

Supreme Court of India

V. Sreenivasa Reddy And Ors vs Govt. Of A.P. And Ors on 5 October, 1994

Bench: K. Ramaswamy, N. Venkatachala

CASE NO. :

Appeal (civil) 6575-6580 of 1994

PETITIONER:

V. SREENIVASA REDDY AND ORS.

RESPONDENT:

GOVT. OF A.P. AND ORS.

DATE OF JUDGMENT: 05/10/1994

BENCH:

K. RAMASWAMY & N. VENKATACHALA

JUDGMENT:

JUDGMENT 1994 SUPPL. (4) SCR 233 The Judgment of the Court was delivered by K. RAMASWAMY, J, Leave granted.

These appeals arise from the order of the Andhra Pradesh Ad-ministrative Tribunal dated November 5, 1993 made in O.A. Nos. 36875 of 1990 and batch. The appellants were temporarily appointed between March 6, to August 19, 1980 under Rule 10(a)(i)(l) of the Andhra Pradesh State and Subordinate Service Rules (for short 'the Rules') by the Chief Engineer to the Andhra Pradesh Panchayat Raj Engineering Service as Assistant Executive Engineer (Jr. Engineer, as the nomenclature then stood). The AP. Public Service Commission, (for short the PSC) issued notification in 1981 inviting applications for direct recruitment to the posts of Assistant Executive Engineers. Candidates including those appointed with appellants (for short 'temporary appointees') had applied for and had taken the written tests and had become eligible for interview, were inter-viewed between February 18, 1982 and March 9, 1982. In the meanwhile, some supervening events occurred, namely, the candidates who had ap-plied for direct recruitment notified in the year 1978 had approached this Court and assailed the direction given by the Administrative Tribunal to the State Government to regularise the services of the temporary appoin-tees appointed during the years 1973 to 1978, otherwise then in accordance with the process of direct recruitment, This Court granted stay on February 8, 1982 which was vacated on August 2, 1982 and the judgment was rendered on October 21, 1982 in I.J. Dwakar v. Govt of A.P., [1982] 3 SCC 341. Therein this Court upheld the power of the Government exercised under proviso to clause (3) of Article 320 dispensing consultation with the PSC for the appointment by Direct recruitment and the relaxation given thereof. Consequently the government was directed to regularise the ser- vices of the temporary appointees under Rule 10(a)(i)(l) appointed during the period of the ban on recruitment and to appoint direct recruits of 1978 batch and until then further recruitment was stayed.

The PSC had prepared the select list of 1981 recruits and communicated to the government for appointment. Pending verification of their antecedents, the selected direct recruits and the contesting respondents (for short 'PSC candidates') were appointed on May 24, 1984 and were put

on probation under Rule 5 of the Andhra Pradesh Panchayat Raj Engineering Service Rules (for short 'the Special Rules'), At this juncture, it may be relevant to mention that there was no prohibition for the temporary appointees to apply for and seek selection by direct recruitment. AS a matter of fact, some of the temporary appointees had applied for and were selected.

In the meanwhile, the service association and other persons made innumerable representations to the government to exercise their power under Article 320(3) (proviso) to relax the recruitment rules and to regularise their Services. The government in G.O. Ms. 122, GAD dated March 5, 1982 considered the representations and directed them to appear for special qualifying test to be conducted by the PSC in accordance with the Special Rules made applicable to the respective services. But on further representations by G.O. Ms. No. 411 August 29, 1983 the government withdrew the orders that were made in G.O. Ms. No.122 dated March 5, 1982 and in G.O. Ms. No. 412 G.A.D. dated August 29, 1983. Because of dispensation of consultation with PSC, under proviso to Clause (3) of Article 320 of the Constitution, it was not necessary for the PSC to be consulted in temporary appointments made between August 10, 1979 and March 5, 1982 and such temporary appointees continued as such. In that situation, Government by G.O. Ms. No. 413 G.A.D., dated August 29, 1983 directed regularization of services of temporary appointees subject to certain conditions of which condition (iii) is relevant for the purpose of this case. It reads as under :

"(iii) the services of the temporary employees covered under (i) and (ii) though appointed between August 10, 1979 and March 5, 1982 and are continuing in service as such as on March 5, 1982 should be regularised without subjecting to any tests written or oral", should be regularised from the date subsequent to the last regular candidate or candidates appointed or allotted for appointments from the list of successful candidate drawn by the Andhra Pradesh Public Service Commission based on the examinations last held in the concerned Department or from the date of their temporary appointment, whichever is later."

