

Telangana Judges Association vs Union Of India . on 3 October, 2018

Equivalent citations: AIR 2018 SUPREME COURT 5510, 2019 LAB IC 407 2018 (10) ADJ 14 NOC, 2018 (10) ADJ 14 NOC, AIRONLINE 2018 SC 729

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Bench: Ashok Bhushan, A.K. Sikri

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.85 OF 2015

TELANGANA JUDGES ASSOCIATION & ANR.

... PETITIONERS

VERSUS

UNION OF INDIA & ORS.

... RESPONDENTS

WITH

CIVIL APPEAL NOS.10170-10173 OF 2018
(ARISING OUT OF SLP(C)NOS.18787-18790 OF 2016)

STATE OF TELANGANA & ANR.

... APPELLANTS

VERSUS

SARASANI SATYAM & ORS.

... RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. The bifurcation of lower judiciary by State wise strength of combined State of Andhra Pradesh, consequent to the Andhra Pradesh Reorganisation Act, 2014 is the issue which has arisen in these two cases which have been heard together and are being decided by this common judgment.

Facts: Writ Petition (C) No.85 of 2015

3. The writ petition has been filed by the Telangana Judges 16:22:41 IST Reason:

Association, a registered forum, formed to protect the interest of the Judicial Officers of State of Telangana. The petitioner has challenged the recruitment process initiated by the High court of the Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh (hereinafter referred to as 'the High Court') for filling up the post of Civil Judge (Junior Division). The petitioner's case is that consequent to the Andhra Pradesh Reorganisation Act, 2014(hereinafter referred to as 'Act, 2014') with effect from 02.06.2014 a new State has been formed, namely, State of Telangana without permitting the option envisaged in Section 77(2) of the Act, 2014 and without bifurcation of subordinate judiciary the recruitment process has been initiated which is not in accordance with law. Petitioner's case is that from the establishment of the High Court of Andhra Pradesh in the year 1956, there has been inadequate representation of Telangana Judges in the cadres of Junior Civil Judges, Senior Civil Judges, District Judges and even Judges of the High Court.

The impugned notification issued by respondent No.2 without constituting Telangana State Judicial Service and without preparing State wise cadre strength of respective States would affect the seniority as well as promotion of the Telangana State Judicial Officers whose strength is at present 25% only in comparison with Andhra Pradesh State Judicial Officers.

4. An advertisement dated 01.02.2014 for recruitment for 97 vacancies of Civil Judges (Junior Division) was published. The preliminary written examination was notified for 27.04.2014. The State of Telangana was created as the 29th State of the Union of India by the Act, 2014 on 01.03.2014. A representation was submitted to stop the recruitment process as the Central Government had announced, 02.06.2014, the date for the formation of Telangana State. The High Court put on hold the selection process till a clarification is obtained from this Court. An application was filed by the High Court in C.A. No.1867 of 2006 (Malik Mazhar Sultan & Ors. vs. Union Public Service Commission & Ors.) on which this Court on 07.07.2014 passed an order permitting the status quo. However, this Court in Malik Mazhar Sultan passed an order on 20.01.2015 clarifying that the process already initiated for recruitment of Judicial Officers in the States of Andhra Pradesh and Telangana by the High Court be proceeded with. The Chief Justice of the High Court had constituted a Committee of Judges, which Committee decided to ask the Judicial Officers in the State of Andhra Pradesh to exercise option with respect to the newly formed States. Writ Petition(C)No.403 of 2014(Dumpala Dharma Rao vs. High Court of Andhra Pradesh & Ors.) was also filed in this Court challenging the proposed

action of the High Court calling for the option of Judicial Officers. An application for impleadment by Telangana Judges Association has been allowed in Writ Petition No.403 of 2014. Petitioners have also submitted suggestions for the purpose of final guidelines for allocation of States services to the Principal Secretary, Government of Andhra Pradesh. Petitioners also submitted representation to the Joint Secretary, Department of Personnel & Training, Government of India dated 02.12.2014 requesting that the guidelines issued by the Government of India may be made applicable to the Personnel of Subordinate Judiciary and to take necessary expeditious steps for allocation of members of Subordinate Judiciary.

5. In the writ petition petitioner has made the following prayers:

"(i) Issue writ/writs including a writ in the nature of Mandamus directing the respondents to bifurcate the Lower Judiciary from the erstwhile Andhra Pradesh State Judicial Service and to constitute the Telangana Judicial Service under Articles 233 and 234 of the Constitution of India and fix the cadre strength of each State;

(ii) Issue writ/writs including a writ in the nature of certiorari quashing the Notification dated 05.02.2015 and Notification No.54/2015□RC dated 09.02.2015 issued by the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh; and

(iii) pass such other order or orders as are deemed fit and necessary in the interest of justice." Civil Appeal Nos.....of 2018 (arising out of SLP(C)Nos.18787□8790 of 2018

6. These appeals have been filed by the State of Telangana against the Division Bench judgment dated 29.04.2016 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh (herein after referred to as 'the High Court') deciding Public Interest Litigation No.31 of 2015 with three other Writ Petitions. In the Public Interest Litigation filed before the High Court following prayer was made:

"I therefore pray that this Hon'ble Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of a Writ of Mandamus declaring the action of respondents in not bifurcating the Subordinate Judicial Officers and other Judicial Officers of the erstwhile State of Andhra Pradesh as per Section 77 of Andhra Pradesh Reorganisation Act, 2014 and not distributing Subordinate Judicial Officers and other employees to the State of Telangana and to the State of Andhra Pradesh and issuance of impugned notification No.15/2014□RC dated 01.02.2014 and consequential notification No.54/2014□

RC dated 05.02.2014 of the second respondent as null and void, arbitrary, illegal and violative of Articles 233 and 234 of Constitution of India and Part VIII of A.P. Reorganisation Act, 2014 and consequently direct respondents to distribute the subordinate judicial officers and other judicial employees to both the States and only thereafter make recruitments to the Subordinate Higher Judicial Service and Judicial Service and pass such other order or orders as this Hon'ble Court may deem fit and proper."

7. The High Court after elaborately considering all the issues dismissed all the writ petitions. The State of Telangana has by a notification adopted Andhra Pradesh Judicial Service Rules, 2007 without making any consultation with the High Court. The recruitment process initiated by the notification in the year 2014 for 97 posts of Civil Judges and recruitment process for 34 posts in pursuance of 2015 notification were completed. After completing the entire process of selection during pendency of the writ petitions, the High Court noticed in the judgment that the ratio of Judicial Officers selected are in the ratio of 60 : 40 per cent. While dismissing the Public Interest Litigation and Writ Petitions, the High Court in paragraph 18 held:

"18. In the result, the Public Interest Litigation and the Writ Petitions are dismissed. The respondent – High Court shall complete the process of recruitment initiated in pursuance of 2014 and 2015 Notifications. The respondent – State Governments are directed to take all necessary steps for appointments of the selected candidates, recommended by the High Court at the earliest. 2015 Rules shall not be acted upon and shall not operate since they were not made in consultation with the High Court as provided for under Article 234 of the Constitution. It is open to the State of Telangana to take steps to adapt 2007 Rules afresh, in exercise of the powers under Section 101 of the Act, in consultation with the High Court."

