract service in the regular recruitment process;

(vi) Relaxation of Rule 9(b) of the General Rules paves way to compute the contract service for weightage in the process of direct recruitment.

Therefore, the contentions raised by Mr. Anand Kapoor, the learned Counsel, with regard to the power of relaxation are unacceptable.

General Aspects of Selection Process:

43. Before we examine and decide the issues framed hereinabove, it would be apposite to first delineate the general aspects of selection process, the legal difficulties which arise in the said process, and also to deal with the case law on different aspects of selection process. For, this discussion would be useful for the final decision about the issues framed and mentioned above.

44. There are certain prerequisites for employment in the State service or in service under the State entities: i) the eligibility criteria needs to be prescribed; ii) regular recruitment should be made by following the procedure as prescribed by the Service Rules/ Regulations/ Bye Laws/ Policy decisions/ Circulars/ Instructions/ governing the service; iii) before commencing the recruitment

process, wide publicity, indicating the eligibility criteria and procedure of selection, needs to be given; iv) the selection has to be conducted in a transparent manner; v) the selection must be in strict compliance of Articles 14 and 16 of the Constitution of India.

45. Eligibility criteria include educational/professional/technical qualifications, experience, age etc. Procedure of selection may include selection exclusively based on written examination, or oral examination, or both; prescribing minimum pass mark in the written examination, and/or prescribing minimum pass mark in the oral examination; short listing of candidates for further selection, by holding screening test; prescribing preference based on higher educational qualifications, age, experience etc. Employer may prescribe tests to assess the skill in a particular discipline, such as typing, short hand, etc. Thus, it is for the employer to custom tailor the eligibility criteria and/or selection procedure as per his requirements. The employer is the best person to assess qualifications required to hold a post and method of selection.

46. Every person, who possesses the eligibility criteria, has a right to compete for public employment by participating in the selection process. However, such a right cannot be extended to appointment when the employer is not intending to fill all vacancies notified, or prescribes a cut off mark, but the aggrieved person has not crossed the cut off mark, though qualified in the recruitment examination, etc.

47. However, at times, the state government, or its entities fail to assess the employment requirement, and fail to initiate steps to make regular recruitment periodically. Instead, the State or its entities resort to temporary appointments or backdoor employment.

48. The backdoor entry to public service was/ is a common phenomenon. The officers concerned would appoint persons of their choice, calling such appointment as temporary, daily wage, part-time, contingent, Nominal Muster Roll etc., and continue such persons, in service, for years together. Later their

services may be regularized by formulating some scheme, or without a scheme, or under the guise of a Court order.

49. Recruitment to public employment is a perennial source of litigation. It covers a vast range of issues: from appointing on temporary basis to continuing temporary employment for long years, from not resorting to regular recruitment to reservation to social groups, from eligibility criteria to method of selection to illegalities in the selection process etc. Broadly, there are four aspects to employment in public service: **(i)** Scope of power of employer to regularize the services of persons employed on daily wage basis/Nominal Muster Roll/employed on consolidated wages/employed on contract basis/employed on outsourcing basis etc (for brevity hereinafter broadly classified as temporary employees); **(ii)** assigning preference to a class of persons in the selection process for employment; **(iii)** prescribing a procedure for selection for direct recruitment; **(iv)** scope of judicial review in matters concerning selection and weightage to temporary service.

THE PRECEDENTIAL LAW ON VARIOUS ASPECTS OF RECRUITMENT IN PUBLIC EMPLOYMENT:

50. There is enough precedential guidance for the four aspects of public employment noted above. For convenience they are considered under respective headings. However, at times, the judgments of the Apex Court may deal with more than one aspect of public employment noted above. Hence, there is bound to be some overlapping in the observations made by the Hon'ble Supreme Court.

(i) Scope of power of employer to regularize the services of temporary employees.

51. On this aspect, the Constitution Bench of the Hon'ble Supreme Court has rendered an authoritative pronouncement in **Umadevi** (Supra).

52.1. Having noticed the conflicting opinions, in the earlier decisions of the Hon'ble Supreme Court, on the issue of regularization of services of temporary

employees, the legal issue was referred to the Constitution Bench for authoritative pronouncement.

52.2. The Hon'ble Supreme Court held that no illegal appointment should be made to public employment, and recruitment should be made in due compliance with Articles 14, 16 and 309 of the Constitution.

52.3. The principles deducible from the decision of the Hon'ble Supreme Court in **Umadevi** (Supra) are as under:

a) A regular appointment to public service should be made consistent only with the requirements of Articles 14 and 16 of the Constitution. (paragraph 48);

b) The Rule of law compels the State to make appointments as envisaged by the Constitution. The constitutional scheme as adumbrated in Articles 14, 16, 21 and 309 of the Constitution makes it abundantly clear that public employment should be given only after affording opportunity to compete in a fair and equitable manner. (paragraph 50);

c) A temporary employee, whose engagement was not preceded by proper selection as recognized by relevant rules or procedure, cannot invoke theory of legitimate expectation to be confirmed in the post held by him. (paragraphs 46 and 47);

d) There is no fundamental right in those who have been employed temporarily to claim that they have a right to be absorbed in service. (paragraph 48);

e) No mandamus can be issued in favour of temporary employee directing the employer to make the employee permanent as he/she has no enforceable legal right for permanent absorption. In fact, the State has no legal duty to make the said employee permanent. (paragraph 52);

f) Appointments made on irregular basis (not illegal basis), against sanctioned posts, by persons who are qualified and have been working for more than ten years, without intervention of the Courts, can be considered for regularization. Accordingly directions were issued to formulate a scheme to regularize such persons as a one time measure. (paragraph 53); and

g) Persons who are not governed by directions in paragraph 53 can be permitted to compete in the regular recruitment by waving the age restriction, and by giving some weightage for the work rendered on temporary basis. (paragraph 55);

52.4. In the cases on hand, issue concerns weightage to the contract/outsourcing service in the direct recruitment.

52.5. Paragraph-53 of the judgment in **Umadevi** (supra) reads as under:

*“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, **the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals** and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.*

(Emphasis supplied)

53. Where the appointments are not made or continued against sanctioned posts, or where the persons appointed do not possess the prescribed minimum qualifications, the appointments are considered illegal. But where the persons employed possess the prescribed qualifications and were working against sanctioned posts, but had been selected without undergoing the process

of open competitive selection, such appointments are considered to be irregular. **(State of Karnataka Vs M.L.Kesari and others³⁰:Paragraph 7-iii).**

54. Directions issued in paragraph-53 in **Umadevi** (supra) triggered further litigation. The Constitutional Courts opined that the completion of ten years of service to qualify for regularization of irregular appointment was to be reckoned only as on 10.04.2006, the day on which judgment in **Umadevi** (supra) was rendered.

55. However, in **Narender Kumar Tiwari v. State of Jharkhand³¹**, the Hon'ble Supreme Court further held that the courts should adopt a pragmatic interpretation to regularization rules. The Apex Court held that all employees who have completed ten years of service on the date of promulgation of regularization rules should be extended the benefit of regularization.

56. In **Union of India and others v. Central Administrative Tribunal and others** (Civil Appeal Nos.175-176 of 2019, judgment delivered on 08.01.2019), the Hon'ble Supreme Court, reviewed all the decisions rendered by Benches of smaller strength after the decision in **Umadevi** (supra), and concurred with the view taken in **Narendra Kumar Tiwari** (supra) on pragmatic approach on claims for regularization of services.

Thus, regularization of services of temporary/ contract employees is permissible.

(ii) Assigning preference to a class of persons in the selection process for employment; (iii) prescribing procedure of selection for direct recruitment;

57. Employment in the State service or services in the State entities has to be made on regular basis, by prescribing eligibility criteria, and by following procedure of selection as laid down in the Service Rules/Regulations/Bye Laws/Policy decisions/Circulars/Instructions/governing the service. The

³⁰ (2010) 9 SCC 247

³¹ (2018) 8 SCC 238

concerned Service Rules/ Regulations/Bye-laws/Policy decision etc should prescribe eligibility criteria and the procedure of selection.

