

P. Sudhakar Rao & Ors vs U. Govinda Rao & Ors on 3 July, 2013

Equivalent citations: AIR 2013 SUPREME COURT 2533, 2013 (8) SCC 693, 2013 AIR SCW 3853, 2013 (3) SERVLJ 97 SC, 2013 (8) SCALE 504, (2013) 3 SERVLJ 97, (2013) 4 KCCR 382, (2013) 3 LAB LN 37, (2013) 4 SCT 185, (2013) 5 SERVLR 186, (2013) 6 ANDHLD 15, (2013) 8 SCALE 504

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Bench: Kurian Joseph, Madan B. Lokur, R.M. Lodha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1712-1713 OF 2002

P. Sudhakar Rao & Ors.

....Appellants

Versus

U. Govinda Rao & Ors.

....Respondents

J U D G M E N T

Madan B. Lokur, J.

1. There is a clear distinction between weightage given for years of service rendered by an employee for purposes of promotion and weightage given for years of service rendered by an employee for purposes of seniority in a grade. While the first concerns eligibility for promotion to a higher post, the other concerns seniority for being considered for promotion to a higher post.

2. To consider the validity of weightage for seniority purposes and its impact on the seniority of other employees, the following question has been referred to a larger Bench in these appeals. The reference order is reported as P. Sudhakar Rao v. U. Govinda Rao, (2007) 12 SCC 148.

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“Whether the decision given in *Devi Prasad v. Govt. of A.P.* [1980 (Supp) SCC 206] and *State of A.P. v. K.S. Muralidhar* [(1992) 2 SCC 241] laid down the correct law or the decision given in *G.S. Venkat Reddy v. Govt. of A.P.* [1993 Supp (3) SCC 425], *K. Narayanan v. State of Karnataka* [1994 Supp (1)

SCC 44] and State of Gujarat v. C.G. Desai [(1974) 1 SCC 188] laid down the correct proposition of law?”

3. It appears to us that this question ought not to be answered in the narrow confines in which it is framed, nor should it be answered on the basis of the limited submission noted in the reference order relating to “the validity of the rule by which retrospective seniority benefit was given to the Junior Engineers by G.O.Ms No. 54 Irrigation (Service IV-2) dated 15.2.1983.” The question has larger implications and we propose to answer it keeping the broad canvas in mind. We also propose, in this light, to answer the question on merits of these appeals, namely, whether, on appointment as a Junior Engineer, weightage of service given to a Supervisor can be taken into account for fixing his seniority as a Junior Engineer, thereby effectively refixing the seniority with retrospective effect.

Factual background:

4. Initially, the State of Andhra Pradesh had a single engineering department. This was subsequently broken-up into several - departments but we are not concerned with that. What we are concerned with is that at all material times, engineers in Andhra Pradesh were either in the Andhra Pradesh Engineering Subordinate Service or in the Andhra Pradesh Engineering Service.

5. The Andhra Pradesh Engineering Subordinate Service consisted, inter alia, of Junior Engineers who possessed a degree in engineering and Supervisors who possessed a diploma in engineering. Upon recruitment, both categories of engineers were placed in the same pay scale but Junior Engineers, by virtue of a better academic qualification, had a higher starting pay while Supervisors were placed in the minimum of the pay scale. Functionally, both had more or less similar duties to perform. A Supervisor could, while in service, obtain an engineering degree and if he did so, he would be designated as a Junior Engineer and given a higher pay in the same pay scale.

6. A Junior Engineer or a Supervisor was eligible for appointment by transfer as an Assistant Engineer in the Andhra Pradesh Engineering Service as it existed. This continued to be so till the Special Rules for the Andhra Pradesh Engineering Service were promulgated by issuance of G.O.Ms. No. 285 PWD dated 22.2.1967. -

7. With effect from 22.2.1967 the Andhra Pradesh Engineering Service consisted of five categories of officers, the juniormost being Category 5 - Assistant Engineer. As mentioned above, a Junior Engineer or a Supervisor was eligible for appointment by transfer as an Assistant Engineer in the Andhra Pradesh Engineering Service. The mode of recruitment was:

a) By direct recruitment (or)

b) By recruitment by transfer of

i) Junior Engineers and Supervisors of the Andhra Pradesh Engineering Subordinate Service;

ii) Draughtsman, Special Grade and Draughtsman Grade-I of the Andhra Pradesh Engineering Subordinate Service.

8. Later, by issuance of G.O.Ms No. 1149 dated 5.11.1973 a sixth category of officers was included in the Andhra Pradesh Engineering Service, namely, Junior Engineer with effect from 28.2.1972. This was declared a gazetted post. The inclusion of the post of Junior Engineer in the Andhra Pradesh Engineering Service resulted in its consequent exclusion from the Andhra Pradesh Engineering Subordinate Service. The effect of this was that a separate cadre of Junior Engineers, distinct from erstwhile Junior Engineers/Supervisors was formed.