8. When these appeals (SLPs) were filed against the judgment of the High Court dated 29.04.2016, this Court on 15.07.2016 directed these appeals to be listed along with Writ Petition (C)No.85 of 2015.

This Court on 18.07.2016 took up both, the writ petitions and these appeals and after hearing learned counsel for the parties passed a detailed order on 28.04.2017 where this Court issued following directions:

"....In the background of the above mentioned suggestion, we deem it appropriate to direct that the guidelines issued by the existing High Court be treated as the draft guidelines for the purpose of

allotment of the judicial officers to the different cadres in two 4 states. Telangana Judges Association and the State of Telangana as well as the State of Andhra Pradesh and any one of the judicial officers subject to the control of the existing High Court and not belonging to Telangana Judges Association either individually or in their representative capacity may make suggestions within a period of four weeks from today. Any representation made by anyone of the above mentioned bodies shall be made both to the Government of India and the existing High Court and also the copies of the same shall be furnished simultaneously to all the parties before this Court in these two matters.

The Union of India shall thereafter examine the various suggestions made by anyone of the above mentioned bodies and prepare the draft guidelines in consultation with the existing High Court on or before the 17th of June, 2017 and place the draft guidelines before this Court on the next date of hearing for appropriate further orders.”

9. Consequent upon the above order dated 28.04.2017 an affidavit of compliance has been filed by the Union of India. In pursuance of the order of this Court dated 28.04.2017 respondent No.1 prepared a draft guidelines for allocation of Subordinate Judicial Officers which was submitted to the High Court. The High Court after consideration of the draft guidelines and other inputs decided to submit a revised guidelines. The revised guidelines as suggested by the High Court have been brought on record as Encl.E to the affidavit of the Union of India filed in compliance of order dated 28.04.2017. For the purposes of this case, we need only to notice the modified guidelines submitted by the High Court in reference to which submissions have been made by the learned counsel for the petitioners. The draft sent by the Department of Personnel & Training and as modified by the High Court and final decision taken by the respondent has been filed in the Tabular form. Relevant part of paragraphs 7, 8 and 9 of the affidavit of Union of India may also be noticed which are as follows:

“7. It is humbly submitted that the Ld. Registrar General of the Hon'ble High Court of Judicature at Hyderabad, vide letter dated 8.7.2017, had forwarded the modified guidelines and the option form as approved by the Hon'ble High Court, for further necessary action. The Draft Guidelines, thus duly modified by the Hon'ble the High Court, as stated above, is annexed as ANNEXURE□D.

8. It is respectfully submitted that while the Hon'ble High Court has accepted most of the Principles for allocation as incorporated by the Central Government in the Draft Guidelines, a few modifications have been

made by the Hon'ble High Court. The significant modification(s) inter alia include as under: a.

b.

c.
Modification in descending order of
Priority

of the principles to be

adopted for allocation of employee by
the Full Court.

The Hon'ble existing High Court of

Judicature at Hyderabad has modified the
Central Government guidelines and approved the principles of allocation as under:

(a) those who have opted and are senior;

(b) those who have opted for the State in which the district declared by them at
the time of entering service falls;

(c) if allocable posts still remain, then allocation would be done in the reverse order
of seniority.

The above modifications have been approved by the Full Court of the Hon'ble existing High Court. The DoPT, Govt. of India accepts the above mentioned modifications which have been approved by the Hon'ble existing High Court.

9. The draft guidelines as modified by the Hon'ble High Court and received by the DoPT [vide letter dated 8/7/2017] along with the Department's proposed modification as mentioned in para 8(a) above, is submitted for consideration of this Hon'ble Court, in compliance with this Hon'ble Court's order dated 28/4/2017. This Affidavit is submitted on behalf of the DoPT, Govt. of India in compliance with the order dated 28.04.2017 for kind consideration by this Hon'ble Court towards finalization of the Guidelines for allocation/ distribution of judicial officers between the two States."

10. Shri Salman Khurshid and Shri Huzefa Ahmadi, learned senior counsel have appeared for the writ petitioners. Shri R. Venkatramani has appeared for the High Court. Shri Maninder Singh, learned Additional Solicitor General of India has appeared for Union of India. Shri V.V.S. Rao, learned senior

counsel has appeared for the State of Andhra Pradesh. Shri B. Adinarayana Rao, learned senior counsel has appeared for the Andhra Pradesh Judicial Officers Association. We have also heard learned counsel for the State of Telangana.

11. Learned counsel for the parties have confined their submissions only to the guidelines for allocation as modified by the High Court.

12. Shri Salman Khurshid and Shri Huzefa Ahmadi learned senior counsel appearing for the petitioners contends that modified guidelines issued by the High Court whereunder option of those who are senior has to be first accepted, causes prejudice to officers of Telangana. It is submitted that the ratio of Judicial Officers from Telangana as compared to those from State of Andhra Pradesh has always been less. The main object of bifurcation of existing State of Andhra Pradesh and formation of Telangana State is for betterment of socio-economic conditions and to fulfill the political and other aspirations of the people of Telangana and to do the justice to the people of Telangana on various fronts. The High Court by modifying the guidelines for accepting the option had watered down the enactment of Act, 2014. The guidelines proposed by DoPT for option were fully acceptable to the petitioners where initially in accepting the option preference was to be given to those who had opted to the State in which District declared at the time of service falls, which has been subsequently modified by the High Court. He submitted that by permitting seniors to opt for State of Telangana, there being large number of senior Judicial Officers from Andhra Pradesh, the prospects of promotion of Officers who belong to Telangana region is being marred which will be nothing but perpetuating the injustice meted out to them.

13. Learned counsel for the petitioners has also come up with a submission that Judicial Officers belonging to State of Andhra Pradesh may be accommodated in the State of Telangana on deputation basis. The Officers who have opted State/District of Telangana can be sent back in the native State of Andhra Pradesh. It is submitted that by the said suggestion no prejudice will be caused to either of the parties. The petitioner has also relied on proviso to Section 77(2) of the Act, 2014 in support of their submission.

14. The petitioners have also relied on Article 371D of the Constitution which according to the petitioners was inserted to give recognition to the aspirations of the people of Andhra Pradesh. Article 371D permits domicile as the basis for appointment to the services.

15. Shri Maninder Singh, learned Additional Solicitor General of India submits that Union of India has already filed compliance affidavit in pursuance of the order dated 28.04.2017 and the Union of India will implement the

guidelines for allocation which may be approved by this Court. Although, Department of Personnel & Training has accepted the revised guidelines submitted by the High Court submitted with the approval of the full Court as has been indicated in the compliance affidavit.

16. Shri R.Venkatramani, learned senior counsel appearing for the High Court submits that it is the High Court which has control over the Subordinate Judiciary as per the constitutional scheme which has to lay down the guidelines for allocation of State. The High Court while finalising the guidelines has taken a fair and equitable decision for all Judicial Officers. It is submitted that domicile has not been provided as any special factor for allocation and the emphasis on domicile as exclusive criterion to allocation cannot be sustained. The declaration given by the Officers at the time of entering into the service relating to home District in the context of service requirement cannot be exalted to the status of criteria or norm.

