

HIGH COURT OF ANDHRA PRADESH

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WRIT PETITION No. 3837 of 2020

Between:

M. J. Ratna Kanth Babu and 2 ors.

.....PETITIONERS

AND

The Government of Andhra Pradesh,
Rep.by its Principal Secretary,
Mines and Geology Department,
Secretariat, Velagapudi,
Amaravathi, Guntur District and 12 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **02.09.2022**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

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

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**+ WRIT PETITION No. 3837 of 2020

% 02.09.2022

M. J. Ratna Kanth Babu and 2 ors.

....Petitioners

Versus\$ The Government of Andhra Pradesh,
Rep.by its Principal Secretary,
Mines and Geology Department,
Secretariat, Velagapudi,
Amaravathi, Guntur District and 12 others

.....Respondents

! Counsel for the Petitioners: Sri J. Sudheer

^ Counsel for the respondents: AGP for Services-II for R1 & R2
Sri M. R. Tagore, for R3 to R11
Sri V. Naga Praveen, for R12 & R13

< Gist :

> Head Note:

? Cases Referred:

1. (1979) 2 SCC 150
2. 1980 SCC (L&S) 432
3. (1990) 2 SCC 707
4. (2019) 19 SCC 740
5. (2016) 16 SCC 464
6. (2020) 5 SCC 689
7. (2019) 17 SCC 228
8. (2008) 1 SCC 747
9. (2002) 4 SCC 247
10. (2012) 2 SCC 542
11. (2011) 8 SCC 568
12. (2017) 15 SCC 133
13. (1994) 3 SCC 440
14. (1949) 2 KB 481
15. AIR 1966 SC 1987
16. (2021) 6 SCC 460
17. (2018) 6 SCC 162
18. (2022) 1 SCC 294

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**WRIT PETITION No. 3837 of 2020****JUDGMENT:**

Heard Sri J. Sudheer, learned counsel for the petitioners, Sri M. R. Tagore, learned counsel for respondents Nos.3 to 11, Sri V. Naga Praveen, learned counsel for respondents Nos.12 and 13, and learned AGP for Services – II, for respondents Nos.1 and 2.

2. This writ petition has been filed for the following relief:

“...to issue Writ Order or Direction more particularly one in the nature of Writ of Mandamus;

- (a) Set aside the final seniority list vide Memo No.1376/E3/2013, dated 21.01.2020 in the cadre of Royalty Inspectors as bad, illegal, without following principles of natural justice and unconstitutional;
- (b) Declare the action of the respondents in not fixing and/or not maintaining the ratio between direct recruitees and promotees in the cadre of Royalty Inspectors, though it became a first level Gazetted Post and Entry Level post with direct recruitment as one of the modes of the recruitment on par with the ratio as was maintained for Assistant Geologist i.e., 3 : 7 between direct recruitees and promotees when it was the first level Gazette with direct recruitment as one of the modes of recruitment as bad, illegal, irrational and unconstitutional;
- (c) Redraw the seniority in the cadre of Royalty Inspectors by fixing the ratio as mentioned in G.O.Ms.No.530 dated 04.10.2000;
- (d) and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case;”

3. The petitioners' case is that the Andhra Pradesh Mining Service Rules 1998, (in short "the special rules") were issued vide G.O.Ms.No.59, Industries and Commerce (Mines-I), dated 10.03.1998. The A.P. Mining Service consisted of various categories of posts in which the post of Assistant Geologist was shown as Category – 11. As per the Special Rules, the post of Assistant Geologist could be filled up by direct recruitment and also by appointment by transfer from Royalty Inspectors under Rule 3 thereof.

4. The post of Royalty Inspectors was not part and parcel of A.P. Mining Service Rules. This was included/shown in A.P. Mining Subordinate Service Rules. Vide G.O.Ms.No.340, dated 10.12.2007, the post of Royalty Inspector was removed from A.P. Mining Subordinate Service Rules and by G.O.Ms.No.341, dated 10.12.2007, the same was included in A.P. Mining Service Rules as Category – 18. Prior to 10.12.2007, the post of Royalty Inspectors was being filled up by promotion from the post of Technical Assistants, and there was no direct recruitment to this post. From 10.12.2007, when the post of Royalty Inspectors was incorporated in A.P. Mining Service Rules, rule 3 of the special rules, provided that this post shall be filled by appointment by transfer from Technical Assistant as also by direct recruitment.

5. So far as the post of Assistant Geologist is concerned, which was in the A.P. Mining Service Rules, Category -11, vide the same G.O.Ms.No. 341, dated 10.12.2007, the mode of direct recruitment for this post was deleted and the same could now be filled up only by appointment by transfer from the Royalty Inspectors.

6. Since 10.12.2007 the entry level gazetted post in A.P. Mining Services is Royalty Inspectors and the Assistant Geologists became a post to be filled by appointment by transfer from Royalty Inspectors. Before the aforesaid change vide G.O.Ms.Nos.340 and 341, dated 10.12.2007, vide G.O.Ms.No.530, dated 04.10.2000 for the post of Assistant Geologist, a cycle of 10 was prescribed between promotees and direct recruitees in the ratio of 7 : 3. There was no need to prescribe any ratio for Royalty Inspectors as at that time there was only one source of recruitment for Royalty Inspectors by promotion from Technical Assistants.

7. After G.O.Ms.Nos.340 and 341, dated 10.12.2007, the ratio of 7:3 in a cycle of 10 between the promotees and direct recruitees on the post of Assistant Geogolist, became redundant as now there was only one source of recruitment for the post of Assistant Geologist i.e., by appointment by transfer / promotion from Royalty Inspectors. But, from 10.12.2007 the post of Royalty Inspectors was to be filled up by two sources one by direct recruitment and the other by promotion, and as such fixation of ratio for this post between promotees and direct recruits became relevant, however any ratio was not fixed.

