

M. Surender Reddy vs Govt. Of A.P. And Ors on 18 February, 2015

Equivalent citations: 2015 AIR SCW 1477, 2015 (8) SCC 410, 2015 LAB. I. C. 1664, AIR 2015 SC (SUPP) 755, (2015) 3 ANDHLD 101, (2015) 3 KCCR 188, (2015) 2 MAD LJ 437, (2015) 6 ADJ 7 (SC), (2015) 2 SCALE 548, (2015) 2 ESC 245, (2015) 2 LAB LN 51, (2015) 2 SCT 242, (2015) 6 SERVLR 621, AIR 2015 SC (CIV) 1729

Bench: V. Gopala Gowda, Sudhansu Jyoti Mukhopadhaya

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5099 OF 2006

M. SURENDER REDDY

... APPELLANT

VERSUS

GOVT. OF ANDHRA PRADESH AND ORS.

... RESPONDENTS

With

C.A. No.5100 of 2006 and

C.A. No.5101 of 2006

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

These appeals have been preferred by the appellants against common judgment dated 27th December, 2004 passed by the Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition Nos. 20106, 20350, 20539 and 21554 of 2004 and common order dated 28th December, 2004 passed by the same High Court in Writ Petition Nos.20215, 20305, 21558 and 23173 of 2004. By the impugned common judgment, the High Court dismissed the writ petitions, upheld the finding of the Andhra Pradesh Administrative Tribunal (hereinafter referred to as the "Tribunal") and held as follows:

"26. In view of our foregoing discussions, we record the following conclusions:

The finding of the Tribunal that the selection process has to be in accordance with the G.O.Ms. No.124, dated 8.8.2002 cannot be said to be erroneous or contrary to law.

But, however, the direction that the entire select list has to be reviewed clubbing the appointments under 1st round selection is not sustainable and accordingly the procedure as contemplated under G.O.Ms. No.124 has to be followed only in respect of the candidates excluding the appointments already made in 2001 and 2002 namely Asstt. Municipal Commissioners Grade- III, Asstt. Commercial Tax Officers, Asstt. Labour Officers and Asstt. Section Officers in non-executive cadre in view of the peculiar and circumstances of this case.

The inter se seniority between the 1st round appointees and later inducted persons under second round selection in the same cadre if any shall be decided by the appropriate authority in accordance with rules, depending on the merit ranking obtained by them.

The Reservation to PHC category wherever it is not provided under the Special Rules cannot be claimed and hence the findings of the Tribunal do not call for any interference.

27. We do hope that the process of selection would be completed expeditiously without further hurdles. Subject to the above conclusions, the Writ Petitions stand dismissed."

By the impugned common order, the High Court disposed of the said writ petitions in terms of the common judgment dated 27th December, 2004 in Writ Petition No.20106 of 2004.

2. The brief facts of the case are as follows:

The President of India in exercise of powers conferred by Clause (1) and (2) of Article 371-D of Constitution of India made the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 dated 20th October, 1975 (hereinafter referred to as "Presidential Order"). Sub-Paragraph(1) of Paragraph 3 of the said order gives power to the State Government to organize classes of posts in the civil services of and classes of civil posts under the State into different local cadres for different parts of the State within 27 months from the commencement of the said order. Paragraph 8 relates to reservation in the matter of direct recruitment. Relevant portion of which reads as follows:

"8. Reservation in the matter of Direct Recruitment:- (1) 80% of the posts to be filled by direct recruitment any time-

(a) in any local cadre under the State Government comprising posts belonging to the category of lower division clerk or a Category equivalent to or lower than that lower division clerk; and

(b) in any cadre under a local authority comprising post carrying a scale of pay the minimum of which, or a fixed pay which does not exceed the minimum of the scale of pay or a lower division clerk, shall be reserved in favour of local candidates in relation to the local area in respect of such cadre.

(2) 70% of the posts to be filled by direct recruitment at any time-

(a) in any local cadre under the State Government comprising posts belonging to non-gazetted categories other than those referred to in item

(a) of sub-paragraph (1); and

(b) in any cadre under a local authority comprising posts carrying a scale of pay, the minimum of which, or a fixed pay which exceeds the minimum of the scale of pay of a lower division clerk, but does not exceed Rs. 480/-

per mensem on any amount corresponding to it as may be specified in this regard in the successive revisions of pay scales granted by the State Government from time to time shall be reserved in favour of local candidates in relation to the local area in respect of such cadre."