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9. The mode of recruitment for Junior Engineers in the Andhra Pradesh Engineering Service was now by direct recruitment. This meant that despite having an engineering degree, Supervisors were not eligible for appointment as Junior Engineers on transfer. However, the mode of recruitment for the next higher post of Assistant Engineer was by way of direct recruitment, by promotion of a Junior Engineer having not less than 5 years service in the grade and by transfer of a Supervisor having a minimum service of 10 years in the grade.

10. To remedy this situation in the case of Supervisors who had obtained an engineering degree prior to 28.2.1972 the State Government issued G.O.Ms No. 893 dated 15.6.1972 inserting a note being Note 2 under Rule 4 of the Andhra Pradesh Engineering Service Rules. Through this Note, a Supervisor was given a weightage of 50% of service rendered by him on his acquiring an engineering degree while in service. The weightage was subject to a maximum period of 4 years service rendered prior to acquisition of the degree. The weightage was available as if the service had been rendered by the Supervisor in the post of Junior Engineer. The weightage was, therefore, available for inclusion for appointment to -

the post of Assistant Engineer. However, the weightage was subject to certain conditions, one of them being that it was available to only those Supervisors who had obtained a degree prior to 28.2.1972.

11. Note 2 below Rule 4 (as inserted) in the Andhra Pradesh Engineering Service Rules reads as follows:

“Supervisors who acquire, while in service, B.E., A.M.I.E. (India) qualification shall be entitled to count 50% of their service rendered as Supervisor prior to acquisition of such qualification, subject to a maximum limit of 4 years as if it had been in the post of Junior Engineers for the purpose of consideration for appointment by transfer to the post of Assistant Engineer from Junior Engineer and subject to the following conditions:

(1) They should render a minimum service of one year after acquisition of B.E. or A.M.I.E. (India) qualification:

(2) They should be considered to have been placed below the list of the Junior Engineers of the year after giving weightage as indicated above.

(3) They should put in a total service of 5 years as Junior Engineer inclusive of the period given as weightage.

(4) The benefit of weightage given above shall be given effect for the purpose of all selections that are made by Public Service Commission pertaining to the years from 2nd January, 1968 onwards till 28th February, 1972.” [Note: Clause (4) was subsequently amended but we are not concerned with the amendment].

12. The benefit of weightage granted to Supervisors by G.O.Ms No. 893 dated 15.6.1972 was challenged as being arbitrary, - unreasonable and violating Article 14 of the Constitution. This Court rejected the challenge in *Devi Prasad* and held that the benefit of weightage was a matter of government policy which needed no interference since it was not unreasonable or arbitrary.

13. In what appears to be an oblique reference to loss of promotional chances that Junior Engineers may have to suffer due to weightage being given to Supervisors this Court observed as follows:

“Perhaps there is force in the submission of Dr. Chitale that the Junior Engineers have to face adversity in the matter of promotions. All that we can do is to emphasise that this being a matter of government policy, the State will receive any representation that may be made for change of policy from the Junior Engineers and consider whether any such change in the policy is justified in the circumstances of the case. In so doing, there is no doubt that the other affected groups will also be heard because administrative fair play is basic to satisfaction of government servants as a class. We say no more nor do we indicate that in our view there is any hardship. We only mean to say that government will remove hardships if by modification of policy it can achieve this result. Undoubtedly, in this process, both sides will have to be heard not as a rule of law but as a part of administrative fair play.”

14. As mentioned above, the benefit of weightage was available to only those Supervisors who had obtained an engineering degree - before 28.2.1972. There was no provision relating to those who had obtained a degree post 28.2.1972.

15. Apparently to overcome this anomaly, and as a result of representations made, the State Government issued G.O.Ms No. 451 dated 10.6.1976 containing a decision that Supervisors who have acquired a graduate qualification while in service should be appointed temporarily as Junior Engineers (prospectively) with immediate effect. This decision was implemented.

16. The implementation of G.O.Ms No. 451 resulted in consequential orders relating to weightage of service rendered and the inter se seniority of Supervisors vis-à-vis Junior Engineers. The consequential orders were issued through G.O.Ms No. 559 dated 18.7.1977. These orders provided as follows:

“2. Accordingly, matters relating to weightage, seniority, etc., have been examined by the government and the following orders are issued:—

(i) Supervisors who acquire graduate qualification may be appointed as Junior Engineers on or after February 28, 1972, subject to the availability of vacancies in the cadre of Junior Engineers.

They will not be entitled for appointment as Junior Engineers automatically from the date of acquisition of degree qualification;

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(ii) A Supervisor, who is appointed as Junior Engineer, shall be entitled to count one-third of the service rendered by him as Supervisor, before his appointment as Junior Engineer, subject to a maximum of four years, for the purpose of computing the service as Junior Engineer, which will render him eligible for consideration for promotion as Assistant Engineer.

(iii) The seniority of the Supervisors, who are appointed as Junior Engineers, shall be fixed with reference to the notional date arrived at after giving weightage of service;

(iv) A Supervisor, who is appointed as Junior Engineer, shall put in a minimum service of one year as Junior Engineer to become eligible for promotion as Assistant Engineer;

(v) No Supervisor shall ordinarily be eligible for appointment as Junior Engineer unless he has not in a minimum service of three years as Supervisors. A Supervisor with less than three years of service, who is appointed as Junior Engineer for any special reason, shall not be entitled to any weightage for his past service.