8. Vide Notification No.50 of 2008, dated 31.12.2008, the Andhra Pradesh Public Service Commission (APPSC) called for applications from eligible candidates to fill up the posts of Royalty Inspectors by direct recruitment. In continuation, supplementary notification was also issued on 14.03.2011, pursuant to which, the petitioners applied and they were duly selected and after their due selection, the APPSC sent the list of the selected candidates for the post of Royalty Inspectors, in February, 2012 but the actual appointment and posting orders of the direct recruits

were delayed which were issued through proceedings dated 30.10.2012 pursuant to which they joined the services and since then they were working as Royalty Inspectors through direct recruitment. However, in the meantime, i.e., in between the petitioner's selection and appointment, the Technical Assistants were promoted as Royalty Inspectors in August, 2012.

9. Tentative seniority lists dated 24.11.2017 and 24.09.2018 were published in the category of Royalty Inspectors showing the promotes above the direct recruitees. The petitioners submitted objections/representations separately, individually, in September 2018 raising objections that placing promotee Royalty Inspectors enblock above the direct recruitees of 2008 notification is incorrect and illegal, and on the analogy of the ratio fixed for Assistant Geologists vide G.O.Ms.No.530, dated 04.10.2000 i.e., 7 : 3 between promotes and direct recruitees, the same ratio should be followed for Royalty Inspectors as well, in as much as Royalty Inspector has become the entry level gazetted post in A.P. Mining Services in place of Assistant Geologists.

10. The tentative seniority lists dated 24.11.2017 and 24.09.2018 were not finalized and one more tentative seniority list in the cadre of the Royalty Inspector was issued, vide Memo No.1376/E3/2013, dated 02.12.2019 referring to earlier tentative seniority list dated 24.09.2018. It was stated in the memo dated 02.12.2019 that the issue regarding Assistant Geologists' seniority is pending before the A.P. Administrative Tribunal (in short 'APAT'), and that final decision will be taken between the direct recruitees and promotees in the cadre of Royalty Inspectors only after the finalization of the dispute in the cadre of Assistant Geologists by the APAT.

11. Learned counsel for the petitioners submitted that the petitioners' representations against the tentative seniority lists pursuant to communication dated 24.09.2018 was not rejected but the seniority dispute between the direct recruits and promotees in the category of Royalty Inspector was in fact kept in abeyance, observing that the final seniority list shall be prepared by taking into consideration of quota and rota system as per G.O.Ms.No.530, Industries & Commerce (M-I) Department, dated 04.10.2000, Rule 4(b) of A.P.State & Subordinate Service Rules 1996 and General Administration Department, vide Circular Memo dated 21.04.1999, but the respondent No.2 subsequently, vide proceedings dated 21.01.2020, issued the final seniority list confirming the tentative seniority list dated 02.12.2019, showing the petitioners at Sl.No.45, 46 and 49 respectively below the names of the promotees.

12. Learned counsel for the petitioners submitted that the very basis for issuance of impugned final seniority list is that no objections were filed and therefore tentative seniority list dated 02.12.2019 was finalized. But, the very basis is baseless and contrary to record in as much as, firstly, any objection against the tentative seniority list of 02.12.2019 were not called, and secondly, against the tentative seniority list dated 24.11.2017 and 24.09.2018 the petitioners had already submitted their objections and while taking note of those objections in the order/Memo dated 02.12.2019 it was clearly observed that the petitioners had filed representations dated 28.09.2018, 29.09.2018 and 26.09.2018, and the decision will be taken on seniority dispute between direct recruits vs. promotees in the category of Royalty

Inspectors soon after receipt of final orders in O.A.Nos.596 of 2019 and 620 of 2019 filed by the Assistant Geologists.

13. Learned counsel for the petitioners further submitted that it was clearly mentioned in the memo dated 02.12.2019 that the seniority list shall be prepared by taking into consideration of quota and rota system, as per G.O.Ms.No.530, Industries & Commerce (M-1) Department, dated 04.10.2000, Rule 4 (b) of A.P. State and Subordinate Service Rules, 1996 and General Administration Department, vide Memo dated 21.04.1999, but the petitioners' objections filed against tentative seniority lists dated 24.11.2017 and 24.09.2018 were not considered at all and that they did not take into consideration Rule 4(b) of A.P. State and Subordinate Service Rules, 1996 nor took into consideration quota and rota system though it was specifically mentioned to be taken into consideration in the memo dated 02.12.2019.

14. Learned counsel for the petitioners has placed reliance on Rule 4(b)(iii) of the A.P. State and Subordinate Service Rules, 1996, to contend that where the normal mode of recruitment to any service, class or category includes direct recruitment, the direct recruitment shall be made only against the substantive vacancies and the percentage earmarked for direct recruitment should not fall short of 33-1/3% in respect of posts in State Service and 30% posts in subordinate service. His submission is that not less than 30% posts are to be earmarked for direct recruitment and they have to be filled up only by direct recruitment.

15. He submitted that the A.P. State and Subordinate Service Rules, 1996 being the general rules and applicable to all the services, whether gazette or non-gazetted under the State Government shall apply to the State and Subordinate

Services and to the holders of posts, whether temporary or permanent included in any State or Subordinate Service except to the extent otherwise expressly provided by or under any law for the time being in force, in respect of holders of any post, appointed by contract or agreement subsisting between such holders and the State Government.

16. Placing reliance on rule 4(b)(iv) of A.P. State and Subordinate Service Rules, 1996 he further contended that if special rules specify more than one method of appointment, a provision shall be made in the special rules indicating the cycle or order in which vacancies shall be filled by such different methods of appointments. His submission is that there being more than one method of appointment to the post of Royalty Inspector, the provision shall be made in special rules indicating cycle or order in which vacancies shall be filled by such different methods of appointment, but as till date the special rules do not provide for the percentage for direct recruitment nor for the cycle or order in which the vacancy shall be filled on the post of Royalty Inspector by direct recruitment and by promotion/transfer from the post of Technical Assistant, the same cycle as was applied to the post of Assistant Geologist, prior to 2007, when it was the first entry level gazette post, should be applied to the post of Royalty Inspector between promotees and direct recruits.