3. In exercise of the powers under sub-para(1) Paragraph 3 of the 'Presidential Order, 1975' the Andhra Pradesh State Government issued G.O.P. No.729 dated 1st Novemer,1975, whereby 70% of non-gazetted category posts other than Lower Division Clerk or equivalent posts were reserved in favour of local candidates. By G.O.P. No.763 dated 15th November, 1975 the State Government prescribed certain procedures to be followed in conducting recruitment to the posts. Annexure III to the said G.O.P. deals with the procedure to be followed for selection of candidates for recruitment to the categories of posts for which multiple cadre recruitment is made. As per paragraph 5 of the annexure a combined merit list a local and non-local candidates shall be drawn up to fill up the vacancies.

4. Later, the Andhra Pradesh State Government issued G.O.Ms. No.124 dated 7th March, 2002, whereby G.O.P. No.763 dated 15th November, 1975 was amended by bifurcating combined merit list into two parts i.e. one reserved for local candidates and another for both local and non-local candidates.

5. On 28th December, 1999, the Andhra Pradesh Public Service Commission (hereinafter referred to as the "APPSC") issued Advertisement NO.10 of 1999 to fill up certain Executive and Non-Executive Posts of 27 categories under Group-II services of State Government. As per the said Advertisement selection was to be made on the basis of marks obtained in written test plus oral test for executive posts and only on the basis of marks obtained in the interview, the written test for non-executive posts. Later the State Government withdrew that part of the advertisement which called for applications to 141 vacant posts of Assistant Section Officers. Accordingly, more than 3 lacs candidates appeared in the written examination and among them 269 persons were called for interview for appointment to the executive posts on the basis of marks obtained in the written

examination. After concluding interviews, 104 candidates were selected for executive posts in December 2000. Subsequently, in view of an order passed by the Tribunal in O.a.No.7443 of 2000, filed against the non- exclusion of 141 posts of Assistant Section Officers 113 candidates including the appellants were recommended for non-executive posts i.e. Asstt. Sections Officers in February, 2002 based on marks obtained in written test.

Subsequently, as per the directions of the High Court, 973 Executive posts were included in Advertisement No.10 of 1999 and more than 2000 candidates along with the appellants were called for interview on the basis of the marks obtained in the written examination. Thereafter, the APPSC selected 973 candidates for executive posts on the basis of written plus oral test and prepared common merit list by including 104 candidates who were already appointed against executive posts.

6. Some of the candidates filed applications before Tribunal to implement G.O.Ms. No.124 dated 7th March, 2002 which was allowed by the Tribunal with a direction to the APPSC to re-caste the merit list by implementing the G.O.Ms. No.124. Being aggrieved by the said direction, when the appellants filed Writ Petitions, the High Court while dismissed the same directing to exclude the present appellants and other A.S.Os from consideration to the executive posts.

As the above said direction of the High Court created an anomaly restricting the meritorious candidates, already appointed Asstt. Sections Officers who were appointed to the to lower non-executive posts and less meritorious candidates were to get higher posts in executive cadres, the appellants have challenged the same.

7. Learned counsel for the appellants submitted that G.O.Ms. No.124 dated 7th March, 2002 cannot be applied retrospectively to the selection already in process or selection already made, particularly when the State Government's order is a part of substantive law and not procedural law. It is further contended that G.O.Ms.124 dated 7th March, 2002 is null and void having issued after lapse of period of limitation prescribed in sub-para(1) of Paragraph 3 of the Presidential Order, 1975. Further, according to the counsel for the appellants, G.O.Ms.124 dated 7th March, 2002 is ultra vires of Presidential Order, 1975 and G.O.P. No.729 dated 1st November, 1975 and G.O.P. No.763 dated 15th November, 1975 issued in pursuance of Paragraph 3(1) of the Presidential Order, 1975.

8. We have heard learned counsel for the parties, perused the records and relevant notifications relating to reservation of posts issued from time to time.

The questions that arise for determination in this case are: (a)whether G.O.Ms.124 dated 7th March, 2002 is retrospective in nature in order to make it applicable to the posts for which selection process has already started pursuant to 1999 advertisement, and (b) If the said G.O.Ms. is retrospective, whether it is required to review the entire select list disturbing the appointments already made during the period between the 2001 and 7th March, 2002.