17. It is further submitted that submission of the petitioner that Judicial Officers pertaining to State of Telangana are much less as compared to State of Andhra Pradesh, is not fully correct. It is submitted that recruitment of Judicial Officers is on all India basis, Officers from other States including Karnataka, Orissa, Bihar, Tamil Nadu are also in the service and in allocation of State, thus nativity or home District declared cannot serve any substantial basis. Shri Venkatramani submits that in effect there is no difference in allocation of cadre in respect to those who had declared District in the State of Telangana as there home District and under both, the guidelines that is unrevised and revised the result is same. During the course of submission, Shri Venkatramani was permitted to submit a chart reflecting the position of allocation of all Judicial Officers as per their options. The above chart has also been submitted by the learned counsel for the respondent.

18. Shri B. Adinarayana Rao, learned senior counsel appearing for Andhra Pradesh Judicial Officers Association submits that the High Court has exclusive power and jurisdiction over District Courts and Subordinate Courts thereto. In the Constitutional scheme as delineated by Article 235, it is the High Court who has control over Judicial Service. In allocation of the Judicial Officers, it is the High Court which is competent to finalise guidelines and the revised guidelines submitted by the High Court are perfectly in accordance with law. The due weightage to the seniority of the Judicial Officers have to be given which seniority cannot be taken away to prejudice the Judicial Officers. Those Officers who had been senior in the combined seniority list cannot be made junior by accepting guidelines for accepting options as contended by the petitioners. He further submitted that there is no relevance of place of birth in public employment. He submits that appointment for Judicial Service is made on all India basis, hence, petitioners cannot claim any special privilege and right in the service only on the ground that they are native of District which now falls in newly created State of

Telangana. Shri Rao further submits that scheme of allotment as envisaged by Part VIII of Act, 2014 has no application for the allotment of Judicial Officers of the District Courts and Courts Subordinate thereto. He submits that power under Article 2, 3 and 4 of the Constitution of India is not absolute. He submits that revised guidelines approved by the full Court of the High Court are fully in consonance with Articles 14 and 16 of the Constitution and protect the rights of Judicial Officers which need no interference in these writ petitions.

19. The submission on behalf of State of Telangana is that expression "Affairs of the State" featuring in Section 77 of the Act, 2014 necessarily have to be construed to mean all the three organs of the State including judiciary. In order to render justice to the service personnel allotted to the two States and to completely eliminate the possibility of discrimination it may be prudent to entrust the powers mentioned in Section 77 to the Central Government because the said power is in nature of a special power contemplated to meet the exigencies. The criterion of Domicile is in consonance with the Legislative intent and the Constitutional spirit embedded in principle of territoriality which is the heart and soul of any State Reorganisation Act.

20. It has also been brought to our notice that the State of Telangana has already framed new set of Rules, The Telangana State Judicial Service Rules, 2017. In view of the framing of the Rules, 2017 and further on completion of recruitment in pursuance of order of this Court which was challenged in the writ petition before the High Court, which has been dismissed, nothing survives in the SLP to decide.

21. We have considered the submissions of the learned counsel for the parties and perused the records.

22. The issue which needs to be considered in the writ petition lies in the very narrow compass, i.e., whether the revised guidelines as submitted by the High Court to respondent No.1 for allocation deserve to be accepted or not. It is useful to notice the guidelines proposed by the High Court that is initially proposed and modified guidelines.

23. The High Court's guidelines which were initially proposed on 26.02.2016 are as follows:

"1. The allocation shall be done in the order of seniority as available on June 02, 2014. Preference shall be given first to those who have applied for the State in which the District declared by them at the time of entering service falls."

24. The guidelines dated 26.02.2016 were sent to the Department of Personnel & Training. Representation and objections were also submitted to the draft guidelines dated 26.02.2016 proposed by the High Court. The DoPT after considering the objections and representation to the proposed

guidelines sent proposed guidelines by letter dated 29.06.2017 to the High Court. The High Court deliberated on the proposed guidelines sent by DoPT and vide its letter dated 08.07.2017 communicated the modified guidelines. The Union of India in its affidavit filed in compliance with the order dated 28.07.2017 has brought on record the draft guidelines as proposed by DoPT, modified guidelines by the High Court and the decision taken by DoPT in a Tabular Chart filed in Annexure E to the affidavit.

25. We may first notice the relevant provisions of Andhra Pradesh Reorganization Act, 2014 assented by the President of India and gazetted on 01.03.2014. By Section 3 of the Act, Telangana State was formed comprising of territories of existing State of Andhra Pradesh of several districts as enumerated therein. Section 30 provided that on and from appointed day, High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted. Part VIII of the Act dealt with provisions as to Services. Section 76 dealt with All India Services. Section 77 dealt with other services and Section 78 contains other provisions related to services. Section 77 and Section 78 which are relevant are extracted as below: "77. Provisions related to other services: (1) Every person who immediately before the appointed day is serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Andhra Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Telangana:

Provided that every direction under this sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service, after consideration of option received by seeking option from the employees, and the date with effect from which such allotment shall take effect or be deemed to have taken effect:

Provided that even after the allocation has been made, the Central Government may, in order to meet any deficiency in the service, depute officers of other State services from one successor State to the other:

Provided further that as far as local, district, zonal and multi-zonal cadres are concerned, the employees shall continue to serve, on or after the appointed day, in that cadre: Provided also that the employees

of local, district, zonal and multi-zonal cadres which fall entirely in one of the successor States, shall be deemed to be allotted to that successor State: Provided also that if a particular zone or multi-zone falls in both the successor States, then the employees of such zonal or multi-zonal cadre shall be finally allotted to one or the other successor States in terms of the provisions of this subsection.

(3) Every person who is finally allotted under the provisions of subsection (2) to a successor State shall, if he is not already serving therein, be made available for serving in the successor State from such date as may be agreed upon between the Governments of the successor States or, in default of such agreement, as may be determined by the Central Government:

Provided that the Central Government shall have the power to review any of its orders issued under this section.

78. Other Provisions relating to services: (1) Nothing in this section or in section 77 shall be deemed to affect, on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Andhra Pradesh or to the State of Telangana under section 77 shall not be varied to his disadvantage except with the previous approval of the Central Government. (2) All services prior to the appointed day rendered by a person,—

(a) if he is deemed to have been allocated to any State under section 77, shall be deemed to have been rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of the successor State of Telangana, shall be deemed to have been

rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service.

(3) The provisions of section 77 shall not apply in relation to members of any All-India Service.”

26. Section 80 contemplated establishment of Advisory Committees to assist the Government. Section 80 is as follows:

"80. Advisory Committees:(1) The Central Government may, by order, establish one or more Advisory Committees, within a period of thirty days from the date of enactment of the Andhra Pradesh Reorganisation Act, 2014, for the purpose of assisting it in regard to—

(a) the discharge of any of its functions under this Part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

(2) The allocation guidelines shall be issued by the Central Government on or after the date of enactment of the Andhra Pradesh Reorganisation Act, 2014 and the actual allocation of individual employees shall be made by the Central Government on the recommendations of the Advisory Committee:

Provided that in case of disagreement or conflict of opinion, the decision of the Central Government shall be final: Provided further that necessary guidelines as and when required shall be framed by the Central Government or as the case may be, by the State Advisory Committee which shall be approved by the Central Government before such guidelines are issued.