17. Sri M. R. Tagore, learned counsel for respondents No.3 to 11, submitted that any rule has not been prescribed governing the service conditions of Royalty Inspector on the specific subject of what percentage of posts should be filled by direct recruitment and what percentage by promotion from the post of Technical Assistants. Any ratio has also not been fixed.

18. Sri M. R. Tagore further submitted that the seniority would be governed by applying the provisions of rules 33 and 34 of the A.P. State and Subordinate Services rules, 1996, according to which the seniority of a person in a service shall be determined by the date of his first appointment to such service, class, category or grade and accordingly he submitted that a person who enters in service on later date cannot be treated as senior to those who were already adjusted in the category. He submitted that as promotees to the post of Royalty Inspector were granted promotion prior to the petitioners entry on the post of Royalty Inspector through direct recruitment, the promotees would stand senior and are to be placed above the petitioners.

19. Sri M. R. Tagore, further submitted that any direction contrary to the rules to treat the petitioners senior could not be given in the absence of any rule on the particular point. He further submitted that it is the function of the executive to lay down the percentage of posts to be filled by direct recruitment as also to fix the quota and rota to determine the placement in the seniority list between the direct recruits and promotees which function being in the nature of legislative function cannot be exercised by the Court as the Courts are not the legislative sector. He further submitted that any direction can also not be issued by the Court to the respondents to frame rules on the aspect nor to frame rules in a particular manner, as that would also fall within the legislative competence of legislature or the executive while exercising legislative function or by issuing executive instructions, and the Court cannot assume such function as the power of the Court is only to interpret the law and not to legislate.

20. Sri V. Naga Praveen, learned counsel for the respondents No.12 and 13, submitted that the respondents were promoted in the month of August, 2008 and consequently they stand senior to the petitioners and likely to be placed above the petitioners. In this respect there is no illegality in the preparation of final seniority list impugned in the writ petition.

21. Sri V. Naga Praveen, learned counsel also raised the same arguments as advanced by Sri M. R. Tagore that the Court cannot legislate as in his submission in the absence of any rule prescribing the quota and rota, any direction with respect to the percentage between promotees and the direct recruits or to apply the same ratio as was earlier fixed for the post of Assistant Geologist to the post of Royalty Inspectors would amount to legislation and such direction cannot be issued.

22. Learned AGP for Services – II, appearing for respondents No.1 and 2, while adopting the arguments advanced by the learned counsels for Respondents Nos.3 to 13, placed reliance in the case of ***Distt.Registrar, Palghat v. M.B.Koyakutty***¹ and ***K. Dheenadhayalan v. State of Tamil Nadu***² to contend that where the rules are silent, the Government is entitled to make an order filling up *lacuna* and cover the gap in the rules, but not the Courts. He has further placed reliance in the case of ***Mallikarjuna Rao v. Sate of Andhra Pradesh***³ to further contend that neither the court can fill the *lacuna* nor it can direct the executive to frame rules or issue executive instructions, as such mandate would amount to legislation which is the function of the State and cannot be usurped by the Court.

¹ (1979) 2 SCC 150

² 1980 SCC (L&S) 432

³ (1990) 2 SCC 707

The Court cannot even indirectly require the executive to exercise its rule making power in any manner and cannot assume to itself a supervisory role over the rule making power of the executive.

23. I have considered the submissions advanced by the learned counsels for the parties and perused the material available on record.

24. The Andhra Pradesh State and Subordinate Service Rules, 1996 (for short 'Rules of 1996') and the A.P.Mining Service Rules, 1998 (for short 'Rules of 1998') are the relevant Service Rules.

25. Rule 1 (b) and (d) of the Rules, 1996 read as under:

“Rule 1(b) The gazetted and non-gazetted posts under the State Government shall be constituted into various State and Subordinate Services and they shall be governed by the State and Subordinate Service Rules (General Rules) and the Special Rules as well as ad hoc rules issued by the Government.”

“Rule 1(d) Relation to Special Rules: If any provisions in these rules are repugnant to the provisions in the special rules applicable to any particular service in regard to any specific matter, the latter shall, in respect of such service and such specific matter, prevail over the provisions in these rules.”

26. Rule-2 of the Rules, 1996, is the definition clause. It defines 'General Rules' and 'Special Rules' in Rule 2 (17) and 2 (31) respectively, which are reproduced as under:

“2. DEFINITIONS: In these rules, unless there is anything repugnant in the subject or context;

“(17) General Rules: “General Rules” means the Andhra Pradesh State and Subordinate Service Rules.

“(31) Special Rules: “Special Rules” means the rules applicable to each service or class or category of a service, which include *ad hoc* rules applicable to temporary posts in a service, or class or category, which are not covered by the special rules.

Explanation: The words importing either gender in these or special rules shall be taken to include those of the other gender if circumstances so require.”

27. The A.P. State and Subordinate Service Rules, 1996 are therefore the 'General Rules' and the A. P. Mining Service Rules, 1998 are the 'Special Rules', which at many places would be referred as such.

28. Rule 4 of the Rules 1996/General Rules provides as under:

“4. METHOD OF APPOINTMENT:-

(a) Appointment to any service, class or category shall be by one or more of the methods indicated below as may be specified in the Special Rules applicable to the relevant post:-

1. Direct recruitment
2. Recruitment / Appointment by transfer
3. Promotion or
4. Contract / Agreement / Re-employment

(b) Direct Recruitment:- Where the normal method of recruitment to any service, class or category includes direct recruitment, the proportion in which the special rules may require vacancies to be filled by persons recruited direct shall be applicable to all substantive vacancies and direct recruitment shall be made only against the substantive vacancies.