9. The Presidential Order, 1975 by virtue of sub-paragraph (1) of Paragraph 3 empowers the State Government to organize classes of posts in civil services under the State into different local cadres in different parts of State within 27 months from the commencement of the said order. Paragraph 3 of

the order empowers the State to organize Local Cadres, which is as follows:

"3. Organization of local cadres :- (1) The State Government shall within a period of * twenty-seven months [Vide G.O. Ms. No. 728, G.A. (SPF.A) Dept, dt. 27-10-1977] from the commencement of this Order, organize classes of posts in the civil services of and classes of civil posts under the State into different local cadres for different parts of the State to the extent and in the manner, hereinafter provided.

Provided that, notwithstanding the expiration of the said period, the President may by order, require the State Government, whenever he considers it expedient so to do, to organize any classes of posts in the civil services of and classes of civil posts under the State into different local cadres or different parts of the State. (Vide G.O. Ms. No. 34, G.A. (SPF.A) Dept, date 24-1-81) (2) The posts belonging to the category of lower division clerk and each of the other categories equivalent to, or lower than that of a lower division clerk, in each department in each district shall be organized into separate cadre.

Explanation:- For the purposes of this sub-paragraph, sub-paragraph(1) of paragraph 6, and sub-paragraph (1) of paragraph 8 a category shall be deemed to be equivalent to or lower than that of a lower division clerk if the minimum of the scale of pay of a post belonging to that category or where the post carries a fixed pay, such fixed pay is equal to or lower than the minimum of the scale of pay of a lower division clerk.

(3) The posts belonging to each non gazetted category, other than those referred to in sub-paragraph (2), in each department in each zone shall be organized into a separate cadre.

(4) The posts belonging to each specified gazetted category in each department in each zone shall be organized into a separate cadre.

(5) Notwithstanding anything contained in sub-paragraph (3) and (4), the State Government may where it considers it expedient so to do and with the approval of the Central Government, organized the posts belonging to any of the categories referred to therein, in any department, or any establishment thereof, in two or more contiguous zones into a single cadre.

(6) Notwithstanding anything contained in sub Paragraphs (2), (3), (4) and (5), the Central Government; may notify the departments in which and the categories of posts for which a separate cadre has to be organized for the City of Hyderabad and on such notification, the posts belonging to each such category in each such department in the said City (other than those concerned with the administration of areas falling outside, the said City) shall be organize into a separate cadre and the posts so organized in pursuance of this paragraph or Constituted otherwise and comprising posts belonging to the category in that department.

(7) In organising a separate cadre in respect of any category of posts in any department for any part of the State, nothing in this Order shall be deemed to prevent the State Government from organising

or continuing more than one cadre in respect of such category is such department for such part of the State.

(8) Where the Central Government is satisfied that it is not practicable or expedient to organize local cadres under this paragraph in respect of any non gazetted category of posts in any department, it may, by notification, make a declaration to that effect and on such declaration the provisions of this paragraph shall not apply to such category of posts."

Each district is regarded as a 'Local area' as per paragraph 6, which is as follows:

"6. Local areas:- (1) Each district shall be regarded as a local area-

(i) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that district belonging to the category of a lower division clerk or to any other category equivalent to or lower than that of a lower division clerk.

(ii) for direct recruitment to posts in any cadre under any local authority within under that district carrying a scale of pay, the minimum of which does not exceed the minimum of the scale of pay of a lower division clerk or a fixed pay not exceeding that amount.

(2) Each Zone shall be regarded as a local area-

(1) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that zone belonging to any non-gazetted category other than those referred to in sub paragraph (1);

(ii) for direct recruitment to posts in any local cadre comprising all or any of the post in any department in that zone belonging to the categories of Tehsildars, Asst. Executive Engineers, Assistant Agricultural Officers, Inspectors of Police and Motor Vehicle Inspectors (Vide G.O. Ms. No. 498,dt. 16-7-1977 G.O.Ms. No. 34, dt. 24-1-1981 and G. O. Ms. No. 635, G.A.(SPF. A) Dept. dated 30-11-1993)

(iii) For direct recruitment to posts in any cadre under any local authority within that zone, carrying a scale of pay, the minimum of which exceeds the minimum of the scale of pay of a lower division clerk but does not exceed Rs. 480/- per mensem or a fixed pay which exceeds the minimum of the scale of pay of a lower division clerk but does not exceed Rs. 480/-

per mensem or any amount corresponding to it as may be specified in this regard in the successive revisions or pay scales granted by the State Government from time of time. (G.O.Ms. 635, G.A. (SPF.A) Dept. dated 30-11- 93.17) Provided that where a single cadre has been organized for two or more zones under sub-paragraph (5) of paragraph 3 of posts belonging to any of the categories

referred to in clause (i) or clause (ii) each of such zones shall be regarded as separate local area in respect of such cadre.