58. Two fundamental aspects which govern public employment are prescribing eligibility criteria to a post, and transparent procedure of selection. Eligibility criteria include educational qualifications, age, experience, etc. Procedure of selection may include selection exclusively based on written examination, or oral examination, or both; the employer may prescribe minimum pass mark in the written examination, and/or prescribe minimum pass mark in the oral examination; the employer may resort to short listing of candidates for further selection, by holding screening test; the employer may also prescribe preference based on higher educational qualifications, age, experience etc. Assigning weightage to service rendered on temporary basis and weightage to seniority in acquiring educational qualifications also come under procedure of selection. Employer may prescribe tests to assess the skill in a particular discipline, such as typing, short hand, physical endurance etc. Thus, it is for the employer to custom-tailor the eligibility criteria and/or selection procedure as per his/her requirements. The employer is the best person to assess qualifications required to hold a post, and the method of selection.

59. However, it is imperative that in the recruitment notification the employer must clearly specify the eligibility criteria, and the procedure of selection for recruitment to a public post. There must be wide publicity about the recruitment.

60. Every person who possesses the eligibility criteria has a right to compete for public employment by participating in the selection process. But a right to compete does not extend to a right of appointment. The employer is free not to fill up all the vacancies, or to prescribe a cut off mark. A person, who has not scored the cut off mark, cannot claim the right to be appointed. Moreover, a mere selection does not bestow a right of appointment. In fact, the right is of

equal opportunity to compete, a right of consideration, but certainly not of appointment.

(iv) Scope of judicial review in matters concerning selection and weightage to temporary service:

61. Judicial review of administrative action is core of our constitutional scheme and rule of law. It is all pervading and encompasses all aspects of Executive actions where rights of individuals are affected. However, scope of judicial review in matters touching recruitment to public employment is in a narrow compass. Judicial review on such aspects is confined to, whether any mala fide/arbitrary decision was taken to prescribe particular qualification only to favour a particular person(s), and/or such qualifications, though not at all required to hold the concerned post, but is prescribed in order to eliminate a person(s). And if there are illegalities in the selection process vitiating the selection. As long as the eligibility criteria and procedure of selection meets the mandate of Articles 14, 16 and 309 of the Constitution of India, and no illegalities are pointed out in the selection process, the scope of judicial review on the qualifications prescribed to a post, and the procedure of selection is limited one.

62. From precedent decisions of the Hon'ble Supreme Court on the scope of judicial review in matters of prescribing eligibility criteria, selection procedure and right of a candidate seeking public employment, the following principles can be culled out:

1. Article 14 or Article 16 of the Constitution of India neither exclude the laying down of selective tests, nor preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical, but they can also be general qualifications relating to the suitability of the candidate for public service as such. [**State of Mysore v. P. Narasinga Rao**³²-paragraph 4].

³² AIR 1968 SC 349

2. The Courts should not usurp the function of determining the appropriate method of selection, and the relative weight to be attached to the various tests even in cases of proven or obvious oblique motive. That would be amounting to re-writing the rules; the courts should not undertake such an exercise. [**Lila Dhar Vs State of Rajasthan**³³:Paragraph-9]

3. Matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, prescribing additional or desirable qualifications, including any grant of preference, criteria of selection fall within the exclusive domain of the employer. The Court has no role either in determining the methodology of recruitment, or in laying down the criteria of selection. It is the employer who is best suited to decide the requirements that a candidate must possess, according to the needs of the employer, and the nature of work. In the garb of judicial review, a Court cannot sit in the chair of the appointing authority, and decide what is best for the employer. Moreover, the Court cannot sit in appeal over the judgment of the employer, and ordain that a particular post be filled in a particular manner. The Court cannot lay down the conditions of eligibility. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. In such matters, the power of judicial review can be exercised only if it is shown that the action of the employer is contrary to any constitutional or statutory provision, or is patently arbitrary, or is vitiated due to mala fide. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving the efficiency of administration. [**Union of India v. Pushpa Rani**³⁴: Paragraph-37]. [**Maharashtra Public Service Commission** (supra) : Paragraph-9].

³³ (1981)4 SCC 159

³⁴ (2008) 9 SCC 242

4. Since the administrative authorities have experience in administration, the Court must respect this. Thus, the Court should not interfere readily with administrative decisions. The Court should not ordinarily interfere in policy decisions, unless there is clear violation of some constitutional or statutory provision (or the statute.). [**Dilip Kumar Garg v. State of U.P.**,³⁵: Paragraph- 15]. There should be judicial restraint in administrative decisions. [**Tata Cellular v. Union of India** [(1994) 6 SCC 651].

5. An enabling provision postulates a discretion which may or may not be exercised. The Court cannot find fault in exercising an enabling power in a particular manner. [**Zahoor Ahmad Rather and others Vs Sheikh Imtiyaz Ahmad and others**³⁶: Paragraph-29]

6. Where an Executive action of the State is challenged, the Court must tread with caution, and not overstep its limits. The interference by the Court is warranted only when there are oblique motives, or there is miscarriage of justice. [**Pradeep Kumar Rai v. Dinesh Kumar Pandey**³⁷: Paragraph- 21]

7. The recruitment notification merely amounts to an invitation to the qualified candidates to apply for recruitment. On their selection, they do not acquire indefeasible right to the post, even if all the vacancies notified are not filled up. [**Shankarsan Dash Vs Union of India**³⁸: Paragraph- 7; **Mohd. Rashid v. Director, Local Bodies, New Secretariat and others**³⁹: Paragraph-13].

8. In service jurisprudence, constitutional Courts should balance the equality principle with the principle of classification, dependent on the nexus for making the classification; this aspect is best left to the wisdom of the administrative authorities [**State of Uttarakhand Vs S.K.Singh**⁴⁰: Paragraph- 27].

³⁵ (2009) 4 SCC 753

³⁶ (2019) 2 SCC 404

³⁷ (2015) 11 SCC 493

³⁸ (1991) 3 SCC 47

³⁹ (2020) 2 SCC 582

⁴⁰ (2019) 10 SCC 49

9. If mode of selection is not prescribed by the rules, and there is no other impediment in law, it is permissible for the competent authority to lay down the norms for selection, such as holding tests, minimum benchmarks for written test as well as for viva voce. [**Ramesh Kumar v. High Court of Delhi**⁴¹: Paragraph-15]. Depending on the nature of the post, it is permissible to make selection based on performance in the interview. [**Kiran Gupta v. State of U.P.**,⁴²: Paragraph-26].

10. If classification is otherwise legal, valid and reasonable, it is not prohibited by Article 14 of the Constitution of India. [**State of Bihar Vs. Bihar State Plus-2 Lecturer Association and others**⁴³: paragraph-14].

63. From the above precedential case law on all the four aspects it is, thus, safe to conclude that:

a) It is permissible for the employer to formulate a scheme to regularize the services of temporary employees whose appointment was irregular, but not illegal, and who have been continuously working for more than ten years without the intervention of the Courts;

b) In the process of direct recruitment, it is open to the employer to permit temporary employees, and not governed by the directions in paragraph 53 of Umadevi, to compete in regular recruitment, (i) by relaxing age restriction; and (ii) by assigning weightage to such service;

c) It is for the employer to prescribe procedure of selection for direct recruitment to public employment;

d) While prescribing procedure of selection, it is permissible for the employer to apportion marks for temporary service, (seniority for waiting for employment after acquiring educational/professional and technical qualifications, age, etc.).

⁴¹ (2010) 3 SCC 104

⁴² (2000) 7 SCC 719

⁴³ (2008) 7 SCC 231)

e) The scope of judicial review in matters of prescribing qualifications, procedure of selection, and method of selection is very limited. The Writ Court cannot act as Court of appeal, and cannot determine what qualifications can be prescribed to hold a post; it cannot prescribe the procedure of selection to make regular recruitment. Only when there is patent illegality in the selection procedure/process would the writ Court interfere.

64. Guided by the above principles, issues formulated have to be answered.

65. **Issue No.(ii):** As part of selection process for direct recruitment, whether the employer has power to apportion marks towards the service rendered by a person on temporary basis or not?

66. This issue is separately considered with reference to State Government service and service in the Power Utilities Companies.

I. STATE GOVERNMENT SERVICE:

67. The State Government or its entities neither made proper assessment of employment requirement, nor resorted to periodical regular recruitment. Instead, appointments were made on temporary basis or on contract basis. While Rule 9 of the General Rules enables appointment to public service on contract basis, Rule 10 of the General Rules enables appointment on temporary basis. The Government generally resorts to these two provisions in order to recruit either on contract basis, or on temporary basis, as the case may be.

