

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 2286 of 2014

Between:

The Government of Andhra Pradesh,
Rep.by its Principal Secretary to Education Department,
A.P.Secretariat, Hyderabad and 4 others

.....PETITIONERS

AND

Dendukuri Venkata Narasimha Raju and 11 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **07.05.2025**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN**

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

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! Counsel for the Petitioners : Ms. C. Indrani, AGP

Counsel for the Respondents : Sri Somagutta Harinath
Rep.Sri P. Veerabhadra Reddy

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> Head Note:

? Cases Referred:

1. (2008) 7 SCC 728
2. 2011 SCC OnLine Del 574
3. (2008) 2 SCC (L&S) 586
4. (1998) 5 SCC 246
5. (2011) 3 SCC 267
6. (2000) 7 SCC 561
7. (1977) 1 SCC 308
8. (1983) 3 SCC 601
9. 1987 Supp SCC 763
10. (2020) 5 SCC 689
11. (1998) 4 SCC 456
12. (2012) 13 SCC 340
13. 2022 SCC OnLine SC 1717
14. WP.No.21193 of 2017, erstwhile
APHC, dated 29.06.2017
15. W.P.(TR) No.3564 of 2017
TGHC, decided on 18.01.2023

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE CHALLA GUNARANJAN**

WRIT PETITION No.2286 of 2014

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Ms. C. Indrani, learned Assistant Government Pleader for Services, for the petitioners and Sri Somagutta Harinath, learned counsel, representing Sri P. Veerabhadra Reddy, learned counsel for the respondents.

2. This writ petition under Article 226 of the Constitution of India has been filed challenging the Order dated 25.02.2013 passed in O. A. No. 8668 of 2012 by the Andhra Pradesh Administrative Tribunal at Hyderabad (in short 'the Tribunal') by which the respondents were extended the benefits in terms of G.O.Ms.No.21 Education (PE-SER.I) Department, dated 18.05.2010.

3. Respondents Nos.1 to 11 in the writ petition were the applicants in O.A. No. 8668 of 2012 before the Tribunal, which was filed against the writ petitioners, the State of Andhra Pradesh and its Authorities.

4. The respondents will be referred hereinafter as 'applicants' and the writ petitioners as 'petitioners'.

5. The applicants applied for the post of Special Grade Teachers (SGT) under DSC-1989 and were selected. But, appointment orders were not given to them. On the other hand, in the 18 posts that were allotted to East Godavari District to which the applicants belonged, less meritorious candidates than the applicants were appointed as Special Grade Teachers through proceedings

dated 05.08.1996, as per the Orders of the Government. One Sri V. Seshagiri Rao was also appointed at the same time.

6. Being aggrieved, the applicants filed O.A. which was allowed by the Tribunal and the matter was carried to the High Court, but to no avail, finally judgment was delivered in W.P.No.10586 of 1999 and batch, vide judgment dated 28.08.2000. Relevant part of the judgment dated 28.08.2000 in W.P.No.10586 of 1999 reads as under:

“....However, having regard to the fact that there are only 912 vacancies, which left unfilled because of the erroneous interpretation and importing the panel-theory and as there are more number of qualified candidates among the petitioners, the petitioners have to be arranged in terms of their merit among them and in order of that merit, the appointments are to be made. We make it clear that such of 911 petitioners, who stand qualified to be appointed in order of the above merit, shall continue and others have to pave the way for more meritorious candidates basing upon the merit list. We reiterate that merit list shall be drawn for 912 posts only among the writ petitioners herein and shall not percolate beyond them for the reason of their initiation of legal proceedings right on time and pursuing the same before several forums right from A. P. Administrative Tribunal to that of Supreme Court and others even if they were qualified, had not initiated any legal proceedings and remain contended. This exercise shall be made by the appointing authorities within a period of one month from the date of receipt of a copy of this order. It is pertinent to mention that the above 912 vacancies shall not form part of the selection process for recruitment of Teachers pursuant to DSC-2000.

28. Accordingly, all the five writ petitions are disposed of. No costs.”

7. Consequently, the applicants were appointed as Teachers on 11.01.2002. The Government directed the Mandal Educational Officers to allow regular time scale of Rs.3750-7650 to all the Special Teachers continued and

appointed as per the judgment of the High Court, including the applicants and to Sri V. Seshagiri Rao, vide proceedings dated 20.12.2003. The regular scale of pay was allowed to the applicants from the date of their appointments as Special Grade Teachers with effect from 11.01.2002. Subsequently, they made a representation dated 10.12.2004 to extend the benefits that were given to the candidates appointed as Special Grade Teachers in 1996 pursuant to the same DSC-1989. When no action was taken, they filed O.A.No.950 of 2005 before the Tribunal which was allowed directing to pass appropriate Orders. Consequent thereto, the Government vide proceedings Rc.No.118-B4/C6/2007, dated 30.07.2012 rejected the claim of the applicants.

8. Assailing the proceedings, dated 30.07.2012, the applicants filed O.A.No.8668 of 2012 to extend the benefits on par with the Teachers selected under DSC-1989 and appointed in 1996.