3. Necessary amendment to the Special Rules for the Andhra Pradesh Engineering Service will be issued separately.....”

17. The interpretation of G.O.Ms No. 559 dated 18.7.1977 came up for consideration before this Court (through the State Administrative Tribunal) in Muralidhar. This Court dealt with the issue of seniority and concluded as follows:

“(i) The weightage of four years in respect of upgraded Junior Engineers as provided in G.O.Ms. No. 559 has to be reckoned from the date of appointment and not the date of their acquiring the degree qualification;

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(ii) On the basis of that notional date, their inter se seniority has to be fixed;

(iii) The regularisation of the degree holders Junior Engineers who passed the SQT by giving retrospective effect cannot be held to be illegal, and their seniority among themselves shall be subject to the order of ranking given by the Public Service Commission on the basis of the SQT;

(iv) The government shall prepare a common seniority list of the degree holders Junior Engineers and the upgraded Junior Engineers on the above lines and that list shall be the basis for all the subsequent promotions. Promotions, if any, already given shall be reviewed and readjusted in accordance with the said seniority list;

and

(v) The approval of the Public Service Commission in respect of these appointments and their seniority thus fixed need not be sought at this distance of time.” Impugned G.O.Ms No. 54 dated 15.2.1983:

18. As mentioned in G.O.Ms No. 559 dated 18.7.1977 necessary amendments in the Special Rules for the Andhra Pradesh Engineering Service were carried out by issuance on 15.2.1983 of the impugned G.O.Ms No. 54 with effect from 28.2.1972. This G.O.Ms is significant for three reasons: (i) it had retrospective operation; (ii) it statutorily regularized recruitment by transfer “of Supervisors of the Andhra Pradesh Engineering Subordinate Service who have acquired the B.E. or A.M.I.E. (India) qualification and who are approved probationers in that category.” and (iii) it inserted Note

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3 below Rule 4 of the Andhra Pradesh Engineering Service Rules. This Note dealt with issues of weightage given to the service rendered by a Supervisor and his/her entitlement to seniority. The Note reads as follows:

“(3) A Supervisor who is appointed by transfer as Junior Engineer on or after 28.2.1972 shall be entitled to count 1/3rd of the service rendered as Supervisor before appointment as Junior Engineer subject to a maximum of 4 years weightage for the purpose of computing the service as Junior Engineer, which will render eligible for consideration for promotion as Assistant Engineer, and subject to the following conditions:-

(i) The seniority of a Supervisor, who is appointed as Junior Engineer shall be fixed in the category of Junior Engineers with reference to the notional date arrived at after giving weightage of service aforesaid;

(ii) A Supervisor who is appointed as Junior Engineer shall put in a minimum service of one year on duty as Junior Engineer, after such appointment, and a total service of five years as Junior Engineer, inclusive of the period given as weightage to become eligible for promotion as Assistant Engineer;

(iii) No Supervisor shall ordinarily be eligible for appointment as Junior Engineer, unless he has put in a minimum service of three years as Supervisor;

(iv) A Supervisor with less than three years of service, who is appointed as Junior Engineer for any special reasons, shall not be entitled to any weightage of his past service as Supervisor.”

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19. Aggrieved by the issuance of G.O.Ms No. 54 dated 15.2.1983 petitions were filed by aggrieved Junior Engineers in the State Administrative Tribunal questioning its validity. The Tribunal rendered its decision, which was then challenged in this Court. This Court remanded the matter for fresh consideration by the State Administrative Tribunal which then upheld the validity of the G.O.Ms. Decision of the Tribunal:

20. In its decision regarding retrospective operation given to the G.O.Ms the Tribunal held, relying upon a Constitution Bench decision in B.S. Yadav v. State of Haryana, 1980 Supp SCC 524 that retrospective operation could be given to the G.O.Ms and that there was no illegality in this regard. It was further held that the impugned G.O.Ms merely gave statutory recognition to a situation existing through the executive order contained in G.O.Ms No. 559 dated 18.7.1977.

21. The Tribunal also upheld the grant of weightage given to Supervisors who obtained a graduate degree. For arriving at this conclusion, the Tribunal referred to Devi Prasad which had found the benefit of weightage to be neither arbitrary nor unreasonable. A -

reference was also made to Muralidhar in this regard. The Tribunal rejected the contention that because the post of Junior Engineer had become a gazetted post in a different cadre, a Supervisor who subsequently became a Junior Engineer was not entitled to weightage. It was held that Supervisors and Junior Engineers continued to perform substantially the same functions and hold the same responsibilities. Therefore, the mere gazettement of a post and change of cadre would not make any material difference to the principle laid down by this Court.

22. On the issue of impacting and disturbing the seniority of directly recruited Junior Engineers by Supervisors, the Tribunal initially dealt with the issue rather cursorily and held that the seniority would get altered and that there would be a certain amount of fluidity in the seniority of Junior Engineers but that was no reason to strike down G.O.Ms. However, later in its judgment, the Tribunal explained that weightage was all along being given to Supervisors and it is this that caused the fluidity in the seniority list of Junior Engineers.

