

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

**WRIT PETITION Nos. 37131, 36489, 41996 of 2017, 5776, 6094,
6474, 9959, 14748, 16994, 35119, 35667 and 35986 of 2018**

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

1. The main issue in these cases is whether posts and promotions in each Zone as per the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (for short, 'the **Presidential Order, 1975**' issued under Article 371-D of the Constitution of India) are "water-tight compartments" and if so, whether the said principle has been violated by the State of Andhra Pradesh or the State of Telangana.
2. In this batch of Writ Petitions, (i) the principles involved in the preparation of Seniority List in the cadre of Deputy Executive Engineer (for short 'Dy.EE') applied by the Engineer-in-Chief, Administrative Wing, Water Resources Department, Government of Andhra Pradesh, (ii) the Seniority Lists issued by him on different dates during July to November, 2017 and (iii) also consequential promotions effected, based on the said seniority lists, to the cadres of Executive Engineers (EEs), Superintending Engineers (SEs), Chief Engineers (CEs) and Engineer-in-Chief (ENC) in both the State of A.P and the State of Telangana, are in question.

(A) Brief facts relating to the petitioners and prior history leading to the filing of these cases:

3. The petitioners claim to be appointed to the posts of Assistant Executive Engineer (for short, 'AEE') in Irrigation and CAD Department (presently Water Resources Department) in the erstwhile combined State of A.P. on selection by the AP Public Service Commission to different zones pursuant to Notifications issued during different years which are as under:

Sl. No	Name	Notifi- cation	DOA	Unit	
1	A.Trinadham	1990	2-4-1993	<u>Zone-V</u> <u>Zone-I</u>	W.P.No.5776/ 2018
2	Md Amzad Hussain	1987	9-5-1989	<u>Zone-V</u> <u>Zone-V</u>	W.P.No.6094/ 2018
3	B.Gopala Krishna Rao	1990	22-4-1992	<u>Zone-V</u> <u>Zone-I</u>	
4	Saragadam Jagadeeshwar Rao	1990	13-4-1993	<u>Zone-V</u> <u>Zone-I</u>	W.P.No.6474 /2018
5	G.Srinivasa Rao	1990	7-4-1993	<u>Zone-V</u> <u>Zone-I</u>	W.P.No.9959/ 2018
6	G.Ramachandra Rao	1990	15-4-1992	<u>Zone-V</u> <u>Zone-I</u>	WP.No.37131 /2017
7	K.Ramana	1990	02-04-1993	<u>Zone-V</u> <u>Zone-I</u>	
8	M.Bhaskara Rao	1990	17-05-1992	<u>Zone-V</u> <u>Zone-I</u>	
9	B.Srihari	1990	08-04-1993	<u>Zone-V</u> <u>Zone-I</u>	
10	Sambangi Sugunakara Rao	1987	03-05-1989	<u>Zone-VI</u> <u>Zone-I</u>	W.P.41996/ 2017
11	Peela Appala Naidu	1990	01-04-1992	<u>Zone-VI</u> <u>Zone-I</u>	
12	Ponnada Sudhakara Rao	1990	01-04-1992	<u>Zone-V</u> <u>Zone-I</u>	
13	Reddy Venkata Satyanarayana	1990	01-04-1992	<u>Zone-V</u> <u>Zone-I</u>	
14	Dola Tirumala Rao	1987	03-05-1989	<u>Zone-IV</u> <u>Zone-I</u>	
15	Dulam Rama Gopal	1987	03-05-1989	<u>Zone-V</u> <u>Zone-I</u>	35119/2018
16	B.Venkateswarulu	1985	20-01-1986	Zone V	
17	S.Narasimha Rao	1985	16-01-1986	Zone V	
18	B.Shanker	1987	29-04-1989	Zone V	
19	K.Shyamsunder	1985	27-01-1986	Zone V	35667/2018
20	V.Ajay Kumar	1987	01-03-1989	Zone V	
21	K.S.S.Chandrasekhar	1987	01-04-1989	Zone V	14748/2018
22	T.Srinivasa Rao Gupta	1990	01-04-1992	Zone V	
23	A.Amarender Reddy	1990	20-03-1993	Zone V	
24	V.Srinivas	1990	01-04-1992	Zone V	16994/2018
25	N.Venkateswarlu	1985	01-02-1986	Zone V	
26	N.Sreedhar	1990	01-04-1992	Zone V	35986/2018
27	Mohd Azmal Khan	1990	01-04-1992	Zone V	
28	Mittapalli Ramesh	1990	01-04-1992	Zone V	36489/2017
29.	D.Srinivasulu		1995	Zone-I	
30.	B.Yesubabu			Zone-II	
31.	B.Rambabu			Zone I	

(a) The zonal seniority lists in the cadres of (i) AEEs & (ii) Dy.EEs and (iii) State-wide integrated seniority list of Dy.EEs

4. The provisional seniority list of AEEs working in different units/zones was issued by Circular Memo No.RC/ENC/A3/24018/2012-1 dt.10.09.2012 and was put up on the website of the Irrigation Department of the State of A.P. Objections were received to the same and thereafter final seniority lists of different units/zone were prepared by Circular Memo No. RC/ENC/A3/24018/2012-1 to 4 dt.18.10.2012.

5. Based on the seniority lists, cases of the petitioners and others were considered by a Screening Committee for being included in the panel of a particular year; and on selection by the Screening Committee, petitioners and others were included in different panels of different panel years and they were shown to have been promoted to the cadre of Dy.EE from a particular date.

6. Thereafter, provisional seniority lists in the next higher cadre of Dy.EE were issued vide Circular Memo No.RC/ENC/E1/E3/12651/2012-Zone, dt.12.12.2012. Objections made to the same were considered and final seniority lists of Dy.EEs were prepared and issued by Circular Memo No. RC/ENC/E1/E3/12651/2012-2-Zone, dt.22.01.2013.

7. Seniority Lists were issued in two annexures A and B, the first comprising final seniority lists of Dy.EEs from 1975-76 panel year to 31.12.1982 and the latter comprising of the final seniority list of Dy.EEs from 1983-84 panel to 2001-02 panel and from 2002-03 to 2008-09 by another annexure.

8. Later, Statewide integrated seniority list of Dy.EEs was issued vide proceedings No.RC/ENC/E1/22713/2013 dt.22.07.2013.

(b) The challenge to these three seniority lists before the A.P. Administrative Tribunal by AEEs of Zones II and III

9. This seniority list dt.22.07.2013 was challenged in OA.No.1563 of 2014 by K.S.Prakash Rao (3rd respondent in WP.No.5776 of 2018) and 10 others. The said persons also challenged the zonal/seniority list of AEEs of Zones II and III dt.18.10.2012 in O.A.No.2032 of 2014. They also challenged zonal seniority lists of Dy.EEs dt.22.1.2013 of Zone II and III in OA.No.2608 of 2014.

10. All these OA.s were allowed by a Common Order dt.29.04.2015.

(c) The challenge in the High Court of Telangana to the order of the Administrative Tribunal in O.A.Nos.1563 of 2014 and batch :

11. The petitioner in WP.No.5776 of 2018 filed WP.No.s 40948 of 2015 and 40950 of 2015, and some others filed WP.No.s 42093 of 2015 42878 of 2015 and 4451 of 2016 questioning the common order dt.29.04.2015 made in OA.No.s1563 of 2014, 2032 and 2608 of 2014.

12. Four consequential orders passed by the official respondents in the said Writ petitions on 12.11.2015, 13.11.2015, 02.12.2015 and 15.12.2015 canceling the in-charge arrangements in superior posts and revising the seniority lists were also challenged in the said Writ petitions.

(d) The order dt. 18.07.2016 of the Division Bench of the High Court in W.P.No.40948 of 2015 and batch:

13. By a Common Order dt.18.07.2016, a Division Bench of this Court allowed W.P. No.s 40948, 40950, 42093, 42878 of 2015 and WP.No.4451 of 2016; and the Common Order dt.29.04.2015 of the A.P. Administrative Tribunal, G.O.Rt.Nos.705 and 709 dt.12.11.2015 and dt.13.11.2015 and the provisional and final seniority lists dt.02.12.2015 and dt.15.12.2015, were all set aside. This decision is reported in **Akkena Trinadham and others v. The State of A.P.**¹ This decision will be discussed more in detail later.

(e) The further challenge in the Supreme Court of India

14. Questioning the Common Order dt.18.07.2016 in WP.No.40948 of 2015 and batch, SLP.(Civil) No.s 30355-30357 of 2016 were filed in the Supreme Court of India. They were also dismissed on 07.11.2016.

(f) The Decision in D.Vishnu Murthy & Ors. v. Government of A.P.²(Civil Appeal No.s 4142, 4144, and 4147 of 2004 dt.18.02.2016 reported in 2016(13) SCC 111) on seniority issues

15. In the meantime, i.e., before 07.11.2016, when **Akkena Trinadham (1 supra)** was decided, the Supreme Court had decided on 18.02.2016 the case of **D.Vishnu Murthy and Others.**

16. In that case, the question before the Supreme Court was the decision of the Government to exclude from the purview of the Public Service Commission, all temporary appointments made to Engineering Services of the State Government in different departments as on

¹ (2016) 6 ALD 447 (DB)

² 2016(13) SCC 111

09.08.1979; and the reconciliation of the disputes between such temporary appointees, who also got selected later through Public Service Commission, but were given the option to choose either the date of their regularization or the date of their selection through the Public Service Commission, for the purpose of revising seniority.

17. The Supreme Court in the said case of **D.Vishnu Murthy** (2 supra) set aside the decision of the Full Bench of the A.P. High Court rendered on 21.11.2003 in WP.No.17497 of 1999, wherein the High Court had upheld the order dt.25.06.1999 of the A.P. Administrative Tribunal in a batch of O.A.s including O.A.No.5667 of 1993. The Supreme Court further directed that if service conditions of the temporary employees governed under G.O.Ms.No.647 dt.14.09.1979 were altered in any manner based on the order of the Tribunal, the official respondents should reverse the same and rework the benefits to be granted to those appellants.

18. Though the appellants before the Supreme Court were nine in number, there were another 48 persons, who would also be benefited by the decision in **D.Vishnu Murthy** (2 supra).

(g) The Decision of the Supreme Court in R.Venkata Ramudu v. State of A.P.³ (Civil Appeal No.9856-9860 of 2016 dt.27.09.2016 reported in 2016(16) SCC 464)

19. In 2016, before the decision in **Akkena Trinadham** (1 supra), there was another important decision rendered by the Supreme Court in **R.Venkatramudu** (3 Supra).

³ 2016(16) SCC 464)

20. In this decision, the Supreme Court had occasion to consider the question whether AEEs belonging to the A.P. Engineering Services are entitled to retain the date of commencement of services originally assigned to them by virtue of Note under Rule 8 of the A.P. Engineering Service Rules, 1967 (Special Rules) *and* whether Rule 16(h) of the A.P. State and Sub-ordinate Service Rules, 1996 ('General Rules' which deal with various aspects of the probation of direct recruits such as commencement of probation, period of probation, passing of tests or acquiring qualifications etc.,) overrides the provisions of the Special Rules.

21. **Rule 16(a)** of A.P. State and Sub-ordinate Service Rules, 1996 (the General Rules) declares that a direct recruit shall commence his probation '*from the date of his joining the duty or from such other date as may be specified by the appointing authority*'; but **Rule 16(h)** of the same Rules is in the nature of an exception to Rule 16(a) and states that '*a probationer who does not pass the prescribed test "shall be deemed to have commenced the probation with effect from the date to be fixed by the Government"*'.

22. Note appended to Rule 8 of the A.P. Engineering Service Rules, 1967 (Special Rules) stated that "*any such Assistant Executive Engineer on probation shall not be discharged for failure to pass the above test (Accounts Test for P.W.D. Officers and Subordinates) within the period of his probation, but his probation shall be extended and his increment stopped till he passes the test*".

23. In the case of **R.Venkataramudu** (3 supra), though the appellant was appointed on 19.04.1992 as Assistant Executive Engineer, by a communication dt.17.07.2003 purportedly made under Rule 16(h), he was placed on probation with retrospective effect from 18.04.1992 for a period of two years and directed to pass Accounts Test within probation period, though he had already passed the said test six years prior thereto.

24. The A.P. Administrative Tribunal had taken the view that Rule 16(h) of the above General Rules of 1996 overrides the provisions of the Special Rules of 1967 and the High Court of Andhra Pradesh confirmed the same.

25. The Supreme Court reversed the said decisions and held that seniority is determined from the date of appointment which is different from the date of commencement of probation; that appointment precedes commencement of probation; commencement of probation is from date a person joins duty; that conclusion of the Tribunal as confirmed by the High Court that those persons who passed Accounts Test within prescribed probation period constitute separate class from those who pass the test after securing benefit of extended period of probation, and such latter class cannot gain advantage by way of seniority over former class, is without any basis. It held that in case the rule-making authority intended to make such distinction it would have done so expressly.

26. It further observed that in the context of the service such as the one to which R. Venkatramudu belonged, what is more relevant is the technical qualification of the employee and the experience gained in

utilizing such technical qualification for the service of the State than the knowledge of accounts, a subject which is of incidental significance; that knowledge of accounts is relevant only for the discharge of administrative responsibilities to be shouldered by the engineers; their essential duty is to provide skills of technical knowledge to the State; and the State Government was not right in its memo dt.20.01.2007 in taking the date of commencement of probation of R. Venkatramudu as 27.07.1998, by applying Rule 16(h) of the A.P. State and Subordinate Service Rules, 1996 (General Rules) instead of 18.04.1992. The Supreme Court set aside the said memo and quashed it and directed the State to consider the case of R. Venkatramudu and others for promotion to the post of Dy. Executive Engineer by taking into account their initial date of appointment with all consequential benefits.