(3) Notwithstanding anything contained in sub-paragraphs (1) and (2),-

(i) the City of Hyderabad shall be regarded as a local area for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in the said City in the departments and belonging to the categories notified under Sub-paragraph (6) of paragraph 3 and the said City shall be excluded from the local area relatable to any other local cadre comprising posts in the departments and belonging to the categories so notified; and

(ii) the City of Hyderabad shall be regarded as a local area for direct recruitment to posts in any cadre under a local authority within the said City comprising posts carrying a scale of pay the minimum of which does not exceed Rs. 480/- per mensem or any amount corresponding to it as may be specified in this regard in the successive revisions of pay scales granted by the State Government from time to time, or a fixed pay not exceeding that amount, and the said City shall be excluded from the local area relatable to any cadre under any local authority not within the said City. (G.O. Ms.No. 635, G. A. (SPF. A) Dept. dated 30-11-93) (4) Notwithstanding anything contained sub-paragraphs (1), (2) and (3). (1) the districts of Medak, Ranga Reddy and Hyderabad shall be regarded as a local area for direct recruitment to posts in any cadre under the Hyderabad Urban Development Authority comprising posts, carrying a scale of pay, the minimum of which does not exceed the minimum of the scale of pay of lower division clerk or a fixed pay not exceeding that amount.

(ii) Zone VI shall be regarded as a local area for direct recruitment to posts in any cadre under the Hyderabad Urban Development Authority comprising posts, carrying a scale of pay, the minimum of which exceeds the scale of pay of a lower division clerk but does not exceed Rs. 480/- per mensem, or a fixed pay which exceeds the minimum of the scale of the pay of a lower division clerk but does not exceed Rs. 480/- per mensem J-698/318 or any amount corresponding to it as may be specified in this regard in the successive revisions of pay scales granted by the State Government from time to time. (Vide G.O.Ms. No. 498, G. A. (SPF. A) Dept. dt. 16-7-77 and G.O. Ms.No. 34, G. A. (SPF. A.) Dept, dt. 24-1-1981.)"

"Local candidates" for direct recruitment to any post in relation to the local area is defined in paragraph 7 as follows:

"7. Local Candidate:- (1) A candidate for direct recruitment to any post shall be regarded as a local candidate in relation to a local area.-

(a) in cases where a minimum educational qualification has been prescribed for recruitment to the posts-

(i) If he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with

the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination; or

(ii) where during the whole or any part of the four consecutive academic years ending with the academic year in which he appeared or as the case may be, first appeared for the relevant qualifying examination he has not studied in any educational institution, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the qualifying examination in which he appeared or as the case may be, first appeared.

(b) In cases where no minimum educational qualification has been prescribed for recruitment to the post, if he has resided in that local area for a period of not less than four years immediately preceding the date on which the post is notified for recruitment.

Explanations:- For the purpose of this paragraph.-

(i) 'educational institution' means a University or any educational institution recognised by the State Government, a University or other competent authority;

(ii) 'relevant qualifying examination' in relation to a post means;

(A) the examination, a pass in which is the minimum educational qualification prescribed for the post;

(B) the Matriculation examination or an examination declared by the State Government to be equivalent to the Matriculation examination; which is lower ; and

(iii) in reckoning the consecutive academic years during which a candidate has studied, any period of interruption of his study be reason of his failure to pass any examination shall be disregarded.

(iv) the question, whether any candidate for direct recruitment to any post has resided in any local area shall be determined with reference to the places where the candidate actually resided and not with reference to the residence of his parents or other guardian (Vide G.O.Ms. No. 168, G.A. (SPF.A) Dept. dt.10-3-77).

(2) A candidate for direct recruitment to any post who is not regarded as a local candidate under sub-paragraph (1) in relation to any local area shall.-

(a) in cases where a minimum educational qualification has been prescribed for recruitment to the post.