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23. The Tribunal then upheld the validity of the impugned G.O.Ms and disposed of the petitions pending before it by recording the following observations:

“(1) The Junior Engineers on acquisition of Degree qualification in Engineering would be entitled for weightage of those appointments are made or deemed to have been made under the Rules providing for such appointments and weightage with reference to their dates of appointment (not with reference to acquisition of degree qualification) against a vacancy in the cadre of Junior Engineer.

(2) The Government is advised to consider fixing a ratio between direct recruits and those appointees by appointment by transfer to the post of Junior Engineer (now Assistant Executive Engineer) to the post of Assistant Engineer (now Deputy Executive Engineer)”.

Decision of the High Court:

24. Feeling aggrieved by the decision rendered by the Tribunal, Junior Engineers challenged it in the Andhra Pradesh High Court. However, the petitioners in the High Court did not challenge the validity of the entire G.O.Ms No. 54 dated 15.2.1983 but contended that “the weightage rule should be confined to the eligibility and the same should not be considered for the purpose of seniority.” The decision of the High Court is reported as U. Govinda Rao v. Government of Andhra Pradesh, 2002 (1) ALD 347 = 2002 (1) ALT 713.

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25. While adverting to the impact of the benefit of weightage on the seniority of Junior Engineers, the High Court drew attention to the averment in one of the cases wherein a chart was drawn of the notional seniority given to Supervisors. This chart is as follows:

Sl.No.	Name of the	Year of	Appointment as	Notional date as	respondent
	passing	Assistant	Assistant	Degree	Executive
	Engineer	(Supervisor)	by (Supervisor)	transfer	1. Md.Sirajuddin
	1986	7.5.1986	6.5.1982		2. B. Seva
	1986	31.7.1986	31.7.1982		3. Ms. Zinullabuddin
	1986	19.11.1983			4. G.Uppalaiah V.T.
	1987	4.10.1987	26.2.1984		5. Venkateshwarlu
	1987	4.10.1987			6. K. Bhaskar
	1988	8.9.1988	2.6.1985		7. P. MaheedarRaj
	1988	3.3.1989	30.10.1985		8. A. Gopal
	1988	31.3.1989	26.10.1985		

26. The High Court noted that: (i) the notional date of seniority of Supervisors was given without any reference to any existing vacancy; (ii) seniority was given to the Supervisors from a date when they did not even possess the qualification to hold the post of -

Junior Engineer, and (iii) regularly appointed Junior Engineers were being subjected to a loss of seniority at the instance of those Supervisors who had been regularized subsequently.

27. The High Court then relied upon B.S. Yadav, K.C. Arora v. State of Haryana, (1984) 3 SCC 281, P.D. Agarwal v. State of U.P., (1987) 3 SCC 622 and K.V. Subba Rao v. Government of A.P., (1988) 2

SCC 201 to conclude that the civil right of seniority of the Junior Engineers could not be taken away by applying the impugned G.O.Ms retrospectively. Relying upon Devi Prasad and Muralidhar it was held that weightage of past service can be given to the Supervisors only from the date of appointment.

28. In conclusion, it was held that the impugned rule violates Article 14 and 16 of the Constitution in so far as it takes away the vested right of seniority of Junior Engineers vis-à-vis Supervisors. Discussion on the judgments:

29. Feeling aggrieved, Supervisors before the High Court preferred these appeals. Since the issue of weightage of service for eligibility purposes was decided in their favour, the principal grievance (if not the only grievance) raised by them, as noted by the Bench that earlier heard these appeals is “the validity of the rule by which -

retrospective seniority benefit was given to the Junior Engineers by G.O.Ms No. 54 Irrigation (Service IV-2) dated 15.2.1983.” Indeed, before us also, the only contention related to the issue of striking down the benefit of retrospective seniority given to the Supervisors.

30. The question referred to the larger Bench arises in this context, but as noted above, it has wider implications.

31. Desai is the earliest case mentioned in the reference order and this concerned the [Gujarat] Engineering Service Rules, 1960. This case dealt with two classes of employees: (a) those who had rendered service as officiating or temporary Deputy Engineers prior to their direct recruitment as Deputy Engineers, and (b) those promotee Deputy Engineers who had rendered service as officiating or temporary Deputy Engineers prior to their promotion.

32. The case of the category (a) employees was that their ‘pre direct recruitment’ services should be counted as ‘eligibility service’ for purposes of their next promotion as Executive Engineers since the ‘pre- promotion’ services of category (b) was being so counted. In other words, without the word ‘weightage’ having actually been used, the category (a) employees wanted some weightage to be given to their ‘pre direct recruitment’ services. This Court found no basis - for such an interpretation of the relevant recruitment rules. This Court also found that the directly recruited Deputy Engineers were not discriminated against vis-à-vis promotee Deputy Engineers in this regard since they fell in two distinct groups or classes having a rational basis. Consequently, there was no violation of Article 14 or Article 16 of the Constitution.