27. The Central Government constituted two Advisory Committees, (i) for the allocation of All India Services officers born on undivided cadre of the State of Andhra Pradesh under the chairmanship of Shri Pratyusha Sinha, and,

(ii) for other State cadre employees under the chairmanship of Shri Kamalanathan. Kamalanathan Committee submitted recommendations for allocation of other State Services.

28. The High Court issued guidelines dated 26.02.2016 providing for procedure of allocation alongwith revised option form. The relevant provisions for allocation as contained in the guidelines in paragraph 1 provided, as follows:

"1. The allocation shall be done in the order of seniority as available on June 02, 2014. Preference shall be given first to those who have applied for the State in which the District declared by them at the time of entering service falls."

29. On basis of aforesaid communication, Officers submitted their option which were compiled and send by the High Court.

As noted above, in the mean time, Writ Petition No.403 of 2014 was filed by Dumpala Dharmarao, where he had challenged the action of the High Court in calling for option of the Judicial Officers in the State of Andhra Pradesh. This Court had passed an Order for status quo on 07.07.2014. Writ Petition was subsequently dismissed as have been becoming infructuous after retirement of Dumpala Dharmarao. As noted above, in pursuance of the Order dated 28.04.2017 passed by this Court in W.P.No.85 of 2015, the guidelines framed by the High Court were treated as draft guidelines and Union of India was directed to examine the various suggestions made through representations and place the draft guidelines before this Court. As noted above, the Compliance Affidavit has been filed by the Union of India. The Union of India has in its compliance affidavit noted the suggestions on guidelines issued by the High Court, Telangana State Government, different associations, individuals and proposed guidelines of Department of Personnel and Training.

30. The High Court vide its letter dated 08.07.2017 again forwarded modified guidelines for allocation of Judicial Officer in category of District Judge, Senior Civil Judge and Junior Civil Judge. High Court gave suggestions regarding constitution of Advisory Committee which may include Senior most Judges among the nominated Judges of the High Court being the Chairman of the Committee. Paragraph 5 of the draft guidelines contains principles for allocation. Paragraph 5 (i) & (ii) which are relevant are quoted below: "5. The allocation shall be done keeping in view the following principles;

(i) The allocation shall be done in the order of seniority as available on June 01,2014 for each category of posts.

(ii) Officers will be considered for allocation in the following order (a) those who have opted and are senior; (b) those who have opted for the State in which the district declared by them at the time of entering service falls; (c) if allocable posts still remain then allocation would be done in the reverse order of seniority."

31. The Government of India has brought on record draft guidelines framed by the Department of Personnel and Training and modified guidelines as sent by the High Court on 08.07.2017 and the decision of Department of Personnel and Training. The draft guidelines as forwarded by the High Court in Paragraph 5 (i) & (ii) as extracted above have been accepted by Department of Personnel & Training, which is clear from Enclosure

E, filed alongwith the compliance affidavit. It is useful to extract relevant part of Annexure E containing principles for allocations. Relevant part of the guidelines are as follows:

"DRAFT GUIDELINES FOR ALLOCATION OF SUBORDINATE JUDICIAL OFFICERS S.No. Draft framed by DOPT As modified by Remarks/Observa High Court tion of DOPT reference Col.

1.

2.

3.

4.

5. The allocation shall be done keeping in view the following principles:

i. The allocation No Change shall be done in the order of seniority as available on June 01, 2014 for each category of posts.	Accepted
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ii. Officers will be considered for allocation in the following order(a) those who have opted for the State in which the district declared by them at the time of entering service falls, failing which as determined as per para 5(vii); (b) those who have opted and are senior; (c) if allocable posts still remain then allocation would be done in the reverse order of seniority.	Officers will be considered for allocation in the following order (a) those who have opted and are senior; (b) those who have opted for he State in which the district declared by them at the time of entering service falls; (c) if allocable posts still remain then allocation would be done in the reverse order of seniority.	Since the modifications have been approved by the full court we may accept as approved by the High Court.
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32. Now, we come to the challenges which have been raised by the petitioners to the guidelines as modified by the High Court and accepted by the Department of Personnel & Training.

Petitioners' grievance is that draft framed by the Department of Personnel & Training protected the interest of Judicial Officers of Telangana whereas modification of the guidelines made by the High Court are prejudicial to the Rights of the Judicial Officers of the State of Telangana. The first ground of challenge which has been raised by the petitioner is that it is the Central Government which is competent to issue guidelines as per Section 77 read with Section 80. The Petitioner submits that the guidelines which were prepared by the Advisory Committee i.e. Kamalanathan Committee, ought to have been applied for the Judicial officers also. The Parliamentary legislation i.e. Act, 2014, ought to have been implemented by the High Court by accepting the guidelines of Kamalanathan Committee. We need to examine the provisions of Act, 2014, in the above context. In the constitutional scheme, Subordinate Courts, Judicial Officers working therein are under control of the High Court by virtue of Article 235 of the Constitution. The Constitution Bench of this Court in (1979) 2 SCC 34, Chief Justice of Andhra Pradesh and other versus L.V.A Dixitulu and others, had occasion to consider nature of control of the High Court on judicial services.

Article 371D as well as Article 229 and Article 235 of the Constitution of India came for consideration. Dealing with Article 235, Constitution Bench said that control over the subordinate judiciary is vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. Paragraph 39 and 40 of the judgment is as follows:

"39. Article 235 is the pivot around which the entire scheme of the Chapter revolves. Under it, "the control over district courts and courts subordinate thereto including the posting and promotions of, and the grant of leave to persons belonging to the judicial service of a State" is vested in the High Court.

40. The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystallised by these decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends a wide variety of

matters. Among others, it includes:

(a) (i) D i s c i p l i n a r y j u r i s d i c t i o n a n d a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however, to the condition of service, and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article 311(2).

(ii) In Article 235, the word 'control' is accompanied by the word "vest" which shows that the High Court alone is made the sole custodian of the control over the Judiciary. The control vested in the High Court being exclusive, and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority, (State of West Bengal Vs. Nripendra Nath Bagchi; Shamsher Singh V. State of Punjab and Punjab and Haryana High Court Vs. State of Haryana(sub nom Narendra Singh Rao).

(iii) Suspension from service of a member of the judiciary with a view to hold a disciplinary inquiry.

(b) T r a n s f e r s , p r o m o t i o n s a n d c o n f i r m a t i o n o f such promotions, of persons holding posts in the judicial service, inferior to that of District Judge.(State of Assam Vs. S.N.Sen and State of Assam Vs. Kuseswar Saikia).

(c) Transfers of District Judges.(State of Assam Vs. Ranga Mahammad and Chandramouleshwar Vs. Patna High Court.)