B The zonal issue and a more detailed account of the decision in Akkena Trinadham :

27. We now go back to the earlier decision in **Akkena Trinadham** mentioned earlier by us for a more detailed look and its significance to this batch of cases.

28. In this case, zone-wise final seniority list in Zones II and III of AEEs dt.18.10.2012 relating to batches I and II, final Zone-wise provisional and final seniority lists of Dy. EEs communicated by proceedings dt.09.11.2012 and 22.01.2013 as well as State-wide inter se seniority list of Dy.EEs for promotion to the post of Executive Engineer communicated on 22.07.2013 were challenged in O.A.No.2032

of 2014 and O.A.No.1563 of 2014 before the A.P. Administrative Tribunal by persons belonging to Zones II and III.

29. It was contended that in the seniority list of AEEs, the Engineer-in-Chief had included persons from other zones in Zones II and III affecting the seniority of candidates initially selected by Public Service Commission in 1978 and 1985; the Engineer-in-Chief had no power or jurisdiction to transfer a local candidate of a particular zone or local cadre to any other zone; this would be violative of the **Presidential Order, 1975** issued under Article 371-D of the Constitution of India; there was no prior notice given before altering the seniority of the applicants; that in fact, once the seniority position of an individual is settled, the same cannot be altered; and it is not open to the State Government or the Engineer-in-Chief to obliterate the rank assigned to the selected candidates in a zone, by bringing candidates selected in other zones and thereby destroying the promotional avenues of the localities.

30. It was also contended that the Engineer-in-Chief issued the seniority list of Dy.EEs revising the panels of the entire period from 1975-76 to 2008-09; and since the Government already constituted a screening committee under G.O.Rt.No.1129, Irrigation and Command Area Development Department dt.08.10.2012, for the consideration of the panels for promotion to the 1st and 2nd level Gazetted categories for the panel years 2012-13 and 2013-14, the Engineer-in-Chief could not have issued the impugned seniority lists.

31. The A.P. Administrative Tribunal allowed the O.As.1563 and 2032 of 2014 by a common order and set aside the seniority list of Dy.EEs dt.22.07.2013, final seniority list of AEEs dt.18.10.2012 relating to Batch I and of the same date relating to Batch II, and four final zonal seniority lists of Dy.EEs dt.22.01.2013 relating to Zones II and III.

32. This was questioned in WP.No.s.40948 of 2015 and batch before this Court. This Court by common judgment dt.18.07.2016 in **Akkena Trinadham** (1 supra) set aside the order of the Tribunal and restored the seniority lists which had been set aside by the Tribunal.

33. The Division Bench recorded that after the Presidential Order, 1975 came into operation, Districts became 'water-tight compartments' in relation to certain posts; cluster of Districts formed into 'zones' and they became 'water-tight compartments' in relation to certain categories of posts; posts of AEEs and Dy.EEs in the Irrigation Wing of the Public Works Department were included in the III Schedule to the Presidential Order, thereby making them Specified Gazetted Categories of posts; and by virtue of Paragraph no.3 (4) of the Presidential Order, these posts, being Specified Gazetted category posts, had to be organized into a separate cadre in 'each zone'.

34. The Bench noticed that, on objections raised with regard to certain allotments made in terms of Paragraph no.4 of the Presidential Order by the Telangana Non-Gazetted Officers' Union, the State Government issued G.O.Ms.No.610 General Administration Department dt.30.12.1985; and as per Paragraph no.5(1) of the said G.O., employees

allotted after 18.10.1975 to Zones V and VI in violation of the zonalisation of the local cadres under the Six Point formula were to be repatriated to their respective Zones by 31.03.1986 by creating supernumerary posts; that a Commission known as Girglani Commission was appointed to sort out the anomalies in implementation of G.O.No.610 dt.30.12.1985; that the said Commission gave a report on 21.09.2004; and then G.O.Ms.No.674 dt.07.09.2007 was issued ordering the repatriation of non-local candidates appointed in deviation of the Presidential Order to their respective local cadres.

35. It noted that this was challenged in O.A.No.3784 of 2007, etc., before the A.P. Administrative Tribunal which dismissed all applications on 23.04.2012 and upheld the repatriation orders, and the said order was also confirmed by a Division Bench of this Court by order dt.21.11.2012 in Writ Petition No.13273 of 2012. It also noted that the Supreme Court refused to interfere with the said judgment of this Court by dismissing the Special Leave Petitions.

36. It held that only thereafter the Irrigation Department came up with the seniority lists dt.18.10.2012 and 22.07.2013.

37. The Division Bench held in its order dt.18.07.2016 in **Akkena Trinadham** (1 supra) that the 'transfer' or 'repatriation' of some persons from some zones to others had taken place in exercise of the power conferred under Paragraph no.5(2)(c) of the Presidential Order (which permits the Government to order a transfer from one local cadre to another where such transfer is otherwise considered necessary in the

public interest); that such orders under Paragraph no.5(2)(c) of the Presidential Order confer benefit of protection of seniority; and the same cannot be unsettled by a new group of persons particularly when such transfers were approved by the Tribunal and this Court and later the Supreme Court too.

38. The Division Bench held that by upsetting the seniority of the repatriatees, the Administrative Tribunal committed an illegality and so it set aside the Government Orders G.O.Rt.No.705 and 709 dt.12.11.2015 and 13.11.2015 and the provisional and final seniority lists dt.02.12.2015 and 15.12.2015.

39. As stated already, the S.L.P.s preferred against the order dt.18.07.2016 in **Akkena Trinadham** (1 supra) were dismissed by the Supreme Court.

C. Events after the decision in Akkena Trinadham (1 supra)

40. Now, we shall refer to the steps taken by the State of Andhra Pradesh after the decision of the High Court in **Akkena Trinadham** (1 supra).

(i) Government Memo No.19039 / Service – I / 2013 dt.23.09.2016 :

41. The State Government of Andhra Pradesh then issued the Government Memo No.19039 / Service – I / 2013 dt.23.09.2016 appointing a Five-Member Committee comprising of :

- (i) The Engineer-in-Chief (Irrigation) W.R. Department, A.P.
- (ii) The Engineer-in-Chief (A.W.) W.R. Department, A.P.

- (iii) Sri B.S.N.Reddy, Engineer-in-Chief (Retd.);
- (iv) Sri M.K. Rehman, Engineer-in-Chief (Retd.); and
- (v) Assistant Secretary to Government, W.R. (Ser) Department, A.P. Secretariat.

42. The said Committee was asked to consider the following issues :

- (i) *Methodology adopted in finalization of Zonal wise seniority lists in the cadre of AEEs and DEEs and State wide integrated list of Dy.EEs.*
- (ii) *To examine and make suggestions on the tentative seniority lists prepared by the ENC (AW) in the light of the Hon'ble Supreme Court orders in C.A.Nos.4142/2004 & 4147/2004 (D. Vishnu Murthy- 2 Supra) and Hon'ble A.P. High Court orders dt.18.7.2016 in W.P.Nos.40948, 40950, 42093 and 42878 / 2015 and 4451/2016 (Akkena Trinadham (1 supra)).*
- (iii) *Any other connected issues.*

43. The present disputes before us are an off-shoot of the recommendations of the Committee.

44. One set of Writ Petitions are concerned with Zones I to IV falling in the present State of Andhra Pradesh and another set of Writ Petitions are concerned with Zones V and VI of the new State of Telangana which came into existence from 01.06.2014.

(ii) The recommendations made by the Committee :

45. The following recommendations made by the said Committee in its report dt.9.5.2017 are in issue in all the Writ Petitions :

Recommendations 5 and 11 :

Paragraph 5 : “The basis for distribution of vacancies of DEEs in each panel year shall be the ratio of recruitment in the feeder cadre, i.e., AEE in the respective batch of recruitment with a concept that a senior shall be given

first preference to promotion. This is to ensure that no junior batch AEEs will be promoted to the cadre of DEEs until senior batch of AEEs in all zones are promoted as DEEs and to avoid anomalies in service conditions.

Paragraph 11 : “Declaration of post of DEE as state cadre post :

“To avoid future legal disputes and anomalies, the committee here by recommends to declare the post of DEEs as the State cadre post duly obtaining necessary amendments to Presidential Order.”

(iii) The acceptance of the recommendations of the Committee by the Engineer-in-Chief on 10.05.2017

46. A Circular Memo No.RC/ENC/AP/A2/03032015 dt.10.05.2017 was issued by the Engineer-in-Chief (AW), Water Resources Department, Hyderabad accepting the recommendations including recommendation No.5 of the Committee.

It provided in paragraph 7 that it is proposed to integrate the candidates of Zone I to IV in the cadre of Dy.EEs promoted in each panel year for the purpose of preparing Statewide Integrated Seniority list of Dy.EEs (for the purpose of promotion to the cadre of EEs), following the respective ranking in the cadre of AEEs as per service commission for those recruited through APPSC or as per seniority assigned for those regularised as per principles laid down in G.O.Ms.647.

The said Circular was placed in the official website, and all Engineers of the department, who were in service and retired, were requested to go through the Circular placed in the website, and make

objections on or before 31.05.2017 online. It was made clear that no separate individual communication would be made.

47. Thereafter a further meeting of the Committee was also held on 04.07.2017 dealing with some of the objections received to the methodology suggested by the Committee and a decision was taken that the Engineer-in-Chief (Admn) should publish seniority lists of AEEs of IJD batch and 647 batch on 05.07.2017 and other batches on 06.07.2017.

48. The Engineer-in-Chief Administrative Wing, Water Resources Department, Andhra Pradesh finalized and published a final seniority list of AEEs on 05.07.2017, with which petitioners have no grievance.

(iv) The ratification on 06.07.2017 by the Government of Andhra Pradesh of the action of the Engineer-in-Chief :

49. The Government of AP issued Memo No.19039/Services-I/2013 dt.06.07.2017 and ratified the action taken by the Engineer-in-Chief (AW), Water Resources Department, AP, Vijayawada in accordance with the recommendations of the Committee constituted by the Government and also permitted him to finalise the seniority lists of AEEs duly disposing of the objections received in the matter, as recommended by the Committee and to publish the final seniority lists accordingly. The Engineer-in-Chief (AW) was also permitted to finalise the said seniority lists strictly in accordance with the Orders of the Supreme Court in **R.Venkata Ramudu** (3 supra), as regards effect of Special Rules and General Rules mentioned supra.

(v) **Constitution of Screening Committee by the Government of Andhra Pradesh :**

50. G.O.Rt.No.374, Water Resources (Services.1) Department, dt.13.07.2017 was subsequently issued by the Government of Andhra Pradesh constituting a Screening Committee for review of panels for promotion to the posts of DyEEs from the panel years 1975-76 to 1998-99.

51. The Government of Telangana vide DO Letter No.71/Spl.CS (IRR)/2017 dt.24.07.2017 forwarded seniority lists of Engineers of Zones V and VI working in Telangana to the Government of Andhra Pradesh by the Letter dt. 18.07.2017 of the Engineer-in-Chief (AW), Telangana.

(vi) **Preparation of final seniority lists of AEEs for the four Zones in the State of Andhra Pradesh and giving of promotions to the posts of Dy.EEs, EEs, SEs and CEs**

52. Final seniority lists of AEEs from 1982 onwards were prepared by Circular Memo No.RC/ENC/A2/03032015/2015-2 dt.26.07.2017 of the Engineer-in-Chief (Admn), Water Resources Department, Vijayawada, AP for different periods in all the four Zones in Andhra Pradesh.

53. Thereafter the Engineer-in-Chief (AW), Water Resources Department, Andhra Pradesh issued Proceedings No.RC/ENC(ADMN)/C1/C2/786999/2017-Z1 to Z4 dt. 02.08.2017, 10.08.2017 and 02.11.2017 for the panel years 1983-84 to 1996-97, 1996-97 to 2004-05 and 2007-08 to 2008-09 respectively.

54. Petitioners assert that by virtue of the acceptance of the recommendations of the Committee by the Government, they have been pushed down up to 10 years in the panels of DyEEs while the non-official respondents were pushed up by 5 years in the panel of DyEEs. They also contend that to achieve this, the vacancies/posts of DyEEs of each Zone filled earlier in the settled seniority lists had been redistributed among other Zones retrospectively from the panel year 1983-84 to 2013-14 up to the bifurcation of the erstwhile State of A.P on 2.6.2014 into the new State of Telangana and the residuary State of A.P.

55. According to the petitioners, based on the said alleged panels / review panels, neither fresh orders of promotion / appointment by transfer were given to the members of the service nor a provisional or final Seniority list was ever prepared, but Govt. issued Notional promotion (cadre) / promotion to certain persons who were the beneficiaries of proceedings dt.2-8-2017, 10-8-2017 and 2-11-2017 to the post of Executive Engineers (EEs) by G.O.Ms.No.67 WR (Services) Department dt. 23-10-2017 for the panel years 2001-2002 to 2012-2013 in State of A.P. (present). Further promotions were given to the cadre of EEs for the panels of 2014-15, 2015-16 to 2017-18 by G.O.Ms.No.73 WR (Services) Department, dt.07-11-2017.

56. The State of Andhra Pradesh issued G.O.Ms.No.70, dt.03-11-2017 conferring further benefits to the beneficiaries of G.O.Ms.No.67 dt.23-10-2017 by giving further promotion / Notional promotion to the cadre of Superintending Engineers (SEs).

57. The State of Andhra Pradesh issued G.O.Ms.No.72, dt.03-11-2017 giving still further notional promotions / promotions from S.Es. to the cadre of Chief Engineers (CEs) to the beneficiaries of G.O.Ms.No.67, WR (Services-II) Department, dt.23-10-2017.