9. The Government had issued Orders in G.O.Ms.No.21, dated 18.05.2010 stating that the temporary services of 681 Special Teachers appointed from 1996 onwards with consolidated pay of Rs.398/- per month and later absorbed in regular posts of Special Grade Teachers (SGT) should be taken into account on notional basis for sanction of 8/16 years promotions scale under automatic advancement scheme, and also for pensionary benefits. The applicants made a representation to extend the same benefit to them also which was refused. But they allowed the said benefit to Sri V. Seshagiri Rao, who was appointed in 1996 and continued as per the judgment of the High Court dated 28.08.2000 in W.P.Nos.10586 of 1999 & batch.

10. The case of the applicants was that they would have also got appointments on par with those appointed in 1996 under DSC-1989, but they were denied due to wrongful action of the Government and its Authorities. Their contention was that the Government was bound to accord all benefits to the applicants on par with those who were appointed in 1996.

11. The present petitioners contested the O.A. Their contention was that the applicants were neither appointed with consolidated pay as Rs.398/- nor appointed as apprenticeship teachers. They were appointed duly allowing scale of pay with effect from 11.01.2002. In G.O.Rt.No.1149, dated 01.11.2003 it was categorically stated that the seniority of the said persons who were appointed in relaxation of apprenticeship shall be reckoned from the date of their absorption to the regular vacancies of SGTs. Accordingly, the seniority of the applicants who were appointed with effect from 11.01.2002 duly allowing the scale of pay of Rs.3750-7650 with effect from 11.01.2002, could not be allowed their request. With respect to G.O.Ms.No.21 dated 18.01.2010, the stand of the Government was that the Government ordered that temporary service of 681 Special Teachers/Special Language Pandits and Special P.E.T who were appointed from 1996 onwards with consolidated pay of Rs.398/- and absorbed in regular post of Special Grade Teachers that should be taken into account on notional basis for sanctioning 8/16 years promotion scale and automatic advanced scheme and also the pensionary benefits. The monetary benefits shall be given from the date of issue of G.O.Ms.No.21, dated 18.01.2010. Their further case was that the claimants had not been appointed

with consolidated pay of Rs.398/- per month. They were appointed duly allowing the scale of pay Rs.3750-7650 with effect from 11.01.2002. Therefore, the benefit given to the Special Teachers who were appointed with consolidated pay of Rs.398/- was not available to the applicants, since they were appointed on regular scale of pay with effect from 11.01.2002.

12. The petitioners' further stand was that the case of the applicants was considered and the Order was passed on 30.07.2012 making it clear that as per G.O.Ms.No.1149, dated 01.11.2003 the appointments which were made in accordance with the judgment in W.P.No.10586/1999 and batch, those appointees were allowed the regular scale of pay in SGT cadre of Rs.3750-7650 with effect from 11.01.2002 i.e., from the date of their appointment which was categorically envisaged in para-6 of the G.O.Ms.No.1149, dated 01.11.2003.

13. The Order dated 30.07.2012 reads as under:

"PROCEEDINGS OF THE DISTRICT EDUCATIONAL OFFICER,
EAST GODAVARI : KAKINADA

PRESENT : Sri K. V. Srinivasulu Reddy, M.A., M.Ed.

Rc.No.118-B4/C6/2007

Dated: 30-07-2012

Sub: Education – C.A.No.891/2012 in O.A.No.950/2005 filed by Sri D.Venkata Narasimha Raju, SGT, MPP School, Ramarajulanka Main, Malikipuram Mandal and 10 others speaking orders – Issued – Reg.

Ref: 1. O.A.No.950/2005 filed by Sri D.V.Narasimha Raju and 10 others
2. Interim orders in O.A.No.950/2005, dt.07.03.2005
3. This office Lr.Rc.No.118/B4/2007, dt.02.12.2007 addressed to the Commissioner & Director of School Education, A.P., Hyderabad
4. Judgment delivered in O.A.No.950/2005, dt.20.11.2009
5. This office D.O.Lr.Rc.No.118/B4/2007, dt.09.02.2010 addressed to Joint Director of School Education,

O/o.Commissioner & Director of School Education,
A.P., Hyderabad

6. C.A.No.891/12 in O.A.No.950/05 filed by Sri D.V.Narasimha Raju and 9 others.
7. This Office Lr.Rc.No.118/B4/C6/07, dated 20.07.2012 addressed to the Commissioner & Director of School Education, A.P., Hyderabad
8. Procs.Rc.No.702/D1-2/10, dt.26.07.2012 of the Commissioner & Director of School Education, A.P., Hyderabad.

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The Hon'ble APAT, Hyderabad in the orders 4th cited, directed the respondents to pass appropriate orders on the representation of Sri D. V. Narasimha Raju and others. Accordingly the following disposal orders issued.