Explanation: (i) For the purpose of this rule, notwithstanding anything contained in these rules or special or adhoc rules, substantive vacancies shall mean all vacancies in the permanent cadre and all vacancies in the posts which have been in existence for more than 5 years.

(ii) The posts earmarked for direct recruitment in the Special Rules / Adhoc Rules shall be filled by direct recruits strictly and not be any other method.

{(iii) The percentage earmarked for direct recruitment should not fall short of 33-1/3% in respect of posts in State Service and 30% in respect of posts in Subordinate Service.}

{Subs.by G.O.Ms.No.142, G.A.(Ser.D) Dt.13-3-2008}

(iv) If the special rules specify more than one method of appointment, a provision shall be made in the special rules indicating the cycle or order in which vacancies shall be filled by such different methods of appointments.

(c) Re-allotment of candidates selected by the Public Service Commission:- The reallotment of candidates selected by the Andhra Pradesh Public Service Commission for appointment, from one unit to another unit, either in the same service and district / Zone or in any other service of district / Zone shall be made with the mutual consent of the appointing authorities concerned and with the prior concurrence of the Commission. The order of re-allotment shall be issued by the appointing authority to whose unit the candidate was first allotted by the Commission.

Provided that such re-allotment shall be strictly in conformity with the provisions of the Presidential Order.”

29. Thus, Rule-4 of the Rules, 1996 provides for the method of appointment to any service, class or category. The method of appointment under clause (a) of Rule-4, are direct recruitment, recruitment/appointment by transfer, promotion or, contract/agreement/re-employment. Clause (b) of Rule-4 deals with direct recruitment. It provides that where the normal method of recruitment to any service, class or category includes direct recruitment, the proportion in which the special rules may require vacancies to be filled by persons recruited direct shall be applicable to all substantive vacancies and direct recruitment shall be made only against the substantive vacancies. The Explanation (ii) to clause (b) of Rule-4 provides that the posts earmarked for direct recruitment in the Special Rules/*Ad hoc* Rules shall be filled by direct recruits strictly and not be any other method. Explanation (iii) provides that the percentage earmarked for direct recruitment should not fall short of 33-1/3 % in respect of posts in the State Service and 30% in respect of posts in Subordinate Service. Explanation (iv) provides that if the special rules specify more

than one method of appointment, a provision shall be made in the special rules indicating the cycle or order in which vacancies shall be filled by such different methods of appointment.

30. From a conjoint reading of the aforesaid provision, it is evident that as per Rule-4 of the Rules, 1996 where the normal mode of recruitment, includes direct recruitment; (a) the percentage earmarked for direct recruitment should not fall short of 33.1/3% in respect of State Service posts and 30% in respect of subordinate service posts, (b) the posts earmarked for direct recruitment in the special rules/*ad hoc* rules shall be filled by direct recruits strictly and not by any other method, and (c) if the special rules specify more than one method of appointment, a provision shall be made in the special rules indicating the cycle or order in which vacancies shall be filled by such different methods of appointment.

31. Relevant rules of the A.P.Mining Services Rules 1998, Special Rules, Rules 2 and 3, to the extent relevant for the present case are reproduced as under:

“Rule 2. Constitution:- The Andhra Pradesh Mining Service shall consist of the following categories of posts:

Category-11 : Assistant Geologist

Category-18 : Royalty Inspector
(Added by G.O.Ms.No.341, I and C (M.I)(I),
dt.10-12-2007)

Rule 3. Method of Appointment:- (a) The method of appointment to the categories mentioned in Rule 2 shall be as specified in the Table below:-

Sl. No. (1)	Category (2)	Method of Appointment (3)
11.	Assistant Geologist	By appointment by transfer from Royalty Inspectors

		(Subs. By G.O.Ms.No.341, I and C (M.I)(I), dt.10-12- 2007)
18.	Royalty Inspector	By Direct Recruitment (i) By direct recruitment (ii) By appointment by Transfer from Technical Assistant Constitute Class IV of A.P. Mining Subordinate Service Rules (Added by G.O.Ms.No.341, I and C (M.I)(1), dt.10-12- 2007)”

32. Rule 4 of A.P. Mining Service Rules 1998 provides for the appointing authority in respect of the posts of different categories and rule 5 provides for the qualification for such posts. Rule 6 provides for the age of a person eligible for appointment by direct recruitment and rule 7 for reservation for appointment. Rule 8 provides for the probation period of two years within a continuous period of three years and rule 9 provides for the departmental tests in zoology for person appointed by direct recruitment to the category of Ore Dressing Officers. Rule 10 provides for training and rule 11 relates to the transfers and postings.

33. The Rules 1998/Special Rules, therefore provides for direct recruitment, as one of the method(s) of appointment to the post of Royalty Inspector. However, these rules do not provide for any percentage to be earmarked for direct recruitment as also by promotion.

34. At this stage the Court may refer few decisions on the aspect of the applicability of the special Act with the General Act, in case of dispute.

35. In ***State of U.P. v. Aman Mittal***⁴ the Hon'ble Apex Court observed and held in paragraph-33 as under:

“33. It cannot be disputed that the Act is a special Act vis-à-vis IPC. In *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.* [*Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*, (2018) 2 SCC 674 : (2018) 2 SCC (Civ) 288] , this Court adopted a doctrine of harmonious construction to hold that there was clear disharmony between the two parliamentary statutes which cannot be resolved by harmonious interpretation. This Court held as under: (SCC pp. 711-14, paras 44 & 47)

“44. Similarly, in *CTO v. Binani Cements Ltd.* [*CTO v. Binani Cements Ltd.*, (2014) 8 SCC 319] , the rule of construction of two parliamentary statutes being harmoniously construed was laid down as follows: (SCC pp. 332-33, para 35)

‘35. Generally, the principle has found vast application in cases of there being two statutes: general or specific with the latter treating the common subject-matter more specifically or minutely than the former. *Corpus Juris Secundum*, 82 CJS Statutes § 482 states that when construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonised, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject-matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy (*Edmond v. United States* [*Edmond v. United States*, 1997 SCC OnLine US SC 45 : 137 L Ed 2d 917 : 520 US 651 (1997)] , *Warden v. Marrero* [*Warden v. Marrero*, 1974 SCC OnLine US SC 136 : 41 L Ed 2d 383 : 417 US 653 (1974)]).’