33. The following two paragraphs from the judgment of this Court give the essence of the view of this Court:

“If a person, like any of the respondents, to avoid the long tortuous wait leaves his position in the “never-ending” queue of temporary/ officiating Deputy Engineers etc. looking for promotion, and takes a short cut through the direct channel, to Class II Service, he gives up once for all, the advantages and disadvantages that go with the

channel of promotion and accepts all the handicaps and benefits which attach to the group of direct recruits. He cannot, after his direct recruitment claim the benefit of his pre-selection service and thus have the best of both the worlds. It is well-settled that so long as the classification is reasonable and the persons falling in the same class are treated alike, there can be no question of violation of the constitutional guarantee of equal treatment.

“As pointed out by this Court in Ganga Ram case [(1970 1 SCC 377)] in applying the wide language of Articles 14 and 16 to concrete cases, doctrinaire approach should be avoided and the matter considered in a practical way. If the claim of the respondents to the counting of their pre-selection service is conceded, it will create serious complications in running the administration; it will result in inequality of treatment rather than in removing it. If the pre- selection service as officiating Deputy Engineers of direct recruits having such service, is -

taken into account for the purpose of promotion, it would create two classes amongst, the same group and result in discrimination against those direct recruits who had no such pre-selection service to their credit.”

34. The next decision in line is Devi Prasad which relates to the Andhra Pradesh Engineering Subordinate Service Rules and is, therefore, important for our purposes. This decision came to be rendered as a result of the issuance of G.O.Ms. No. 893 dated 15.6.1972 relating to Supervisors in the Andhra Pradesh Engineering Subordinate Service. By the said G.O.Ms. a note being Note 2 was inserted under Rule 4 of the Andhra Pradesh Engineering Service Rules.

35. Thereby a Supervisor working as a Junior Engineer was given a weightage of 50% of service rendered by him. This was treated as if the said Supervisor/Junior Engineer had rendered service in the post of Junior Engineer for the purpose of consideration for appointment to the post of Assistant Engineer from Junior Engineer. This G.O.Ms was challenged as being arbitrary, unreasonable and in violation of Article 14 of the Constitution.

36. As is evident, the effect of weightage was limited to eligibility for appointment to the post of Assistant Engineer from Junior - Engineer – it had no reference to seniority. This Court found that there was nothing capricious in the “limited benefit of weightage” being given to Supervisors. This Court also concluded that the grant of weightage was a matter of government policy which needed no interference since it was not unreasonable or arbitrary.

37. Considered from this point of view, there is essentially no conflict between Desai and Devi Prasad. Both cases dealt with weightage for eligibility purposes and not with any reference to seniority based on the weightage given. It is true that in Devi Prasad it is mentioned that Desai was distinguishable. However, the distinguishing feature did not relate to the rules – both were statutory – but related to the reasonableness thereof. In Desai the employees took a short cut to the Class II service via direct recruitment and thereby gave up “the advantages and disadvantages that go with the channel of promotion” and accepted “all the handicaps and benefits which attach to the group of

direct recruits.” This was not so in Devi Prasad where there was functional parity between Junior Engineers and Supervisors and the only real difference between the two categories was the academic superiority of the Junior Engineers.

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38. The benefit of G.O.Ms No. 893 dated 15.6.1972 was available to only a limited category of Supervisors, namely those who had obtained an engineering degree prior to 28.2.1972. Consequently, in response to representations made, the Andhra Pradesh Government issued G.O.Ms No. 451 dated 10.6.1976 containing a decision that Supervisors acquiring a graduate qualification even after 28.2.1972 should be appointed temporarily as Junior Engineers (prospectively) with immediate effect.

39. This resulted in consequential orders being G.O.Ms No. 559 dated 18.7.1977 relating to weightage of service rendered and the inter se seniority of Supervisors vis-à-vis Junior Engineers.

40. The interpretation of G.O.Ms No. 559 dated 18.7.1977 was considered in Muralidhar. This Court noted in the opening paragraph of its decision that “The dispute is regarding the inter se seniority between the Supervisors who are upgraded as Junior Engineers and the degree holders who are directly appointed as Junior Engineers.”

41. This Court endorsed the terms of the G.O.Ms without actually going into the legality thereof. This was apparently because the issue of seniority had been burning for two decades and this Court - wanted to bring a quietus to it. This is clear from the fact that in its conclusion, this Court bypassed the statutory rules which required the imprimatur of the Public Service Commission for the appointments made. While recording its conclusions, this Court said:

“Having given our careful consideration particularly to the fact that this litigation has been pending for the last so many years, about two decades, we feel that it is high time a finality has to be reached by resolving the controversies and in this context we are of the view that the approval of the Public Service Commission in respect of these appointments need not be sought, if the government has not already obtained the approval of the Public Service Commission. To sum up, our conclusions are as under:

(i) The weightage of four years in respect of upgraded Junior Engineers as provided in G.O.Ms. No. 559 has to be reckoned from the date of appointment and not the date of their acquiring the degree qualification;

(ii) On the basis of that notional date, their inter se seniority has to be fixed;

(iii) The regularisation of the degree holders Junior Engineers who passed the SQT by giving retrospective effect cannot be held to be illegal, and their seniority among themselves shall be subject to the order of ranking given by the Public Service Commission on the basis of the SQT;

(iv) The government shall prepare a common seniority list of the degree holders Junior Engineers and the upgraded Junior Engineers on the above lines and that list shall be the basis for all the subsequent promotions. Promotions, if any, already -

given shall be reviewed and readjusted in accordance with the said seniority list; and

(v) The approval of the Public Service Commission in respect of these appointments and their seniority thus fixed need not be sought at this distance of time.”