Sri D. V. Narasimha Raju, SGT, MPPS, Ramarajulanka Main, Malikipuram Mandal and 10 others are hereby informed that the Govt. in G.O.Ms.No.1149 Edn Ser-IV Dept, dt.01.11.2003 has issued orders that the meritorious petitioners who are appointed in pursuance of orders Hon'ble High Court 28.8.2000 in W.P.No.10586/99 and batch be allowed regular time scale of pay of SGT of Rs.3750-7650 to 681 Special Teachers w.e.f.11.01.2002 instead of apprenticeship in relaxation of orders issued in G.O.Ms.No.72 Edn (Ser IV A1) Dept., dt.09.07.2000 read with G.O.Ms.No.75 Edn (Ser-V-A1) Dept, dt.19.06.2001. Accordingly the petitioners were allowed time scale w.e.f.11.01.2002.

Further it is informed that the seniority of special teachers who were allowed regular pay scale instead of apprenticeship, it is categorically mentioned that service was reckoned from the date of absorption into regular vacancies of SGTs. The individuals appointed w.e.f.11.01.2002 in the regular vacancies. Therefore the petitioners who have been selected through the District Selection Committee and also as per instructions of Commissioner & Director of School Education as special teachers who are working as on 11.01.2002 are absorbed/appointed w.e.f. 11.01.2002 duly terminated the 17 special teachers. The seniority of such teachers to be reckoned from the date of their absorption of regular vacancies of SGT's only.

As such the request of applicants for service with retrospective effect could not be feasible for consideration as the special teachers are appointed on condition that they were absorbed in regular vacancy as and when arisen.

Accordingly the representation dt.10.12.2004 of the applicants in O.A.No.950/2005 in C.A.No.891/12 are hereby disposed.

These orders are issued in accordance with the orders of the Commissioner & Director of School Education, A.P., Hyderabad reference 8th cited.”

Sd/-K.V.Srinivasulu Reddy,
District Educational Officer,
East Godavari : Kakinada”

14. The Tribunal framed the following point for determination:

“Whether the impugned proceedings in Rc.No.118-B4/C6/2007, dated 30.07.2012, issued by the 1st petitioner herein rejecting the request of the applicants for extending similar benefit on par with those appointed in 1996 as Special Teachers was sustainable in law or on facts?”

15. The Tribunal recorded a finding that the applicants applied for the post of Special Teachers under DSC-1989 and though they secured good marks, they were denied appointments, and less meritorious candidates were appointed as Special Teachers. It also observed that ultimately as per the directions of the High Court, the Government appointed the applicants as Special Teachers on 11.01.2002 and sanctioned regular scale of pay to them. The Tribunal was of the view that essentially the appointments of the applicants had to be treated as ones made under DSC-1989 and they shall be deemed to be in service on par with their colleagues, who were appointed in 1996. Consequently, the Tribunal held that the applicants were entitled to the benefits

that were conferred upon the candidates appointed in 1996 as Special Teachers and merely because they were granted regular time scale in the year 2003 with effect from 11.01.2002, the applicants could not be denied the benefits that were conferred upon those appointed in 1996, vide G.O.Ms.No.21, dated 18.05.2010.

16. The Tribunal, thus, allowed the O.A.No.8668 of 2012, setting aside the impugned proceedings in Rc.No.118-B4/C6/2007, dated 30.07.2012 with the directions to extend the benefits that were extended to the Teachers appointed in 1996 to the applicants also notionally till the date of their appointment as Special Teachers on 11.01.2002, including the benefit under G.O.Ms.No.21, dated 18.05.2010.

17. The operative part of the Order dated 25.02.2013 in O.A.No.8668 of 2012 reads as under:

“13. For the reasons stated under Point No.(i), the O.A. is allowed setting aside the impugned proceedings in Rc.No.119-B4/C6/2007, dt.30.07.2012, issued by the 1st respondent. The respondents are directed to extend the benefits that were extended to the Teachers appointed in 1996, to the applicants also notionally, till the date of their appointment as Special Teachers on 11.01.2002, including the benefit under G.O.21, dt.18.5.2010. Necessary orders shall be passed within a period of eight weeks from the date of receipt of a copy of this order.”

18. Challenging the said Order dated 25.02.2013, the present writ petition has been filed by the State of Andhra Pradesh.

19. Learned Government Pleader submitted that the applicants were appointed on 11.01.2002 and consequently, they cannot claim the benefits at

par with the candidates appointed in 1996 as Special Teachers. He submitted that by Rc.No.118-B4/C6/2007, dated 30.07.2012, specifically it was provided that the seniority of the applicants shall be reckoned from the date of their absorption in regular vacancies of Special Grade Teachers only. It could not be retrospective. Their services were to be reckoned from the date of their absorption in regular vacancies of SGTs. They were appointed with effect from 11.01.2002 in the regular vacancies, duly terminating the services of 17 Special Grade Teachers. He further submitted that the Special Grade Teachers appointed in 1996 were on consolidated pay of Rs.398/- per month. The G.O.Ms.No.21, dated 18.01.2010 was with reference to those teachers and as the applicants were appointed on 11.01.2002 in regular pay scale, they were not entitled to such benefit nor or seniority at par the Secondary Grade Teachers of 1996.