⁴ (2019) 19 SCC 740

47. Similarly, in *R.S. Raghunath v. State of Karnataka* [*R.S. Raghunath v. State of Karnataka*, (1992) 1 SCC 335 : 1992 SCC (L&S) 286], the non obstante clause contained in Rule 3(2) of the Karnataka Civil Services (General Recruitment) Rules, 1977 was held not to override the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1976. It was held: (SCC p. 348, para 13)

‘13. As already noted, there should be a clear inconsistency between the two enactments before giving an overriding effect to the non obstante clause but when the scope of the provisions of an earlier enactment is clear the same cannot be cut down by resort to non obstante clause. In the instant case, we have noticed that even the General Rules of which Rule 3(2) forms a part provide for promotion by selection. As a matter of fact Rules 1(3)(a), 3(1) and 4 also provide for the enforceability of the Special Rules. The very Rule 3 of the General Rules which provides for recruitment also provides for promotion by selection and further lays down that the methods of recruitment shall be as specified in the Special Rules, if any. In this background if we examine the General Rules it becomes clear that the object of these Rules only is to provide broadly for recruitment to services of all the departments and they are framed generally to cover situations that are not covered by the Special Rules of any particular department. In such a situation both the Rules including Rules 1(3)(a), 3(1) and 4 of the General Rules should be read together. If so read it becomes plain that there is no inconsistency and that amendment by inserting Rule 3(2) is only an amendment to the General Rules and it cannot be interpreted as to supersede the Special Rules. The amendment also must be read as being subject to Rules 1(3)(a), 3(1) and 4(2) of the General Rules themselves. **The amendment cannot be read as abrogating all other Special Rules in respect of all departments. In a given case where there are no Special Rules then naturally the General Rules would be applicable.** Just because there is a non obstante clause, in Rule 3(2) it cannot be interpreted that the said amendment to the General Rules though later in point of time would abrogate the special rule the scope of which is very clear and which co-exists particularly when no patent conflict or inconsistency can

be spelt out. **As already noted, Rules 1(3)(a), 3(1) and 4 of the General Rules themselves provide for promotion by selection and for enforceability of the Special Rules in that regard. Therefore, there is no patent conflict or inconsistency at all between the General and the Special Rules.**”

36. The Hon'ble Apex Court has clearly held that when construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonized, if possible, with the objective of giving effect to a consistent legislative policy and if they cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy.

37. From examination of the General Rules it becomes clear that the object of these rules is to provide broadly for recruitment to services of all departments and they are framed generally to cover situations that are not covered by the special rules of any particular department. The General Rules themselves provide for the posts being earmarked for direct recruitment by the special rules but with the rider that such percentage shall not fall short of 33.1/3% in respect of State service post and 30% in subordinate service posts.

38. In ***R. Venkata Ramudu v. State of A.P.***⁵ where A.P. State and Subordinate Service Rules and the Special Rules were involved, the Hon'ble Apex Court held that in the event of conflict between the General Rules and any Special

⁵ (2016) 16 SCC 464

Rules applicable to a particular service, the special rules prevail over the General Rules.

39. It is apt to refer paragraphs-22 and 23 of **R. Venkata Ramudu** (supra) as under:

“**22.** The erstwhile State of Andhra Pradesh initially made rules known as the Andhra Pradesh State and Subordinate Rules, 1962 in exercise of the power conferred by the proviso to Article 309. The said Rules contain various stipulations regarding the various aspects of employment under the State, the details of which may not be necessary for the present purpose. The said Rules were superseded by the General Rules (the 1996 Rules referred to supra).”

“**23.** Under Rule 1(d) of the General Rules, it is stipulated as follows:

“**1. (d) Relation to Special Rules.**—If any provision in these Rules are repugnant to the provisions in the Special Rules applicable to any particular service in regard to any specific matter, the latter shall, in respect of such service and such specific matter, prevail over the provisions in these Rules.”

In substance, providing that in the event of conflict between the General Rules and any Special Rules applicable to any particular service, the Special Rules prevail over the General Rules. The expression “Special Rules” is defined under Rule 2(31) [“**2. (31) Special Rules.**—“**Special Rules**” mean the rules applicable to each service or class or category of a service, which include ad hoc rules applicable to temporary posts in a service, or class or category, which are not covered by the Special Rules.”]

. It is not in dispute that the Andhra Pradesh Engineering Service Rules, 1967 are special rules within the meaning of Rule 2(31) of the General Rules.”

40. In the present case, the special rules may not be providing for the percentage of posts of Royalty Inspector falling under direct recruitment and under the promotion quota, but on this aspect, General Rules are clear. In the absence of the special rules on a particular point or in the absence of any special rule contrary to the general rules, the general rules on the point shall apply. The exclusion of the

general rules and applicability of the special rules depends upon the question whether the particular field is occupied by the special rules or not. If the field is not occupied by the special rules and is occupied by the general rules, the general rules are to be given effect to. The principle of exclusion of general rules applies to a field covered by the special rules to the extent of inconsistency, in which case also, firstly, the Court's endeavour would be to have a harmonious construction to make both the provisions workable and only if the inconsistency is such that both cannot work together it is the special rules that would apply to the exclusion of the general rules.

41. In view of the aforesaid, one thing is for certain that once there are no special rules covering the field on the point of percentage to fill the post of Royalty Inspectors from the method of appointment of direct recruitment, the applicability of the Rules of 1996/General Rules, to that extent, cannot be excluded. So, the direct recruitment on the post of Royalty Inspector has to be not less than 30%.