(d) R e c a l l o f D i s t r i c t J u d g e s p o s t e d o n e x c e d i n g cadre posts or on deputation on administrative posts. (State of Orissa V. Sudhansu Sekhar Misra)

(e) A w a r d o f s e l e c t i o n g r a d e t o t h e m e m b e r s o f the judicial service, including District Judges, being their further promotion after their initial appointment to the cadre.(State of Assam v. Kuseswar Saikia)

(f) C o n f i r m a t i o n o f D i s t r i c t J u d g e s , w h o h a v e been on probation or are officiating, after their initial appointment or promotion by the Governor to the cadre of District

Judges under Article

233.(Punjab and Haryana High Court Vs. State of Haryana)

(g) Premature or compulsory retirement of Judges of the District Courts and of Subordinate Courts.(State of U.P. Vs. Batuk Deo Pati Tripathi)”

33. The constitutional scheme for vesting the control of the High Court over the subordinate judiciary was with object and purpose. The main object was to ensure that judiciary should be independent of the executive which is constitutional objective and also a Directive Principle of State Policy as contained in Article 50. Referring of judgment of State of U.P. vs. Batuk deo Pati Tripathi, (1978) 2 SCC 102, Constitution Bench quoted with approval the law laid down by this Court in Batuk Deo Pati Tripathi in paragraph 43 which is as follows: “43. Recently, in State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi(Supra), this Court succinctly summed up the whole position as follows:[(1978) 2 SCC 102, 112(para 14)] The ideal which inspired the provision that the control over District Courts and courts subordinate thereto shall best in the High Courts is that those wings of the judiciary should be independent of the executive...It is an order to effectuate that high purpose that Article 235 as construed by the Court in various decisions requires that all matters relating to the subordinate judiciary including compulsory retirement and disciplinary proceedings but excluding the imposition of punishments falling within the scope of Article 311 and the first appointments and promotions, should be dealt with and decided upon by the High Courts in the exercise of the control vested in them.”

34. The nature of control of the High Courts over the judiciary again was elaborately considered by Constitution Bench of this Court in State of Bihar and Another Versus Bal Mukund sah and Others, (2000) 4 SCC 640 . The Constitution Bench again reiterated that the Judicial independence is the very essence and basic structure of the Constitution. In paragraph 34 and 35, following has been held: “34. It has also to be kept in view that judicial independence is the very essence and basic structure of the Constitution. We may also usefully refer to the latest decision of the Constitution Bench of this Court in Registrar(Admn.), High Court of Orissa v. Sisir Kanta Satapathy wherein K.Venkataswami, J., speaking for the Constitution Bench, made the following pertinent observations in the very first two paras regarding Articles 233 to 235 of the Constitution of India;

"An independent Judiciary is one of the basic features of the Constitution of the Republic. Indian Constitution has zealously guarded independence of Judiciary is doubtless a basic structure of the Constitution but the said concept of independence has to be confined within the four corners of the Constitution and cannot go beyond the Constitution." The Constitution Bench in the aforesaid decision also relied upon the observations of this Court in All India Judges Assn. wherein on the topic of regulating the service conditions of the Judiciary as permitted by Article 235 read with Article 309, it had been observed as under; (SCC p.297, para

10) "The mere fact that Article 309 gives power to the Executive and the Legislature to prescribe the service conditions of the Judiciary, does not mean that the Judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the Judiciary in that behalf, for theoretically it would not be impossible for the Executive or the Legislature to turn and twist the tail of the Judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain the independence of the Judiciary." In view of this settled legal position, therefore, even while operating in the permissible field of regulating other conditions of service of already recruited judicial officers by exercising power under Article 309, the authorities concerned have to keep in view the opinion of the High Court of the State concerned and the same cannot be whisked away.

35. In order to fructify this constitutional intention of preserving the independence of the Judiciary and for fructifying this basic requirement, the process of recruitment and appointment to the District Judiciary with which we are concerned in the present case, is insulated from outside legislative interference by the Constitution makers by enacting a complete code for that purpose, as laid down by Articles 233 and 234, Consultation with the High Court is therefore, an inevitable essential feature of the exercise contemplated under these two articles. If any outside independent interference was envisaged by them, nothing prevented the Founding Fathers from making Articles 233 and 234 subject to the law enacted by the Legislature of States or Parliament as was done in the case of other articles as seen earlier....."

35. The Andhra Pradesh Reorganisation Act, 2014, is a parliamentary enactment for the reorganisation of existing State as referred to in Article 2, Article 3 and Article 4 of the Constitution of India. Article 4 of the Constitution is as follows: "4. (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions

(including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.”

36. The power under Articles 2 & 3 is subject to other provisions of the Constitution and is not unfettered. This position of law has been considered and elucidated by a Constitution Bench judgment of this Court in the case of Mangal Singh Vs. Union of India, (1967)2 SCR 109, at page 112, in the following words:

".....On the plain words of Article 4, there is no warrant for the contention advanced by counsel for the appellants that the supplemental, incidental and consequential provisions, which by virtue of Article 4 the Parliament is competent to make, must be supplemental, incidental or consequential to the amendment of the First or the Fourth Schedule. The argument that if it be assumed that the Parliament is invested with this wide power it may conceivably exercise power to abolish the legislative and judicial organs of the State altogether is also without substance. We do not think that any such power is contemplated by Article 4. Power with which the Parliament is invested by Articles 2 & 3, is power to admit, establish, or form new States which conform to the democratic pattern envisaged by the Constitution; and the power which the Parliament may exercise by law is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the Constitution, and is not power to override the Constitutional scheme.....”(Emphasis supplied)

37. Article 4 sub-clause (1) contemplates that any law referred to in Article 2 or Article 3 shall contain provisions which may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary. The supplemental, incidental and consequential provisions are contemplated to effectuate the reorganisation of existing State or formation of a new State in accordance with the Constitutional Scheme as contained in the Constitution. Sub-clause (2) of Article 4 clarifies that no such law as referred to in Article 2 and Article 3 shall be deemed to be an amendment of this Constitution for the purposes of Article

368. Thus the provision of Andhra Pradesh Reorganisation Act, 2014, has to be interpreted in the manner so that any provisions of the Act, 2014, does not run contrary to the existing Constitutional Scheme.

38. It is true that Section 77 contemplates allotment of State after consideration of option received by an officer but for interpreting Section 77 and

Section 80, the existing constitutional scheme that control of Judicial Officer is vested in the High Court can neither be ignored nor given a go by. From the facts on record, it does appear that Department of Personnel and Training has understood the provisions in such manner and has communicated to the High Court to submit a list after taking options from the officers. The reply affidavit filed by Union of India also clearly indicates that stand taken by Union of India is that allocation/distribution of District Judges and Judicial Officers belonging to subordinate judiciary had been carried out under the aegis and supervision of the respective High Courts, on earlier occasions when the reorganisation enactment was passed. Paragraph 10 of the reply affidavit filed by the Union of India is extracted as follows: "10. It is most humbly submitted that in so far as the allocation of subordinate judicial officers between the two States in question are concerned, it is necessary to set out factual position and background facts. It is submitted that even on earlier occasions of passing of Reorganisation enactments, the task of allocation/distribution of District Judges and judicial officers belonging to the subordinate judiciary - had been carried out under the aegis and supervision of the respective High Courts. For example, in the case of Reorganization of the State of Madhya Pradesh, State of Uttar Pradesh as well as State of Bihar, such process had been followed for the allocation/distribution of District Judges and judicial officers belonging to the subordinate judiciary."