68. Rule 9 of the General Rules is already extracted while considering the first issue. Rule 10 of General Rules reads as under:

10. TEMPORARY APPOINTMENT INCLUDING APPOINTMENTS BY DIRECT RECRUITMENT, RECRUITMENT / APPOINTMENT BY TRANSFER OR BY PROMOTION:

(a) Where it is necessary in the public interest to fill emergently a vacancy in a post borne on the cadre of a service, class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may appoint a person temporarily, otherwise than in accordance with the said rules, either by direct recruitment or by promotion or by appointment by transfer, as may be specified as the method of appointment in respect of that post, in the special rules.

(b) No appointment under sub-rule (a) shall be made of a person who does not possess the qualifications, if any, prescribed for the said service, class or category: Provided that where, in the exigencies of service and where persons with the prescribed qualifications are not available, a person who may not possess all or some of the prescribed qualifications may be appointed on temporary basis. Every such person who does not possess such qualifications and who has been or is appointed under sub-rule(a) shall be replaced as soon as possible, by a person possessing such qualifications.

(c) A person appointed under sub-rule (a) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointments to such service, class or category.

(d) A person temporarily appointed under sub-rule (a) shall, whether or not he possesses the qualifications prescribed for the service, class or category to which he is appointed, be replaced as soon as possible by the member of the service, who is entitled to the appointment under the rules.

(e) The appointing authority shall have the right to terminate the service of a person who has been appointed under sub-rule (a), at any time, without assigning any reason and without any notice, if appointed by direct recruitment, revert to a lower category or grade, if promoted, or revert to the post from which such appointment by transfer was made, if appointed by transfer.

(f) A person appointed to any part-time post, created in lieu of a whole time post borne on the cadre of a service, class or category shall not be regarded as a probationer in such service nor shall he be entitled by reason only of such appointment to any preferential claim to future appointments to such service, class or category.

(g) No person appointed under sub-rule (a) shall be eligible to an increment in the time scale of pay applicable to him, unless he passes the tests, complete the training or acquires the qualifications prescribed in the Special Rules, as a condition for the grant of increment to a member of the service, class or category.

(h) The practice of making in-charge arrangements on own scale of pay of the incumbent concerned is totally prohibited and whenever filling up of vacant posts is considered expedient in the exigencies of administration, action may be taken to fill the post following the relevant Special / Ad hoc Rules, duly placing the proposals before the Departmental Promotion Committee / Telangana State Public Service Commission as the case may be or by making full additional charge arrangements as provided for in the Fundamental Rules.

(i) Temporary posts requiring special qualifications: Notwithstanding anything contained in these rules or special rules, if and when, a temporary post is created as an addition to the cadre of any service, class or category and the holder thereof is required by the State Government to possess such qualifications, knowledge or experience, any person who possesses such qualifications, knowledge or experience and who is considered to be the most suitable person to discharge the duties of such post may, irrespective of other considerations, be appointed temporarily to that post by the appointing authority; but the person so appointed shall not, by reason only of such appointment, be regarded as a probationer in such service, class or category nor shall he acquire thereby

any preferential right to future appointment to such service, class or category.

69. While Rule 9 of the General Rules vests an overarching power on the State Government to make appointments on contract basis/by an agreement to any post in its service, Rule 10 contemplates power to make temporary appointments. It deals with various contingencies when such appointments can be made. Thus, it is apparent from the above Rules, in the exigencies of service, it is permissible to make temporary appointments/appointments on contract basis, or by way of agreements with prior sanction of the competent authority. Appointments on contract basis to various posts are made by tracing power to Rule 9 of the General Rules.

70. The availability of this power has also triggered an avalanche of appointments on contract basis against regular posts. Many a times, some procedure of selection is followed; at times also ignored. Though such employment is intended for a short period, but generally contract service is renewed year after year, and continued for long time. Such employment is rampant in Medical services. With the fond hope of getting regular employment, the contract employees have rendered long service. They attend to the very basic facet of State obligation, i.e., providing health education and care.

71. In order to strengthen the Medical and Health services, vide G.O.Ms.No.181 Finance (HRM-II) Department, dated 11.12.2017, and G.O.Ms.No.66 Finance (HRM-VII) Department, dated 01.05.2017, respectively, the Government has sanctioned posts of Civil Assistant Surgeon Specialists (1175), posts of Civil Assistant Surgeon (91), posts of Dental Civil Surgeon (14), in Medical, Health and Family Welfare Department and posts of Medical Officers and Lecturers in the Department of AYUSH (183). After sanctioning the above posts, the Government passed orders in G.O.Ms.No.7 Finance (HRM-II) Department, dated 02.02.2018, withdrawing the posts from the purview of Public Service Commission; it constituted a Departmental Selection Committee (to make the recruitment) for recruiting the candidates for the said posts. Vide

G.O.Ms.No.13, Health, Medical & Family Welfare (B2) Department, dated 24.02.2018, a Selection Committee was constituted for making recruitment to the 183 posts in AYUSH. The Government orders also indicated the method of selection: while 75 marks are earmarked by assessing aggregate marks obtained in all the years of BAMS/BHMS/BUMS, 20 marks are to be awarded for the contractual service, and for the service rendered in the National Rural Health Mission (NRHM). Moreover, six months of service rendered in the tribal area would fetch 2.5 marks, in rural area 2 marks, and in urban area 1 mark. For Lecturers, 1.5 marks are uniformly earmarked for contract service. Meanwhile, 5 marks are meant for the years of weighting after acquiring educational qualification. Consequent to the above orders of the Government, recruitment notification No.1/A/2018 was issued by the Department of AYUSH.

72. The Government also decided to make regular recruitment to various posts, which include Administrative Officer, Staff Nurse Para-Medical service, Multi-Purpose Health Assistant, etc. In recognition of long service rendered by employees on contract basis in hazardous conditions, the Government issued G.O.Ms.No.166 Health, Medical and Family Welfare (B1) Department, dated 09.09.2017 relaxing Rule 9(b) of the General Rules, paving way for computing contract service in the selection process, and awarding weightage marks for the contract service.

73. The G.O. specifies the recruitment process as under:

(i) *Distribution of marks is as under:*

Total marks = 100

a) Written Test = 70

b) Govt. service on contract basis = 20

c) Seniority in terms of passing of = 10

qualifying examination

(ii) *The marks for contract service are to be applied as under:*

a) Service in the Tribal area = 4 marks for 6 months of
service

b) Service in the Rural area= 2 marks for 6 months of

(G.P. Grade-III & II service

Municipalities)

c) Urban area (Corporations= 1 mark for 6 months of

Grade-I Municipalities) service

74. In continuation of G.O.Ms.No.166, the G.O.Ms.No.216 General Administration (Ser. A) Department, dated 09.09.2017, was also issued prescribing the scheme of the examination. The Written examination was in two parts, Paper-I: General Abilities for 50 marks, and Paper-II: in concerned subject for 100 marks. For written examination, 70 points and for experience 30 points are earmarked.

75. Consequently, recruitment notifications were issued to make recruitment to the posts of Lab-Technician Grade-II, Multi-Purpose Health Assistant, Pharmacist Grade-II, Staff Nurse etc.

76. In this whole exercise, there are two competing aspects: the State requires streamlining, and strengthening the health services for the needy people, particularly in remotest corners of the State. Therefore, the State intends to conduct the recruitment to fill up large number of posts at different levels. On the other spectrum is the interest of large pool of trained Doctors, Lecturers and other staff, who have been working on contract basis on meager remuneration and in hazardous conditions, with the diamond hope of getting permanent employment. Such persons have rendered considerable service and have also gained experience. Their conduct and work output is found to be satisfactory. They appear to have undergone process of selection, and were qualified to hold the post. Hence, their interest also needs to be considered, protected, and balanced.

77. The recruitment notifications seek to balance both these aspects. By the impugned orders and notifications, the State seeks to fill up a large number of vacancies, in the cadre of Medical Officers/Lecturers, and the supporting staff.

And in the selection process, certain marks are exclusively earmarked for the service rendered on contract basis.