42. In the absence of Special Rules on the point of percentage, not earmarking the number of post by direct recruitment, the only thing that can be said is that for direct recruitment any percentage of posts in excess of 30% cannot be earmarked by the respondents nor can be claimed by petitioners/ direct recruits.

43. Accordingly, in view of Rule-4(b)(iii)(iv) of A. P. State Subordinate Service Rules, 1996, the number of posts of Royalty Inspectors ought to have been earmarked under the quota of direct recruitment, which should not fall below 33.1/3% of the total posts in the State service and not below 30% in the subordinate service.

44. The posts of Royalty Inspectors falling under the quota of direct recruitment cannot be filled by any other method of appointment in view of Rule-4(b) Explanation (ii) of the Rules, 1996 which specifically provides that posts earmarked for direct recruitment shall be filled by direct recruits strictly and not by any other method of appointment.

45. The petitioners' objection in their representations as referred to in the Memo dated 02.12.2009 *inter alia* is to revise the seniority list by placing direct recruits joined in the year 2012 in the substantive vacancies occupied by the promotes as per A.P.State and Subordinate Service Rules, 1996.

46. The Memo No.1376/E3/2013, dated 02.12.2019 is reproduced as under:

“GOVERNMENT OF ANDHRA PRADESH
DEPARTMENT OF MINES AND GEOLOGY :: IBRAHIMPATNAM

Memo No.1376/E3/2013

Dated: 02.12.2019

Sub: Establishment – Department of Mines and Geology, Ibrahimpatnam – Tentative Inter-se-Seniority list in the cadre of Royalty Inspectors – Communication – Regarding.

Ref: 1. This Office Memo No.1376/E3/2013, dated 24.09.2018
2. Representation dt.28.09.2018 from Sri M.J.Ratnakanth Babu, RI.
3. Representation dt.29.09.2018 from Sri V.Venkata Sivappa, RI.
4. Representation dt.26.09.2018 from Sri K.Raju, RI.
5. Representation dt.28.09.2018 from Smt.B.Kavita, RI.
6. Common representation dt.01.09.2019 from Sri M.J.Ratnakanth Babu & others Royalty Inspectors.
7. Common representation dt.15.09.2019 from Sri J.Ravi Varma & Sri M.Suresh Kumar, Royalty Inspectors.

Through the reference 1st cited, this office has communicated the inter-se-seniority list in the cadre of Royalty Inspectors working in this Department with request to submit their objections if any, within 7 days from the date of receipt of the memo. The said memo was communicated to the Royalty Inspectors in the State through Department email on 24.09.2018.

Accordingly, through the reference 2nd to 6th cited, Sri M.N.Ratnakanth Babu, Sri V.Venkata Sivappa, Sri K.Raju, Sri B.S.V.T.G.Sankar Rao and Smt.B.Kavita, Royalty Inspectors have submitted their objections stating that they have appointed as Royalty Inspectors in the year 2012 by direct recruitment through the APPSC.

The common objection raised by the afore stated Royalty Inspectors is to revise the seniority list by placing the Direct Recruits joined in the year 2012 in the substantive vacancies occupied by the promotes as per A.P. State & Subordinate Service Rules. Further, they have submitted that, as per the G.O.Ms.No.530, Inds. & Com. (M-1) Department, dated 04.10.2000 provides for provision of quota of vacancies to be filled by the Promotes vs Direct Recruits in 7:3 ratio.

Finally, requested that the quota and rota system mentioned in the above said G.O. may be followed in preparation of seniority list and subsequent promotions keeping in view of the General Administration Department vide Circular Memo No.16/Ser.A/93-59, dt.21.04.1999.

In fact, the individuals shown at Sl.No.1 to 30 have been promoted to the post of Royalty Inspectors in the year 2008 itself. Whereas, in respect of the individuals shown at Sl.No.44 to 53, Ten (10) Royalty Inspectors were recruited directly through APPSC Notification No.07/2011 and they have joined as Royalty Inspectors in the Department in the month of October, 2012 onwards. In the meantime, rest of the Individuals shown at Sl.No.31 to 43 who got promotion as Royalty Inspectors have been joined in the month of August, 2012 onwards. **Therefore, seniority list shall be prepared by taking into consideration of quota and rota system as per G.O.Ms.No.530, Industries & Commerce (M-I) Department, dt.04.10.2000, Rule 4(b) of A.P.State & Subordinate Service Rules, 199 and General Administration Dept., vide Circular Memo No.16/Ser.A/93-59, dt.21.04.1999.**

In similar cases, Smt.B.Vijaya Lakshmi and 4 other direct recruits of Asst.Geologists have filed appeal before the Government. Accordingly, as per the directions of the Government vide Memo No.11123/Estt./A2/2017, Ind. & Comm. Dept., dt.06.11.2018, the final seniority list in the cadre of Asst.Geologists has been communicated vide Memo No.27665/E1/2015, date 21.03.2019 by taking into consideration of quota and rota system as per the G.O.Ms.No.530, Inds.& Com.(M-I) Department, dt.04.10.2000, Rule 4(b) of A.P.State & Subordinate Service Rules, 1996 and General Administration Dept., vide Circular Memo No.16/Ser.A/93-59, dt.21.04.1999.

But, in similar cases some of the Asst. Geologists have filed O.A.No.596/2019, dt.22.04.2019 against the direct recruits of Asst. Geologists before the Hon'ble Andhra Pradesh Administrative Tribunal (APAT), Hyderabad against the final seniority list communicated vide Memo dated 21.03.2019.

The Hon'ble APAT issued *status-quo* orders on 22.04.2019 in O.A.No.596/2019. Subsequently, some of the effected Asst. Geologists have filed O.A.No.620/2019 before the Hon'ble APAT, Hyderabad against the final seniority communicated vide Memo dated 21.03.2019. The Hon'ble APAT issued the *status quo* orders on 25.04.2019 in O.A.No.620/2019. In both the cases hearing was held on 10.06.2019 and no further orders received from the Hon'ble APAT.