39. We thus are of the view that for preparing guidelines for allocation of the Judicial officers, the views of the High Court are not to be ignored and the Union of India, Department of Personnel & Training, has rightly given due weight to the views of the High Court for allocation. However, the scheme of Act, 2014 indicates that final allocation Order is to be issued as per the statutory provisions, by the Central Government. The coverage of Section 77 is "Every person who immediately before the appointed day is serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh..." The coverage of Section 77 is in very wide term which includes every person who is serving in connection with the affairs of the existing State. There can be no denial that Judicial Officers working in the Subordinate Judiciary are serving in connection with the affairs of the existing State. Thus, there cannot be any denial that Section 77 also clearly covers the subordinate judiciary of the State and final allocation Order has to be issued by the Central Government after due consultation with the High Court.

40. We are thus of the view that High Court in preparing draft guidelines and thereafter issuing modified guidelines for allocation of cadre of Judicial Officers was well within its jurisdiction and its views required due weight in giving effect to the provisions of Section 77 of the Act.

41. The guidelines as modified by the High Court are challenged by the petitioner on several grounds including violation of their rights under Article 14 and as to whether the guidelines are fair and equitable to persons affected by the guidelines.

42. Section 80 expressly indicates that in carrying out exercise by the Central Government as contemplated under Section 77, there has to be fair and equal treatment to all persons affected by the provisions of Part VIII of the Act. The guidelines for allocation of cadre should ensure fair and equal treatment to all persons affected and they should also conform the equality clause as enshrined in Article 14 of the Indian Constitution. We have thus to scrutinize the guidelines in this context so as to enable us to come to a decision that whether guidelines are to be implemented or not.

43. Now, we come to the core issue raised by the petitioner. The petitioner submits that Act 6 of 2014 was enacted to redress a historic discrimination faced by the residents of State of Telangana of being denied their fair share of representation in the matter of public services, education and in the matters of governance and in all other matters such as Legislative and Executive powers which are normally attributes of any State. The petitioners have also referred to Statement of Objects of the Act, 2014. Statement of Objects of the Act notices: “1. The creation of a separate State of Telangana for the betterment of the social, economic, political and other aspirations of the people of that region has been a long standing demand. Pursuant thereto, the Government of India on 9th December, 2009 announced that the process for formation of a separate State of Telangana would be initiated. After wide ranging consultations on 3rd October, 2013, the Government of India decided to bifurcate the existing State of Andhra Pradesh.

2. The Andhra Pradesh Reorganisation Bill, 2014 seeks to give effect to the aforesaid decision. It aims at reconstituting the existing State of Andhra Pradesh into two separate States, namely the State of Andhra Pradesh and the State of Telangana. The proposed reorganisation will meet the democratic aspirations of the people of Telangana region and ensure peace, goodwill, progress and prosperity among all the sections of the people of both successor States.”

44. One more article of the Constitution, which has been relied by the petitioners needs to be noted is Article 371D. Article 371D was inserted in the Constitution by Constitution (Thirty second Amendment) Act, 1973. Article 371D contains a special provision with respect to State of Andhra Pradesh. Now, by virtue of Act, 2014 in place of the State of Andhra Pradesh “the State of Andhra Pradesh or the State of Telangana” has been substituted. Article 371D sub clause(1), sub clause(2) and sub clause(3) provides: “371D. Special provisions with respect to the State of Andhra Pradesh or the State of Telangana. (1) The President may by order made with respect to the State of Andhra Pradesh or the State of

Telangana, provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of such State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the States.

(2) An order made under clause (1) may, in particular,—

(a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order the persons holding such posts to the local cadres so organised;

(b) specify any part or parts of the State which shall be regarded as the local area—

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government;

(ii) for direct recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

(c) specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made—

(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;

(ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order, to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be.

(3) The President may, by order, provide for the constitution of an Administrative Tribunal for the State of Andhra Pradesh and for the State of Telangana to exercise such jurisdiction, powers and authority [including any jurisdiction, power and authority which immediately before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, was exercisable by any court (other than the Supreme Court) or by any tribunal or other authority] as may be specified in the order with respect to the following matters, namely:—
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45. Special provisions were introduced by way of Article 371D of the Constitution of India. This amendment was made in order to provide for equitable distribution of opportunities and facilities to the people belonging to the different parts of the State of Andhra Pradesh in matters of public employment, education etc. The President is empowered to issue an order to organise the civil posts, create local areas, provide for preference or reservation in the matter of direct recruitment to services and in admission into educational institutions. In exercise of the power under Article 371D the President had issued Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as "Presidential Order" for brevity). The said Presidential Order provided for organising the classes of posts in the civil services of the State into various local cadres under para 3 and para 4 provide for allotment of persons to such cadres. Paras 6 and 7 deal with local cadre and local candidates and Para 8 provide for reservation to such local candidates. The said Presidential Order thus is limited in its application to the civil posts under the State and local bodies and had no application to the Courts subordinate thereto.

46. The basis for Article 371D is to provide equal opportunity to the people of Andhra Pradesh by introducing domicile as the basis for appointment to services and admissions in educational institutions, however, Article 371D has no application in respect of the appointment to the posts of District Judges and Judges Subordinate thereto, in view of the constitutional scheme of separation of powers and express provisions having been made by the Constitution. The issue was authoritatively settled by the Constitution Bench of this Court in Chief Justice of Andhra Pradesh & Ors. Vs. L.V.A. Dixitulu & Others, (1979) 2 SCC 34.

47. In the above case, one of the questions came for consideration before this Court was as to whether members of Judicial Services of the State are amenable to the jurisdiction of the Administrative Tribunal, which was constituted by the President issuing an order under sub-clause(3) of Article 371D. The Administrative Tribunal has passed an order on an application filed by a member of Judicial services setting aside the order of compulsory retirement passed by High Court. Matter was taken by the Chief Justice of Andhra Pradesh in this Court challenging the jurisdiction of the Tribunal. It was contended that Judicial Service is not contemplated to be included in the meaning covered by the expression "any civil service of the State". This Court held that Statement of Objects and Reasons of the Bill for insertion of Article 371D does not indicate that there was any intention on the part of the Parliament to impair or derogate from the scheme of securing independence of the Judiciary as enshrined in Articles 229 and 235 of the Constitution. Court further held that amendment or abridgement of this basic scheme was never an issue of debate in Parliament when the Constitution (32nd Amendment) Bill was considered. The Constitution Bench of this Court in Chief Justice of Andhra Pradesh & Ors. Vs. L.V.A. Dixitulu (supra) laid down following in Paragraph Nos. 76, 77, 78 and 80: "76. The Statement of Objects and

Reasons does not indicate that there was any intention, whatever, on the part of the legislature to impair or derogate from the scheme of securing independence of the judiciary as enshrined in Articles 229 and 235. Indeed, the amendment to abridgment of this basic scheme was never an issue of debate in Parliament when the Constitution (32nd Amendment) Bill was considered.

77. One test which may profitably be applied to ascertain whether the High Court staff and the subordinate judiciary were intended to be included in clause (3) of Article 371D is: Will the exclusion of the judiciary from the sweep of this clause substantially affect the scope and utility of the article as an instrument for achieving the object which the legislature had in view? The answer cannot but be in the negative. The High Court staff and members of the Subordinate Judiciary constitute only a fraction of the number of persons in public employment in the State. Incidentally, it may be mentioned that one of the primary purposes of this article viz. to secure equitable share in public employment to people of certain local areas in the State on the basis of the Mulki Rules requiring 15 years residence in those areas, could be achieved under those rules which, as subsequently clarified by this Court in *State of Andhra Pradesh v. V. Reddy*, 1973 (1) SCC 99, continued to be in force as valid law in the territories of the former State of Hyderabad even after the constitution of the State of Andhra Pradesh.