The Chief Engineer, P.R. exercising the powers under condition (ii) above, regularised the temporary services of the appellants in the Panchayat Raj Engineering Service by his proceedings dated June 11, 1984 with the five Conditions of which the relevant two conditions read as under:

"(b) The orders of regularisation of service now proposed to be issued shall be purely provisional and subject to such modification as may deem fit necessary in future and subject to relaxation of rules as may deem fit necessary to be issued by the government in future.

(d) They shall not be entitled to for any seniority in the category of Asstt. Executive Engineers on the basis of their regular appointment and given them seniority from the date of initial appointment between the dates afore-stated, namely, June 16, 1982 and August 19, 1980."

The respondents, PSC candidates, who were appointed on May 14, 1984, appealed to the government against regularisation of the appellants contending that condition (iii) in G.O.Ms. No. 413 was misunderstood by the Chief Engineer; the government intended to give benefit to the PSC candidates last selected in 1981 selection and that though they were appointed in 1984, they are entitled to seniority over the appellants, since the latter became members of the service only on their

regularisation on June 11, 1984, i.e. after their appointment on May 14, 1984 which found favour with the government and made it that the PSC candidates are entitled to seniority from the initial dates of their appointments and the temporary appointees (appellants) be placed below them, The appellants questioned before the Tribunal that order of Panchayat Raj and Rural Development made in G.O. Ms No. 296 dated April 24, 1990 and the PSC candidates challenged the appellants' regularisation order by the Chief Engineer Panchayat Raj.

The Tribunal in the impugned order expressed its unhappiness and was right in holding that the exercise of the power under proviso to clause (3) of Article 320 of the Constitution and relaxation of recruitment by PSC is bad and that all appointments should be made in accordance with the Special Rules conformable to the zonal regulation made by the President exercising the power under Article 371-D of the Constitution. The Tribunal also upheld the G.O. giving seniority to the PSC candidates over the temporary appointees.

Sri K. Madhava Reddy, learned senior Counsel appearing for the temporary appointees-appellants, contended that this Court in *G. S. Venkat Reddy v. Govt. of A.P.*, [1993] Supp. 3 SCC 425, held that the temporary appointees are members of the service and that they rank below the PSC candidates of 1978 as per the directions in *Diwakar's* case. The appointments of the last direct recruits of 1978 notification, was made in May 14, 1984; In the light of the directions in *Venkat Reddy's* case, the appellants would become seniors to the PSC candidates, as the temporary appointment made under Rule 10(a) (i) (1) is in accordance with the Rules. By Operation of Rules 23(a) read with Rule 33 of the Rules, their seniority is to be determined with effect from the date of the regular appointments so that they would become seniors to the PSC candidates and below the last candidate of *Diwakar's* batch 1978. The contesting respondents should, thereby, become juniors to the appellants as the rules were made under proviso to Article 309 of the Constitution. The appointment made under Rule 10(a)(i)(1) though temporary, they are members of the service since they were qualified graduate Engineers and appointed to the vacancies in the cadre borne on service and that, therefore, the ratio in *Venkata Reddy's* case should be extended. We find no force in the contention inasmuch as its acceptance would be fraught with several incongruities. That in *Venkata Reddy's* case the competing claims were not between temporary appointees and the PSC candidates. There, it was a matter of assigning seniority between temporary appointees and the promotees who secured B.E. qualification. The former Were appointed during the period of ban on recruitment. In that context, the State exercised its power under proviso to clause (3) of Article 320 and relaxed the requirement of consultation with PSC for direct recruitment, the entire length of service was given. Admittedly, though the appointments of the appellants were under Rule 10(a)(i)(1), they were not made on the basis of selection by PSC and, therefore, their appointments were made otherwise than in accordance with the Special Rules. Therefore, they cannot be the members of the service unless they are appointed to the service in accordance with the Special Rules.