58. Circular Memo No. RC/ENC/A2/03032015/2017, dt.26-4-2018 was issued by the Engineer-in-Chief (Aw), Water Resources Department, State of A.P notifying the provisional seniority list of AEEs from 1985 PSC to 2007 PSC recruitment batches for Zones V and VI.

D. Details of the Writ Petitions concerning Zones I to IV in the present State of Andhra Pradesh

59. In W.P.No.5776 of 2018, the following reliefs were sought for:

“(a) action of the 2nd respondent in issuing circular Memo No.RC/ENC/AP/03032015 dt.10-5-2017 accepting the minutes of the Committee constituted vide Government Memo No.19039/Services-I/2013 dt.23-09-2016 in so far as it relates to Paragraph-5 & 7;

(b) Memo No.19039/Services-I/2013 dt.6-7-2017 of the 1st respondent in ratifying the action of the 2nd respondent in accepting the minutes of the Committee are illegal and arbitrary and are violative of Article 14 and 16 of the Constitution of India and Paragraph-5 of APPE (OLC & RDR) order 1975;

(c) Consequently declare that the seniority list of Dy.E.Es. issued by proceedings No. RC/ENC(Admn.)/C1/786999/2017-Z1, Z2, Z3, Z4, dt.2-8-2017 to 2-11-2017 are illegal and arbitrary and without power and jurisdiction and violative of Article 14 and 16 of the Constitution of India;

(d) declare that promotions effecting vide G.O.Ms.No.67 dt.23-10-2017, G.O.Ms.No.73 dt.7-11-2017, G.O.Ms.No.70 dt.3-11-2017, G.O.Ms.NO.72 dt.7-11-2017 are illegal and arbitrary and are violative of Article 14 and 16 of the Constitution of India, APPE (OLC & RDR) Order 1975

(e) further declare that the State vide integrated seniority list of Dy.E.E. issued vide circular No.RC/ENC/E1/E3/22713/2013 dt.22-7-2013 is liable to be confined by making such of the alterations which are required to made for complying the judgment of the Supreme Court in Civil Appeal No.4142/2004, dt.18-2-2016 and Civil Appeal No.9861/2016 dt.27-9-2016;

(f) and pass such order or orders as this Hon'ble Court may deemed fit and proper in the circumstances of the case.”

60. In W.P.37131 of 2017, the petitioners raised similar pleas by filing O.A.No.2254 of 2017 before the Administrative Tribunal, but it did not grant interim relief. So a Writ of Certiorari is sought in the said W.P. to call for records of the said O.A.

61. In W.P.16994 of 2018, Circular Memo No. RC/ENC/A2/03032015/2017, dt.26-4-2018 issued by the Engineer-in-Chief (Aw), Water Resources Department, State of A.P notifying the provisional seniority list of AEEs from 1985 PSC to 2007 PSC recruitment batches for Zones V and VI is assailed raising similar pleas.

62. In W.P.No.41996 of 2017, the petitioners had questioned order dt.30-11-2017 in O.A.No.3233 of 2017 wherein the A.P.Administrative Tribunal had refused to set aside proceedings in Rc.No.Enc/Admn/C1/C2/786999/2017-Z1 dt.02-08-2017, Rc.No. Enc/Admn/C1/C2/786999/2017-ZI dt.10-08-2017, Rc.No.Enc/Admn /C1 /C2/786999/2017-Z1 dt.02-11-2017 issued by the Engineer-in-Chief (Admn Wing), Water Resources Department, Vijayawada reviewing the

panels of Dy.EEs from 1995-96, 1996-97, 1997-98, 1998-99 to 2001-02, 2004-05, 2007-08.

63. In W.P.No.9959 of 2018, petitioners questioned order dt.27-02-2018 in O.A.No.313 of 2018 of the A.P. Administrative Tribunal, Hyderabad refusing to set aside paras-5 and 7 of the Circular Memo No.Rc/Enc/AP/A2/03/03/2015 dt.10-05-2017 of the Engineer-in-Chief, Administrative Wing, Water Resources Department, Andhra Pradesh, ratification of the action taken by the Engineer-in-Chief by the Memo No.19030/Ser.I/2013 dt.06-07-2017 of the State of Andhra Pradesh as well as promotions given to the cadre of EEs vide G.O.Ms.No.67 dt.23-10-2017, G.O.Ms.No.73 dt.7-11-2017, G.O.Ms.No.70 dt.3-11-2017, G.O.Ms.No.72 dt.7-11-2017.

64. In the other Writ Petitions No. W.P.36489 of 2017, W.P.6094 of 2018, W.P.6474 of 2018 and W.P.14748 of 2018, similar reliefs as were claimed in W.P.No.5776 of 2018 were sought.

E. Details of the Writ Petitions concerning Zones V and VI in the State of Telangana :

65. W.P.no.35986 of 2018 relates to Zones V and VI in the State of Telangana.

66. The Engineer-in-Chief, Administrative Wing, Water Resources Department, Andhra Pradesh issued provisional seniority list of AEEs working in Zones V and VI vide Circular Memo No.Rc/ENC/A2/030032015/2017 dt.26-04-2018 inviting objections. In the said list, the names of the petitioners in W.P.No.35986 of 2018 were

shown at Sl.No.275 and 305 respectively. The said list was finalized vide Circular Memo No. Rc/ENC/A2/030032015/2017 dt.23-05-2018.

67. *Even before finalization of the seniority list in the Feeder cadre of AEEs*, the Engineer-in-Chief, Administrative Wing, Water Resources Department, Andhra Pradesh issued orders in Circular Memo No.Rc/ENC(Admin)/C1/C2/786999/2017-Z-V dt.19-04-2018 revising the panels and according notional promotions in the Dy.E.E. category.

68. Petitioners in W.P.No.35986 of 2018, who were earlier shown in panel year 2003-04 were pushed down to 2007-08 panel year (Sl.No.1194 and 1237) without putting them on notice and the same was displayed on the A.P. Government website on 07-09-2018.

69. Similarly in Zone-VI also, orders were issued vide proceedings No.Rc/ENC(Admin)/C1/C2/786999/2017-Z-VI dt.19-04-2018 and in continuation of the same, orders were issued vide G.O.Ms.No.99 Water Resources (Service-II) Department dt.07-09-2018, G.O.Ms.No.100, Water Resources (Service-II) Department dt.07-09-2018, G.O.Ms.No.101, Water Resources (Service-II) Department dt.07-09-2018 and G.O.Ms.No.102, Water Resources (Service-II) Department dt.10-09-2018 according notional promotions to the categories of EEs, SEs, Chief Engineers and Engineers-in-Chief respectively.

70. In W.P.No.35986 of 2018, petitioners have challenged action of the State of Andhra Pradesh and the Engineer-in-chief, Administrative Wing, Water Resources Department, State of A.P., in according notional

promotions in Dy.E.E. category vide proceedings No.Rc/ENC(Admin)/C1/C2/786999/2017-Z-V dt.19-04-2018 conferring notional seniority to the non-official respondents vide proceedings No. Rc/ENC(Admin)/C1/C2/786999/2017-Z-VI dt.19-04-2018 and the connected integrated seniority list of the Dy.E.Es. of Zones V and VI vide letter No.Rc/ENC/B2/17080/EEs/SEs/CEs/2018-19-1 dt.12-09-2018 and the consequential G.O.Ms.Nos.99, 100 and 101 Water Resources (Service-II) Department dt.07-09-2018 and G.O.Ms.No.102, Water Resources (Services-II) Department dt.10-09-2018 according notional promotions in the higher categories of EEs, SEs, CEs and Engineer-in-Chief without preparing the integrated seniority list of Dy.E.Es. working in Zones- I to VI up to 01-06-2014 and contending that petitioners are entitled to retain the seniority conferred upon them vide seniority list communicated vide Circular Memo No.Rc/ENC/E1/E3/12655/2012-2-Zone-V dt.22-01-2013 and proceedings No.Rc/ENC/E1/E3/22713/2013 dt.22-07-2013 with benefits incidental and ancillary thereto.

71. Similar relief is sought in W.P.No.35667 of 2018 and in W.P.No.35119 of 2018.

F . Contentions of the Counsel for petitioners

72. In all these Writ Petitions, the main contention of Sri M. Surender Rao, Sri K.G. Krishna Murthy, Sri G. Vidya Sagar, learned Senior Counsel for the petitioners and Sri J. Sudhir and Sri V. Ravichandran, counsel for the petitioners is that the recommendation No.5 and 11 of the

Committee made on 9.5.2017 constituted by the Government of Andhra Pradesh vide G.O. Memo No.19039/Services-I/2013 dt.23-09-2016, its acceptance by the Engineer-in-Chief by Memo 19039/Services-I/2013 dt.10.5.2017 and Government vide Memo No.19039/Services-I/2013 dt.06-07-2017, and preparation of Zone-wise seniority lists of AEEs and Dy.EEs as well as the integrated seniority list of Dy.EEs, apart from notional promotions issued to the posts of Dy.EEs, EEs, SEs, CE and Engineer-in-Chief posts on the basis of the said recommendations of the Committee are illegal and arbitrary and violative of Article 14 and 16 of the Constitution of India and in particular, the Presidential Order, 1975.

While the counsel for petitioners have expressed that they have no objection for implementation of the decisions of the Supreme Court in **D.Vishnu Murthy** (2 supra) and **R.Venkata Ramudu** (3 supra), they contend that in the process of so doing, the State of Andhra Pradesh cannot violate Paragraph-5(1) of the Presidential Order.

They point out that the posts of AEEs and Dy.EEs in Irrigation Department are mentioned in III Schedule to the Presidential Order as 'Specified Gazetted Categories' at item Nos.40 and 41; that as per the A.P. Irrigation Engineering Service Rules, 2010 framed vide G.O.Ms.No.32, Irrigation and CAD (Services-IX) Department dt.12-04-2010 framed under proviso to Article 309 of the Constitution of India and in particular, Rule 11 thereof, posts of AEEs and Dy.EEs are Zonal posts; that the Zone is the Unit for the purposes of recruitment, appointment, discharge, seniority, promotion and transfer as per

Paragraph-5(1) of the Presidential Order; the Engineer-in-Chief will have no power or jurisdiction or authority to transfer a local candidate of a particular Zone or local cadre to any other Zone except in exceptional cases covered by Paragraph-5(2) of the Presidential Order; under no circumstances, a candidate directly recruited in one Zone can be transplanted into another Zone for any purpose; and it is not open to the State Government or the Engineer-in-Chief to obliterate the rank assigned to the selected candidates in a Zone, by bringing candidates in other Zones and thereby destroying the promotional avenues of the localities.

They contend that after coming into force of the Presidential Order, Districts became 'watertight compartments' in relation to certain posts and cluster of districts formed into Zones became 'watertight compartments' in relation to certain categories of posts as per Paragraph-6 of the Presidential Order; Zones-I to IV fall within the State of Andhra Pradesh and Zones-V and VI fall within the State of Telangana; and if due to what happened within their local cadres someone gained something, persons in other cadres cannot make out a grievance. Likewise, persons in other local cadres cannot also have a grievance if what happened within some other local cadre conferred benefit upon the persons in that cadre that eventually had an impact upon the integrated State wide seniority list.

73. It is contended that vacancies of Dy.EE in a particular Zone cannot be distributed to other Zones based on any ratio, because Dy.EE

post is a Zonal post and all the vacancies of Dy.EE posts in a particular Zone should be filled in by AEEs of that particular Zone only as per the Presidential Orders but not by any AEEs of other Zones under any circumstances. It is contended that the State of A.P and it's Engineer-in-Chief, (AW), Water Resources Department erred in changing the number of Dy.EE vacancies of each Zone by introducing the illegal methodology suggested by the Committee on 9.5.2017 contrary to the Zonal system envisaged by Article 371-D of the Constitution of India and the Presidential Order.

74. It is contended that promotions from the post of AEEs to the post of Dy.EE shall be confined to the members appointed in separate Unit of appointment i.e. Zone and an AEE working in Zones – I to VI can get promotion as Dy.EE only in the Zone in which he is appointed. According to them, promotional opportunities in a Zone/Unit of appointment will depend upon (a) the number of sanctioned posts to which the promotions are being made and (b) the vacancies arising in the sanctioned posts due to death, retirement, promotion, cessation of employment for any reason etc.

75. They contend that in a particular unit there may be more promotional opportunities and in other Unit there may not be that many promotional opportunities and the chance of promotion may vary according to the availability of vacancies. They allege that promotion cannot be based on State-wide seniority and a person belonging to a

particular Zone cannot be treated as a Junior or Senior to the members of the service in another Zone.

76. They therefore contend that the Committee appointed by the Government vide G.O. Memo No.19039/Services-I/2013 dt.23-09-2016 could not have made on 9.5.2017 recommendation No.5 for distribution of vacancies of Dy.EEs in each panel year among different Zones reducing the vacancies of Dy.EEs of Zone-I and increasing the vacancies of Dy.EEs in other Zones retrospectively; vacancies in a Zone cannot be distributed as suggested in the said recommendation proportionate to the recruitment in the feeder cadre.

77. They also submitted that the Committee also recommended in **Paragraph-11** that the post of Dy.EE should be made a State cadre post and till this is done, possibly by amending the Presidential Order, the recommendation of the Committee cannot be implemented; and the Engineer-in-Chief could not have accepted the said recommendation on 10.5.2017, and the State Government in its Memo No.19039/Ser.I/2013 dt.06-07-2017 could not have ratified the acceptance by the engineer-in-Chief of the recommendations of the Committee.