20. Learned counsel for the respondents/applicants submitted that the Order passed by the Tribunal does not suffer from any illegality. He submitted that the respondents/applicants are also the selectees of the same selection of DSC-1989. They were illegally denied the appointment though they were meritorious and less meritorious persons were given appointments. Consequently, they being selectees of the same selection of DSC-1989 pursuant to which the other candidates were appointed in 1996 but the applicants were illegally denied the appointments, the applicants were legally entitled for the benefits at par with the candidates appointed in 1996 and so the Order passed by the Tribunal calls for no interference.

21. We have considered the aforesaid submissions and perused the material on record.

22. The point that arises for consideration is whether the judgment of the Tribunal dated 25.02.2013 granting the benefit to the applicants at par with the candidates appointed in 1996, being the selectees of the same selection DSC-1989, is justified or it deserves interference.

23. In other words, the question is whether the respondents 1 to 11 (the applicants) who were admitted into service on 11.01.2002, are entitled to claim the service benefits including seniority treating their services at par with the candidates who were appointed in the year 1996 selected under the same notification of DSC-1989.

24. So far as the facts are concerned there is no dispute that the applicants are the selectees of the same DSC-1989. Many of the selected candidates of DSC-1989 were given appointment on 05.08.1996 pursuant to the G.O.Ms.No.156 Education Department dated 08.07.1996 in East Godavari district. The Chief Executive Officer, Zilla Parishad appointed 18 candidates who were less meritorious to the applicants as Special Teachers pursuant to the G.O.Ms.No.156 dated 08.07.1996, on 05.08.1996. The applicants litigated and finally in W.P.No.10586 of 1999 and batch, vide judgment dated 28.08.2000 the decision came in their favour and pursuant thereto, they were appointed with effect from 11.01.2002. But the State Authorities taking the said date as date of their appointment has declined to grant the similar benefit, including the

seniority which was given to the selectees of the same DSC-1989 in the year 1996.

25. The Tribunal has recorded that the State and its Authorities were responsible for not appointing the applicants as Special Teachers on par with those selected DSC-1989 who were appointed in the year 1996 and therefore, the applicants were entitled for the similar benefits as were conferred on candidates appointed in 1996. The Tribunal has placed reliance on Rule 33 (b) of the Andhra Pradesh State and Subordinate Rules 1996 (in short 'Service Rules 1996') and also in the judgment of the Hon'ble Apex Court in the case of ***Balwant Singh Narwal v. State of Haryana***¹ and in the case of ***Government of Delhi v. Dr. Pawan Kumar N. Mali***².

26. Rule 33 (b) of the Andhra Pradesh State and Subordinate Rules, 1996 is relevant for the present case reads as under:

“33. SENIORITY:

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them, and where such order has been fixed, seniority shall be determined in accordance with it.

Provided further that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed inter-se with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to

¹ (2008) 7 SCC 728

² 2011 SCC OnLine Del 574

the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.”

27. Rule 33 (b) of the Service Rules 1996 provides that the appointing authority may at any time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them, and where such order has been fixed, seniority shall be determined in accordance with it. Its proviso provided that the order of merit or order of preference indicate in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed *inter se* with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary shall be assigned to the persons concerned with reference to the order of merit or order of preference assigned to them in the said list.

28. Therefore, as per Rule 33 (b) of the Service Rules 1996, the respondents/applicants were entitled to be given the seniority in the order of merit or preference as per the merit list of appointees of 1996 being selectees of DSC-1989.

29. In ***Balwant Singh Narwal v. State of Haryana***³ the Haryana Public Service Commission, the third respondent therein (in short “the Commission”) issued an advertisement in January 1992 inviting applications for

³ (2008) 2 SCC (L&S) 586

18 posts of temporary Principals in higher secondary schools. The advertisement made it clear that the number of posts advertised was subject to variations to any extent. On 01.06.1993, the State Education Department made a fresh requisition to the Commission in regard to additional vacancies, thereby increasing the posts to be filled to 37. The respondents 4 to 16 therein were applicants against the said advertisement and underwent the process of selection. The Commission declared the merit list of 30 selected candidates on 30.09.1993, published on 01.10.1993, which included respondents 4 to 16. However, before the State Government could make appointment in terms of the said list, a non-selected candidate filed WP No. 12700 of 1993 contending that only 18 posts were notified and the Commission could not make recommendations for selection of 30 candidates. The writ petition was allowed by the High Court on 04.04.1994 and the recommendations in excess of the 18 vacancies were quashed on the ground that the Commission could not make recommendations beyond the number of posts advertised. The appeal was dismissed by the Division Bench of the High Court. In the meanwhile, in view of the Orders of the learned Single Judge, the State Government appointed only 16 candidates from the list of 30, by Order dated 02.06.1994, as against 18 permitted by the High Court, not for want of vacancies but on account of some technical difficulty in appointing other two candidates. The respondents 4 to 16 were denied appointments, though their names were in the selected merit list of 30 candidates. The Order of the Division Bench of the High Court was challenged before the Hon'ble Apex Court, which was disposed of, reversing the

decision of the High Court and dismissing the writ petition, also holding that the recommendations made by the Commission were in accordance with law, and therefore, all the 30 names recommended by the Commission were entitled to be appointed. Pursuant thereto, the State Government by Order dated 26.05.2000 appointed respondents 4 to 16 as Principals. They also requested for fixing their seniority with reference to the merit list vide various representations that they should be given seniority above those who were appointed against subsequent vacancies. The State Government considered and accepted their request and fixed their position immediately after the 16 candidates who were appointed from the same merit list on 02.06.1994, and they were shown above the appellants before the Hon'ble Apex Court in the provisional seniority list of Principals HES-II. These appellants before the Hon'ble Apex Court were the Principals appointed in the meantime pursuant to subsequent selection for subsequent vacancies.