Rule 1 of the Special Rules specifies the service consisting of (i) the Chief Engineer, (ii) Superintendent Engineer, (iii) Executive Engineer,

(iv) Deputy Executive Engineer (formerly Assistant Engineer), (v) Assistant Executive Engineer. Rule 2 provides the method of appointment and to the category (v) Asstt, Executive Engineer, (a) by

direct recruitment or (b) by transfer of Asstt. Engineer (formerly known as Supervisors) of the Andhra Pradesh Panchayat Raj Engineering Subordinate Service. The appellants are not drawn from this feeder service. Rule 4 prescribes qualifications, namely, for direct recruitment, a Degree in B.E. (Civil) or B.E. (Mechanical) and B.E. (Highways), of the recognised University. The proviso is not necessary for the purpose of this case, hence omitted. Under Rule 5(a), every person appointed as a Deputy Executive Engineer (formerly Asstt. Engineers, rules provide ratio for direct recruitment) or Asstt. Executive Engineer (formerly Junior Engineer) by direct recruitment shall be on probation for a period of two years to be spent on duty within a continuous period of three years. Clause (b) and Note are not relevant for the purpose of this case, hence omitted.

Rule 3 of part I of the Rules, gives definitions and Rule 3(1) defines 'Appointed to service, as :

"A person is said to be "appointed to a service" when in accordance with these rules or in accordance with the rules applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof."

Explanation is not necessary for the purpose of this case, hence omitted.

Rule 3(2) defines 'Approved Candidate' means a candidate whose name appears in an authoritative list of candidates approved for appointment to any service, class or category by the PSC.

Approved probationer has been defined in Rules 3(3), "Approved Probationer" in a service, class or category means a member of that service, class or category who has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category."

The approved candidates within the meaning of Rule 3(2) of Part 1 of the Rules are the PSC candidates duly appointed to the Panchayat Raj Engineering service under Rule 3(1) and they become the members of the service from the date on which they started discharging the duties of the post borne on the cadre P.R.E. service. By operation of Rule 5 of the Special Rules, they were put on probation and they became members of the service and on declaration of probation, they became the approved probationers by operation of Rule 3(3) of Part I of the Rules awaiting appointment as full members.

It is now well settled law that appointment/promotion must be in accordance with the Rules, direct recruit takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre While a temporary appointee appointed de hors the rules or on ad hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment.

It is settled law by the judgment of the Constitution Bench in Direct Recruits Class II Officers Association v. State of Maharashtra, [1992] 2 SCR 900, that appointment in accordance with Rules is a condition precedent to count seniority. Temporary or act hoc or fortuitous appointments etc. are not appointments in accordance with the Rules and the temporary service cannot be counted towards the seniority. Delhi Water Supply and Sewage Disposal Committee v. R.K. Kashyap, 1989

Supp 1 SCC 194, Masood Akhatar Khan v. State of M.P., [1990] 4 SCC 24, D.N. Aggrawal v. State of M.P., [1990] 2 SCC 553, State of Tamil Nadu v. E. Paripoamam, [1992] Supp. 1 SCC 420, R.C. Poudyal v. Union of India, JT (1993) 2 SC 1 and at 25, Excise Commissioner, Karnataka v. Sreekanta, [1993] 3 SCC 53.

In K.C. Joshi v. Union of India, [1992] Supp 1 SCC 272, the seniority is to be counted from the date on which appointment was made to the post in accordance with the rules. The previous temporary service should be considered to be fortuitous. In Union of India v, S.K.. Sharma, [1992] 2 SCC 772, this Court held that the approval of the UPSC for continuation in ad hoc post for the purpose of granting pay and allowances, would not amount to regular appointment and ad hoc services cannot be counted for determining seniority by the selection by PSC vide Vijay Kumar Jain v. State of Madhya Pradesh, [1992] 2 Supp. SCC 95. In K.C. Joshi's case, this Court held that employee would become a member of service only from the date of his appointment according to rules. In A.M. Sehgal v. Raja Ram, [1992] Supp. 1 SCC 304, this Court held that where statutory rules link seniority with confirmation seniority cannot be fixed according to length of service and confirmation to a post borne on the cadre is a condition to get seniority. In State of West Bengal v. Gauri Nath Dev, [1993] 3 SCC 371, it was held that if ad hoc service is followed by regular service, the benefit of ad hoc service is not admissible if the appointment was in violation of rules. In D.N. Agrawal v. State of Madhya Pradesh, [1990] 2 SCC 553, it was held that seniority cannot relate back to the date of temporary appointment.