78. So all consequential steps taken such as revising panels of Dy.EEs, making promotions to the category of EEs, SEs, CEs vide G.O.Ms.No.67 dt.23-10-2017, G.O.Ms.No.73 dt.07-11-2017, G.O.Ms.No.70 dt.02-11-2017 and G.O.Ms.No.72 dt.07-11-2017 apart from State-wide integrated seniority list of Dy.EE issued by Circular

No.Rc/ENC/E1/E3/22713/2013 dt.22-07-2013 are illegal and arbitrary and are to be set aside.

79. Reliance is also placed on the order dt.23-08-2017 in W.P.M.P.No.33071 of 2017 in W.P.No.26658 of 2017 wherein an interim order was granted permitting the official respondents to revise the seniority lists in Zone-V only in terms of the judgments of the Supreme Court in **R. Venkata Ramudu** (3 supra) and **D. Vishnu Murthy** (2 supra) and *not on any other ground*. It is contended that the said interim order has also been violated by the respondents. Apart from this learned counsel for petitioners also relied on the decision in **Government of Andhra Pradesh and others Vs. A.Suryanarayana and others**⁴.

80. As regards Zones V and VI now located in the State of Telangana, Sri V.Ravichandran, learned counsel for the petitioner in W.P.No.35986 of 2018 contended that Zone is the unit of appointment in terms of Rule 11 of the A.P. Irrigation Engineering Service Rules for both the posts of AEE and Dy.EE and question of ensuring that 'no junior batch of AEEs being promoted to the cadre of Dy.EEs until senior batch of AEEs in all Zones are promoted, as recommended by the Committee', runs contrary to the scheme of the Presidential Order; there is no question of withholding the promotion of AEEs working in other Zones to the post of Dy.EEs despite availability of vacancies in those Zones merely because in a different Zone, a person of a senior batch of AEEs did not get promoted as a Dy.EE; the State and the Engineer-in-Chief should

⁴ AIR 1991 SC 2113

have integrated the seniority list of Dy.EEs working in Zones – I to VI up to 01-06-2014 for the purpose of effecting promotions to the post of EEs, which is a State cadre post; and Engineer-in-Chief erred in revising the panels of Dy.EEs without issuing notice, thereby violating principles of natural justice and also Rule 24 of the A.P. State and Subordinate Service Rules, 1996. He also contended that though proceedings No.Rc/ENC(Admn)/C1/C2/786999/2017-Z-V dt.19-04-2018 were issued reviewing the panels, they were uploaded on the website of Government of Andhra Pradesh on 07-09-2018 and the petitioners and many others were not aware of the exercise being undertaken by the State of Andhra Pradesh and it's Engineer-in-Chief, AW,Water Resources Department.

81. According to him, because of the illegal action of the State of Andhra Pradesh and the Engineer-in-Chief, the non-official respondents, who were earlier shown as Juniors to the petitioners in Dy.EE category in the seniority list dt.22-07-2013 came to be placed above the petitioners; and the panel year of the petitioners was pushed down from 2003-04 to 2007-08 as per letter No.Rc/ENC/B-II/17080/EEs/SEs/CEs/2018-19 dt.12-09-2018 of the Engineer-in-Chief, while the non-official respondents got the benefit and their names were included in the 1998-99 panel. He contended that settled seniority list was unsettled contrary to the circular instructions issued by the Government vide Memo dt.20-05-2004 which prescribed that no request for revision of seniority shall be entertained after lapse of more than 3 years.

82. He also contended that according notional promotions to the AEEs working in Zones-V and VI even before preparing the Unit Seniority List of Dy.EEs working in the respective Zones is not permissible; and the petitioners are entitled to be continued as EEs with benefits incidental thereto in terms of the seniority assigned to them in 2013 in the Dy.EE category.

Contentions of the State of A.P and the Engineer-in-Chief, Administrative Wing, Water Resiurces department, State of A.P.

83. In the counter affidavit filed by the Government of Andhra Pradesh and the Engineer-in-Chief (AW), Water Resource Department, State of Andhra Pradesh, they contended that there was nothing wrong in the recommendations dt.9.5.2017 made by the Committee of Engineers appointed by the State of Andhra Pradesh on 23-09-2016 and in particular recommendation No.5 which provided for distribution of vacancies of Dy.EEs in each panel year to be in the ratio of recruitment in the feeder cadre of AEE in the respective batch of recruitment, and ensuring that no junior batch AEE will be promoted to the cadre of Dy.EE until senior batch of AEEs in all Zones are promoted as Dy.EEs to avoid anomalies in service conditions. They also contended that there is no illegality or impropriety in recommendation No.11 to declare the post of Dy.EE as a State cadre post by amending the Presidential Order.

84. According to them, the posts in question are posts in 'Major Development Project' as defined in Paragraph-2(g) of the Presidential Order and under Paragraph-14 of the Presidential Order, posts other than posts belonging to any of the non-Gazetted categories in the Ministerial

and Technical services in a Major Development Project are outside the purview of the Presidential Order.

85. They contended that the petitioners are employed in Major Development Projects notified in G.S.R. 525(E) dt.18-10-1975; and the petitioners cannot rely upon Paragraph-5 of the Presidential Order and contend that posts of AEEs and Dy.EEs are Zonal posts and it is not permissible to distribute posts of Dy.EEs among the six Zones constituted under the Presidential Order. According to them, due to pendency of seniority disputes in the cadre of AEEs since 40 years, many people retired or expired without getting promotions to higher cadres and the respondents have acted in conformity with the decisions of **R.Venkata Ramudu** (3 supra) and **D.Vishnu Murthy** (2 supra) and the petitioners, with a selfish motive, have filed these cases.

86. Further, it is submitted that, in Irrigation & CAD Department (Water Resources Department) due to prioritized major projects situated in various places (zones), the recruitment in the cadre of AEEs did not evenly taken place in Zone I, II, III and IV from 1985 to 1996 which was shown as follows :

BATCH	ZONE I	ZONE II	ZONE III	ZONE IV	REMARKS
1985 PSC and A/T	38	54	43	59	
1989 PSC and LR and A/T	20	33	26	171	
IPP Batch	0	0	0	15	
GO 193 and A/T.	0	0	0	176	

1992 PSC and A/T	20	31	33	100	
1993 PSC and LR and A/T	15	11	14	82	
1994 PSC and A/T	1	0	0	13	
1995 PSC and LR	4	9	9	47	
1996 PSC and A/T	5	7	9	27	
Total	103	145	134	690	

87. It is submitted that, there were large variations in recruitment between zones and so the Committee constituted by the Government vide Memo No.19039/Ser. I/2013 dt.23.09.2016 proposed on 9.5.2017 a new procedure in Paragraph 5 that, *“the basis of recruitment in the feeder cadre, i.e., Assistant Executive Engineer in the respective batch of recruitment, with a concept that a senior shall be given first preference to promotion. This is to ensure that no junior batch of AEEs will be promoted to the cadre of DEEs until senior batch of AEEs in all zones are promoted as DEEs and to avoid anomalies in service conditions”* which was accepted by the Engineer-in-Chief vide Memo No.RC/ENC/AP/A2/03032015, dt. 10.05.2017 and was ratified by the State Government in Memo/19039/Services-I/2013 dt.6.7.2017.

88. According to them, the procedure specified is regarding vacancies of DyEE cadre in each panel year will be with reference to basis of recruitment to AEEs zone-wise as the number of AEEs and number of DEEs posts in each zone is interlinked and thereby, vacancies are also to arise proportionately. As a result of this, the promotional opportunities

in the cadre of Dy.EE will be equal to the ratio of AEEs among the zones.

89. Quoting Para 4(A) of G.O.Ms.No.729 General administration (SPF-A) Department dt.1.11.1975 and Para 2(g) of G.O.Ms.No.730 General administration (Services –A) Department dt.1.11.1975, they contended that local preference has to be given to the recruitment of AEEs but not in promotions of the Dy.EES though it is a Zonal cadre post.

90. They contended that after completion of the Major Development Projects, the concerned units/Circles have been converted into regular circles due to which the posts were localized and eventually the strength of the Dy.EEs posts in the Zones was changed from time to time; and this affected the promotional opportunities of engineers in the Zones. They contended that as per rules they have to be adjusted in all Zones but this was not done.

91. They contended that the review of promotions has taken place due to revision of seniority as per decision in **D. Vishnumurthy** (2 supra) and as per Government instructions, and it is inevitable to have effect on some of the Engineers as per seniority and other eligibility conditions; that while doing so, some of the In-charge EEs, SEs and CEs were not regularized in their respective cadres and the Government vide G.O.Ms.No.68, (Finance HR.II) Department, dt.23.05.2018, have accorded sanctioned for 34 Supernumerary posts and accommodated the affected engineers in the cadre of CE(1), SE (14) and EE (14) in Water

Resources Department; and Government vide G.O.Rt.No.507, Water Resources (Services.II) Department, dt.18.07.2018 have issued posting orders to the above Supernumerary CEs, Supernumerary SEs and Supernumerary EEs.

92. Further, it is submitted that, in order to implement the Supreme Court orders in **D. Vishnu Murthy** (2 supra), the Engineer-in-Chief (Admn. Wing), I & CAD Department, Government of Telangana has initiated action well before the Water Resources Department, Government of Andhra Pradesh by proposing a procedure on preparation of seniority lists vide their Circular Memo No.RC/ENC(AW)/A1/24018/2017 dt.19.04.2017 which is as follows :

“It is proposed to regularize/accord promotions in all cadres in Government of Telangana for the live (working) candidates belonging to Zone-V and VI as on 02.06.2014, duly adopting the following procedure that,

It is proposed to confine the promotions to Zone-5 Zone-6, candidates only.

- (i) *The number of arrangements made earlier will be treated as number of vacancies;*
- (ii) *The no. of EE and shall be taken as 42% of total posts of combined of AP for the period prior to 02.06.2014;*
- (iii) *It is proposed to integrate the Zone-5 and Zone-6 in the AEE batch following the established principles of integration (i.e., one AEE of Zone-5 and one of Zone-6 will be placed in order of seniority till all the AEEs of that batch exhausts in both zones and so on. In respect GO.647 batch, the AEEs of the zones will be clubbed and will be placed as date of joining in the department) and promotions will be given batch wise to the cadre of DEE,*

to the anomaly occurred due to adoption of method of cadre strength.”

93. According to them, the ENC (AW), I & CAD Department, Telangana has first gone ahead by proposing their procedure dt. 19.04.2017 and revised the seniority of the AEEs; that the Engineer-in-Chief (Admn. Wing), Irrigation & CAD Department, Government of Telangana has published Dy.EEs Seniority List of Zone V and VI vide Circular Memo No.RC/ENC/B3/91746/2017, dt.19.09.2017, without consulting the Engineer-in-Chief (Admn.), Water Resources Department, Government of Andhra Pradesh, and the same was struck down by this Court.

94. They contend that pursuant to the High Court orders in WP.No.41639 of 2017 dt.29.01.2018 wherein the State of A.P and the State of Telangana undertook to prepare the seniority lists of Dy.EEs in Zones V and VI in 4 months, the Special Chief Secretary to Government, I & CAD Department, Government of Telangana has requested the Engineer-in-Chief (Admn. Wing), I & CAD Department, Hyderabad to send the lists immediately to the Engineer-in-Chief (Admn.), Water Resources Department, Government of A.P.; that the Government of Telangana vide Memo No.1951/Ser.II/2017-3, dt.07.02.2018 has furnished the seniority lists of AEEs, Assistant Engineers and Technical Officers of Zone V and VI along with charges verification reports; and accordingly, the provisional seniority list of AEEs in respect of 1978 PSC to 2007 PSC of Zone V to VI was revised in terms of decision in **D.Vishnu Murthy** (2 supra) duly giving time for

7 days time for submitting objections and placed on the official web-site www.irrigation.ap.gov.in vide Engineer-in-Chief (Admn.) Circular Memo No.RC/ENC/A2/03032015/2017, dated 26.04.2018.

95. They stated that aggrieved by the above Sri N. Venkateswarlu and another have filed W.P.No.16994 of 2018 with a prayer to suspend the Circular Memo No.RC/ENC/A210303201512017, dt. 26.04.2018.

96. The High Court order by order dt.02.05.2018 directed:

“The Circular Memo dated 26.04.2018 issued by the Engineer-in-Chief (Administration), Water Resources Department, Government of Andhra Pradesh, stipulates 02.05.2018 as the last date by which objections should be submitted. We are of the opinion that this time frame is far too short for those affected to submit their objections comprehensively along with supporting material.

There shall accordingly be a direction to the respondent authorities to receive objections up to 15 days from today, i.e., up to 05.00 p.m. on 17.05.2018; and consider all such objections in accordance with the procedure before taking a further decision in the matter.”

97. Accordingly, the final seniority list of Assistant Executive Engineers in respect of 1978 PSC to 2007 PSC of Zone V to VI was finalized in terms of Apex Court orders in **D. Vishnu Murthy** (2 supra) duly disposing of the objections received and placed on the official web-site www.irrigation.ap.gov.in vide Engineer-in-Chief (Admn.) Circular Memo No.RC/ENC/A2/03032015/2017, dt.23.05.2018.

98. While the matter stands thus, they contended that one Sri H. Manohar and two others filed C.C. No.1555 of 2018 with a prayer to punish the respondents herein for committing contempt of court by their

willful and deliberate disobedience of the orders dt.29.01.2018 passed by in Writ Petition No.41639 of 2017 and this Court in its order dt.10.07.2018 in C.C.No.1555 of 2018 in Writ Petition No.41639 of 2017 had ordered as follows :

“Learned Government Pleader appearing on behalf of respondents submits that extension petition has been filed, however, same is not listed before the Court.

Keeping in view the facts and circumstances of the case, we hereby grant six weeks time to complete the whole exercise, as per the directions dated 29.01.2018 passed in W.P.No.41639 of 2017, falling which, the respondents shall personally remain present in Court on the next date of hearing.