(i) If he has studies in educational institutions in that State for a period of not less than seven consecutive academic years ending with academic year in which he appeared or as the case may be,

first appeared for the relevant qualifying examination be regarded as a local candidate in relation to (1) Such local area where he has studied for the maximum period out of the said period of seven years; or (2) where the period of his study in two or more local areas are equal, such local areas where he has studied last in such equal periods;

(ii) If during the whole or any part of the seven consecutive academic years ending with the academic years in which he appeared or as the case may be first appeared for the relevant qualifying examination, he has not studied in the educational institutions in any local areas, but has resided in the State during the whole of the said period of seven years, be regarded as a local candidate in relation to (1) such local area where he has resided for a maximum period out of the said period of seven years : or (2) where the periods of his residence in two or more local areas are equal, such local area where he has resided last in such equal periods ;

(b) in cases where no minimum educational qualification has been prescribed for recruitment to the post, if he has resided in the State for period of not less than seven years immediately preceding the date on which the post is notified for recruitment, be regarded as a local candidate in relation to

(i) such local area where he has resided for the maximum period out of the said period of seven years ; or (ii) where the periods of his residence is two or more local areas are equal such local area where he has resided last in such equal periods.(G.O.Ms. No. 168, dated 10-3-1977)"

Paragraph 8 mandates reservation in the matter of direct recruitment relevant of which is quoted below:

"8. Reservation in the matter of Direct Recruitment:- (1) 80% of the posts to be filled by direct recruitment any time-

(a) in any local cadre under the State Government comprising posts belonging to the category of lower division clerk or a Category equivalent to or lower than that lower division clerk; and

(b) in any cadre under a local authority comprising post carrying a scale of pay the minimum of which, or a fixed pay which does not exceed the minimum of the scale of pay or a lower division clerk, shall be reserved in favour of local candidates in relation to the local area in respect of such cadre.

(2) 70% of the posts to be filled by direct recruitment at any time-

(a) in any local cadre under the State Government comprising posts belonging to non-gazetted categories other than those referred to in item

(a) of sub-paragraph (1); and

(b) in any cadre under a local authority comprising posts carrying a scale of pay, the minimum of which, or a fixed pay which exceeds the minimum of the scale of pay of a lower division clerk, but does not exceed Rs. 480/-

per mensem on any amount corresponding to it as may be specified in this regard in the successive revisions of pay scales granted by the State Government from time to time shall be reserved in favour of local candidates in relation to the local area in respect of such cadre. (G.O.Ms. No. 635, G. A. (SPF.A) Dept, dated 30-11-93).

(3) 60 % of the posts to be filled by direct recruitment at any time in any local cadre under the State Government comprising posts belonging to the categories of Tehsildars, Assistant Executive Engineers, Assistant Agricultural Officers, Inspector of Police and Motor Vehicle Inspectors shall be reserved in favour of local candidates in relation to the local area in respect of such cadre.(G.O.Ms. No. 498, G.A. (SPF. A) Dept, Dt. 16- 7-1977)(G.O.Ms. No. 34, G.A. (SPF. A) Dept, Dt. 24-1-1981)(G.O.Ms. No. 635, G.A. (SPF. A) Dept, Dt. 30-11-1993).

(4) Notwithstanding anything contained in sub-paragraph (2) or sub- paragraph(3) where, in respect of any of the categories referred to in the said paragraph a single cadre has been organized for two or more zones under sub-paragraph (5) of paragraph 3, 70% or as the case may be, 60 % of the posts to be filled by direct recruitment at anytime in such cadre shall be reserved in favour of and allocated amongst the local candidates in relation to each of the local areas in respect of such cadre in the ratio specified in the Second Schedule against the zone comprising each such local area.

(5) 60% of the posts under the State Government belonging to the category of Civil Assistant Surgeons to be filled by direct recruitment at any time shall be reserved in favour of and allocated amongst the local candidates in relation to the local area specified in column (1) the Table below in the respective ratios specified in the corresponding entry is column (2) thereof."

Paragraph 9 deals with carry forward of reserved posts, if no candidate is available, which is as follows:

"(9) Carry forward of reserved posts:- If a qualified local candidate in respect of a local area is not available to fill a post reserved or allocated in favour of a local candidate in respect of that local area, such post shall be carried forward for recruitment of a local candidate in respect of that local area for period not exceeding three years;

Provided that pending recruitment of a local candidate, such post may be filled in temporarily by borrowing the service of a person holding a post of the same category in any other local cadre or under any other local authority as the case may be (Vide G.O. Ms. No. 34,dt. 24-1-1981)."

Paragraph 11 stipulates that the order to have overriding effect over Statute, Ordinance, Rule, Regulation or other order made before or after the commencement of the said Order in respect of direct recruitment to posts under the State Government or any local authority.

10. After publication of the Presidential Order 1975 the Government of Andhra Pradesh by G.O.P. No.729 dated 1st November, 1975, intimated the Scheme of the Order and directed the authorities to furnish District-wise list in case of categories of Lower Divisional Clerk and equivalent or lower categories and Zone-wise list in the case of higher categories.