Under Rule 10(a)(i)(l) where it is necessary in the public interest to fill emergently 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. Under Sub-Rule (iv) of Rule 10(2), such temporary appointee shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointments to such service, class or category. Rule 23(a) provides the procedure for commencement of the date of probation of persons first appointed temporarily as under :

If a person having been appointed temporarily under Sub-Rule (a)(i)(l) or sub-rule (c) of Rule 10, a post borne on the cadre of any service, class or category or having been appointed to any service, class or category, otherwise (hen in accordance with the Rules governing and appointed thereto is subsequently appointed to any service, class or category in accordance with the Rules, he shall commence his probation from the date of subsequent appointment or such earlier date as appointing authority may determine."

The other clauses are not relevant for the purpose of this case, hence omitted.

Rule 33 determines the seniority - (a) The seniority of a person in a service, class or category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade. If any portion of the service of such person does not count towards probation under rule 10 (a),

(iv), 10(c), 16, 37 (d) or 42(d), his seniority shall be determined by the date of commencement of his service which counts towards probation.

It is true that in Diwaker's case and in Venkata Reddys case, this Court upheld the exercise of the power by the Government under proviso to Clause (3) Of Article 320 of the Constitution and in Venkata Reddys case held that the temporary employees are appointed in accordance with the rules. As stated earlier, those appointments came to be made during ban period and remained in service for long period. In this case, there is no ban on recruitment and the appellants were eligible to apply for and seek direct recruitment. In Paripoomam's case , another bench of three Judges, considering the similar Madras Rules, held in paragraph 14, that temporary appointments made under Rule 10(a)(i)(l) to fill in emergency vacancies were otherwise than in accordance with the Rules and the temporary service cannot be counted towards the seniority. Same is the view held by another three Judges Bench in A. P .M. Mayankutty v. Secretary, Public Service Department, [1977] 2 SCC 360. In Diwaker's case and Venkata Reddy's case, this Court approved the validity of the exercise of the power under proviso to Clause (3) of Article 320 owing to the ban on the recruitment by the government; and long lapse of time which had elapsed from the date of the initial temporary appointments till the date the decision was taken by the Government to regularise the services of such temporary appointments;

In A.K. Bhatnagar v. Union of India, [1991] 1 SCC 544, this Court while deprecating the practice of the government giving a go-by to the statutory rules or regulations, framed under proviso to Article 309 of the Constitution making large scale departure, expressed thus :

"On more than on occasion in this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect Acting in a manner contrary to the rules does create problem and dislocation. Very often government them-selves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules."

It was reiterated in K.C. Joshi's case and it is common experience that, it is a vicious circle that initially governments impose ban on recruit- ment and make massive ad hoc appointments de hors the rules giving a go-by to make recruitment in accordance with the Rules and then resort to regularisation of such appointments exercising the power under Article 320(3) proviso or Article 162 to make them the members of the service. This practice not only violates the mandates of the Articles 14 and 16 but also denies to all eligible candidates, their legitimate right to apply for and stand for selection and get selected. In State of Orissa v. S. Mahapatra, [1993] 2 SCC 486 and J & K Public Service Commission v. Dr. Narendra Mohan, [1994] 2 SCC 630, it was held that appointments made in violation of recruitment rules violates Articles 14 and 16. Therefore, as stated earlier, the Administrative Tribunal has rightly expressed unhappiness on the exercise of the power by the State Government by resorting to proviso to clause (3) of Article 320 to make massive departure to make recruitment in accordance with the Rules. We agree with Shri Guru Raja Rao, the

learned counsel for PSC candidates that the PSCs must be made more functional and its efficacy be streamlined appointing people of eminence, experience and competence with undoubted integrity to recruit the candidates in accordance with rules for appointment to the post and back door entry by nepotism be put an end. Free play of exercise of the power under proviso to clause (3) of Article 320 would undermine the efficacy of constitutional institution i.e. PSCs. Be it as it may, we have to consider whether the regularisation of the service of the temporary appointees is in accordance with the special rules and the rules vis-a-vis condition (iii) of the Order under G.O. Ms, No.413, dated August 29, 1983.