30. They filed the writ petition. Their contention was that the seniority of the respondents 4 to 16 should be reckoned only from the date of their actual appointment, and granting notional seniority with retrospective effect would affect them as they had already entered into service prior to the respondents 4 to 16. The High Court dismissed the writ petition, holding that the appointments of the respondents 4 to 16 were in regard to an advertisement issued prior to the advertisement, in response to which, the appellants were selected, and that the actual appointment of the respondents 4 to 16 was delayed not for want of any vacancies but on account of litigation

which were beyond their control, and that but for the decision of the learned single Judge in the writ petition declaring selections beyond 18 to be illegal, the respondents 4 to 16 would have been appointed on 02.06.1994 itself when the other candidates from the same merit list were appointed, and therefore, the State Government was justified in giving respondents 4 to 16 the benefit of notional seniority with effect from 02.06.1994 and placing them above the appellants who were appointed against subsequent vacancies pursuant to subsequent advertisement.

31. The Hon'ble Apex Court in ***Balwant Singh Narwal*** (supra) observed that the general proposition that selection by the Public Service Commission is merely recommendatory and does not imply automatic appointment and that the appointing authorities should not give notional seniority without valid reason, from a retrospective date, which would affect the seniority of those who have already entered service, was not in dispute. Further, the Hon'ble Apex Court observed on the question in regard to seniority of the respondents 4 to 16 selected on 01.10.1993 against certain vacancies of 1992-1993 who were not appointed due to litigation, and those who were selected against subsequent vacancies, that a similar situation, arose in ***Surendra Narain Singh v. State of Bihar***⁴ in which it was held that the candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical

⁴ (1998) 5 SCC 246

difficulties, when appointed subsequently, would have to be placed above those who were appointed against subsequent vacancies.

32. Paragraph-9 of **Balwant Singh Narwal** (supra) reads as under:

“9. There is no dispute about these general principles. But the question here is in regard to seniority of Respondents 4 to 16 selected on 1-10-1993 against certain vacancies of 1992-1993 who were not appointed due to litigation, and those who were selected against subsequent vacancies. All others from the same merit list declared on 1-10-1993 were appointed on 2-6-1994. Considering a similar situation, this Court, in **Surendra Narain Singh v. State of Bihar** [(1998) 5 SCC 246 : 1998 SCC (L&S) 1317] held **that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.**”

33. Consequently, following the judgment in **Surendra Narain Singh** (supra), the Hon'ble Apex Court in **Balwant Singh Narwal** (supra), justified the action of the State Government in giving notional seniority and placing the respondents 4 to 16 therein immediately below the other 16 candidates who were selected in the common merit list and appointed on 02.06.1994. The retrospective seniority was also given to them from 02.06.1994 when the other selected candidates in the same merit list were appointed, observing that those should not be denied the benefit of seniority.

34. We shall also refer to **Pawan Pratap Singh v. Reevan Singh**⁵ in which the question was of determination of seniority between two groups of direct recruits to the posts of Deputy Jailor (Group 'C' post), one appointed in

⁵ (2011) 3 SCC 267

1991 through the selection made by the Uttar Pradesh Subordinate Services Selection (in short 'the Selection Commission') and the other in 1994 by the Uttar Pradesh Public Service Commission (in short 'UPPSC'). The Uttar Pradesh Government Servants Seniority Rules, 1991 (in short '1991 Rules') were made applicable to all government servants of Uttar Pradesh. Rule 5 of 1991 Rules provided for seniority where appointments were made by direct recruitment only and Rule 8 of 1991 Rules provided for determination of seniority where appointments were made by promotion and direct recruitment. Other Rules, namely, the Uttar Pradesh Jail Executive Subordinate (Non-Gazetted) Service Rules, 1980 (in short '1980 Rules'), under which the procedure for direct recruitment to the post of Deputy Jailor and Assistant Jailor was provided. The recruitment to the post of Deputy Jailor was by two sources, by direct recruitment and by promotion. The High Court therein had applied Rule 5 of 1991 Rules for determination of seniority, as the question was relating to the determination of seniority between two groups of direct recruits to the post of Deputy Jailor. It was held that since the appointments were to be made to the post of Deputy Jailor by promotion and also by direct recruitment, Rule 5 was not applicable, but Rule 8 would apply even if it was a case of determination of seniority between two groups of direct recruits to the Deputy Jailor.