Though the Chief Secretary to the State of Andhra Pradesh is not a party in the present case, under Article 226 of the Constitution of India we hereby direct him to look into the matter personally and ensure the compliance of the order dated 29.01.2018 within six weeks, failing which, the Chief Secretary to the State of Andhra Pradesh, shall also remain present in Court on the next date of hearing.

List on 05.09.2018.”

99. Sri P.Govind Reddy, Special Counsel for the State of A.P reiterated the above submissions and contended that in obedience to the High Court orders, the Departmental Promotion Committee for promotions to the cadre of EEs, SEs, Chief Engineer and Engineer-in-Chief were conducted on 05.09.2018, 06.09.2018 and 10.09.2018 and as per the approval of the Departmental Promotion Committee, orders were issued by the Government vide G.O.Ms.No.99, G.O.Ms.No.100, G.O.Ms.No.101, Water Resources (Ser.II) Department, dt. 07.09.2018 and G.O.Ms.No.102, Water Resources (Ser.II) Department, dt. 10.09.2018 and the same was submitted to the Special Secretary to

Government, Telangana State, Hyderabad and the ENC(AW), I & CAD Department, Errummanzil, Hyderabad for taking further necessary action in the matter.

100. The Counsel for the State of A.P prayed for dismissal of the W.Ps.

The stand of the State of Telangana

101. It is the stand of the State of Telangana that after the decision in **D. Vishnu Murthy** (2 supra), a Contempt Petition (Civil) No.755 of 2017 was filed in the Supreme Court to implement the said decision and it was dismissed on 15.11.2017 requesting this Court to dispose of the Writ Petitions already pending before it within four months; and recording undertaking of the Counsel for the State of Telangana that the orders would be implemented in four months by taking all consequential steps and making disbursements to eligible employees expeditiously.

102. It is contended that thereafter two persons filed M.A.No.234 of 2019 in the Supreme Court to reopen the above Contempt Case on the ground that the Government of Telangana did not implement the orders of the Supreme Court in the above Contempt Case.

103. It is also stated that in WP.No.35119 of 2018, this Court granted interim orders on 03.10.2018 in I.A.No.1 of 2018 that decision taken, if any, shall not be given effect to till the next date of hearing and later, on 22.11.2018, the said order was extended till 12.12.2018 and on 12.12.2018, it was extended until further orders.

104. It is stated that to comply with the directions of the Supreme Court and this Court, orders were issued in G.Os.No.116, 117, 118 and 119 Irrigation & CAD (Ser.II) Department, dt.22.11.2018 for implementation of the orders issued by the Water Resources Department of the Government of Andhra Pradesh; but before communication of these orders to the Engineer-in-Chief (Administration Wing), Irrigation and CAD Department, Hyderabad, it was informed about the extension of the interim order dt.03.10.2018 in WP.No.35119 of 2018 until further orders; and therefore the said orders were all kept in abeyance in Government Memo No.1951 / Ser.II / 2017 dt.24.11.2018.

105. It is also stated that in M.A.No.234 of 2019 in Contempt Petition No.755 of 2017 in C.A.No.4147 of 2004, the Supreme Court requested this Court on 22.07.2019 to decide W.P.No.35119 of 2018 and dispose it of.

106. It is contended that the judgment in **Akkena Trinadham** (1 supra) was also confirmed on 07.11.2016 by the Supreme Court by dismissing S.L.P.Nos.30355 – 30359 / 2016 and so the integrated seniority lists of Dy.EEs from Zones I to VI which were prepared and published by Memo No.RC/Engineer-in-Chief (Admin.) / E1 / E3 / 22713 / 2013 dt.22.07.2013 continue to be valid in respect of repatriations made by the Government as per G.O.610 dt.30.12.1985 and G.O.Ms.No.124 General Administration (SPF.A) Department dt.07.03.2002.

107. After referring to the decisions of **D. Vishnu Murthy** (2 supra) and **R. Venkatramudu** (3 supra) it is contended that the Seniority Lists

of AEEs and Dy.EEs were required to be prepared in accordance with the said two decisions of the Supreme Court.

108. According to the State of Telangana, consequent on its creation by the A.P. Re-organization Act, 2014 w.e.f. 02.06.2014, individual Zonal list, subsequent integrated seniority list for each higher category has to be prepared by the State of A.P. based on consensus with the State of Telangana *up to 01.06.2014* and thereafter each State has to independently maintain Zone-wise list and integrated lists.

109. It is contended that as per sub-Paragraph (4) of Paragraph 3 of G.O.Ms.No.674 dt.20.10.1975 (Presidential Order), posts belonging to each specified Gazetted category in each Department in each Zone shall be organized into a separate cadre; that at Serial No.40 and 41 of Schedule III annexed to the Presidential Order, the posts of AEEs and Dy.EEs in Public Works Department (Irrigation) were Specified Gazetted category of posts; and promotions from the category of AEE to Dy.EE are made as per Service Rules from the same Zone to the extent of vacancies available in that Zone as per Paragraph no.5 of the Presidential Order. Reference is also made to the decision of the Supreme Court in **A. Suryanarayana Rao and others** (4 supra).

110. The G.P for Services –II , State of Telangana reiterated the said submissions.

Contentions of counsel for other non-official respondents :

111. Sri D. Prakash Reddy, Senior Counsel appearing for Sri C. Sai Reddy, counsel for respondent nos.8 and 9 in Writ Petition No.35119 of 20185, contended that the posts of Dy.EEs existing in Nine (9) Offices namely (1) The Engineering in Chief (Irrigation); (2) Chief Engineer (Medium Irrigation); (3) Chief Engineer (Minor Irrigation); (4) Chief Engineer (CDO); (5) Chief Engineer (ISWR); (6) Chief Engineer (Hydrology); (7) Commissioner of Tender; (8) Commissioner of CADA, and (9) Engineer in Chief (IW), have to be treated as Cadre Strength of Zone VI in the State of Telangana. All these Offices are located in the territory of Zone VI, but were not treated as State Level Offices / Establishment / Institution / Head Offices as per the Presidential Order. These offices remained as Local Offices, but all the posts of Dy.EEs in the said Offices were filled up by promotion from the feeder cadres of AEEs of all zones, treating the said offices as Head Offices.

112. After report dt.21.09.2004 of Sri J.M. Girglani, I.A.S. (Retired), the Government issued amendment in G.O.Ms.No.549 G.A. (M.C.) Department dt.04.10.2006 to G.O.P.No.728 G.A. (SPF.A) Department dt.01.11.1975, treating the Office of the Engineer-in-Chief (Admn. Wing), Irrigation and C.A.D. Department as only the Head office, leaving all said Nine (9) Offices.

113. So, as per Paragraph 14 (b) of the Presidential Order, G.O.P.No.728 G.A. (SPF.A) Department dt.01.11.1975 and G.O.Ms.No.549 G.A. (MC) Department dt.04.10.2006 '*Office of the*

Engineer-in-Chief (Admn.Wing), Irrigation and C.A.D. Department' is only the Head Office and exempted from the provisions of the Paragraph 14(b) of the Presidential Order; that the Telangana Irrigation Engineers Association – Zone VI have made several requests including representations dt.13.05.2010 and 12.07.2010 to the respondents herein requesting to fill the vacancies of Dy.EEs existing in the said Nine (9) Offices, by promotion from the AEEs of Zone VI, treating the said vacancies as those of Zone VI. Based on it, fair share ratio, in the Head Office, Major Development Projects, State Level Offices and Special Establishment, etc., is required to be fixed.

114. If the ratio of fair share is fixed accordingly, he contended, Zone VI gets 34% fair share. But instead of doing so, the State Government addressed a letter No.22726/SPF/2007-1, dt.13.11.2008 to the Government of India for inclusion and approval of said offices as State Level Offices / Institutions. But the Government of India has not accorded for inclusion of said offices in the list of State Level Offices / Institutions, as it is clear from the U.O.No.4218/SPF-MC/2017-1 dt.29.04.2017 of G.A.D.

115. Even then the posts of D.E.Es in the said offices were filled by D.E.Es of all Zones, apportioning said vacancies among all zones, due to which the A.E.E.s of Zone VI were deprived of promotions in the cadre of Dy. EEs to the extent vacancies in Zone VI.

116. He contended that the Government issued Memo No.12957/Ser.VIII.A1/2010 dt.11.01.2011, requesting the Engineer in

Chief (AW) I & CAD Hyderabad, to furnish the fair share comparative statement duly treating the said offices as local offices in Zone VI in the cadre of A.Es/A.E.Es/Dy.E.E.s for taking further action in the matter. But, thereafter no further action in the matter was taken and the respondents have filled up the vacancies of Dy.E.E.s in the said offices, from the A.E.Es of other zones by promotion vide proceedings dt.09.11.2012 and 07.12.2012. Based on it, seniority list dt.22.01.2013 of Dy.E.E.s in Zones and integrated seniority list dt.23.07.2013 of Dy.E.E.s were issued.

117. He contended that the Official respondents have not followed the cadre strength to the Zones, on the plea that cadre strength was not fixed; due to this, the vacancies varied from Zone to Zone, for each panel year right from the panel year 1975-1976 onwards, resulting in lesser vacancies in the cadre of Dy.E.E.s being filled from A.E.E.s of Zone VI.

118. Due to apportioning the vacancies existing in the said offices among all Zones and also adopting lower fair share to Zone VI, in the Major Development Project, Special Officers / Special Establishments etc., the A.E.E.s of Zone VI are not in getting their due share in the promotions to the cadre of Dy.EEs and higher cadres, resulting in anomalies in service conditions.

119. He alleged that from the panel year 2014-2015 to 2017-2018, no person was promoted to the cadre of Superintending Engineer and Chief Engineer from Zone VI and all the vacancies were filled up from personnel of Zone V only. In the panel year 2018-2019, only 17 persons

from Zone VI got promoted to the cadre of S.E., out of 47 vacancies and remaining 30 were filled from Zone V. But to the cadre of Chief Engineer, no person was promoted from Zone VI and 23 were promoted from Zone V out of 24 vacancies. Likewise, to the cadre of ENC, no person from Zone VI got promoted, though there were four (4) vacancies and all four (4) vacancies were filled up from Zone V only.

120. Sri T. Surya Karan Reddy, learned Senior Counsel appearing for respondent no.15 in Writ Petition No.35119 of 2018, Smt. A. Chaya Devi, learned counsel appearing for respondent no.4 in Writ Petition No.37131 of 2017, for respondent no.3 in Writ Petition No.36849 of 2017, for respondent no.5 in Writ Petition No.6094 of 2018, for respondent no.10 in Writ Petition No.35119 of 2018, for respondent no.6 in Writ Petition No.14748 of 2018, Smt. K. Rajya Lakshmi, learned counsel appearing for respondent no.4 in the Writ Petition No.5776 of 2018; Sri M. Sudhir Kumar, learned counsel appearing for respondent nos.4 to 6 in Writ Petition No.37131 of 2017, for respondent nos.3 to 5 in Writ Petition No.36489 of 2017, for respondent nos.10 and 11 in Writ Petition No.41996 of 2017, and for respondent nos.5 and 6 in Writ Petition No.6094 of 2018 also addressed arguments.

121. These counsel for non-official respondents reiterated that the State of Andhra Pradesh and the State of Telangana did not commit any illegality in accepting the recommendations of the Committee in Paragraph no.s 5 and 11, revising seniority lists on the said basis and making promotions on the said basis. It is contended that distribution of

vacancies in the cadre of Dy.EEs across the Zones I to VI is just and proper and would ensure that all AEEs in all Zones in a particular panel year would get promotion to the post of Dy.EEs and remedy the injustice done to the non-official respondents in the earlier panels of seniority notified by the official respondents.

122. We have considered the submissions of all the parties.

G. THE POINTS FOR CONSIDERATION:

123. On the basis of the contentions of the parties, the following points arise for consideration:

“ (a) Whether the posts of AEEs and Dy.EEs in the Irrigation and CAD Department of the erstwhile State of Andhra Pradesh are Zonal posts governed by the Presidential Order?

(b) Whether it is permissible for the Committee constituted by the Government of Andhra Pradesh to recommend in Paragraph-5 of its recommendations that there should be a distribution of vacancies of Dy.EEs in each panel year among the different Zones?

DISCUSSION:

124. Before we deal with the same, a brief introduction in relation to the Presidential Order of 1975 is warranted.

THE PRESIDENTIAL ORDER,1975

125. There were two agitations, one in 1969 and another in 1972, known as ‘The Telangana Agitation’ and ‘Jai Andhra Agitation’ in the erstwhile composite State of Andhra Pradesh. Normalcy was restored when a Six-Point Formula was arrived at by and between the leaders of the two regions.

126. The Six-Point Formula provided *inter alia* for accelerated development of the backward area of the State; institution of uniform arrangements throughout the State to enable preference to local candidates in the matter of admission to educational institutions and also in the matter of direct recruitment to non-Gazetted (other than specified posts) posts and corresponding posts in the local bodies and the posts of Tahsildars, Junior Engineers and Civil Assistant Surgeons; setting up of an Administrative Tribunal for dealing with grievances of employees of the State Government / others in Public Employment etc.

127. The Constitution (32nd Amendment) Act, 1973 was passed to implement the Six-Point Formula. By this Amendment, Clause (1) of Article 371 was omitted and two new Articles, i.e., Article 371D and 371E were inserted.

128. Clause (1) of Article 371D empowered the President of India to provide, by order, for equitable opportunities in facilities for the people belonging to different parts of the State in the matter of Public Employment and in the matter of Education. Clause (10) of Article 371D declared that the provisions of Article 371D and any order made by the President thereunder shall have the effect notwithstanding any other provision of the Constitution or in any other law for the time being in force.