In *R.N. Nanjundappa v. T. Thimmiah*, [1972] SCR 799 at p.808, Placitum C & D, dealing with the contention that Article 309 speaks of rules for appointment and general conditions of service, held that regularisation of appointment in exercise of executive power process notwithstanding any rule cannot be a form or kind of appointment and if it is in infraction of the rules and if it has effect of the violation of the rules or the constitution, illegality cannot be regularised. If it does not violate the law, it would be permissible. Otherwise the rule itself gets criticised on the ground that it is in violation of Articles 14 and 16 (1);

In *B.N. Nagarajan v. State of Karnataka*, [1979] 3 SCR 937, a bench of three judges, held that regularisation in violation of the statutory rules is not permissible, in exercise of the executive power of the State which have the effect of overriding the rules framed under proviso to Article 309 of the Constitution and that, therefore, no regulations in exercise of the executive power under Article 162, in contravention of the statutory rules, is permissible.

In *State of Haryana v. Piara Singh*, JT 1992 (5) 179 at page 207-08, paragraph 43, 'another three Judges bench held that "the normal rules, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employees may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary.

In *Paripoprnam's case*, a bench of three Judges, of this Court held that the appellant, State Government, appointed Junior Professors temporarily, exercising the power under Rule 10(a)(i) (1) of Madras State Subordinate Services Rules. They subsequently appeared at the regular selection test conducted by PSC and were recommended as per the approved list and order of merit of the appointment. The government regularised the first set of Junior Professors with effect from the date of their original appointments and were promoted as Professors in the Law Colleges which was challenged in the writ petition. The High Court accepted the plea and quashed the promotion and directed the government to make a proper order of promotion in the light of the view expressed in this judgment. The High Court held that once they have been regularised in the temporary service retrospectively, the temporary Service rendered under Rule 10(a) (i) (1) be reckoned by giving them the benefit of regular service notwithstanding the ranking given in the approved list prepared by

PSC This Court reversed the view of the High Court and held that under Rule 23(a) (ii) read with Rule 35(a), (equivalent to Rule 33(a) of Rules) the order of regularisation should be in the order of the list of approved candidates prepared by PSC in the order of merit and it should be the basis to determine their inter se seniority. It is not open to the parties to claim the temporary service as Junior Professors upon regularisation but should not be counted for the purpose of determining the seniority in the cadre. The appointment under Rule 10(a)(i)(l) is made otherwise than in accordance with the procedure prescribed under the Rules. The temporary service has only limited purpose. The emergency appointment is an exception to the Rule.

In *A.P.M. Mayakutti v. Secretary, Public Service Department*, [1977] 2 SCR 937, another bench of three Judges considered the same question. Therein the appellants were appointed under Rule 10(a)(i)(l) of Madras S.S.S. Rules in the years 1950-51. They were subsequently selected by the PSC. Their probation was commenced from March 15, 1953 to July 18, 1954. On the reorganisation of States, they were allotted to the State of Kerala. They claimed their seniority from the date of their initial appointment under Rule 10(a)(i)(l). The High Court negated the claim. On appeal, this Court held that in the face of the provisions of the rules and the express terms of their appointment therein, were appointed as an emergency arrangement which services cannot be taken into account for the purpose of seniority. Clause (iii) of Rule 10(a) made the provision clear that they should be replaced by the approved candidates sent by the PSC. Mere qualification to hold the post cannot entitle them to count for the purpose of seniority. The period of temporary service governed by Rule 10(a)(i)(l) nor they be regarded as probationers. Their services shall be liable to be terminated at any time without any notice or without assigning any reasons. It was, therefore, held that "the appellants were appointed initially on a uniquely precarious tenure. Such tenures hardly even count for seniority in any system of service jurisprudence."