42. Effectively, therefore, this Court not only accepted weightage of service for the benefit of Supervisors for eligibility purposes, but also for purposes of seniority by accepting the concept of a notional date for such a determination. As mentioned above, this Court did not consider the legality of the seniority of Supervisors based on weightage vis-à-vis Junior Engineers.

43. Venkat Reddy was decided on its own peculiar facts and to deal with a specific situation. As mentioned in the beginning of the judgment, the controversy “ relates to the determination of seniority between the appellants who entered service in the various engineering departments of the State initially as Supervisors and who on acquiring a degree in engineering were redesignated Junior Engineers and those graduate Junior Engineers who were temporarily appointed on ad hoc basis under Rule 10(a)(i)(1) of the Andhra Pradesh State and Subordinate Service Rules and whose -

services were later regularised under GOMs No. 647 dated September 14, 1979.”

44. Venkat Reddy concerned itself with the seniority of a limited class of Junior Engineers who were appointed temporarily on an ad hoc basis and subsequently regularized. The case centred round the interpretation of the latter part of clause (ii)(a) of G.O.Ms No. 647 dated 14.9.1979 containing the words “should be regularised from the next date following the date on which the last regular appointment in that category was made in the unit concerned”. The relevant portion of the G.O.Ms reads as follows:

“(i) the services of all temporary Government employees who were appointed by direct recruitment to any category or post and are continuing in service as on August 9, 1979 should be regularised without subjecting them to any test written or oral;

(ii)(a) the services of all temporary employees in all categories, other than LDCs, Typists and Steno-typists, in the Offices of the Heads of Departments and Junior Assistants, Typists and Steno-typists in the Secretariat, should be regularised from the next date following the date on which the last regular appointment in that category was made in the unit concerned or from the date of temporary appointment whichever is later;”

45. The controversy arose due to a ban on the recruitment of Junior Engineers through the Public Service Commission in Andhra Pradesh. To sidestep the ban, Junior Engineers were recruited on a - temporary and ad hoc basis under Rule 10(a)(i)(1) of the Andhra Pradesh State and Subordinate

Service Rules (paragraph 2 of the Report). This rule provides that where it is necessary in the public interest to emergently fill a vacancy in the post borne on the cadre of a service, class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may appoint a person temporarily otherwise than in accordance with the said rules (paragraph 10 of the Report).

46. In due course of time, the question of the regularization of these Junior Engineers came up for consideration. The State Government then lifted the ban on recruitment and decided to regularize the services of the temporary and ad hoc Junior Engineers after subjecting them to a Special Qualifying Test (SQT) conducted by the Public Service Commission.

47. Some temporary and ad hoc Junior Engineers were ineligible to take the SQT while others were eligible and they did take the test but did not qualify. It was to accommodate these Junior Engineers (and others similarly placed) that G.O.Ms No.647 dated 14.9.1979 was issued and it is under these atypical circumstances that Venkat Reddy was decided and the expression relating to -

regularization “from the next date following the date on which the last regular appointment in that category was made” occurring in the said G.O.Ms interpreted. Given these facts, this decision does not impact on the question that we are concerned with in these appeals.

48. Narayanan concerned itself with the validity of the Karnataka Public Works Engineering Department Service (Recruitment) (Amendment) Rules, 1985. These were challenged by directly recruited Assistant Engineers, inter alia, for giving retrospective appointment to diploma holders and seniority even prior to the date of their eligibility. More specifically, this Court considered the impact of retrospective operation of an amendment to the rules made in 1985 with effect from 1976 and finding no nexus between the appointment and giving retrospective effect to the appointment, struck down its retrospective operation. In this context, it was observed:

“The retrospective operation of the impugned rule attempts to disturb a system which has been existing for more than twenty years. And that too without any rationale. Absence of nexus apart no rule can be made retrospectively to operate unjustly and unfairly against other (sic). In our opinion the retrospective operation of the rule with effect from January 1, 1976 is discriminatory and violative of Articles 14 and 16.”

49. This Court quoted Note (2) relating to the appointment by transfer of a Junior Engineer to the post of Assistant Engineer, as introduced by the impugned amendment. However, it did not deal with the issue of seniority, apparently since the retrospective operation of the impugned rule was struck down, which had its consequential effect. Note (2) as per the impugned amendment reads as follows:

“2. Amendment of the Schedule: In the Schedule to the Karnataka Public Works Engineering Department Services (Recruitment) Rules, 1960, in the entries relating to the category of posts of ‘Assistant Engineer’ for columns (2) and (3) the following shall be substituted, namely:

By direct recruitment or by transfer of a Junior Engineer.