35. In ***Pawan Pratap Singh*** (supra) the issue was not concerned with the seniority *inter se* of persons appointed on the result of one selection through direct recruitment or through direct recruitment and promotion in one selection. The issue was between the direct recruits of different selections, one

appointed in 1991 and the other appointed in 1994. Hon'ble **Justice R. M. Lodha** in his judgment held that Rule 8 (1) in unambiguous terms provided that the seniority of persons, subject to the provisions of sub-rules (2) and (3), for determination would be from the date of the order of their substantive appointments. Sub-rules (2) and (3) were not attracted. Sub-Rule (2) provided that the seniority *inter se* of the persons appointed on the result of one selection, (a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or its Committee, as the case may be, whereas sub-rule (3) provided that where appointments were made both by promotion and direct recruitment on the result of any one selection the seniority of promotes vis-à-vis direct recruits shall be determined in a cyclic order (the first being a promote) so far as may be, in accordance with the quota prescribed for the two sources. Rule 8 (1) was held applicable to determine the seniority from the date of the order of a substantive appointment. The Hon'ble Apex Court (per Hon'ble **Justice R. M. Lodha**) held that what was relevant was the date of the order of their substantive appointment and since the substantive appointment of the 1991 appointees was much prior in point of time, they must rank senior to the 1994 appointees. The Hon'ble Apex Court further observed that the appointees of 1991, who were selected and appointed in accordance with the service rules could not be made juniors to the 1994 appointees, even if it was assumed that the selection and appointment of the 1994 appointees was for earlier vacancies. The Hon'ble Apex Court did not accept the contention raised therein that the seniority shall

be determined with respect to the earlier vacancies. In the said case, the appointees of 1994 were selected against earlier vacancies, but in the meantime, the selection for the subsequent vacancies took place, in which the appointees of 1991 were appointed. The Hon'ble Apex Court held that no retrospective promotion could be granted nor any seniority be given on retrospective basis from a date when an employee had not even been borne in the cadre, as by doing so, it must adversely affect the employees who had been appointed validly in the meantime.

36. In ***Pawan Pratap Singh*** (supra), in the concurring judgment, Hon'ble ***Justice Aftab Alam***, summarized the legal position with regard to the determination of seniority in service in paragraph-45, which reads as under:

“45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

37. In the concurring judgment, **Justice Aftab Alam** in para-61 also observed that in case the seniority between the appellants and the first respondent therein was to be determined outside the 1991 Rules, one has to go to the basic principles for determination of seniority, and one cardinal principle for determination of seniority was that unless provided for in the rules, seniority could not relate back to a period to the date of the incumbent's birth in the service/cadre. It was also observed, in the concurring judgment, that Rule 8 of 1991 Rules was also not applicable to the facts of that case and the issue of seniority was to be decided on the basis of the basic principles and that there was no need of attracting Rule 8 of 1991 Rules. Those basic principles were, firstly, as already mentioned that, seniority cannot relate back to the period prior to the date of birth in that cadre and the other that the direct recruits cannot claim appointment from the date of vacancy, before their selection referring to the judgments in **Suraj Parkash Gupta v. State of J&K⁶**, **N. K. Chauhan v. State of Gujarat⁷**, **A. Janardhana v. Union of India⁸** and **A. N. Pathak v. Secy. to the Govt.⁹** So, in **Pawan Pratap Singh** (supra) the

⁶ (2000) 7 SCC 561

⁷ (1977) 1 SCC 308

⁸ (1983) 3 SCC 601

⁹ 1987 Supp SCC 763

ratio laid down is the same, may be referring to Rule 8 of the Service Rules 1991, or on the general principles, independent of the applicability of Rule 8.

38. From the aforesaid judgments, the legal position, is that the *inter se* seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority *inter se* between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution of India. Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

39. We shall now refer to ***K. Meghachandra Singh v. Ningam Siro***¹⁰ in which the question was of the seniority between promotees and the direct recruits in the Manipur Police Service Grade II Officers Cadre and the promotes who were serving as Inspector of Police, who were granted promotion on the basis of duly constituted Departmental Promotion Committee (DPC) to MPS Grade II Cadre on 01.03.2007. The direct recruits were directly recruited vide the Orders dated 14.08.2007 and 24.11.2007. The appointment and the seniority was governed by the Manipur Police Service Rule 1965. The contention of the promotees was that they entered the MPS Grade II Cadre on