129. The President of India, in exercise of the power conferred by Clauses (1) and (2) of Article 371D, issued “**The Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation**

of Direct Recruitment) Order, 1975 (also referred to as the 'Presidential Order, 1975') which was published in the Gazette of India on 18.10.1975 and re-published in the State under G.O.Ms.No.674, General Administration Department, dt.20.10.1975.

130. In Paragraph 2(c) of the Presidential Order, '*Local Area*' in relation to any local cadre was defined as a local area specified in Paragraph no.6 for direct recruitment to posts in such local cadre. Paragraph 2(e) defined the term '*Local Cadre*' as any local cadre of posts under the State Government organized pursuant to Paragraph no.3, or constituted otherwise for any part of the State. Paragraph 2(f) defined the term '*Local Candidate*' in relation to any local area to mean a candidate who qualifies under Paragraph no.7 as a '*Local Candidate*' in relation to such local area. Paragraph 2(j) defined the term '*Specified Gazetted Category*' to mean any Gazetted category in the 3rd Schedule and includes any other Gazetted category notified as such by the Central Government.

131. Paragraph no.6 of the Presidential Order provided that every District shall be regarded as a local area for Direct Recruitment to posts equivalent to the category of Junior Assistant or posts lower in status than that of Junior Assistant as well as in terms of the scale of pay than that of a Junior Assistant. It also declared that every Zone is a local area for direct recruitment to posts belonging to any non-Gazetted category as well as to categories of Tahsildars, Assistant Executive Engineers,

Assistant Agricultural Officers, Inspectors of Police and Motor Vehicle Inspectors.

132. Paragraph no.8 of the Presidential Order provided that:

(a) 80% of the posts to be filled up by Direct Recruitment in any local cadre comprising of posts equivalent to or lower than that of Junior Assistant / Lower Division Clerk should be reserved in favour of local candidates in relation to the local area;

(b) 70% of the posts to be filled up by Direct Recruitment was made in favour of local candidates in relation to the local area, in respect of posts belonging to non-Gazetted categories or those carrying a pay higher than that of Lower Division Clerk;

(c) and insofar as categories of Tahsildars, Assistant Executive Engineers, etc., the reservation under Paragraph no.8 was restricted to 60%.

Presidential order divided the erstwhile composite state of A.P into 6 zones

133. As per the Presidential Order, the combined State of Andhra Pradesh was divided into six Zones.

Post bifurcation of the composite State of A.P., Zones I to IV fall in the residuary state of A.P and Zones V and VI fall in the new State of Telangana

134. After bifurcation of the same into the new State of Telangana and the residuary State of Andhra Pradesh by the A.P. Re-organization Act, 2014 w.e.f. 02.06.2014, Zones V and VI of the erstwhile combined State of Andhra Pradesh fall in the new State of Telangana and Zones I to IV

of the erstwhile combined State of Andhra Pradesh fall in the residuary State of Andhra Pradesh.

135. It is the admitted case of both sides that individual zonal lists and subsequent integrated seniority list of each higher category has to be prepared by the State of A.P. up to 01.6.2014; and after 2.6.2014, maintenance of Zone-wise list, and integrated Seniority lists had to be done separately by both States independently.

G.O.Ms.No.610 (General Administration) Department dt.30.12.1985

136. But in the combined State of A.P, ten years after the issuance of the Presidential Order of the 1975, in 1985 objections were raised by the Telangana Non-Gazetted Officers' Union with regard to certain allotments made in terms of Paragraph no.4 of the Presidential Order. It was contended that employees were allotted after 18.10.1975 to Zones V and VI in violation of the Zonalization of the local cadres under the Six-Point Formula. This led to issuance by the then Government of Andhra Pradesh of G.O.Ms.No.610 (General Administration) Department dt.30.12.1985.

137. As per Paragraph no.5(1) of the G.O.Ms.No.610, employees allotted after 18.10.1975 to Zones V and VI in violation of the Zonalization of the local cadres under the Six-Point Formula were to be repatriated to their respective zones by 31.03.1986 by creating supernumerary posts. This was done to some extent.

G.O.Ms.No.674 dt.07.09.2007

138. Thereafter, in 2001 a One-man Commission (Girglani Commission) was appointed by the State Government to sort out the anomalies in the implementation of G.O.Ms.No.610 dt.30.12.1985. It submitted a report on 21.09.2004. On the basis of the report of the said Commission, a review of Direct Recruitments made after 1975 was done and G.O.Ms.No.674 dt.07.09.2007 was issued *ordering repatriation of non-local candidates appointed in deviation of the Presidential Order to their respective local cadres.*

139. Challenging this G.O Ms.No.674 dt.07.09.2007, O.A.No.3784 of 2007, etc., were filed before the A.P. Administrative Tribunal by persons who were sought to be repatriated and also by the persons who were already working in the Zones where the repatriates were sent, opposing strangers landing in their zone.

140. On 23.04.2012, a Full Bench of the A.P. Administrative Tribunal dismissed all these applications and the same was also confirmed by a Division Bench of this Court on 21.11.2012 in WP.No.13273 of 2012. The Supreme Court also refused to interfere with the said judgment of this Court and S.L.P.s filed against the order of the Division Bench were dismissed.

141. After the repatriations made by the State under various G.O.s attained finality, the official respondents began preparing seniority lists and thus seniority lists dt.18.10.2012 and 22.07.2013 came into

existence, which were then challenged before the A.P. Administrative Tribunal, and ultimately resulted in the instant litigation also.

Point (a):

142. Now we shall deal with Point (a) framed by us i.e.,

‘Whether the posts of AEEs and Dy.EEs in the Irrigation and CAD Department of the erstwhile State of Andhra Pradesh are Zonal posts governed by the Presidential Order?’

143. While the petitioners counsel contend that they are Zonal posts and are covered by the Presidential Order, 1975, it is the plea of the State of A.P and it's Engineer-in-Chief, AW, Water Resources and the State of Telangana that the posts of AEEs and Dy.EEs were posts in ‘Major Development Projects’ as defined in Paragraph-2(g) of the Presidential Order and mentioned in the Notification GSR 525(E) dt.18-10-1975; that under Paragraph-14 (e) of the Presidential Order, they are exempted from the operation of the provisions of the Presidential Order. They also refer to clause (4A) of G.O.Ms.No.729, General Administration (SPF-A) dt.01-11-1975.

144. It is important to note that we are considering issues relating to AEEs and Dy.EEs in Irrigation Department and these posts are mentioned as item Nos.40 and 41 in the III Schedule to the Presidential Order. These posts would fall within the definition of ‘Specified Gazetted Categories’ defined in Paragraph-2(j) of the Presidential Order.

145. Under Paragraph-3(4) of the Presidential Order, *‘posts belonging to each specified Gazetted category in each Zone shall be organized into a separate cadre’*.

146. Paragraph-5 of the Presidential Order deals with *‘Local cadres and transfer of persons’*. Clause (1) of Paragraph-5 which is relevant for our purpose states:

“Paragraph 5 (1): Each part of the State for which a local cadre has been organized in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters as may be specified by the State Government, in respect of that category of posts.”

147. Paragraph 6 (2) of the Presidential Order, 1975 states:

“ Each Zone shall be regarded as a local area –

- (i) ...
- (ii) *For direct recruitment to posts in any local cadre comprising all or any of the posts in any department in that Zone belonging to the categories of Tahsildars, Assistant Executive Engineers, Assistant Agricultural Officers, Inspectors of Police and Motor vehicle inspectors.*
- (iii) ...”

148. Thus Zone is the local area for direct recruitment to posts in any local cadre comprising all or any of the posts in any department in that Zone belonging to the category of Assistant Executive Engineer (AEE).

149. The IInd schedule to the Presidential Order, 1975 set out which areas fall in what Zones and carves out the State into 6 Zones.

150. Paragraph-3 of G.O.Ms.No.728, General Administration (SPF-A) Department dt.01-11-1975 states that ‘the scheme of organization of local cadres under the Presidential Order applies generally to all non-gazetted categories, other than those specifically exempted under Government of India Notification GSR No.529E dt.18-10-1975 issued under Paragraph-3(viii) of the Order, as also to the Specified Gazetted categories, i.e. the Gazetted categories listed in the III Schedule to the Order ...’.

151. Paragraph-4 of G.O.Ms.No.728, General Administration (SPF-A) dt.01-11-1975 deals with the category of posts covered by the scheme which are required to be organized into different local cadres for different parts of the State and mentions Specified Gazetted Categories as one such category [Category (C)] and directs that *‘the posts belonging to each such category in each Department in each Zone shall be organized into a separate local cadre (Zonal cadre).’*

152. However, the State of A.P. sought to rely on G.O.P.No.729, GA (SPF-A) Department, dt.01.11.1975 and in particular to paragraphs 4A and 4B to contend that inspite of the scheme of reservation in the matter of direct recruitment provided under the Presidential Order though applies to (A) posts under the State Government and (B) posts under local authority, paragraph 4 therein says:

“It may be noted here that the scheme of reservation in favour of local candidates does not apply to gazetted categories other than Tahsildars, Junior Engineers and Civil Assistant Surgeons, even

though they may have been organized into local cadres by virtue of their inclusion in III Schedule to the Order.”

It is contended that local preference has to be given only in the recruitment of AEEs but not in the promotions of Dy.EEs, though the latter is a zonal cadre post.

153. How this argument would enable *vacancies of Dy.EEs in a particular zone to be distributed to another zone*, as recommended in para 5 of its recommendations by the Committee of Engineers on 09-05-2017, is not explained by the official respondents.

154. If really it is possible to post non locals to a particular zone, why G.O.Ms.No.610, General Administration Department dt.30.12.1985 was implemented in the Irrigation Department even with regard to posts of Dy.EEs and higher posts [as was admitted in the counter affidavit filed by Assistant Secretary to Government in O.A.No.1563 of 2014 recorded in para 4(iv) of the judgment in **Akkena Trinadham** (1 supra)], is also not explained by the respondents.

155. In fact in para 3 of G.O.Ps.No.729 GA (SPF-A) Department dt.01.11.1975 it is stated “the organization of different local cadre has been dealt with elaborately in G.O.Ps.No.728 dt.01.11.1975. *The other aspects are dealt with in this G.O.”*

156. Thus if an aspect was already dealt with in G.O.Ms.No.728 dt.01.11.1975, to that topic, what is contained in G.O.Ps.No.729 dt.01.11.1975 will not apply.

157. Since in paragraph 4(C) of G.O.Ms.728 dt.01.11.1975, it is stated that Specified Gazetted Categories posts in each Department in each Zone shall be organized into a zonal cadre, it is not open to the respondents to contend that the post of Dy.EE, which is Specified Category Post, is not a Zonal Cadre Post.

158. It is not disputed that under proviso to Article 309 of the Constitution of India, the **A.P. Irrigation and Engineering Service Rules, 2010** had been issued vide G.O.Ms.No.32, Irrigation and CAD (Services-IX) Department dt.12-04-2010 and that these Rules would govern the services of AEEs, Dy.EEs, SEs, CEs and Engineer-in-Chief in the Irrigation Department.

159. Rule 3 provides for the method of appointment, Rule 4 deals with reservation of appointment, Rule 5 deals with qualifications, Rule 6 deals with the age, Rule 7 deals with minimum service to be taken into account etc.

160. Among the other Rules therein is Rule 11 which deals with Unit of appointment for the purposes of recruitment, appointment, discharge for want of vacancy, reappointment, seniority, promotion, transfer and posting and appointment specifies as regards posts of Dy.EEs and AEEs that they are zonal posts. The said Rule is extracted hereunder:

“Rule 11. Unit of Appointment :—For the purposes of recruitment, appointment, discharge for want of vacancy, re-appointment, seniority, promotion, transfer and posting and appointment as full member to the posts specified in column (2) of the Table below the unit appointment shall be as specified in Column (3) thereof :—

<i>Class & Category</i> (1)	<i>Post</i> (2)	<i>Unit of Appointment</i> (3)
CLASS-A		
5.	<i>Deputy Executive Engineer including equivalent posts designated as in Rule 2</i>	Unit-I: Zone-I: <i>Comprising Srikakulam, Vizianagaram and Visakhapatnam Districts.</i> Unit-II: Zone-II: <i>Comprising East Godavari, West Godavari and Krishna Districts.</i>
6.	<i>Assistant Executive Engineer</i>	Unit-III: Zone-III: <i>Comprising Guntur, Prakasam and S. P .S. R. Nellore District.</i> Unit-IV: Zone-IV: <i>Comprising Chittoor, Kadapa, Anantapur and Kurnool Districts.</i> Unit-V: Zone-V: <i>Comprising Adilabad, Karimnagar, Warangal & Khammam Districts.</i> Unit-VI: Zone-VI: <i>Comprising Hyderabad, Nizamabad, Mahaboobnagar, Medak, Nalgonda and Ranga Reddy Districts.</i>

Provided that the posts of Deputy Executive Engineers and Assistant Executive Engineers in the office of the Engineering-in-Chief/Chief Engineer and Major Developments Projects notified under the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 shall be filled on tenure basis by drawing officers of the respective categories equitably in proportion to the basic strength from different local cadres and the period of such tenure shall not ordinarily exceed three years, at a time ;

Provided further that the posts of Deputy Executive Engineers and Assistant Executive Engineers in the Special Offices/Establishments notified under the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 shall be filled on tenure basis by drafting Deputy Executive Engineers and

Assistant Executive Engineers from the Local Cadres located in the areas served by such offices or establishment and their numbers as far as practicable shall be in proportion to the basic strength of each of such cadre.”