For Direct recruitment:

Should be a holder of a degree in Civil Engineering or Mechanical Engineering depending upon the requirements, as the case may be or of a Diploma certificate from a recognised Institute of Engineers that he has passed parts A and B of the Associate Membership Examination of the Institute of Engineers or equivalent qualification. Age: Must not have attained the age of thirty-five years.

For transfer:

Must possess B.E., or AMIE (India) qualification in Civil Engineering, or Mechanical Engineering.

Note (1) The option of the Junior Engineer shall be obtained before such transfer within the time stipulated by the Government.

Note (2) The transfer shall be effective from the date of graduation subject to the availability of vacancies without ignoring the inter se seniority among those eligible for such transfer.”

50. Without discussion, this Court restricted the applicability of Note (2) and held that it shall be read as providing eligibility only.

51. To sum up, therefore, Desai and Devi Prasad dealt with issues of granting weightage to a section of employees for the purposes of eligibility for appointment or promotion. In principle, this Court did not object to the grant of weightage, provided that it did not violate Article 14 or Article 16 of the Constitution. The principle having been settled by this Court, the validity of a statutory rule or executive order would have to be tested on that touchstone.

52. Muralidhar endorsed Desai and Devi Prasad on the principle relating to the grant of weightage for eligibility purposes. This issue, therefore, is no longer *res integra*. However, Muralidhar extended the weightage, *sub silentio*, to the issue of seniority as well without examining the legality or validity thereof. The issue of weightage for seniority was not specifically raised before this Court -

and it also appears, as mentioned above, that this Court wanted to bring a *quietus* to litigation pending for about two decades on the issue. That the expectation of this Court was belied is clear from the fact that another two decades have gone by and we are still grappling with this issue.

53. Venkat Reddy was decided in the context of a specific situation and did not lay down any general principle for application either confirming or contradicting the principles laid down in Desai, Devi Prasad or Muralidhar.

54. Narayanan also did not concern itself with the validity of weightage of service for appointment or promotion nor did it concern itself with any issue of seniority. It was confined merely to the retrospective operation of a statutory rule, which it struck down with consequential effect.

55. Where does this leave us in so far as the decisions mentioned in the reference order are concerned? On the question of weightage of service for appointment or promotion the issue is now well settled. However, on the question of weightage of service for seniority, the issue is still open since the judgments in the reference -

deal with different and, in some cases, specific or limited issues. Hence this reference.

56. The problem as we see it is that somewhere down the line, the issue came to be limited to the Andhra Pradesh Engineering Service. In our opinion, the reference concerns a much larger audience and we propose to answer it in that light and not in the limited context of the submission made relating to the validity of the rule by which retrospective seniority benefit was given to the Junior Engineers by G.O.Ms No. 54 dated 15.2.1983. Answering the questions:

57. As far as the impact of the retrospective operation of the executive instructions or statutory rules on the seniority of employees is concerned (including the Junior Engineers before us), this issue is now settled by a few recent decisions of this Court. There is no doubt that retrospective operation can be given to statutory rules such as the Andhra Pradesh Engineering Service Rules. But, the retroactivity must still meet the test of Article 14 and Article 16 of the Constitution and must not adversely trench upon the entitlement of seniority of others.

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58. Without intending to multiply precedents on this subject, reference may be made to a decision rendered by this Court more than two decades ago. In *State of Bihar v. Akhouri Sachindra Nath*, 1991 Supp (1) SCC 334 it was held that retrospective seniority cannot be given to an employee from a date when he was not even born in the cadre. So also, seniority cannot be given with retrospective effect so as to adversely affect others. Seniority amongst members of the same grade must be counted from the date of their initial entry into the grade. It was held:

“In the instant case, the promotee respondents 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over respondents 1 to

5. It is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering

Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law respondents 6 to 23 cannot be made senior to respondents 1 to 5 by the impugned government orders as they entered into the said service by promotion after respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned government orders made in Annexures 8, 9 and 10 is unexceptionable.”

59. This decision was cited with approval, a few years ago, along with the decision rendered in *Keshav Chandra Joshi v. Union of India*, 1992 Supp (1) SCC 272. This Court held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in his/her quota and not from any anterior date of promotion or subsequent date of confirmation. It was observed that injustice ought not to be done to one set of employees in order to do justice to another set. It was said in *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.*, (2006) 10 SCC 346, on referring to these judgments that:

“We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in *Keshav Chandra Joshi v. Union of India* [1992 Supp (1) SCC 272] held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits.....

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“This Court has consistently held that no retrospective promotion can be granted nor any seniority can be given on retrospective basis from a date when an employee has not even borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime.”