¹⁰ (2020) 5 SCC 689

01.03.2007, whereas the direct recruits were appointed subsequently and therefore the promotee should be regarded as senior to the direct recruits. The contention of the direct recruits was that the seniority had to be decided in accordance with the year of the vacancy and not by the fortuitous date on which the appointment could be finalized for the direct recruits. The High Court found that the promotees got entered into the cadre in the recruitment 2006-2007, whereas the direct recruits would stand appointed in the recruitment year 2007-2008, and therefore, there was no overlap between the promotees and direct recruits as far as the year of recruitment was concerned. So the principle of rotation quota between the two streams would not arise under Rule 28 (iii). Accordingly, the High Court determined that the promotees would rank seniors to the direct recruits. The Division Bench upheld the conclusion of the learned single Judge and confirmed the Order, but also held that the seniority for direct recruits could not be reckoned from a date prior to their appointment. The Hon'ble Apex Court upheld the judgment of the High Court. It was held that the seniority could not be given to the employee who was yet to be borne in the cadre. The seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment was made to the post. The Hon'ble Apex Court approved the judgments in the cases of **Jagdish Ch. Patnaik v. State of Orissa**¹¹, **Suraj Parkash Gupta** (supra), and overruled **Union of India v. N. R. Parmar**¹² with the caveat that the judgment in **K. Meghachandra Singh** (supra) will not affect the *inter se* seniority already

¹¹ (1998) 4 SCC 456

¹² (2012) 13 SCC 340

determined, based on **N. R. Parmar** (supra) and the same was protected. The judgment in **K. Meghachandra Singh** (supra) was held to be applied prospectively, except where seniority was to be fixed under the relevant rules from the date of vacancy/the date of advertisement. If the relevant rules provided for determination of seniority from the date of vacancy or date of advertisement, the seniority would be determined as per that rule, but otherwise the seniority could not be determined from the date of vacancy or the date of notification.

40. We are not oblivious that in **Hariharan v. Harsh Vardhan Singh Rao**¹³ the judgment in **K. Meghachandra Singh** (supra) has been referred to the Larger Bench on the following points:

“38. Hence, we pass the following order:

- i. We are of the considered view that the following questions need to be decided by a larger Bench of five Hon'ble Judges:
 - a. Whether the decision in the case of *K. Meghachandra*² can be said to be a binding precedent in the light of the law laid down by the Constitution Bench in the case of *Mervyn Coutindo*³ and the law laid down by a Coordinate Bench in the case of *M. Subba Reddy*⁶?
 - b. In absence of specific statutory rules to the contrary, when the ‘rotation of quota’ rule is applicable, whether the seniority of direct recruits who were recruited in the recruitment process which commenced in the relevant recruitment year but ended thereafter, can be fixed by following ‘rotation of quota’ by interspacing them with the direct recruits of the same recruitment year who were promoted earlier during the same year?
- ii. We direct the Registry to place this petition before Hon'ble the Chief Justice of India for appropriate orders.

¹³ 2022 SCC OnLine SC 1717

iii. The interim relief granted on 13th July 2018 stands vacated. Effect shall be given to the impugned judgment subject to the final outcome of this appeal or reference, as the case may be. We also clarify that the seniority of promotees and direct recruits who may be appointed hereafter will be subject to the final outcome of the decision of this appeal or the decision in reference, as the case may be. Accordingly, concerned persons shall be informed in writing by the Income Tax Department.”

41. The present is a case of the applicants for grant of seniority and also the other benefits at par with the appointees of DSC 1989, who were selected and given appointment in the year 1996. The respondents 1 to 11 herein (the applicants) are also the selectees of DSC 1989. They were meritorious and their names were in the merit list, but the persons less meritorious were given the appointment. Litigation started and ended in their favour. Finally these applicants were given the appointment being selectees of DSC 1989 pursuant to the orders of the High Court, in the year 2002 in regular pay scale, after terminating the services of those less meritorious candidates. So, the present is not a case of determination of seniority neither between the direct recruits on one hand and the promotees on the other hand, nor a case of determination of seniority between the groups of two direct recruits of different selections in different years or of different year vacancies. Present is a case of determination of seniority amongst the selectees and the appointees of the same selection of DSC 1989.

42. The date of appointment of the applicants is in the year 2002, but the question is whether their entry in the service is to be considered only from the date they have been given actual appointment or they are to be considered

as having been borne, may be on notional basis on the date the appointments were given to the selectees of the same selection, in the year 1996, and these applicants were denied the appointment on erroneous ground, though they were meritorious and must have been appointed in the year 1996 itself. After many round of litigation, as has been mentioned in the writ petition and also in the O.A. of which reference has been made by the Tribunal on which there is no dispute, if the appointment had been made as per law, these meritorious candidates/applicants could not be denied the appointment, along with their counter parts / the selectees of DSC 1989. Consequently, we are of the view that to the facts of the present case, the law as laid down by the Hon'ble Apex Court in the case of **Balwant Singh Narwal** (supra) and the judgment in **Surendra Narain Singh** (supra) is fully applicable on which the Tribunal placed reliance, in which the Hon'ble Apex Court observed and held that the candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.

43. Consequently, we are of the view that following the law, as laid down in **Surendra Narain Singh** (supra) and **Balwant Singh Narwal** (supra), the respondents 1 to 11 being the selectees of the same DSC 1989, who could not be appointed along with other selectees who were given appointment in the year 1996, and these persons could not be given due to no fault on their part and due to the litigation, when appointed subsequently in the

year 2002 will have to be placed, along with the appointees of 1996 i.e., the selectees of the same selection of DSC 1989 and so the applicants would also be entitled for the benefits at par with the appointees of 1996, which has been rightly awarded by the Tribunal.