78. Let us now apply another test which in the circumstances of the case will be decisive. In that connection, we have to see what consequences will flow if we give this general, undefined and flexible phrase, "civil services of the State" in Article 371D(3), the wider construction so as to include in it the High Court staff and the members of the subordinate judiciary. The inevitable result of such an extensive construction will be that the control vested in the Chief Justice over the staff of the High Court, and in the High Court over the Subordinate Judiciary will become shorn of its substance, efficacy and exclusiveness, and after being processed through the conduit of the Administrative Tribunal, will pass on into the hands of the Executive Government, which, under Article 371D(5), is the supreme authority, having full power to confirm, not to confirm, modify or annul the orders of the Tribunal. Such a construction will lead to internecine conflict and contradiction, rob Articles 229 and 235 of their content, make a mockery of the Directive Principle in Article 50 and the fundamental concept of the independence of the judiciary, which the Founding Fathers have with such anxious concern built into the basic scheme of the Constitution. Parliament, we are sure, could never have intended such a strange result. In our quest for the true intention of

Parliament, therefore, we must eschew this wide liberal interpretation which will defeat or render otiose the scheme of Chapters IV and V, Part VI particularised in Articles 229 and 235, and instead, choose the alternative interpretation according to which members of the High Court staff and the subordinate judiciary will not fall within the purview of the phrase “civil services of the State”. Such a restricted construction will ensure smooth working of the Constitution and harmony amongst its various provisions.

80. In our opinion, non-use of the phrases “judicial service of the State” and “District Judges” (which have been specifically defined in Article 236), and “officers and servants of the High Court” which has been designedly adopted in Articles 235 and 229, respectively, to differentiate them in the scheme of the Constitution from the other civil services of the State, gives a clear indication that posts held by the High Court staff or by the Subordinate Judiciary were advisedly excluded from the purview of clause (3) of Article 371D. The scope of the non obstante provision in clause (10) which gives an overriding effect to this article is coterminous with the ambit of the preceding clauses.”

48. Article 371D having been held by this Court not to be applicable to Judicial Service, arguments based on Article 371D cannot help the petitioner. In this context, one of the submissions raised by the petitioners was that Kamalanathan Committee while framing guidelines for allocation of members of Civil Service has taken into consideration the local area or local cadre etc. No exception can be taken to the guidelines finalised by Kamalanathan Committee for allocation of cadre of members of Civil Services of the State, other than Judicial Service, taking clue from Article 371D. Petitioners have referred to guideline No. 18(f) of the Kamalanathan Committee determining principles guiding allocations read with guideline No. 18(n), which also read with the Andhra Pradesh Public Employment Order, 1975 gives preference in allocation to those who have opted and who are local candidates to be allocated to that State in which they are local candidates. The said order dated 29.10.1975 issued under Article 371D has been relied.

49. For the reasons already indicated above, the guidelines formulated by Kamalanathan Committee in context of other Civil Services are not relevant nor any support can be taken on the basis of said guidelines.

50. It is true that issue of public employment with regard to Telangana region has a long history. During the period of Nizams under Mulki Rules, 15 years residential qualification was required for public employment. For the purposes of this case, we need not dwell any further with regard to residential

requirement of a public employment since in the present case, we are concerned with the post of Judicial Service and this court has already held that for appointment to the post of Munsifs, no residential requirement can be prescribed. Parties are not at variance that recruitment to Judicial Service is on all India basis. This Court has held that prescribing a particular place of practice as a prerequisite for seeking employment into the State Judicial Services as District Munsifs is unconstitutional and violative of Article 14 of the Constitution. In J.Panduranga Rao Vs. Andhra Pradesh Public Service Commission, 1963 (1) SCR 707, this Court laid down following: “If the basis of the impugned rule is that a person who applies for appointment to the post of a District Munsif, should have been enrolled as an Advocate of a High Court, that basis can be satisfied even if the person is enrolled as an Advocate not of the Andhra High Court but of any other High Court. All the High Courts have the same status; all of them stand for the same high traditions of the Bar and the administration of justice, and advocates enrolled in all of them are presumed to follow the same standards and to subscribe to the same spirit of serving the cause of the administration of justice. Therefore, in our opinion, the impugned rule has introduced classification between one class of Advocates and the rest and the said classification must be said to be irrational inasmuch as there is no nexus between the basis of the said classification and the object intended to be achieved by the relevant scheme of rules. That being so, it must be held that the decision of the Andhra High Court in the case of Nallanthighal Bhaktavatsalam Iyengar is not correct.”

51. The nativity for public employment runs counter to the fundamental right guaranteed under Article 16(2) except when it is provided by a Parliamentary Law as per exception carved out in Article 16(3) of the Constitution of India. No Parliamentary Law is relied by the petitioner, which provides residence as an eligibility to the employment in Judicial Service. In Act, 2014, there is no provision, which expressly provides for allotment of the State on the basis of place of birth or residence. Sections 77, 78 and 79 of the Act do not refer to allotment on the basis of place of birth.

When for entering into Judicial Service, no condition can be put regarding residence of particular area for allocation of a State, consequent to Act, 2014, nativity cannot be sole basis, as is contended by the petitioner. It is true that the State of Telangana stand formed to realise the democratic aspirations of the people of Telangana. We have noticed the Statement of Objects and Reasons of Act, 2014, which clearly establish that the creation of a separate State of Telangana is for the betterment of the social, economic, political and other aspirations of the people of that region, which contemplated allocation of

separate State of Telangana. The entire Statement of Objects and Reasons does not indicate that with respect to public employment, nativity is to play a dominant role. It is true that Judicial Officers belonging to Telangana territorial area may have desired or expectation to choose or to opt for their cadre in Telangana area, which is a legitimate aspiration, but giving pre-dominance to nativity only is not spelled from any statutory provision or scheme.

52. Section 77 of the Act contemplate a right of giving option as contemplated by Section 77(2). "Option" has been defined in Black's Law Dictionary, Tenth Edition, Page 1268: "1. The right or power to choose; something that may be chosen the lawyer was running out of options for settlement, 2. An offer that is included in a formal or informal contract; esp., a contractual obligation to keep an offer open for a specified period, so that the offeror cannot revoke the offer during that period the option is valid because it is supported by consideration."

53. Advanced Law Lexicon by P. Ramanatha Aiyar defines "option" in following manner: "Option. For the purposes of these guidelines — 'OPTION' means a right but not an obligation granted to an employee to apply for shares at a predetermined price.

The word 'option' is a synonym for 'choice' or 'preference'.

OPTION, CHOICE. We speak of option only as regards one's freedom from external constraint in the act of choosing : one speaks of choice only as the simple act itself. The option or the power of choosing is given: the choice itself is made : hence we say a thing is at a person's option."