It is seen that under Rule 3(2) of Part I of the Rules, the approved candidates from the list of candidates communicated by PSC, the PSC candidates, by operation of Rule 3(1) of Part I, become persons appointed to the service from the date on which they started discharging the duties of the posts borne on the cadre. They were appointed to the substantive post by operation of Rule 4 of the Rules in the order of merit prepared by the PSC. On being put on probation under Rule 5 of the Special Rules and declaration of successful completion of probation, they became approved probationers under Rule 3(3) of Part I of the Rules. Under Rule 2 of the Special Rules, appointment to the post of Assistant Executive Engineer shall be made only by direct recruitment or by transfer from subordinate service. No third mode is permissible under the Special Rules. By operation of Rule 2 of Part II of the Rules, if any provision in the Rules contained in Part II is repugnant to the provisions in the Special Rules applicable to any particular service contained in Part III, the Special Rules shall prevail over the Rules.

Under Rule 23(a) of the Rules, the temporary appointee, if subsequently appointed to a post borne on the cadre of any service, class or category in accordance with the Rules, shall commence his probation "from the date of such subsequent appointment or from such earlier date as the appointing authority may determine", Under Rule 33(a), the seniority of such temporary employees under rule 10(a)(i)(l), Such temporary service does not count towards probation or his seniority, shall not be determined by the date of the commencement of his service which counts towards



probation. It would thus be clear that by operation of Special Rules and Rules, that PSC candidates gets his seniority from the date on which he starts discharging his duties on the post borne on the cadre and his seniority shall be determined with effect from that date while the temporary appointee under Rule 19(a)(i){l} who is subsequently appointed in accordance with the Rules, the temporary service rendered prior to his appointment shall not be counted towards his seniority or the temporary service even if counted towards probation shall not be counted for the purpose of seniority. Obviously to achieve the same result clause (3) of G.O.Ms. No. 413 dated August 29, 1983 directed that the temporary service of the temporary employee should be regularised from the date subsequent to the last regular candidate or candidates "appointed" or allotted for appointment from the list of successful candidates drawn by PSC based on the examination last held.

The further contention that in Bhatnagar's case, it is one of regularisation of the ad hoc employees and in the instant case regularisation is of the temporary service is not helpful since the distinction is without difference. Both were not the members of the service unless they were appointed to the service in accordance with Rules. Therefore, ad hoc employee or employees appointed on emergency basis, both form the same class. There cannot be any distinction on that score. The appellants' further contention that in Bhatnagar's case, this court pointed out that seniority is regulated by the Rules, it should be determined in accordance with the Rules. Rule 33(a) of the Rules since speaks of length of service put in by an employee while regularising the service under Rule 23(a), the appointing authority is required to fix the date of initial appointment as a date of appointment to the service is also without force. This was made explicit in the counter affidavit filed GA.D. Department in the Tribunal which read thus - "It was intended to protect the interest of the candidates of 1981 batch with includes the applicants themselves." In the Tribunal, as stated earlier, the PSC candidates questioned the regularisation of the appellants by filing a separate O. A. in which the above counter came to be filed. The government, therefore, was right in their direction in G.O.Ms. No. 296 dated April 24, 1990 that "the Chief Engineer RWS & ADMN is directed to place all those A.E.Es. covered by G.O. Ms. No. 413 GA (Ser, A) dated August 29, 1983 below the last PSC candidates of 1981 batch allotted in 1984 in their respective zones and regularise their services accordingly, duly following the procedure of giving notice and obtaining Options against them etc."

At this juncture, we may make it clear that though Shri Guru Raja Rao has contended that the regularisation by executive order is violative of Articles 14 and 16 and the statutory rules placing reliance on Nanjundappa's case, Nagarajan's case, Ramendra Singh's case and Dr. Nangendra Mohan Cases. Later in J & K Public Service Commission, This Court held that the court should not direct PSC to regularise the temporary appointees except as per the procedure provided by PSC, i.e. by direct recruitment. The question of exercise of power by the State Government under proviso to clause (3) of Article 320 did not arise in that case. We are not resting our conclusion on that basis for the reason that there was massive departure of direct recruitment in accordance with the Special Rules to various services in the State of Andhra Pradesh, due to ban On recruitment and number Of persons came to be temporarily appointed in disregard of the statutory rules. Acceptance of the contention of Shri Guru Raja Rao would cause serious doubt on the validity of those temporary appointees or their regularisation creating fluidity and uncertainty which we do not propose to generate by our acceptance of his contention. We allow those appointments during ban period made, rest in peace. Since the appointments of the appellants were made though due to

administrative exigencies but at a time when there was no ban on recruitment, therefore, they cannot stand on the same footing as those appointed during the period of the ban.