78. According to the learned Special Government Pleader, while appointing the persons on contract basis, regular recruitment processes was adopted. Thus, these contractual employees, who have worked for a large number of years, are qualified to hold the post. Hence, their appointment is irregular, but not illegal. They are not backdoor entrants.

79. At this stage, it is useful to extract paragraphs- 8 and 15 of the counter-affidavit in W.P.No.38645 of 2018, deposited by Director of Public Health and Family Welfare. It reads as under:

“8. It is further submitted that, the contractual Staff Nurses who are working on contract basis for long periods are given weightage, on the ground that, their initial entry into service is not back door method. The candidates are qualified and eligible to be appointed as Staff Nurses. In pursuance to the permission granted by the State Government prescribing the qualification to the post, the candidates were appointed as Staff Nurses posts on contract basis by the concerned controlling officers through the constituted committee duly following the merit and rule of reservation. There is no difference in selection mode between the appointments going to be made through the procedure indicated in present case and for the procedure done earlier in respect of contractual Staff Nurse, as both are as per the procedure indicated in Section 4 of the Andhra Pradesh Regulation of Appointment Act (Act 2/1994) only. Hence, there is no infirmity or irregularity in awarding service weightage to the persons working on contract basis.”

15. It is also submitted that, the contents of the petitioners herein that the recruitment should be on the basis of the qualifications only and neither the government nor the TSPSC can give 30% weightage points out of 100 points to the contract employees is not at all correct, as already admitted at supra, the State has adopted a system of appointing the Staff Nurse on contract basis initially for a period of one year which is extendable from time to time. Such contract Staff Nurse working in remote places like Tribal, Rural and Urban serving the department as well as poor and needy people. Hence, their cases deserve sympathetic consideration for award of service weightage co-terminus with their contractual appointment. Hence, the Govt. took a decision for awarding of service weightage to in-service candidates for being posted in the Tribal, Rural and Urban areas for the Health care of the need people as policy matter while framing the procedure for this recruitment. To facilitate this, the rule 9(b) of the State and Subordinate Service Rules 1996 was also relaxed.”

80. Though the statement in the counter-affidavit, extracted above, deals with the issue of recruitment to the post of Staff Nurse, the learned Special Government Pleader has pleaded that the same would apply to all the other posts. In the counter-affidavit filed in W.P.No.44277 of 2018 the same

justification is assigned for granting weightage to the contract service in the recruitment to the post of Pharmacist Grade-II. The learned Special Government Pleader asserts that regular recruitment processes was adopted before appointing them on contract basis, that they have been continuously working, and that they are qualified to hold the respective posts.

81.1. In **Sanjay Ahlawat v. Maharshi Dayanand University**⁴⁴, challenge was made to clause 3 (i) of Chapter-IV of the Prospectus for MD/MS/PG Diploma Entrance Examination, 1993. Selection was based on written examination. In the process of determination of merit for selection to Post Graduation Courses, ten marks were assigned to students who had graduated from the Rohtak Medical College. It was urged that, due to assignment of ten additional marks, the graduates of the Rohtak Medical College were pushed up in the merit list. Though this decision concerns admission to Post Graduate Medical Courses, but the basis of challenge is same as urged in the present set of writ petitions, namely the challenge to the grant of weightage marks. However, the Apex Court repelled the contention of discrimination, and of offending of Article 14 of the Constitution of India (paragraphs 10 & 13).

81.2. Consistently, the Hon'ble Supreme Court has upheld the power of the employer to assign weightage to the temporary service rendered by a person, and to grant age relaxation to such employees while making regular recruitment. [Ref. to **Dinesh Kumar Saxena** (supra); **Sandeep Kumar v. State of U.P.**⁴⁵; **Sachivalaya Dainik Vetan Bhogi Karamchari Union** (supra); **State of Uttar Pradesh Vs. Anand Kumar Yadav**⁴⁶; **Zahoor Ahmad Rather and others Vs Sheikh Imtiyaz Ahmad and others**⁴⁷]

81.3. At this stage, it would be useful to note the view expressed by the Hon'ble Supreme Court in **Umadevi** (supra). Paragraph 55 reads as under:

⁴⁴ (1995) 2 SCC 762

⁴⁵ 1993 Supp (1) SCC 525: 1993 SCC (L&S) 290

⁴⁶ (2018) 13 SCC 560

⁴⁷ (2019) 2 SCC 404

*In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, **waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time.** That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.”*

(Emphasis supplied)

81.4. In **Umadevi** (supra), and in the subsequent decisions of Hon'ble Supreme Court, mentioned hereinabove, the Apex Court permitted the employer to assign weightage of marks for the service rendered on temporary basis while holding regular recruitment. Although Articles 14, 16 and 309 of the Constitution of India emphasize that regular recruitment be followed, for different reasons, over the years, temporary appointments have been made without following the due process. However, even then, while making the regular appointment, the employer is permitted to grant some weightage to such temporary service

rendered by an employee. Such a grant of weightage point does not offend the equality clause contained in Article 14 of the Constitution of India.

82. In the cases on hand, the Government decided to accord weightage to contract service while making regular recruitment. As asserted by the learned Special Government Pleader, the appointments on contract basis were made after following the process of selection. Thus, those appointments cannot be called illegal appointments. Thus, the Government is legally justified in granting the weightage marks to the contractual employees.

II. SERVICE IN POWER UTILITIES:

83. In addition to the competency of employer to grant weightage to contract service, the situation in Power Utilities is peculiar. The Power Utilities are governed by the Industrial Disputes Act. And, as mentioned hereinabove, there were Settlements under the Industrial Disputes Act for assigning weightage to the contract service/service made on outsourcing basis.

84. Needless to say, a Settlement arrived under the Industrial Disputes Act, in the course of conciliation proceedings with a recognized majority Union, is on par with an award made by an adjudicatory authority; it is binding on the Managements and on all the workmen of the establishment. [Ref. to **Transmission Corporation vs. P.Ramachandra Rao**⁴⁸: paragraph-17].

85. As mentioned hereinabove, the grant of weightage marks on the basis of the Settlement was challenged before the First Division Bench. Though the First Division Bench repelled the challenge, the First Division Bench upheld a part of the judgment of the learned Single Judge whereby the latter had reduced the weightage marks from 45 to 20.

86. Operative directions in the judgment of learned Single Judge, to the extent relevant, read as under:

⁴⁸ (2006) 9 SCC 623

"The respondents are, therefore, directed as under:

- 1) Weightage marks for experience shall not exceed 20%.**
- 2) 2 marks for every completed year of service shall be awarded.**
- 3) The experience must be in the relevant job, for one to become entitled to be granted weightage marks. For instance, if a candidate has put in service on contract basis as a Sub-Engineer or Lower Division Clerk or in any other equivalent post, then alone, he will be entitled to be awarded weightage marks for selection to the relevant post. In other words, contract labour who have been rendering service as Sub-Engineers alone will be entitled to count their contract service as Sub-Engineers for awarding weightage marks for selection to the post of Sub-Engineers. Similarly, Lower Division Clerks or those working against equivalent posts can be awarded weightage marks for selection to the posts of Lower Division Clerk, but not for selection to any other post other than Lower Division Clerk, even if they possess the requisite qualification for recruitment to the post of Sub-Engineer.** However, the in-service candidates who otherwise satisfy the criteria for participation in the selection at par with candidates from the open market in respect of educational qualifications and age, are entitled to compete against the open competition without entitlement for the in-service weightage marks.

(Emphasis added)

87. These directions of the learned Single Judge were affirmed by the First Division Bench in W.A.No.110 of 2014 and batch. The only modification was on allotment of marks for the period of service. The First Division Bench only modified the direction number 2 as one mark per every six months, instead of two marks for one year of service. As mentioned above, the Special Leave Petitions preferred against the decision of First Division Bench were dismissed. The judgment of the learned Single Judge, affirmed by the First Division Bench, is binding on the employers. Moreover, admittedly, the present recruitment is in continuation to earlier recruitment, which was the subject matter of above batch of cases.

88. Thus, the issue of awarding marks to contract service stood settled in the previous round of litigation. In fact, the present recruitment notifications merely comply with directions issued therein.