60. However, the mere existence of a vacancy is not enough to enable an employee to claim seniority. The date of actual appointment in accordance with the required procedure becomes important in such a case. This was so held in *State of Uttaranchal v. Dinesh Kumar Sharma*, (2007) 1 SCC 683 [followed in *Nani Sha v. State of Arunachal Pradesh*, (2007) 15 SCC 406] where it was said:

“Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter

was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in Jagdish Ch. Patnaik v. State of Orissa [(1998) 4 SCC 456].”

61. More recently, and finally, in Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 all relevant precedents on the subject were considered, including the Constitution Bench decision in -

Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 and the legal position summarized (by Lodha, J.) as follows:

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

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

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

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

62. In a separate but concurring opinion, Aftab Alam, J. reiterated the position but referred to some more precedents on the subject. It was then said:

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“To the decisions referred to on this point in the main judgment I may add just one more in Suraj Parkash Gupta v. State of J&K [(2000) 7 SCC 561]. The decision relates to a dispute of seniority between direct recruits and promotees but in that case the Court considered the question of antedating the date of recruitment on the ground that the vacancy against which the appointment was made had arisen long ago. In SCC para 18 of the decision the Court framed one of the points arising for

consideration in the case as follows: (SCC p. 578) “18. ... (4) Whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the direct recruit was not appointed by that date and was appointed long thereafter?” This Court answered the question in the following terms: (Suraj Parkash Gupta case SCC p. 599, paras 80-81) “Point 4 Direct recruits cannot claim appointment from the date of vacancy in quota before their selection

80. We have next to refer to one other contention raised by the respondent direct recruits. They claimed that the direct recruitment appointment can be antedated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under the direct recruitment quota.

81. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. -

This principle is well settled. In *N.K. Chauhan v. State of Gujarat* [(1977) 1 SCC 308], Krishna Iyer, J. stated: (SCC p. 325, para 32) Later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service.

Again, in *A. Janardhana v. Union of India* [(1983) 3 SCC 601] it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in *A.N. Pathak v. Secy. to the Govt.* [(1983) 3 SCC 601] that slots cannot be kept reserved for [the] direct recruits for retrospective appointments.”

63. The facts of the appeals before us show that at least some of the Supervisors were given retrospective seniority on the date when they were not even eligible for appointment as Junior Engineers. The precedents referred to above show that this is impermissible. In addition as pointed out by the High Court, there is no indication of the vacancy position, that is, whether the Supervisors could be adjusted in the grade of Junior Engineers from the date on which they were given notional retrospective seniority. There is also no indication whether the quota of vacancies for Supervisors was adhered to as on the date on which they were given notional retrospective seniority. The case law suggests that this is an - important factor to be considered. Finally, it is quite clear that the grant of retrospective seniority to Supervisors has adversely impacted on the promotion chances of Junior Engineers by bringing them down in seniority. This too is impermissible.

64. From the various decisions referred to and from the facts of the case, it is clear that to pass the scrutiny of Article 14 of the Constitution, the seniority of Supervisors should be reckoned only from the date on which they satisfied all the real and objective procedural requirements of the Andhra Pradesh Engineering Service Rules and the law laid down by this Court. This has not happened in the present appeals creating a situation of unreasonableness and unfairness.

65. It may be mentioned that by the time Muralidhar came to be decided, the impugned G.O.Ms No. 54 dated 15.2.1983 had already come into existence. Though this was brought to the notice of this Court, its validity was neither examined nor determined. This is the first occasion when the constitutional validity of the said G.O.Ms has been considered.

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Conclusion:

66. For the reasons aforesaid, we see no occasion for interfering with the view taken by the High Court to the effect that the grant of retrospective seniority to Supervisors on their appointment as Junior Engineers violates Article 14 of the Constitution. The weightage of service given to the Supervisors can be taken advantage of only for the purpose of eligibility for promotion to the post of Assistant Engineer. The weightage cannot be utilized for obtaining retrospective seniority over and above the existing Junior Engineers.

67. We may mention that in *Asis Kumar Samanta v. State of West Bengal*, (2007) 5 SCC 800, the question whether retrospective promotion or seniority can be granted or not has been referred by a Bench of two learned Judges to a larger Bench. It has been noted therein that the grant of retrospective promotions and seniority was accepted by this Court in four decisions while grant of retrospective seniority was held to be ultra vires in five decisions. When these appeals came up for hearing on 02.5.2013, learned counsel for Asis Kumar Samanta sought an adjournment to make alternative arrangements since he could not appear against the - State of West Bengal. Accordingly, that matter was adjourned beyond the ensuing summer vacations.

68. Be that as it may, the pendency of a similar matter before a larger Bench has not prevented this Court from dealing with the issue on merits. Even on earlier occasions, the pendency of the matter before the larger Bench did not prevent this Court from dealing with the issue on merits. Indeed, a few cases including *Pawan Pratap Singh* were decided even after the issue raised in *Asis Kumar Samanta* was referred to a larger Bench. We, therefore, do not feel constrained or precluded from taking a view in the matter.

69. The question referred to us is answered accordingly and the appeals are dismissed, but with no order as to costs.

.....J. (R.M. Lodha)J. (Madan B. Lokur)
.....J. (Kurian Joseph) New Delhi July 3, 2013