11. Referring to the Presidential Order, 1975, Government of Andhra Pradesh issued G.O.P No.763 dated 15th November, 1975 communicating the Scheme and the procedure to be followed in such appointments relevant portion of which reads as follows:

"2. Recruitment of candidates is basically of two types size, single unit i.e. single cadre recruitment and multiple unit i.e., multiple cadre recruitment. Where recruitment is made to fill vacancies in a single cadre i.e., single unit of appointment comprising posts in a given category for a particular department, it can be categorized as single cadre recruitment. Where recruitment is made to fill vacancies in more than one cadre (i.e., for than one unit of appointment in the same or different parts of the State) comprising posts in a given category or different categories in one or more department, such recruitment will be multiple units or multiple cadre recruitment. For example when recruitment is made to fill vacancies of Lower Division Clerk in a district in one department, it becomes single cadre recruitment. Where, however, a combined recruitment is made to fill up the posts of Lower Division Clerks in a district in more than one department of where a combined recruitment to fill vacancies in similar categories like Lower Division Clerks, Typists, Stenographers etc., in one district in one or more departments is made, it becomes multiple cadre recruitment.

3. Recruitment to a single multi-zonal cadre contemplated under the Presidential Order and to the category of Civil Assistant Surgeons will also come under the category of single cadre recruitment but with the difference that preference in the matter of direct recruitment in such cases is to be given to local candidates not one local area but of the different local areas covered by such cadre in the ratio prescribed in the Presidential Order.

4. Multiple cadre recruitment may take different forms especially in the implementation of the proposed Presidential Order on the organization of local cadres. It may take the form of:

(a) Recruitment to fill up the vacancies in a single category for different local cadres or different parts of the State (local areas) in one department, e.g. recruitment of Clerks in the Judicial Department for Courts in the districts undertaken by the Andhra Pradesh Public Service Commission.

(b) Recruitment to fill up the vacancies in identical or different categories in different local cadres in different departments in one part of the State (local area) e.g., recruitment of Group-IV services undertaken by the Collectors now.

(c) Recruitment to fill up the vacancies in different categories in different local cadres in different departments of different parts of the Ste (local areas) e.g. recruitment of Group-II Services undertaken by the Andhra Pradesh Public Service Commission.

5. The State Government have considered the manner in which the scheme of reservation in favour of local candidates provided in the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 should be implemented taking into account the provisions made in regard to appointments in favour of Backward Classes, the Scheduled Castes and the Scheduled Tribes and have decided that the procedure set out in the Annexure to this order may be followed in this regard.

6. The procedure set out in Annexure-I to this order is to be followed for selection of candidates for recruitment of the categories of posts of which single cadre recruitment is made. The procedure set out in Annexure- II will apply to selection of candidates of recruitment of every category of posts for which a Multi-zonal cadre is set up and also in the matter of recruitment of the category of Civil Assistant Surgeons where the posts reserved in favour of local candidates are required to be appointed in the prescribed ratio among local candidates of different local areas covered by such cadre. The procedure set out in Annexure-III to this order is to be followed for selection of candidates for recruitment to the categories of posts for which multiple cadre recruitment is made.

7. All the recruiting authorities and appointing authorities are requested to follow the instructions annexed to the said G.O.P. No.763 dated 15th November, 1975 while making recruitment either temporary or regular, to posts coming within the ambit of paragraph 8 of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975."

12. On 13th December, 2001, the President of India in exercise of the powers conferred by clauses (1) and (2) of Article 371-D of the constitution of India, amending the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 namely - the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment)Amendment) Order, 2001 published by the Government of India, Ministry of Home Affairs S.O. 1219(E). The said Amendment Order reads as follows:

"2. In the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order 1975:-

(1) In paragraph 2 in Sub-Paragraph (1), to clause (a) the following shall be added namely:-

"The territorial Jurisdiction in respect of the posts belonging to the Department of School Education shall be the Revenue District of Hyderabad."

(2) In paragraph 8, in Sub-paragraph(1) after item (b), the following item shall be deemed to have been added with effect from the 1st June 2001, namely:-

"C (i) in any local cadre under the State Government comprising posts belonging to the categories of Teachers in the Andhra Pradesh School Education Subordinate Service and other similar or equivalent categories of posts of teachers under any Department of the State Government; and

(ii) in any cadre under a local authority or under any such other management, as may be notified by the State Government from time to time carrying a scale of pay equal to that of posts in the Andhra Pradesh School Education Subordinate Service shall be reserved in favour of local candidates in relation to the local area in respect of such cadre."