89. Mr. G. Vidhyasagar, the learned Senior Counsel, appearing for the Power Utilities Companies, has asserted that the employees engaged on contract basis/on outsourcing basis were fully qualified. In fact, before they were employed, the employer had scrutinized their eligibility and suitability. Moreover, the work undertaken by them was regular; they worked continuously, even if the contractor was changed. Hence, they have rendered considerable service for a long period of time.

90. After formation of State of Telangana and the establishment of separate Power Utilities Companies in the Telangana State, the Trade Unions agitated against exploitation of workmen employed through outsourcing agencies. The Conciliation process, between the Managements of Power Utilities Companies and the Trade Unions, ended in a Settlement on 14.06.2016. However, as it did not resolve the dispute about absorption, the Unions again resorted to strike. On 01.12.2016 one more Settlement was arrived at between the Managements and the Trade Unions. Consequently, the Managements of Power Utilities Companies constituted Committees to verify and scrutinize applications of the outsourced employees for absorption. The Committees identified about 23,667 workers employed on outsourcing basis, seeking to be absorbed. The orders appointing Committees were challenged by four unemployed persons in a writ petition, and also in a PIL. It is to be noted that the Settlements were never challenged. The issue was considered by a Division Bench in W.P.no.20544 of 2017 and W. P. (PIL) No.149 of 2017 and the Division Bench repelled the contentions of petitioners and dismissed both writ petitions by judgments dated 18.09.2018.

91. Having regard to history of the litigation and the Settlements arrived under the Industrial Disputes Act, the Power Utilities Companies cannot dispense with the awarding of marks to the contract service. Thus, the decision of TSTRANSCO to assign marks for contract service cannot be held as, illegal, arbitrary and unconstitutional.

CONCLUSIONS ON THIS ISSUE:

92. As noticed above, it is for the employer to prescribe the qualifications required to hold a post. It is equally for the employer to prescribe the procedure for selection and to recruit the eligible and suitable persons for a post. Depending on the job description, the employer may stipulate educational qualifications, age, and experience. Posts in the higher echelons, specialized posts, posts in special establishments may require specialized qualifications, experience and only by a particular category of persons. For example, to a post of Professor in Medical College, employer may require person to be aged fifty years, who has super specialty degree, and ten years of experience in teaching. If employer requires the services of an Auditor, it may stipulate special qualifications, which may include a law degree and experience in the field. If employer requires a Warden in Girls' Hostel, he may specify that only women would be considered, or a man above the age of fifty years. If employer requires a Cook, he may prescribe cooking experience more than any educational qualifications. For a particular post, the employer may give more weightage to experience, than to higher educational qualifications. For certain posts, say Class-IV posts, employer may prohibit persons with higher qualification. Thus, depending on the requirements of a job, appropriate qualifications/eligibility criteria may be prescribed. It is the prerogative of the employer. Judicial review cannot be stretched to oversee what qualifications, eligibility criteria, and mode of selection should be prescribed by the employer.

93. In the present cases, admittedly there is large pool of employees, having basic qualifications, who have undergone process of selection, have rendered considerable service, and have gained experience in core aspects of the jobs for which recruitment process is being taken up. Experience gained by them is certainly useful for the employer. The employer may, thus, prefer a person with experience over a raw person. Therefore, preferring a person with experience on the same job neither amounts to bias, nor to arbitrary exercise of power. It is a

classification based on intelligible differentia, i.e., experience on the same job versus inexperience.

94. By assigning marks to contract service, the employer affords an opportunity to person working on contract basis/on outsourcing basis to join the regular stream. Therefore, the present exercise answers the twin tests of valid classification, i.e., intelligible differentia between contract employees and open market candidates, and the object, i.e., to give opportunity to seek permanent public employment to employees working on contract basis/ on outsourcing basis. Moreover, by selecting the experienced persons, who have knowledge of the requirements of the job, the efficiency of the organization is strengthened. A high efficiency is in the public interest. Hence, the classification certainly withstands the test of Articles 14 & 16 of the Constitution of India. It is, thus, reasonable. Therefore, if the employer seeks to earmark certain percentage of marks out of total marks in the recruitment examination towards contract/outsourcing service in the process of selection, it does not offend either Article 14, or Article 16 of the Constitution of India.

95. The decision under challenge concerning State Government service is indeed, well considered and conscious decision. For, it has been taken after having regard to the peculiar circumstances prevailing in the Health Care Administration of the State Government.

96. Further, the Power Utilities Companies are governed by the Settlement arrived on 18.12.2010 under section 12(3) of the Industrial Disputes Act, 1947, which Settlement provides weightage to contract service. However, though Settlement envisaged 45 marks as maximum weightage, as held by the learned Single Judge in the judgment dated 09.12.2013 in W.P.No.3753 of 2012 and batch, affirmed by the First Division Bench, maximum weightage marks is reduced to 20 marks and thus the TS TRANSCO is bound to provide 20 marks as weightage to contract service.

97. Thus, grant of weightage marks is legally permissible. Hence, the arguments raised by the learned Counsel against the grant of weightage marks are clearly untenable. Hence, unacceptable.

Issue No. (iii): Whether such power is an enabling power, which can not be sought as a right? Ancillary to this issue, are two more questions: (a) whether employer, the State or its instrumentality, is under obligation to extend the scheme of weightage to temporary service rendered outside its employment, or not? And (b) whether not extending the benefit of weightage marks to those outside the employment of the Power Utilities Companies would offend Articles 14 and 16 of the Constitution, or not?

98. We shall also deal with this issue separately, i.e. service under the Government, and service under the Power Utilities Companies.

In State service and the Power Utilities Companies claim for grant of weightage marks is being made by temporary employees who are working in other Power Utilities Companies/an instrumentality of the State.

STATE SERVICE:

99. A bare perusal of the Special Rules and in the General Rules clearly reveal that there is no provision made for assigning weightage to contract service. Unless Service Rules prescribe computation of temporary service in the process of regular recruitment, no person, working on temporary basis, can insist, as a matter of right, to assign weightage to temporary service rendered by him/her. Therefore, no person can seek mandamus to assign weightage to contract service. In fact, in the absence of provision in the Service Rules, the employer alone has the discretion to grant weightage to such service while making regular recruitment to the same post. As noticed above, the competency of an employer to assign weightage to temporary service is recognized in law.

100. Interestingly, the State Government has not assigned weightage marks to all its employees in the different departments. For example, the temporary

employees in the Agriculture Department have not been assigned any weightage marks. But while resorting to regular recruitment, it has assigned weightage marks to temporary service in the Health, Medical and Family Welfare Department and the AYUSH Department. Thus, discretion is exercised in the above manner, supported by reasons. It has assigned weightage to temporary service rendered in a particular post in the State Government service, and has not made it as a general proposition to extend weightage to experience gained by a person in any other service.

101. The power to relax the rigors of the Rules is a discretionary power given by an enabling provision of law. Therefore, the employer is legally justified in granting the benefit of weightage to particular class of employees within a given department. Since it is an enabling provision, since it is a discretionary power, those who are outside the department cannot claim that a mandamus be issued in their favour for directing the State to grant them the benefit of weightage as well.

102. In the State Government service, granting weightage to temporary service would serve twin objectives: firstly, it enables a temporary employee, who has been serving the State Government for a long time, in the same post, against which process of regular recruitment is now initiated, to seek permanent employment; secondly, it enables the State Government to secure the services of persons who have been working in the same post for a considerable time and who have gained field experience in the same post, as compared to a raw recruit. Thus, the crucial link to granting weightage to contract service is working on temporary basis in the post and gaining work experience of the post against which regular recruitment process is initiated.

103. In addition to the twin objectives mentioned above, it is pertinent to note that these contract employees have been working for a long time. Present recruitment is against posts occupied by them. If recruitment is finalized, there is every possibility of the contractual employees being displaced unless they are

provided opportunity to compete. The same cannot be said of Staff Nurses working in the Society as present recruitment does not cover those posts.

104. The temporary employment in the State Government service is a class by itself, as compared to temporary service in a State Government established Residential Educational Institutions Society. The classification is reasonable and justified. Therefore, it cannot be said that the State Government's decision to restrict computation of weightage to temporary service rendered only in a particular post in the State Government service, and refusing to compute temporary service rendered in a Society is illegal or arbitrary.