161. Thus, the above Rules conform to Paragraph-3(4) of the Presidential Order, 1975 and Paragraph-3 and 4 of G.O.Ms.No.728, General Administration (SPF-A) Department dt.01-11-1975 in so far making posts of AEEs and Dy.EEs as Zonal posts.

162. A further reading of the above Rule indicates that some persons who are holding posts of AEEs and Dy.EEs in the Irrigation Department could be sent to the Office of the Engineer-in-Chief/Chief Engineer and ‘Major Development Projects’/Special Offices/Establishments *on tenure basis not exceeding three years* by drawing them from the respective categories equitably in proportion to the basic strength from different local cadres.

163. Thus the persons so posted in the Office of the Engineer-in-Chief/Chief Engineer and ‘Major Development Projects’/Special Offices/Establishments on tenure basis in fact belong to the cadre of AEEs and Dy.EEs in the Irrigation Department only and they do not become, by virtue of their posting on tenure basis in ‘Major Development Projects’, employees appointed to any cadre created for the said Projects. They continue to be employees who were born in the Irrigation Department only.

164. Merely because ‘Major Development Projects’ are exempted from the operation of the Presidential Order, by virtue of Paragraph-14(e) of

the Presidential Order, it cannot be contended that AEEs and Dy.EEs who were born/appointed as such, in the Irrigation Department are exempted from the operation of the Presidential Order, merely because on tenure basis, some are made to work in the 'Major Development Projects'.

165. For this reason, Paragraph-8 of G.O.Ms.No.728, General Administration (SPF-A) Department dt.01-11-1975 which mentions about inapplicability of the Presidential Order to posts in 'Major Development Projects' etc., cannot be invoked by the respondents.

166. If the contention of the State of Andhra Pradesh supported by other non-official respondents were to be correct, then they need to explain how in the A.P. Irrigation and Engineering Service Rules, 2010 which had been issued vide G.O.Ms.No.32, Irrigation and CAD (Services-IX) Department dt.12-04-2010, the posts of AEEs and Dy.EEs were shown to be Zonal posts. There is no such explanation forthcoming.

167. Also, in **Akkena Trinadham** (1 supra), where issues relating to seniority lists of AEEs and Dy.EEs in Irrigation Department and grant of notional promotions to them was considered, the stand of the Government of Andhra Pradesh was not that the Presidential Order did not apply to such posts.

168. It was their contention that '*consequent upon repatriation of candidates in terms of G.O.Ms.No.610, GAD Department dt.30-12-1985, review of panels of Dy.EEs was done to the extent of substituting with*

the other eligible candidates in the vacancies caused due to repatriation from that Zone as upheld by the Full Bench Tribunal by its order dt.23-04-2012 in O.A.No.6236 of 2008 and confirmed by this Court by judgment dt.20-11-2012 in W.P.No.13273 of 2012’.

169. In Paragraph-4 (iv) of the decision in **Akkena Trinadham** (1 supra), this plea of the Assistant Secretary to Government in O.A.No.1563 of 2014 is recorded.

170. Admittedly, G.O.Ms.No.610 GAD dt.30-12-1985 provided in Paragraph-5(i) that employees allotted after 18-10-1975 to Zones-V and VI in violation of the Zonalization of local cadres under the Six Point formula were to be repatriated to their respective Zones by 31-03-1986 by creating supernumerary posts. That such repatriation took place was admitted in the above counter-affidavit of the Assistant Secretary to the Government in O.A.No.1563 of 2014.

171. The question of making such repatriation/transfers would arise (by taking action under G.O.Ms.No.610 GAD Department dt.30-12-1985) only because of objections made with regard to allotments made in terms of Paragraph-4 of the Presidential Order by the Telangana Non-Gazetted Officers Union, 10 years after the Presidential Order was issued in 1975.

172. If the Presidential Order, 1975 was not applicable to the posts of AEEs and Dy.EEs in the Irrigation Department, there would have been no occasion to apply G.O.Ms.No.610 GAD Department dt.30-12-1985 at all and repatriate anybody from one Zone to a different Zone on the

ground that he should not have been allowed to be appointed in that Zone.

173. The official and the non-official respondents cannot therefore be permitted to blow hot and cold and take different pleas at different points of time to justify their actions. They are *estopped* from doing so.

174. Also, the doctrine of constructive *res judicata* would apply and bar them from now contending that the Presidential Order, 1975 would not apply to posts of AEEs and Dy.EEs in the Irrigation Department on the ground that such posts fall in Paragraph-14(e) of the Presidential Order, 1975 and that they fall in 'Major Development Projects'.

175. This is because such a plea was available to them at the time of **Akkena Trinadham** (1 supra) and if it was available and it was not taken at that time, they are precluded from raising such a plea now.

176. In fact, in **Akkena Trinadham** (1 supra), the Division Bench of this Court had recorded in Paragraph-14(ix) that the posts of AEEs and Dy.EEs in the Irrigation Department of the Public Works Department were included in the IIIrd Schedule to the Presidential Order, thereby making them Specified Gazetted Categories of posts; *and by virtue of Paragraph-3(4) of the Presidential Order, these posts, being Specified Category Posts, had to be organized into a separate cadre in each Zone.* Admittedly, the decision in **Akkena Trinadham** (1 supra) was confirmed by the Supreme Court in orders dt.07-11-2016 in Special Leave Petition No.30355-30359/2016.

177. These findings in **Akkena Trinadham** (1 supra) therefore bind the respondents and they are not entitled to reopen the said findings by raising new contentions not raised in the earlier litigation.

178. We therefore hold on Point (a) that the posts of AEEs and Dy.EEs in the Irrigation Department are 'Zonal posts' covered by the Presidential Order, 1975 and reject the pleas of the respondents that (i) they are not Zonal posts and (ii) that Paragraph-14(e) of the Presidential Order, 1975 would exempt these posts from the Presidential Order, 1975.

Point (b):

179. Having held in point (a) that the posts of AEES and DyEEs are Zonal posts covered by Paragraph 5(1) of the Presidential Order, 1975 we shall now we shall deal with point (b):

“Whether it is permissible for the Committee constituted by the Government of Andhra Pradesh to recommend in Paragraph-5 of its recommendations that there should be a distribution of vacancies of Dy.EEs in each panel year among the different Zones?”

180. We shall advert to some of the leading cases interpreting the Presidential Order of 1975.

181. A question arose in the A.P. Panchayat Raj Engineering Service whether promotion from post of Junior Engineer to Assistant Engineer should be on the basis of State-wide list or Zonal list. It was contended by the State of Andhra Pradesh that both these posts are Zonal posts under the Presidential Order and the Zonal seniority list has to be

followed in the matter of promotions from Junior Engineer to Assistant Engineer and not the State-wide seniority list. The Andhra Pradesh Administrative Tribunal held that promotions from the post of Junior Engineer to Assistant Engineer should be on the basis of State-wide list and rejected the contention of the State of Andhra Pradesh. The Supreme Court in **A. Suryanarayana Rao and others** (4 supra) upheld the contention of the State of Andhra Pradesh. After referring to Rule 2-A of the A.P. Panchayati Raj Engineering Service Rules introduced on 26.11.1979 which made each Zone as a separate unit for the purposes of recruitment, appointment, promotion, transfer, etc., and also Paragraph no.5 of the Presidential Order, the Supreme Court declared :

“11. When once each zone is treated as a separate unit for the purpose of promotion also in respect of zonal posts then by virtue of Article 371-D and the Presidential Order, as observed above, the promotion from the post of Junior Engineer to the post of Assistant Engineer which are both zonal posts, should be on the basis of the zonal seniority list inasmuch as the post of Junior Engineer and the next promotion post namely Assistant Engineer are included in the local cadre and the zonal list as we find in the Third Schedule. With regards the higher posts which are not included in the local cadre and which are Statewide posts, it becomes obvious that the Statewide seniority list of the Assistant Engineers of all zones should be prepared and that should be the basis of promotion to the post of Executive Engineer which is not a zonal post. Therefore it emerges that the directions given by the Tribunal to ensure that no Junior Engineer is promoted earlier than their seniors in the Statewide seniority list to the post of Executive Engineer, should be quashed.

... ..

12. As mentioned in Paragraph 5 of the Presidential Order and Rule 2-A of the Engineering Service Rules such zones should be treated as separate units for the purpose of promotions also. Therefore

*there is valid nexus to the object that is sought to be achieved and even if there is some anomaly it cannot on that basis be said that such promotions for zonal posts on the basis of the zonal seniority list amounts to discrimination. In **S. Prakasha Rao v. Commissioner of Commercial Taxes**⁵ a bench of three Judges of this Court affirmed the view taken by the Administrative Tribunal, Andhra Pradesh that the zonal seniority list prepared pursuant to the initial organisation and creation of local cadres is to be maintained and such zonal seniority list is the criteria for promotion.*

***13.** In the result we hold that all promotions of Junior Engineers (re-designated as Assistant Executive Engineers) to the next higher post of Assistant Engineers (re-designated as Deputy Executive Engineers) have to be made on the basis of the zonal seniority lists as indicated above and not on the basis of the Statewide seniority list of Junior Engineers.*” (emphasis supplied)

182. This decision applies on all fours to the present litigation and in view of para 11 therein, the view of the Committee that there should be distribution of vacancies of Dy.EEs in each panel year among the different Zones to ensure that no junior batch AEE will be promoted to the cadre of Dy.EE until senior batch of AEEs in all Zones are promoted as Dy.EEs, cannot be sustained.

183. A Division Bench of this Court in **Government of Andhra Pradesh vs. P. Vema Reddy**⁶ held :

“19. The object of organizing different local cadres for different parts of the State is clear from Paragraphs 4 and 5 of the Presidential Order. Under Paragraph 4(1) persons holding posts, required to be organized into local cadres were to be allotted to such cadres by the State Government in accordance with the principle and procedure specified in the Presidential Order. Under Paragraph 5(1) each part of the State, for

⁵ (1990) 2 SCC 259

⁶ (2007) 4 A.L.D. 209

which a local cadre has been organized in respect of any categories of posts, shall be a separate unit for purposes of recruitment, appointment, seniority, promotion, transfer etc. Once a local cadre was organized under Paragraph 3(1) each part of the State, for which such a local cadre was organized, was required to be treated as a separate unit and it is only from amongst persons allotted thereto was promotions to be effected and their seniority determined. In view of Paragraph 5(1), a local cadre is a distinct and separate unit and, for matters prescribed therein, persons who do not belong to the said local cadre or those who belong to other local cadres cannot form part thereof. (emphasis supplied)

184. In **G. Raja Babu vs. Government of A.P.**⁷, another Division Bench of the A.P. High Court held :

“26. Since a local cadre (district/zone) constitutes a separate unit for the purpose of appointment, promotion, seniority etc., it is only from within the said local cadre can employees be considered for promotion/appointment by transfer to higher posts in the local cadre. On the other hand, employees from outside the local cadre are not entitled to be considered and any rule which so provides is liable to be struck down as ultra vires Paragraph 5(1) of the Presidential Order.” (emphasis supplied).

185. In view of the above decisions which are binding on us, we hold that Zone is the Unit for the purposes of recruitment, appointment, discharge, seniority, promotion and transfer as per Paragraph-5(1) of the Presidential Order to posts of AEEs and Dy.EES in the Irrigation Department; the Engineer-in-Chief,AW, Water Resources, Andhra Pradesh or the State of Andhra Pradesh have no power or jurisdiction or authority to transfer a local candidate of a particular Zone or local cadre to any other Zone except in exceptional cases covered by Paragraph-5(2) of the Presidential Order; under no circumstances, a candidate directly

⁷ (2007) 4 A.L.D. 105

recruited in one Zone can be transplanted into another Zone for any purpose; and it is not open to the State Government or the Engineer-in-Chief to obliterate the rank assigned to the selected candidates in a Zone, by bringing candidates in other Zones and thereby destroying the promotional avenues of the localities.

186. We hold that promotional opportunities in a Zone/Unit of appointment will depend upon (a) the number of sanctioned posts to which the promotions are being made and (b) the vacancies arising in the sanctioned posts due to death, retirement, promotion, cessation of employment for any reason etc.; so in a particular unit, there may be more promotional opportunities and in other Unit there may not be that many promotional opportunities and the chance of promotion may vary according to the availability of vacancies; and promotion cannot be based on State-wide seniority and a person belonging to a particular Zone cannot be treated as a Junior or Senior to the members of the service in another Zone.

187. As held in **Akkena Trinadham** (1 supra), after coming into force of the Presidential Order, Districts became 'watertight compartments' in relation to certain posts, and cluster of Districts formed into Zones became 'watertight compartments' in relation to certain categories of posts as per Paragraph-6 of the Presidential Order; and if due to what happened within their local cadres someone gained something, persons in other cadres cannot make out a grievance; and likewise, persons in other local cadres cannot also have a grievance if what happened within

some other local cadre conferred benefit upon the persons in that cadre that eventually had an impact upon the integrated State wide seniority list.

188. We therefore hold on Point (b) that it is not permissible for the Committee constituted by the Government of Andhra Pradesh to recommend in Paragraph-5 of its recommendations that there should be a distribution of vacancies of Dy.EEs in each panel year among the different Zones.

H. Other Issues :

Re: Recommendation 11 of the Committee:

189. If a new principle making posts of Dy.EEs as State cadre posts is now introduced, as suggested by the Committee in para 11 of it's recommendations, enabling distribution of vacancies of Dy.EEs in each panel year among the various Zones, by treating the said posts as State wide posts, it would be clearly unsettling the seniority already determined earlier to the detriment of the petitioners after considerable length of time.