(3) In paragraph 8, in Sub-paragraph (2) in item (a) for the words and figure "in item (a) of Sub-paragraph (1)", the words and figure "in item

(a) or in item (c) of sub-paragraph (1)", shall be substituted."

13. The Government of Andhra Pradesh by G.O.Ms. No.8 dated 8th January, 2002 referring to paragraph 8 of the Presidential Order, 1975 made amendment in the procedure prescribed in paragraph 3 and 4 of Annexure-I to G.O.P.No.763 dated 15th November, 1975. The said GOMs. Reads as follows:

"GOVERNMENT OF ANDHRA PRADESH GENERAL ADMINISTRATION (SPF-A) DEPARTMENT G.O.Ms.No.8 Dated:08.01.2002 Read the following G.O.Ms.No.674, GA(SPF-A) Department, dated 20.10.1975 G.O.P.No.729, GA(SPF-A) Department, dated 01.11.1975.

G.O.P.No.763, (SPF-A) Department, dated 15.11.1975 U.O. Note NO.237/SPF-A/85-2, GA(SPF-A) Department, dated 20.05.1985 G.O.Ms.No.2, G.A.(SPF-A) Department, dated 03.01.2002.

O R D E R In terms of para-8 of the Andhra Pradesh Public employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975, i.e, Presidential Order, referred to in the reference first read above, in the case of District Cadres, 80% of the posts under Direct Recruitment are reserved for local candidates, as defined in para-7 of the Presidential Order. The remaining 20% of the posts are open posts for which local and non-locals have to be considered on the basis of combined merit. This aspect has already been clarified in the U.O. Note fourth read above. The Government have also issued instructions in the G.O. third read above in the manner in which the posts have to be filled up.

2. Government have re-examined the matter of filling up of the posts as prescribed in the G.O. third read above. Accordingly it is decided that while filling up of the posts under Direct Recruitment, the first 20% of posts should be filled following combined merit list of locals and non- locals and, thereafter, the remaining 80% of the posts

shall be filled up by locals only. However, while filling up of the posts the special representation under Rule 22 of the A.P. State and Subordinate Service Rules shall be followed suitably.

3. Accordingly the following amendment is issued to the procedure prescribed in paras 3 and 4 of the Annexure I to the G.O.(P) No.763, General Administrative (SPF.A) Department, dated 15th November, 1975.

4. In respect of the Annexure-II & III to the G.O. 3rd read above orders will be issued separately.

AMENDMENT

5. In the said orders, in the Annexure-I,

(i) for paragraphs 3 and 4 the following shall be substituted namely, "Para 3: The provisional list shall be divided into two parts. The first part will comprise first 20% of the list. The second part will comprise the balance 80%. In case the provisional list does not contain any non-local candidate in the second part the list shall be approved.

Para 4: If, however, on the scrutiny referred to in para 3 it is found that there are non-local candidates in the second part of the list, then these candidates shall be removed and replaced by local candidates ensuring that the rule of reservation is followed.

(ii) the illustrations thereunder shall be omitted.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)"

14. It was followed by G.O.Ms.No.124 dated 7th March, 2002, whereby the Government of Andhra Pradesh amended the procedure prescribed in Annexure II and III of G.O.Ms.No.763 dated 15th November, 1975 which reads as follows:

"GOVERNMENT OF ANDHRA PRADESH O R D E R In the G.O. 6th read above, orders were issued that while filling up of the posts under Direct Recruitment, the first 20% of posts should be filled following combined merit list of locals and non-locals (i.e. Open Category) and, thereafter, the remaining 80% of the posts shall be filled up by locals only. While filling up of the posts the special representation under Rule 22 of the A.P. State and Subordinate Service Rules shall be followed strictly. It was also ordered therein that the amendments to the Annexures II and III to the G.O. third read above be issued separately.

2. Accordingly, the following amendments are issued to the procedure prescribed in the Annexures II and III to the G.O.Ms.No.763, G.A.(SPF-A) Department, dated 15th

November, 1975.

A M E N D M E N T S In the said Government orders, (1) In the Annexure - II,

(i) for paragraphs 3 and 4, the following shall be substituted, namely, "3: The Provisional list shall be divided into two parts. The first part shall comprise 30% of the posts consisting of combined merit lists of locals as well as non-locals and the remaining second part shall comprise the balance 70% of the posts consisting of locals only and the posts shall be filled duly following the rule of reservation."