It is true that Rule 33(a) speaks of length of service but a temporary employee appointed under Rule 10(a)(i)(l), when his services are sought to be regularised under Rule 23(a), the appointing authority has been invested with the discretion to fix the date of initial appointment or subsequent date as the commencement of the date of the probation. In other words, appointment to the service in accordance with the Special Rules is a condition precedent and fixation of the date for commencement of the probation of temporary appointees under Rule 23(a) should be done in accordance with the rules. Therefore, when the competing interests of the PSG candidate and the temporary appointees under Rule 10(a)(i)(l) emerges, the appointing authority has been given discretion to give later date to the temporary appointees. Therefore, the entire length of temporary service cannot be computed for the purpose of determining seniority under Rule 33(a).

The further contention of Sri Madhava Reddy that since the temporary appointees and PSC candidates have been appointed under Rule 10(a)(i)(l) giving seniority to the PSC candidates from the date of their appointment and denial thereof to the promotees of the same date of their initial appointment, since both possess the same qualifications and were appointed under rule 10(a)(i)(l), the denial of seniority to the temporary appointees from the date of their initial appointment, violates Article 14. We find no substance in the contention. It is seen that the PSC candidates were recruited on recommendation by PSC and pending verification of the antecedents of the candidates, they came to be appointed under Rule (a)(i)

(l) but they were put on probation since they are selected on regular basis. Being direct recruits, their seniority, as stated earlier counts from the date on which they started discharging the duties of the post. The temporary appointees though have the insignia of the appointment under Rule 10(a)(i)(l), yet they are not members of the service until they are duly appointed and their services subsequently regularised, they get a date later to regular candidates, appointed in accordance with the Rules and were accordingly regularised. In other words, they are only temporary appointees not in accordance with the Rules (Special Rules prescribed the procedure of recruitment by PSC and appointment by the State of the candidates recommended by PSC). Since the temporary appointees have not undergone that process, they remain to be outside the cadre. Their probation should be determined in accordance with the Rule 23(a) and 33. Till the Government exercised its power under proviso to clause (3) of Article 320 and excluded the constitutional obligation of the consultation of the PSG and then directed by an ad hoc rule to regularise their services in the terms contained in G.O. Ms. No. 413, the temporary appointees have no right to the post. Clause (3), as extracted earlier, gives the state the power to regularise the service and in terms thereof, they fixed the seniority of temporary appointees after the PSC candidates. Both form two distinct classes. The seniority of the appellants should rank under Rules 10(3) below the PSC candidates and their seniority should be on a date, later to PSC candidates. Even the regularisation order by the Chief Engineer also reserves that right to the State. The GAD which issued G.O. Ms. 413 itself had explained its intention to give benefit of seniority to the PSC candidates of 1981 batch vis-a-vis the temporary appointees. Thus, the question of arbitrariness or unfairness or invidious discrimination violating Article 14, does not arise.

We would also test the validity of the appellants' contention on grounds of equity. It is seen that admittedly some of the temporary appointees had appeared before PSC and were selected on competitive basis by direct recruitment. The PSC candidates appeared for and were selected in the order of their merit. In Bhatnagar's case, this Court considered a situation where temporary appointees between different periods and many a candidate availed of the selection by UPSC who thought they were appointed later to the non-selected temporary candidates, this Court upheld the seniority as per the list drawn by the UPSC. All those temporarily appointed as early as 1964, were made juniors to the candidates selected by the UPSC. This Court also made a distinction between UPSC candidates and temporary candidates who do not stand at par. The unregularised officers remained outside the cadre until 1977 and those officers should be placed below regular recruits through the 1970 examination. The same ratio applies to the facts in the case. The temporary appointees cannot be put on a higher pedestal over the PSC candidates who stood the test of merit and became successful and secured ranking according to the merit in the approved list of the candidates prepared by the PSC. In Piara Singh's case, this Court reiterated that the temporary candidates always be replaced giving way to the regular recruits through the prescribed agency and appointments of the regularly selected candidates cannot be withheld or kept in abeyance for the sake of temporary or ad hoc employees.

Therefore we have no hesitation to hold that the appellants cannot claim seniority over the PSC candidates. The appeal is accordingly dismissed but in the circumstances without costs.