Keeping in view of the status-quo orders issued by the Hon'ble APAT with regard to final seniority list communicated in the cadre of Asst. Geologists, **the present seniority list in the cadre of Royalty Inspectors will be revised only after receiving the final orders from Hon'ble APAT in respect of Asst. Geologists, if necessary.**

With regard to objections raised by Sri J.Ravi Varma & Sri M.Suresh Kumar, Royalty Inspectors, the above two individuals have informed that while communicating the seniority list communicated dt.15.05.2017 in the cadre of Royalty Inspectors and as compared with the seniority list dt.07.01.2014 in the cadre of Technical Assistants they have been placed at Sl.No.32 & 33 instead of Sl.No.28 & 30.

In this connection, it is to inform that as per the Judgment dt.25.11.2013 of Hon'ble High Court of A.P., in WP.No.13483/2013, the final seniority list in the cadre of Technical Assistants has been communicated vide this office Memo No.1376/E3/2013, dt. 07.01.2014. Further, this office vide Memo No.1376/E3/2013, dated 15.05.2017 communicated the tentative seniority list in the cadre of Royalty Inspectors by clubbing the Multi Zone-I & II Royalty Inspectors. Subsequently, this office vide Memo No.1376/E3/2013, dated 28.05.2018 have communicated the final seniority list in the cadre of Royalty Inspectors after examination of the objections. At the time of communicating the inter-se-seniority list in the cadre of Royalty Inspectors, Multi Zone-I & II have been clubbed as per the cadre strength. Therefore, the seniority list communicated in the year 2018 in the cadre of Royalty Inspectors is holds good.

In view of the above circumstances, the decision will be taken on seniority dispute between Direct Recruits Vs Promotees in the cadre of Royalty Inspector soon after receipt of the final orders issued by the Hon'ble APAT in O.A.No.596/2019 & O.A.No.620/2019 filed by Asst. Geologists only. Therefore, the tentative seniority list in the cadre of Royalty Inspector is hereby communicated for the panel year 2019-20.

The above seniority list communicated is subject to outcome of the O.As/WPs/Representations if any.

Sd/-K.RAM GOPAL, I.A.S,
DIRECTOR OF MINES & GEOLOGY (FAC)

Encl: (As above)

To:
All the Royalty Inspectors in the Department of Mines & Geology by

Email through their controlling officers.

Copy to Personal Files of the individuals.

//ATTESTED//

Sd/- DEPUTY DIRECTOR (ADMN.)”

47. From a reading of the Memo No.1376/E3/2013, dated 02.12.2019, reproduced above, the following facts become evident:

- 1) With respect to the *inter se* seniority in the cadre of Royalty Inspectors, the petitioners had filed objections/representations cited by reference Nos.2nd, 3rd & 4th and there were some other representations, pursuant to reference 1st cited i.e., the Office Memo No.1376/E3/2013, dated 24.09.2018, by which the *inter se* seniority in the cadre of Royalty Inspectors was communicated inviting the objections;
- 2) The common objection, raised against the *inter se* seniority list, was to revise the seniority list by placing the direct recruits of the year 2012 in the substantive vacancies occupied by promotees, as per A. P. State and Subordinate Service Rules, 1996;
- 3) The Royalty Inspectors direct recruits claimed application of G.O.Ms.No.530 dated 04.10.2000, which provided for filling of post of Assistant Geologist by promotees and by direct recruits in the ratio of 7:3 on 10 posts;
- 4) In view of O.A.No.596 of 2019 and O.A.No.620 of 2019 with respect to the post of Assistant Geologists, before Andhra Pradesh Administrative Tribunal and the orders of *status quo*, the Director of Mines and Geology, the 2nd respondent, clearly provided that the decision with respect to the seniority list

in the cadre of Royalty Inspectors, will be taken only after receiving the final orders from the Tribunal in respect of the Assistant Geologist; and

- 5) The seniority list shall be prepared by taking into consideration quota and rota system as per Rule-4(b) of the A.P.State and Subordinate Service Rules, 1996, G.O.Ms.No.530 dated 04.10.2000 and the Circular Memo No.16/Ser.A/93-59, dated 21.04.1999.

48. From reading of the memo dated 02.12.2019 it is further evident that the objection of the petitioners vide their representations, referred to therein, were not considered and not decided against the tentative seniority list circulated vide Office Memo dated 24.09.2018 in view of the facts and circumstances narrated therein.

49. Now the impugned order vide Memo No.1376/E3/2013, dated 21.01.2020 reads as under:

“GOVERNMENT OF ANDHRA PRADESH
DEPARTMENT OF MINES AND GEOLOGY:: IBRAHIMPATNAM

Memo No.1376/E3/2013

Dated: 21.01.2020

Sub: Establishment – Department of Mines and Geology,
Ibrahimpatanm – Final Inter-Se-Seniority List in the
cadre of Royalty Inspector – Communicated – Regarding.

Ref: This Office Memo No.1376/E3/2013, dated 02.12.2019

Through the reference cited, this office has communicated the tentative inter-se-seniority list in the cadre of Royalty Inspectors working in this Department stating that the decision will be taken on seniority dispute between Direct Recruittees Vs Promotees in the cadre of Royalty Inspector soon after receipt of the final orders issued by the Hon'ble APAT in O.A.No.596/2019 & O.A.No.620/2019 filed by Asst. Geologist only.

The said memo was communicated to the Royalty Inspectors in the State through Department email on 03.12.2019.

In this regard, there are no other objections received from the Royalty Inspectors of this Department till date.

In view of the above circumstances, the seniority list communicated vide reference cited may be treated as final seniority list in the cadre of Royalty Inspector and communicated herewith for the panel year 2019-20 subject to outcome of the O.As/WPs/Representations if any.