190. In any event, as of date when posts of Dy.EEs are Zonal posts as was held by us, and the Presidential order has also not been amended, para 11 of the recommendations dt.9.5.2017 of the Committee cannot be accepted on 10.5.2017 by the Engineer-in-Chief and applied by him in preparing the seniority lists of the AEEs, Dy.EEs, and he cannot make promotions to posts of Dy.EEs, EEs, SEs, CE and ENC on that basis.

Even the State of A.P also could not have ratified the said action of the Engineer-in-Chief on 6.7.2017.

191. As held in **Union of India and another Vs. Hemraj Singh Chauhan and others**⁸, it is the accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution of India and legitimate expectations of eligible employees cannot be defeated by acts of the Government.

192. The caution given by the Supreme Court in **Balram Gupta Vs. Union of India**⁹ that there should be no arbitrariness and hostile discrimination in Government's approach to its employees; as a model employer, the Government must conduct itself with high probity and candour with its employees, seems to have been forgotten by the respondents.

193. As long back as in 1970, the Supreme Court in **Rabindranath Bose and others Vs. Union of India and others**¹⁰, that rights accrued to employees should not be unjustly deprived and that each person ought to be entitled to sit back and consider that his appointment and promotion affected a long time ago would not be set aside after the lapse of a number of years.

⁸ (2010) 4 SCC 290

⁹ AIR 1987 SC 2354

¹⁰ AIR 1970 SC 470

194. This was reiterated in **Malcom Lawrence Cecil D'souza Vs. Union of India**¹¹ wherein the Supreme Court held that satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years; and one who feels aggrieved with an administrative decision affecting ones seniority should act with due diligence and promptitude and not sleep over the matter; once position in the seniority list is settled, it should not be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet.

195. Similar view was expressed in **Vijay Kumar Kaul and others Vs. Union of India and others**¹².

196. To the extent the official and unofficial respondents wish to revise the seniority lists of AEEs and Dy.EEs for implementing the decisions of the Supreme Court in **Akkena Trinadham** (1 supra), **D.Vishnu Murthy** (2 supra) and **R.Venkata Ramudu** (3 supra), there cannot be any objection because the said orders, being orders of the Supreme Court and this Court, require to be obeyed; and none of the petitioners have objected for taking of any action by the State of Andhra Pradesh or the State of Telangana for implementation of the said decisions.

197. Also in the interim order dt.23-08-2017 in W.P.M.P.No.33071 of 2017 in W.P.No.26658 of 2017 this Court permitted the respondents to revise the seniority lists in Zone-V only in terms of the judgments of the

¹¹ AIR 1975 SC 1269

¹² (2012) 7 SCC 610

Supreme Court in **R. Venkata Ramudu** (3 supra) and **D. Vishnu Murthy** (2 supra) *and not on any other ground*.

198. Therefore, it is not open to the official respondents to act on the recommendations of the Committee and in particular recommendation No.5 and 11 and change the seniority positions of AEEs, Dy.EEs. and other higher posts on the said basis.

199. What has been said above by us applies to all Zones I to VI whether they fall in the State of Telangana or the State of Andhra Pradesh.

200. But there are some additional points which need to be looked into as regards Zones V and VI and they are discussed below.

RE: Zones V and VI:

201. It is also important to note that there was never any challenge in **Akkena Trinadham** (1 supra) to the Zonal seniority lists of AEEs dt.18-10-2012 and Dy.EEs dt.22-02-2013 in Zone V and the dispute therein related only to Zone-wise final seniority list in Zones II and III of AEEs dt.18.10.2012 relating to batches I and II, final zone-wise provisional and final seniority lists of Dy. EEs communicated by proceedings dt.09.11.2012 and 22.01.2013 as well as State-wide *inter se* seniority list of Dy.EEs for promotion to the post of Executive Engineer communicated on 22.07.2013.

202. In the absence of any challenge to the zonal seniority lists of AEEs dt.18-10-2012 and Dy.EEs dt.22-02-2013 in Zone V, except to the

extent warranted by the decisions of the Supreme Court in **R. Venkata Ramudu** (3 supra) and **D. Vishnu Murthy** (2 supra), there cannot be any revision by the respondents of the seniority lists in Zones V and VI under the guise of implementing recommendation No.5 and 11 of the Committee dt.09-05-2017 formed by the State of Andhra Pradesh pursuant to the Government Memo No.19039/Services-1/2013 dt.23-09-2016.

203. So Circular Memo No. RC/ENC/A2/03032015/2017, dt. 26-4-2018 issued by the Engineer-in-Chief (Aw), Water Resources Department, State of A.P notifying the provisional seniority list of AEEs from 1985 PSC to 2007 PSC recruitment batches for Zones V and VI, assailed in W.P.16994 of 2018 is liable to be set aside.

Violation of principles of natural justice

204. Also as per Rule 24 of the A.P. State and Subordinate Service Rules, 1996, any order of revision of seniority likely to affect a person who has already been appointed from a panel can only be passed after giving him an opportunity of making representation against the proposed revision, before any order of revision is passed.

205. There is no dispute that this opportunity has not been given to any person by the official respondents before making a downward revision of the seniority lists of AEEs and Dy.EEs particularly to those in Zones V and VI. This is also a serious infirmity which warrants interference with the impugned actions/proceedings of the respondents.

Notional promotions in Zone V and VI could not have been given before the final seniority lists in cadre of AEEs was notified:

206. That apart, it is not in dispute that the provisional seniority lists of AEEs were notified vide Circular Memo No.RC/ENC/A2/03032015/2017 dt.26-04-2018 and final seniority lists of AEEs in Zones V and VI from 1985 PSC to 2007 PSC of Zones V and VI were published vide Circular Memo No.RC/ENC/A2/03032015/2017 dt.23-05-2018 by the Engineer-in-Chief (Admn.), Water Resources Department, Vijayawada, A.P. and was communicated through website www.irrigationap.cgg.gov.in [(Ex.P9) in W.P.No.35986 of 2018].

207. But curiously *much prior thereto* by Proceedings No.RC/ENC(Admn)/C1/C2/786999/2017-Z-V dt.19-04-2018 orders were issued temporarily promoting/appointing by transfer on notional basis certain AEEs in Zone V from 1983-84 to 2008-09 invoking Rule 10(a) of the A.P. State and Subordinate Service Rules, 1996. How this could be done when the seniority lists of AEEs and Dy.EEs had not been finalized by that date in Zone V, is not explained by the official respondents. This is also illegal and warrants interference by this Court.

Re: question of allocation of lesser posts to Zones VI

208. The contention of Sri D. Prakash Reddy, Senior Counsel appearing for Sri C. Sai Reddy, Counsel for respondents 5 and 6 is that fair share of Zone VI was wrongly determined; cadre strength to the Zones was not followed; lesser vacancies in the Cadre of Dy.EEs were

filled from AEEs of Zone VI; vacancies existing in certain offices such as Engineer-in-Chief (Irrigation), Chief Engineer (Medium Irrigation), Chief Engineer (Minor Irrigation), Chief Engineer (CDO), Chief Engineer (ISWR), Chief Engineer (Hydrology), Commissioner of Tenders, Commissioner of CADA and Engineer-in-Chief (IW) were not treated as part of the cadre strength of Zone VI; and it was incumbent on the part of the respondents to treat the above offices as State Level Offices/Establishment/Institution/Head Offices as per the Presidential Order.

209. The representation of the Association of Telangana Assistant Executive Engineers complaining of the same appears to have been given on 18-07-2008 to the Engineer-in-Chief (Admn), I&CAD Department, Hyderabad and was followed up by another representation made by the Hyderabad Engineers Association on 13-05-2010 to the Engineer-in-Chief, I&CAD, Hyderabad, but there was no response.

210. We are not inclined to go into this issue because there is no bar for the State of Telangana to create more posts in cadres of CEs in Zones V and VI if the said Government is interested in doing so to create more promotional opportunities to persons in these Zones.

The Conclusion:

211. Therefore,

(a) W.P.No.5776 of 2018, W.P.6094 of 2018, W.P.6474 of 2018 and W.P.14748 of 2018 are allowed;

(b) The action of the Engineer-in- Chief (AW), Water Resources Department, State of A.P, Vijayawada in issuing circular Memo No.RC/ENC/AP/03032015 dt.10-5-2017 accepting the minutes/recommendations 5 and 11 of the Committee constituted vide Government Memo No.19039/Services-I/2013 dt.23-09-2016, and Memo No.19039/Services-I/2013 dt.6-7-2017 of the State of Andhra Pradesh ratifying the action of the Engineer-in- Chief (AW), Water Resources Department, State of A.P, Vijayawada in accepting the minutes of the Committee, are declared illegal and arbitrary and violative of Article 14 and 16 of the Constitution of India and Paragraph- 5 of Presidential Order,1975;

(c) G.O.Rt.No.374, Water Resources (Services.1) Department, dt. 13.07.2017 subsequently issued by the State of Andhra Pradesh constituting a Screening Committee for review of panels for promotion to the posts of DyEEs from the panel years 1975-76 to 1998-99 is set aside;

(d) Consequently the seniority list of Dy.E.Es. issued by Engineer-in-Chief (Admn), Water Resources Department, Andhra Pradesh vide proceedings No. RC/ENC(Admn.)/C1/786999/2017-Z1, Z2, Z3, Z4, dt.2-8-2017 to 2-11-2017 are declared as illegal and arbitrary, without jurisdiction and violative of Article 14 and 16 of the Constitution of India;

(e) Promotions affected vide G.O.Ms.No.67 Water Resources (Services.II) Department dt.23-10-2017, G.O.Ms.No.73 Water

Resources (Services.II) Department dt.7-11-2017, G.O.Ms.No.70 Water Resources (Services.II) Department dt.3-11-2017, G.O.Ms.NO.72 Water Resources (Services.II) Department dt.7-11-2017 issued by the Government of A.P. are declared illegal and arbitrary and violative of Article 14 and 16 of the Constitution of India and the Presidential Order 1975;

(f) W.P.37131 of 2017 is allowed and a Writ of Certiorari is issued quashing the interim order dt.3.8.2017 in OA No.2254 of 2017 of the A.P Administrative Tribunal, Hyderabad and the said O.A. is allowed as prayed for; and the provisional Seniority list of AEEs of 1992 PSC to 2002 PSC communicated vide Circular memo No.RC/ENC/A2/03032015/2015-5 dt.12.6.2017 for Zones I to V is set aside;

(g) W.P.No. 41996 of 2017 is allowed and a Writ of Certiorari is issued quashing orders dt.30.11.2017 passed by the A. P. Administrative Tribunal in O.A.No.3233 of 2017 and the said O.A. is allowed as prayed for;

(h) W.P. No.9959 of 2018 is allowed and the order dt.27-2-2018 in O.A.No.313 of 2018 of the A.P.Administrative Tribunal is quashed and the said O.A. is allowed as prayed for;

(i) W.P.No.16994 of 2018 is allowed and Circular Memo No. RC/ENC/A2/03032015/2017, dated 26-4-2018 of the Engineer-in-Chief (Admn), Water Resources Department, Andhra Pradesh is set aside;

(j) W.P.No.35986 of 2018, W.P.No.35661 of 2018 and W.P.No.35119 of 2018 are allowed; and proceedings No.Rc/ENC(Admin)/C1/C2/786999/2017-Z-V dt.19-04-2018 issued by Engineer-in-Chief (Admn), Water Resources Department, Andhra Pradesh conferring notional seniority to the non-official respondents vide proceedings No. Rc/ENC(Admin)/C1/C2/786999/2017-Z-VI dt.19-04-2018 and the connected integrated seniority list of the Dy.E.Es. of Zones V and VI vide letter No.Rc/ENC/B2/17080/EEs/SEs/CEs/2018-19-1 dt.12-09-2018 are set aside; and the consequential G.O.Ms.Nos.99, 100 and 101 Water Resources (Service-II) Department dt.07-09-2018 and G.O.Ms.No.102, Water Resources (Services-II) Department dt.10-09-2018 according notional promotions in the higher categories of EEs, SEs, CEs and Engineer-in-Chief without preparing the integrated seniority list of Dy.E.Es. working in Zones- I to VI up to 01-06-2014 is set aside;

(k) W.P.36489 of 2017 is allowed and O.A.2312/2017 is allowed as prayed for;

(l) The State of A.P rep. by it's Secretary, Water Resources (Services-I) Department, and it's Engineer-in- Chief (AW), Water Resources Department, State of A.P, Vijayawada are directed to redraw the Zonal seniority lists in *all Zones* in the cadres of AEEs and Dy.EEs and the State wide integrated seniority list of Dy.E.E. *as on 1.6.2014* complying with the judgment in **D.Vishnu Murthy** (1 supra), **R.Venkatramudu** (2 Supra) and **Akkena Trinadham** (3 Supra); and

then effect promotions Zone wise to the vacancies in cadre of Dy.EEs; and thereafter to the Statewide posts of EEs, SEs, CEs and Engineer-in-Chiefs;

(m) Thereafter, the State of Telangana rep. by it's Special Chief Secretary, Irrigation & CAD Department, Hyderabad *and* the State of A.P. rep. by it's Secretary, Water Resources (Services-I) Department shall prepare the seniority lists for all cadres Zone wise *after 2.6.2014* in respect of Zones falling within their respective territories, and affect promotions to posts of Dy.EEs Zone wise and thereafter to the Statewide posts of EEs, SEs, CEs and Engineer-in-Chiefs.

(n) For a period of two months from today within which this above exercise is to be completed by the State of A.P rep. by it's Secretary, Water Resources (Services-I) Department, and it's Engineer-in- Chief (AW), Water Resources Department, State of A.P, Vijayawada *and* the State of Telangana rep. by it's Special Chief Secretary, Irrigation & CAD Department, Hyderabad, status quo as on date shall be maintained in all respects.

No costs.

212. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J