105. Therefore, a person working in any other organization cannot claim parity with the person working in the same post. Thus, if the benefit of weightage is denied to the temporary Staff Nurse in the Schools and Colleges run by the Residential Schools/ Colleges Society, the denial cannot be faulted.

106. Unless the decision of the State Government is found to be palpably and demonstratively illegal, arbitrary and offending mandate of the Articles 14 & 16 of the constitution, the writ court cannot interfere with the decision of the Government in exercise of the Court's power of judicial review.

SERVICE IN POWER UTILITIES:

107. With reference to power utilities Companies, it is necessary to travel in time in order to fully understand and to appreciate the opposite stand of the parties. The erstwhile Andhra Pradesh State Electricity Board was unbundled, and separate companies were formed in the combined State of Andhra Pradesh. These companies dealt with Generation, Transmission, and Distribution of electric energy. The APGENCO and APTRANSCO were established dealing with Generation and Transmission, respectively. While dividing the entire combined State into four areas, four companies were formed for distribution of electricity. These companies were called, (i) the Northern Power Distribution Company Limited, (ii) the Southern Power Distribution Company Limited, (iii) the Eastern

Power Distribution Company Limited, and (iv) the Central Power Distribution Company Limited.

108. In view of the Settlements arrived under Section 12 (3) read with Section 18 of the Industrial Disputes Act, the Managements of the Power Utilities Companies have no option, but to extend weightage to the temporary service rendered in their respective employments while making regular recruitment. It is no more enabling power. The Settlements vested right to secure weightage marks to all temporary employees governed by the Settlements. However, these Settlements do not impose an obligation on the Power Utilities Companies to extend weightage to contract service rendered in any other company/in any other post.

109. In the Power Utilities Companies, two different circumstances exist: (i) in the recruitment notification Nos.4 of 2017 and 5 of 2017, dated 28.12.2017, issued by TSTRANSCO, for the posts of Junior Lineman and Sub-Engineer (Electrical), the Company has restricted weightage to service rendered on contract basis/on outsourcing basis in the Power Utilities of the Telangana State. Such benefit is not being extended to those contractual employees who had earlier worked under the Andhra Pradesh State Electricity Board, and who are presently working in the State of Andhra Pradesh under its Power Utilities Companies.

(ii) In the recruitment Notification No.2 of 2018, dated 24.5.2018, TSNPDCL has not assigned weightage to contract service in the recruitment process to the post of Sub-Engineer (Electrical).

110. Thus, in the Power Utilities Companies, two independent claims are being made against non-grant of weightage to contract service/service on outsourcing basis: for the recruitment in TSTRANSCO, the contract/outsourcing employees working in the Power Utilities Companies in the State of Andhra Pradesh claim that the benefit of weightage marks should equally be extended to them. Secondly, although TSNPDCL is not extending the benefit of

weightage marks under its recruitment notification, as mentioned above, still the contractual employees of TSTRANSCO claim that the benefit of weightage marks should be given to them for the period of temporary employment under TSTRANSCO.

111. According to Sections 12 (3) and 18 of the Industrial Disputes Act a Settlement is binding on the employer only *vis-a-vis* own employees. In the absence of binding Settlement to extend weightage to contract service/ service on outsourcing basis rendered outside respective power utilities Companies, it is for the employer to take a decision to grant weightage to experience gained by a person outside its employment.

112. It is, indeed, a settled principle of Service Jurisprudence that no temporary employee has an indefeasible right to claim that his temporary service should be counted while making regular recruitment. In fact, it is the employer's discretion to extend weightage to such temporary service while making regular recruitment or not.

113. Since it is a discretionary power TSTRANSCO is well within its power to restrict weightage to service rendered on contract basis/ on outsourcing basis in the Power Utilities of the Telangana State. Merely because, APTRANSCO was the employer before bifurcation of the State of Andhra Pradesh, and merely because TSTRANSCO was carved out from APTRANSCO, are no grounds for an employee of APTRANSCO to claim that he/ she is entitled to the benefit of weightage while applying for a post in TSTRANSCO. After all, TSTRANSCO and APTRANSCO are two different entities. The employees of APTRANSCO are working for a different employer and that, too, in a different state.

114. The Power Utilities in the Telangana State have to work in tandem in the Power Sector of the State. Their combined operative capacity and synergy ultimately ensures uninterrupted supply of power to the consumer, i.e., Generation, Transmission and Distribution. On the other hand, after the bifurcation of erstwhile State of Andhra Pradesh and formation of State of

Telangana, the Power Utilities Companies of Telangana State have no connection with Power Utilities Companies of State of Andhra Pradesh. There may be Power Utilities Companies in several other States, as Generation, Transmission and Distribution of electric energy is common in all States. There may be employees doing same work in the other States. If the argument urged by the learned counsel for the petitioners were accepted that the benefit of past contractual employment has to be given to the contract employees working in Andhra Pradesh Power Utilities Companies as the nature of the work is the same, the said argument would have to be applied to the employees of other states. For the said argument cannot be confined to merely the contractual workers of the Power Utilities Companies of the State of Andhra Pradesh.

115. The Power Utilities Companies of State of Telangana are a class by themselves compared to Power Utilities Companies in State of Andhra Pradesh. Therefore, treating temporary employees working in the Power Utilities Companies of Telangana State as a class and extending certain concessions or benefits to them is reasonable. It is a valid classification and does not offend Article 14 of the constitution of India.

116. Admittedly, in the notification dated 15.12.2011, the APNPDCL had permitted Diploma Operators/Sub-Engineers working in other Power Utilities Companies to avail the benefit of the weightage marks, while undertaking recruitment to the post of Sub-Engineer (Electrical). However, TSNPDCL has not assigned weightage to contract service in the recruitment notification issued by it. The justification assigned against not extending the weightage is three-fold: firstly, no one is working as a Sub-Engineer, on temporary basis, in TSNPDCL. Therefore there is no need to assign weightage. Secondly, the duties and responsibilities attached to the post of Sub-Engineer/Diploma Operator in TSTRANSCO is not the same as that of Sub-Engineer in TSNPDCL. Thirdly, the directions issued by learned Single Judge in the judgment dated 9.12.2013 in W.P. No. 3753 of 2012 and batch, that the weightage should be given only to

those who hold the same post, was affirmed by the First Division Bench. Therefore, the TSNPDCL is justified in denying the benefit of weightage marks to those contractual employees working in other Power Utilities Companies.

117. It is asserted that nature of duties undertaken by the Sub-Engineers in TSNPDCL is not similar to the work undertaken by a Sub-Engineer in TSTRANSCO. Hence, merely because designation is the same, and the educational qualifications prescribed for the post of Diploma Operator in TSTRANSCO and TSNPDCL are the same, it cannot be inferred that the job requirement is same. Therefore the said experience cannot be treated as the requisite work experience.

118. According to TSNPDCL, the 220/132/33 KV Sub-stations owned by TSTRANSCO are manned by Sub-Engineers; if they are working as outsourced employees, they are designated as Diploma Operators. In the TSNPDCL the Sub-stations are manned by helpers. The Sub-Engineers recruited by TSNPDCL do not man the Sub-stations. Their duties are administrative in nature; they work under the supervision of the Assistant Engineer, or the Additional Assistant Engineer. Hence, the nature of work entrusted to them is entirely different from the work entrusted to Sub-Engineers/ Diploma Operators in TSTRANSCO.

119. Undoubtedly, it is for the employer to decide what experience is required to hold a post. Equivalence depends on the nature of duties and responsibilities attached to the concerned post. Therefore, mere designation and same qualifications prescribed for two different posts do not necessarily make the posts equivalent. The employer is best suited to decide the equivalence of the posts. Since the TSNPDCL has taken the stand that duties and responsibilities attached to the posts of Sub-Engineer/Diploma Operator in TSTRANSCO is not the same as Sub-Engineer in TSNPDCL, the writ Court cannot hold the same as illegal. The Court cannot make its own assessment of similarity of work experience. Thus, the Court cannot direct that the contract service rendered as Diploma Operator/ Artisan in TSTRANSCO should be considered for the

recruitment to the post of Sub-Engineer in TSNPDCL. The writ Court has no such expertise. Therefore, such aspects are best left to the employer. Such aspects are not within the realm of judicial review.