54. When a Judicial Officer has been given a right of option to choose either of the successor State, right of option has to be given same meaning and content. Right of option can be defeated only when there is some impediment in accepting the option. The seniority of a Judicial Officer is a first criteria for accepting the option. The seniority in a service is a valuable right of an employee or officer. In service jurisprudence, several benefits and perquisites are attached to the seniority. The petitioners are asking that option be accepted not on the basis of seniority but only on the basis of nativity, i.e. those who are senior even if they opt the State option, their option should not be selected and option of those should be first accepted, who are natives of Telangana. The petitioner's apprehension is that in event option of senior officers are accepted and they are posted in State of Telangana, the future prospects of promotion of the petitioners shall be marred. Whether the officers, who in the senior

ity list, which was prevalent on the date of formation of new State, i.e. on 02.06.2014 where senior should lose their seniority or their seniority cannot be said to play any role on account of formation of two successor States is the question to be answered. The aspiration of petitioners that no senior officer, should come to State of Telangana, which may mar their prospect of promotion is neither in accord with the constitutional scheme nor as per ethos of culture of this country. The modified guidelines submitted by the High Court and accepted by the DoPT itself at second place give preference to nativity.

Thus, the High Court while formulating the guidelines has tried to balance the right of option of each Judicial Officer.

It is relevant to notice that this Court has held in The State of Mysore and another Vs. G.N. Purohit and others, (1967) SLR 753 that although right to be considered for promotion is a right, but right to have a chance of promotion is not protected. In the above case, following has been laid down in paragraph 10: “10. It is then urged on behalf of the respondents that by changing the system from districtwise to statewise the respondents have been very hard hit and have become very junior. It appears from the figures supplied by the respondents that there were 665 Junior Health Inspectors in the old State of Mysore on November 1, 1956 while only 48 Junior Health Inspectors were allotted to the new State of Mysore after the Act. So long as the districtwise system continued these 48 persons would naturally have better chances of promotion in their districts but when the cadre was made statewise, these 48 were likely to go down in the seniority as the list of 1963 actually shows. It is urged that this has affected their chances of promotion which were protected under the proviso to S.115(7) of the Act, which lays down that the conditions of service applicable immediately before the appointed day to the case of any person allotted to the new State shall not be varied to his disadvantage except with the previous approval of the Central Government. It is said on behalf of the respondents that as their chance of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service. It is enough in this connection to refer to the State of Orissa v. Durga Charan Dass (A.I.R. 1966 SC 1547).”

55. To the similar effect is judgment of this Court in Mohammad Shujat Ali and Others Vs. Union of India and Others, in which in Para 15, following has been held: “15. In the first place, it is not correct to say that there was any variation in the condition of service in regard to promotion applicable to non-graduate Supervisors from the erstwhile State of Hyderabad immediately prior to November 1, 1956. It is true that a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service. This proposition can no longer be disputed in view of several pronouncements of this Court on the point and particularly the decision in Mohammad Bhakar v. Y. Krishna Reddy¹ where this Court, speaking through Mitter, J., said: “Any rule which affects the promotion of a per-

son relates to his condition of service". But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion — the latter would certainly not be a condition of service. This Court pointed out in *State of Mysore v. G.B. Purohit*, (1967) 1 SLR 753 that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service. What happened in *State of Mysore v. G.B. Purohit* was that the district wise seniority of Sanitary Inspectors was changed to State wise seniority and as a result of this change, the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115 sub-section (7). This contention was negatived and Wanchoo, J. as he then was, speaking on behalf of this Court observed: "It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service". Now, here in the present case, all that happened as a result of the application of the Andhra Rules and the enactment of the Andhra Pradesh Rules was that the number of posts of Assistant Engineers available to non-graduate Supervisors from the erstwhile Hyderabad State for promotion, was reduced: originally it was fifty per cent, then it became thirty-three and one-third per cent, then one in eighteen and ultimately one in twenty-four. The right to be considered for promotion was not affected but the chances of promotion were severely reduced. This did not constitute variation in the condition of service applicable immediately prior to November 1, 1956 and the proviso to Section 115 sub-section (7) was not attracted. This view is completely supported by the decision of a Constitution Bench of this Court in *Ramchandra Shankar Deodhar v. The State of Maharashtra*, (1974) 1 SCC 317."

56. The petitioners submission that High Court has modified the guidelines for accepting option without there being any valid reason and further no valid reasons have been indicated by the High Court for modifying the guidelines. In this context, it is relevant to notice that the draft guidelines, which were initially circulated by the High Court on 26.02.2016 has in the first sentence stated "the allocation shall be done in the order of seniority as available on 02.06.2014." The second sentence read "Preference shall be given first to those who have applied for the State in which the District declared by them at the time of entering service falls". The above draft guidelines has only been amplified retaining the initial concept of accepting option on the basis of seniority. Both the concept as noted above are now reflected in modified guidelines as guideline No. 5(1) and 5(2) as extracted above. Thus, the argument of the petitioners that guidelines have been substantially changed by the High Court without there being any reason cannot be accepted. The substance of the guidelines are same, which were initially contained in the draft guidelines and modified guidelines. It was the D o P T, which has proposed guidelines, where content clause 5.2 was 5.1 of modified guidelines were proposed as 5.1 was 5.2, which was not accepted

by the High Court and Full Court reiterated their earlier principle, which was initially encapsulated in draft guidelines.

57. We, during course of the submissions, had asked Shri Venkatramani, learned senior counsel appearing for the High Court to give a chart indicating the details of options and chart showing details of Judicial Officers working in both the States of Andhra Pradesh and Telangana from 02.06.2014 and the acceptance position of their option. Detailed chart has been submitted by the High Court, which indicate that all Judicial Officers belonging to territorial area of Telangana region have been allocated Telangana State and the option of all the Judicial Officers, who have opted for Telangana State have been accepted. A list of all officers belonging to District Judge Cadre; Civil Judge Senior Division cadre and Civil Judge, Junior Division cadre has been submitted, which indicate all officers, who have opted for Telangana State have been allocated Telangana State.

58. All the Judicial Officers belonging to Telangana State having opted and allocated the Telangana State, practically, we do not find any error in the operation of guidelines finalised by the High Court.

59. In view of foregoing discussions, we are of the view that modified guidelines as submitted by the High Court vide letter dated 08.07.2017, which has been accepted by DoPT does not suffer from any illegality or error. The above guidelines is to be accepted and approved. In view of the foregoing discussions, we dispose of the writ petition with direction to respondents to finalise options of all the Judicial Officers as per the above guideline and complete the process of allocation within a period of two months from today.

60. Now, coming to the Civil Appeals arising out of S.L.P. (C) No. 18787-18790 of 2016, the appellants themselves in their submissions have not pressed the quashing of Recruitment 2014 and 2015. Further, Andhra Pradesh Judicial Service Rules, 2007 as adopted by State of Telangana, which was quashed by the High Court is now substituted by fresh Rules namely, Telangana State Judicial Service Rules, 2017. All the issues raised in the above Civil Appeals arising out of special leave petitions have become academic and needs no consideration. The Civil Appeals having become virtually infructuous are dismissed accordingly. The parties shall bear their own costs.

.....J. (A.K. SIKRI)J. (Ashok Bhushan) NEW DELHI, OCTOBER 03, 2018.