(2) in the Annexure - III, for paragraph 3, the following shall be substituted, namely, "3: The provisional list shall be divided into two parts. The first part shall comprise 40% of the posts consisting of combined merit lists of locals as well as non-locals and the remaining second part shall comprises the balance 60% of the posts consisting of locals only and the posts shall be filled duly following the rule of reservation."

15. The applicability of the aforesaid G.O.Ms.No.124 dated 7th March, 2002 is in dispute in the present case.

16. In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*, AIR 1961 SC 1596, the Constitution Bench of this Court while considering the question as to whether an Act is to be made operative prospectively or retrospectively held:

"12..... a section may be prospective in some parts and retrospective in other parts. While it is the ordinary rule that substantive rights should not be held to be taken away except by express provision or clear implication, many Acts, though prospective in form, have been given retrospective operation, if the intention of the legislature is apparent."

17. In *Mst. Rafiquennessa vs. Lal Bahadur Chetri and others*, AIR 1964 SC 1511, another five-Judge Bench of this Court while dealing with the question of effect of retrospective legislation on vested rights observed:

"It is not disputed by him that the legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts between the parties; but the argument is that unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. These principles are unexceptionable and as a matter of law, no objection can be taken to them."

18. In absence of any express or necessarily implied provision in the statute, normally statute affects the rights prospectively.

A statutory provision is held to be retrospective either when it is so declared by express terms, or the intention to make retrospective clearly follows from the relevant words and the context in which they occur.

19. The Presidential Order, 1975 was issued in exercise of powers under clauses (1) and (2) of Article 371-D of the Constitution empowering the State Government under sub-paragraph (1) of paragraph 3 of the said order to organize any class of posts in the civil services under the State into different local cadres in different parts of the State within 27 months from the commencement of the said order. Under proviso to sub-paragraph (1) it is stated that notwithstanding the expiration of the said period, the President may by order, require the State Government whenever he considers it expedient to do so to organize any class of posts in civil services of and any class of civil posts under the State into different local cadres or different parts of the State. By Presidential order, 1975 the State Government has not been empowered to pass any order under sub-paragraph (1) of paragraph 3 or paragraph 8 with retrospective effect. Apart from the fact that the State Government was not empowered by the Presidential Order, 1975 to pass any orders with retrospective date, in absence of any terms or the intention to make it retrospective date, the G.O.Ms. No.124 dated 7th March, 2002 cannot be given effect from a retrospective date.

20. In any case, the State Government cannot pass any order amending a procedural law regarding reservation in the matter of selection to posts, with retrospective effect, once the procedure of selection starts.

21. For the reasons aforesaid, we hold that the G.O.Ms.No.124 dated 7th March, 2002 is prospective and is not applicable to the process of selection started pursuant to Advertisement No.10 of 1999 including the 973 executive posts which were ordered to be filled up by the High Court pursuant to the advertisement. The Tribunal erred in directing the APPSC to re-caste the merit list pursuant to G.O.Ms.No.124 dated 7th March, 2002. The High Court by the impugned judgment dated 27th December, 2004 rightly held that the order passed by the Court will not affect the appointments already made to the executive post between 2001-2002 but erred in holding that the selection is to be made in accordance with G.O.Ms.No.124 dated 7th March, 2002

22. For the reasons aforesaid, we set aside the orders passed by the Andhra Pradesh Administrative Tribunal and the impugned common judgment dated 27th December, 2004 and the impugned common order dated 28th December, 2004 passed by the Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition Nos. 20106 of 2004, 21558 of 2004, etc. In view of the foregoing discussions, we direct the respondents to fill up the rest of the posts including the posts of Municipal Commissioners Grade-III, Asstt. Commercial Tax Officers, Asstt. Labour Officers in executive cadre and Asstt. Section Officers in non executive cadre, which are vacant, as per President Order, 1975 and the Government orders in consonance with the Presidential Order which were prevailing in the year 1999 when the Advertisement was issued. The inter se seniority between the persons appointed in the 1st round and the persons appointed afterwards in the same cadre, if any, shall be decided by the appropriate authority in accordance with the rules, depending on the merit ranking obtained by them.

23. We direct the authority to complete the process of selection expeditiously preferably within three months. The appeals are allowed with aforesaid observations and directions.

.....J. (SUDHANSU JYOTI MUKHOPADHAYA)
.....J. NEW DELHI; (V. GOPALA GOWDA) FEBRUARY 18, 2015.