120. In direction No.3 of the judgment dated 9.12.2013, the learned Single Judge ordered that the experience must be in the same post. This direction was affirmed by the First Division Bench, and by the Hon'ble Supreme Court while it dismissed the S.L.P.s preferred against judgment of the First Division Bench. Therefore, the petitioners are unjustified in claiming that the experience gained by them in another post, with another Power Utility Company should be considered, and be given the benefit of weightage marks. Such an argument is clearly untenable.

121. The learned counsel for the petitioners have also raised the argument based on the principle of legitimate expectation. On the aspect of legitimate expectation of temporary employees working in other Power Utilities Companies, in view of earlier decision of the Power Utilities Companies to consider the temporary service rendered in all Power Utilities Companies, it is apt to note the view taken by Hon'ble Supreme Court in identical fact situation, in the case of **Kerala State Beverages (M & M) Corporation Limited** (supra).

122.1. The facts of the said case are that in the year 1995, the State of Kerala established retail sale outlets for sale of arrack. Later, Kerala State Government banned sale of arrack. This resulted in displacement of large number of workers. In the year 2002, Government ordered reservation of 25% of vacancies in daily wage employment in the Corporation. On 07.08.2004, the criterion was altered restricting such consideration only to dependent sons of deceased arrack workers. Displaced workers sought implementation of Government order dated 20.02.2002, and not to restrict application of the scheme. They were successful before the Kerala High Court.

122.2. Before the Supreme Court the plea of legitimate expectation, flowing out of Government Order dated 20.02.2002, was urged in order to claim that all displaced arrack workers should be provided employment.

122.3. Dealing with this aspect, Hon'ble Supreme Court held as under:

Substantive Legitimate Expectation

An expectation entertained by a person may not be found to be legitimate due to the existence of some countervailing consideration of policy or law. [H.W.R. Wade & C.F. Forsyth, Administrative Law (Eleventh Edn., Oxford University Press, 2014).] Administrative policies may change with changing circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our constitutional form of Government. [Hughes v. Department of Health and Social Security, 1985 AC 776, 788 : (1985) 2 WLR 866 (HL)]

The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. [Findlay, In re, 1985 AC 318 : (1984) 3 WLR 1159 : (1984) 3 All ER 801 (HL)] So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated.

The principle of procedural legitimate expectation would apply to cases where a promise is made and is withdrawn without affording an opportunity to the person affected. The imminent requirement of fairness in administrative action is to give an opportunity to the person who is deprived of a past benefit. In our opinion, there is an exception to the said rule. If an announcement is made by the Government of a policy conferring benefit on a large number of people, but subsequently, due to overriding public interest, the benefits that were announced earlier are withdrawn, it is not expedient to provide individual opportunities to such innominate (sic) number of persons. In other words, in such cases, an opportunity to each individual to explain the circumstances of his case need not be given. In Union of India v. Hindustan Development Corpn. [Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499] it was held that in cases involving an interest based on legitimate expectation, the Court will not interfere on grounds of procedural fairness and natural justice, if the deciding authority has been allotted a full range of choice and the decision is taken fairly and objectively.

Proportionality involves "balancing test" and "necessity test". [Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68] Whereas the balancing test permits scrutiny of excessive and onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the necessity test requires infringement of human rights to be through the least restrictive alternatives. [Judicial Review of Administrative Action (1955) and Wade & Forsyth: Administrative Law (2005); Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68]

An administrative decision can be said to be proportionate if:

(a) The objective with which a decision is made to curtail fundamental rights is important;

(b) The measures taken to achieve the objective have a rational connection with the objective; and

(c) The means that impair the rights of individuals are no more than necessary.

In the instant case, the respondents challenged the Order dated 7-8-2004, as being violative of Articles 14, 19 and 21. The High Court accepted the submissions made by the respondents and held that the Order dated 7-8-2004 is vitiated as it suffers from the vice of arbitrariness and unreasonableness. However, in view of the challenge to the decision of the Government being on the ground of violation of Articles 14, 19 and 21, the test of proportionality should be applied to review the impugned decision of the Government.

123. When extending weightage to service rendered in another Power Utility Company is only enabling provision and no temporary employee has right to seek weightage to the temporary service rendered by him, unless he is governed by a binding Settlement, the temporary employee cannot seek mandamus to the employer to grant weightage to contract service rendered outside its employment. The claim of legitimate expectation based on earlier decision is not valid. If the employer does not grant weightage to experience gained by a person under any other employer, supported by reasons, the writ Court, in exercise of power of Judicial Review, cannot mandate extension of such benefit of weightage to temporary service rendered elsewhere.

124. It is apparent that the decision of TSNPDCL not to extend the weightage to the contract service rendered in TSTRANSCO in the post of Sub-Engineer/Diploma Operator/Artisan is well considered, and supported by reasons germane to the decision. Moreover, the petitioners in W. P. Nos. 19831, 25648, 37152 & 41102 of 2018 are working in TSTRANSCO and not in TSNPDCL. Therefore there is no compulsion on TSNPDCL to extend weightage of service rendered under another employer, especially when TSNPDCL asserts that the duties and responsibilities attached to the post of Sub-Engineer/Diploma Operator in TSTRANSCO is not the same as that of Sub-Engineer in TSNPDCL. Thus, the decision not to grant weightage to the said service in the direct recruitment to the post of Sub-Engineer, cannot be declared as illegal or arbitrary.

125. This issue is answered as under:

(i) **Government service:**

- (a) If the Service Rules/policy decisions do not provide weightage to contract service/service on outsourcing basis, no temporary employee can assert that his temporary service should be reckoned in the selection process for direct recruitment;

(b) If no provision is made in the Service Rules/policy decisions, it is for the employer to extend weightage to temporary service while making regular recruitment;

(ii) Power Utilities:

The Settlements entered into by the managements to provide weightage to service rendered on contract basis/on outsourcing basis confers right to all those temporary employees governed by the Settlements and claim weightage marks for such service and the Power Utilities Companies are bound to provide weightage marks. However, it is clarified that even though Settlement dated 18.12.2010 fixed maximum weightage marks as 45, the same was reduced to 20 marks in view of the judgment of learned Single Judge dated 09.12.2013 in W.P.No.3753 of 2012 and batch, affirmed by the first Division Bench.

(iii) State Government service and service in Power Utilities Companies:

(a) While extending weightage to temporary service it is permissible for the employer to prescribe parameters and to restrict grant of such weightage to a class of people, or to people working with that employer/ service in a particular post, if necessary etc. Therefore, no person has a right to claim weightage to temporary service as a matter of course;

(b) It is for the employer to make an assessment of job requirements of a post in its service; it is open to the employer to refuse to grant weightage to temporary service rendered in a post, within its employment or outside.

Issue No. (iv): To what extent marks for the contract service/service on outsourcing basis can be prescribed out of total marks for section?

126. This aspect is also considered separately with reference to service in the State Government and the Power Utilities Companies, as under:

A. STATE GOVERNMENT SERVICE:

127. In the recruitment to supporting medical staff, and for Medical Officers and Lecturers in AYUSH Department, 20% marks are apportioned for contract service.

128. *Per se* granting weightage to temporary service by the employer while making regular recruitment is permissible. The 20% of weightage of contract service is not static; it is made applicable across the board. Thus, it is a dynamic exercise. The assignment of marks is based on the work experience gained by the temporary employee, and his place of work. Having regard to the nature of job undertaken by the temporary employees in hazardous conditions/hard terrain, more weightage is assigned to service rendered in the tribal areas, and slightly less weightage to the service rendered in rural areas, and still lesser weightage to the service rendered in urban areas.

129. In the Medical and Health Department, a person, working on temporary basis in the Urban area, has to render ten years of continuous service in order to gain twenty marks. Further, in the AYUSH Department, a Medical Officer has to work for twenty years in the Urban area, and ten years in the Rural area in order to get twenty marks. Ten years and more is a long service. Even if a person worked in the Tribal Area, or the Rural area for some time, and later moved to rural area from Tribal area and/or from rural area to urban area, he would get less weightage marks compared to a person exclusively working in tribal area/rural area, as the case may be. For, the apportionment of marks depends on amount of service rendered in tribal area/rural area/urban area.