44. In ***State of Telangana v. MD Mujiboddin***¹⁴ relied upon by the learned counsel for the respondents, also pursuant to the notification dated 06.12.2008 for recruitment to the post of Teachers all over the State, Respondents 1 to 14 therein also among the other candidates had applied and they were successful, and they were provisionally selected on 04.11.2020. In pursuance of the selection, all the candidates joined service except 15 candidates, including the respondents 1 to 14 and the reason for not appointing them was that they passed the qualifying training course i.e., Teachers Training Certificate from private institutions which were not recognized. On that ground, their selection was withheld in order to verify and arrive at a conclusion whether they should be appointed or not. In the State, at that point of time, several Teacher Training Centres had cropped up, apart from the Government Teacher Training Institutions. Several candidates underwent training in private institutions which were not recognized by the Government and for such candidates, the Government conducted crash course for six months in Government Institutions and those candidates who were successful in the crash course were made eligible to be considered for appointment to the posts of Teachers. In all other districts, similarly placed candidates studied in private

¹⁴ WP.No.21193 of 2017, erstwhile
APHC, dated 29.06.2017

institutions and underwent crash course and were treated as eligible and given appointment orders, except in Nizamabad District. The District Selection Committee, Nizamabad District raised certain doubts regarding the issue, as a result, though the respondents were provisionally selected, could not be appointed pending clarification from the Commissioner and Director of School Education and the Government. The respondents therein waited for a long time and finally filed O.A.No.8113 of 2010 and batch before the Tribunal which were disposed of initially on 19.11.2010 with a direction to the State to consider the cases of those respondents and pass appropriate orders. On consideration, the respondents' request was rejected which was challenged in another O.A. and the Tribunal allowed it by setting aside the rejection order. The respondents were subsequently appointed by Order dated 06.08.2014, but imposing one condition that they shall not be eligible for notional fixation of seniority on par with other DSC 2008 selected candidates or monetary benefit. They being aggrieved with the said condition, they again approached the Tribunal and the Tribunal allowed their petition declaring such condition as unjust and illegal. The State approached the High Court, in which the Order of the Tribunal was maintained, directing to comply with the direction of the Tribunal.

45. In ***MD Mujiboddin*** (supra), the erstwhile High Court of Andhra Pradesh held that

“it is settled law that when recruitment has taken place and selections have been finalized and there is a delay in issuance of the appointment orders to certain candidates due to administrative reasons or pendency of Court cases, such delay cannot be attributable to the candidates. It is settled law that such

type of candidates, who are appointed at a later point of time, are entitled to the benefit of seniority on par with their batch-mates”.

46. In ***M. Venkata Chary v. the District Educational Officer, Nalgonda***¹⁵ upon which also the learned counsel for the respondents placed reliance, the writ petition was filed challenging the action of the State in rejecting the request of the petitioners for counting of notional seniority and service from 06.08.1996 to September/October 2001 for automatic advancement scheme and pensionary benefits with all consequential benefits. Following the judgment in ***MD Mujiboddin*** (supra) and the matter being squarely covered by the said judgment, the writ petition was allowed.

47. We are of the view that it cannot be said that the applicants/respondents 1 to 11 were borne on the date when the appointment was given to them and giving them the benefit at par with the appointees of 1996, notionally would amount to giving them the seniority from the date they were not borne in the cadre. It cannot be so said, for the reason is that, if they had been given appointment as per their entitlement of being selected in the same selection of DSC 1989 at par their counter parts, they would have borne in the cadre in the year 1996. They were not given appointments along with other selectees in the year 1996. They should not suffer for the fault of the State and its authorities in not appointing them though were selected but not appointed and the persons with less merit were given appointment. Consequently, we are of the further view that by giving the notional seniority

¹⁵ W.P.(TR) No.3564 of 2017
TGHC, decided on 18.01.2023

and the other benefits from 1996 at par with the other appointees of the same selection, the respondents shall be treated as having borne in the cadre of the year 1996 itself notionally. So, it is not the case that they are being given notional seniority or notional benefits from a date prior to their birth in the cadre. But it is a case of giving them parity and their right to which they are legally entitled in view of their selection, but denial of appointment illegally in the year 1996 though selected in the same selection of DSC-1989.

48. So far as the contention of the learned Government Pleader for the State that the respondents could not be given the accelerated benefit because the appointees of 1996 were appointed on consolidated pay and subsequently they were brought in regular pay scale, whereas the respondents were appointed in the year 2002 in the regular scale, in our view the said contention deserves rejection and on that ground the applicants could not be denied those benefits which they would have earned had they been appointed as per their entitlement and legally in the year 1996 itself. The Tribunal has not directed to provide them with greater benefit than the appointees of 1996. But keeping them at par with the appointees of 1996 they would be entitled to the same benefits, which they would have otherwise earned, only notionally as directed by the Tribunal in judgment dated 25.02.2013.

49. Consequently, we do not find any merit in the writ petition and the same is dismissed. The petitioners shall comply with the Order of the Tribunal.

50. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Date: 07.05.2025
Dsr

Note:
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