130. Assigning higher weightage to service rendered in Tribal areas and Rural areas reflects the Governments' resolve to recognize the service rendered by the contract employees in the areas where attention for health and sanitation is required, and where working conditions are far less satisfactory as compared to the urban areas. Though, a person working in Tribal Area gets high percentage of marks for less service rendered by him, having regard to the fact that such

person has rendered service in a hard terrain, serving the most needy people and in inaccessible places, government's decision to assign them higher weightage cannot be said as an arbitrary decision. It meets the parameters of well considered decision; such classification does not offend Article 14 of the Constitution of India.

131. By splitting the apportionment of marks on the amount of service rendered in tribal/rural/urban areas, it cannot be said that the State Government has erred in prescribing 20% as weightage. Considering the justification given in support of the said decision, the assignment of 20% marks cannot be said to be excessive, thereby warranting interference by this Court. Hence, the arguments raised by the learned counsel for the petitioners on this point are unsustainable.

132. The justification for such assignment meets the parameters of reasonable classification with object sought to be achieved i.e., recognizing the service rendered on temporary basis in harsh conditions; affording opportunity to contract employees to seek public employment permanently; securing the services of persons who gained experience in the same post as compared to inexperienced persons. Thus, the assignment of 20 % weightage marks satisfies the requirement of Arts. 14 and 16 of the Constitution of India.

B. SERVICE IN POWER UTILITIES:

133. The Power Utilities Companies are governed by the Settlement arrived under Section 12(3) read with Section 18 of the Industrial Disputes Act to extend weightage for the contract service/service rendered on outsourcing basis. In terms of the settlement dated 18-12-2010, the Power Utilities Companies prescribed 45 marks as weightage to contract service in the recruitment notifications. This aspect was challenged in a batch of writ petitions. In the judgment dated 09.12.2013 in batch of writ petitions challenging assigning weightage to contract service, the learned Single Judge of this Court upheld the validity of assignment of weightage to contract service, but reduced the total marks for contract service to 20 marks instead of 45

marks. This decision of the learned Single Judge was subsequently affirmed by the First Division Bench; the Special Leave Petitions filed against the said judgment were also dismissed. Therefore, the Managements of the Power Utilities Companies are bound by the terms of Settlement to assign weightage to contract service, subject to the directions issued by this Court. The subsequent Settlement arrived at by the Managements *vis-à-vis* the outsourcing employees dated 14.06.2016 read with 01.12.2016 are also affirmed by the Division Bench of this Court, vide judgment dated 18.09.2018 rendered in W.P.No.20544 of 2017 and W.P. (PIL).No.149 of 2017. Thus, the issue is no more *res integra*. Hence, it is no longer open to any person to challenge the quantum of weightage of marks to contract service/service rendered on outsourcing basis while undertaking regular recruitment by the Power Utilities Companies.

134. The Power Utilities Companies have earmarked 20% as weightage to temporary service. Each six months of completed service would carry one mark. To get twenty (20) marks, a person has to work for ten years. A person working for ten years would have gained sufficient experience/expertise in the post held by him. Thus, such experience is certainly useful to employer. Further, the candidate has to secure qualifying marks in the written examination for the posts of Sub-Engineer (Electrical), and Junior Lineman. Moreover, in order to become eligible for computing weightage to temporary service, the person would also have to clear the physical efficiency test, i.e., Pole Climbing Test for the post of Junior Lineman,. Thus, even otherwise granting weightage to temporary service by Power Utilities Companies, *per se*, cannot be held as illegal or excessive.

135. This issue is answered as under:

Prescribing 20% as weightage to contract service/service rendered on outsourcing basis while making regular recruitment is not excessive. It is within the powers of employer. Hence, legal and valid.

THE OPINION OF THE FULL BENCH:

136. Having considered various aspects concerning regular recruitment in public employment, the issues are answered as under:

I. STATE GOVERNMENT SERVICE:

1. This Court upholds the constitutional validity of Rule 31 of the Telangana State and Subordinate Service Rules, 1996. Moreover, the exercise of power under the said Rule is legally valid.

2. The power of relaxation of Service Rules can be exercised by the Governor in order to remove the restriction on computation of temporary service imposed by the Service Rule, and to enable the temporary employee to compute the temporary service as weightage in the process of regular recruitment;

3. However, if the Service Rules do not envisage assignment of marks for temporary service in the regular recruitment, it is for the employer to assign such weightage. For, such a power is an enabling power. It does not bestow any vested right upon a temporary employee to insist upon extension of weightage to temporary service rendered by him;

II. POWER UTILITIES COMPANIES:

1. As the binding Settlements require assignment of marks for temporary service in the regular recruitment, the temporary employee is entitled to seek its enforcement;

2. It is permissible for the employer to restrict application of weightage to temporary service rendered only under him and/or in a particular post;

**III. STATE GOVERNMENT SERVICE AND SERVICE IN POWER
UTILITIES COMPANIES:**

As part of the selection process for direct recruitment, the employer has the power to apportion marks towards service rendered on temporary basis. However, the marks, so apportioned, shall not be more than 20 marks out of total marks of 100, or not more than 20% of the total marks.

137. Submissions were made touching upon several other aspects which are not covered by the four (4) issues formulated for consideration by the Full Bench. We have answered only the issues framed in order to decide the reference. All other aspects are left to be agitated before the Division Bench/ Single Bench. Where there is no challenge to the validity of statutory rule, and/or the validity of the Rule is decided herein, learned Division Bench may release the cases and relegate to the learned Single Judge to decide the issues agitated in the individual cases.

138. Since the issues raised in W.P. No. 33494 of 2018 are altogether different, the Registry is directed to detach the said file from the present Batch, and list the said writ petition in the usual course for hearing.

HON'BLE THE CHIEF JUSTICE

JUSTICE A. RAJASHEKER REDDY

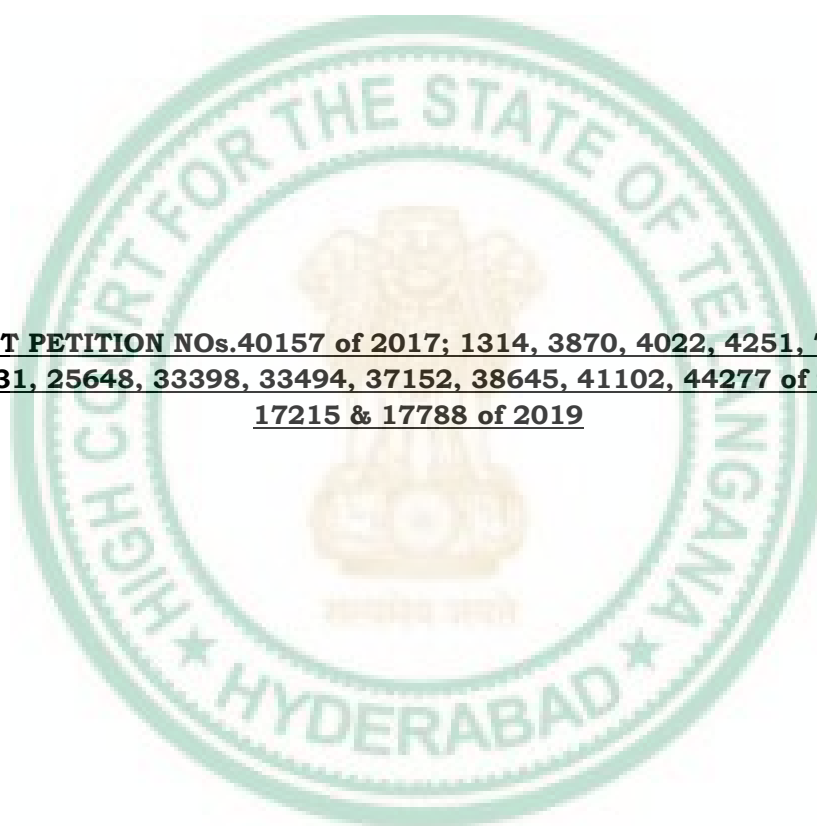
JUSTICE P.NAVEEN RAO

Date: 18.09.2020

Kkm/tvk

HONOURABLE THE CHIEF JUSTICE
HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.40157 of 2017; 1314, 3870, 4022, 4251, 7259,
19831, 25648, 33398, 33494, 37152, 38645, 41102, 44277 of 2018;
17215 & 17788 of 2019



DATE: 18-09-2020