Encl: (As above) Sd/- K.RAM GOPAL, I.A.S,
DIRECTOR OF MINES & GEOLOGY (FAC)

To
All the Royalty Inspectors in the Department of Mines & Geology by
Email through their controlling officers.

Copy to Personal Files of the individuals.

//ATTESTED//

Sd/- DEPUTY DIRECTOR (ADMN.)”

50. A reading of the impugned memo dated 21.01.2020 makes it evident that the Office Memo No.1376/E3/2013,dated 02.12.2019 has been referred therein, and was communicated to the Royalty Inspectors in the State through department e-mail on 03.12.2019 but it further states that in that regard there was no other objection received from the Royalty Inspectors of the department, and in view of that circumstance, the seniority list communicated as aforesaid was treated as final seniority list in the cadre of Royalty Inspectors for the panel year 2019-20 subject to outcome of O.As/W.Ps/Representations, if any.

51. The Court finds force in the submission of the learned counsel for the petitioners that once vide Memo dated 02.12.2019 it was specifically provided that the decision with respect to the dispute of seniority in the cadre of Royalty Inspectors would be taken after receipt of the final orders from the Tribunal in O.A.No.596 of 2019 and O.A.No.620 of 2019 filed by the Assistant Geologists only,

the 2nd respondent could not legally issue the impugned Memo dated 21.01.2020 as there is nothing in the memo dated 21.01.2020 to show that the mentioned O.A(s) were decided finally and that too without inviting any objections or without intimating the petitioners/Royalty Inspectors that the decision would be taken, notwithstanding the Memo dated 02.12.2019 or/and even during pendency of O.A.Nos.596 & 620 of 2019. The Memo dated 02.12.2019 though communicated the tentative seniority list for the panel year 2019-20, but in view of the detailed order as passed, if the same was to be finalized, specific objections should have been invited and opportunity should have been granted to the petitioners/Royalty Inspectors to file objections, if the 2nd respondent was not taking the petitioners' pending representation/objections as objection to the Memo dated 02.12.2019 termed as tentative seniority list for panel year 2019-20.

52. It is thus evident from record that the petitioners had filed their representations/objections through Office Memo dated 24.09.2018 in reference to 1st cited in Memo dated 02.12.2019, on the same subject, but their objections were neither considered in Memo dated 02.12.2019 nor later on in the impugned Memo dated 21.01.2020 which on the contrary was issued mentioning as if no objections were filed by the Royalty Inspectors.

53. It is further evident that Even Rule-4 (b) of the A.P.State Subordinate Service Rules 1996, was not taken into consideration, though in the Memo dated 02.12.2019 it was specifically mentioned that the seniority list shall be prepared by taking into consideration Rule 4(b) of the Rules 1996, as also the quota and rota

system, as per G.O.Ms.No.530 dated 04.10.2010 and the Circular memo dated 21.04.1999.

54. Learned counsel for the respondents 3 to 13 submitted that the seniority is determined by rule 34 read with rule 33 of the Rules 1996, according to which the seniority is to be determined by the date of first appointment to such service, class, category or grade and as the respondents 3 to 13 were granted promotion earlier in point of time than the entry of petitioners through direct recruitment, they would be senior to the petitioners on the post of Royalty Inspector.

55. The rules 1998 Special Rules do not provide for the determination of seniority, which is provided by Rules 33 and 34 of the A. P. State and Subordinate Services Rules 1996. However, it is the unanimous argument of all the counsels for the respondents that the seniority will be governed by rules 33 & 34 of the General rules as the special rules do not provide for any rule for determination of seniority.

56. Rules 33 & 34 of the Rules 1996 are reproduced as under:

“33. Seniority:- (a) The seniority of a person in a service, class, 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.

Provided that the seniority of a probationer or approved probationer in a service, class or category from which he stood reverted on the 1 st November, 1956 or prior to that date, shall be determined in the statewide gazetted posts in the Departments of the Secretariat and the offices of the Heads of Departments with reference to the notional date of continuous officiation with or without breaks in that service, class or category prior to the 1st November, 1956 to the date of re-appointment made thereafter, but it shall not disturb inter-seniority which obtained in the Andhra State. (This proviso shall be in force till 31st October, 1996).

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

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

(c) Whenever notional date of promotion is assigned, such date of notional promotion shall be taken into consideration for computing the qualifying length of service in the feeder category for promotion to the next higher category and that the notional service shall be counted for the purpose of declaration of probation also in the feeder category.

(d) The transfer of a person from one class or category of a service to another class or category of the same service, carrying the same pay of scale of pay shall not be treated as first appointment to the latter class or category for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the date of his regular appointment in the class or category from which he was transferred. Where any difficulty arises in applying this sub-rule, seniority shall be determined by the Government, if they are the appointing authority or in other cases, the authority next higher to the appointing authority shall determine the seniority.

(e) Where a member of a service, class or category is reduced for a specific period, to a lower service, class or category or grade:-

(i) in cases where the reduction does not operate to postpone future increment, the seniority of such member on re-promotion shall, unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service earlier rendered by him in the higher service, class or category.

(ii) in cases where the reduction operates to postpone future increment, the seniority of such member on repromotion shall, unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service earlier rendered by him in the higher service, class or category.

(f) **Seniority of a retrenched and reappointed person:** The seniority of a member of a service who is re-appointed after having been retrenched, owing to reduction of staff as a measure of economy, shall be determined in accordance with the date of such reappointment.

Provided that the inter-se-seniority of such members absorbed in the same service, class or category shall be determined.

(i) In any case in which re-appointment of such members was made in consultation with Public Service Commission or the other selecting authority, in accordance with the order of merit or the order of preference indicated by the said Public Service Commission or other selecting authority; and

(ii) in any other case, in accordance with the total length of service, in the same equivalent or higher service, class or category put in by such member prior to retrenchment.

(g) The seniority of an approved candidate who takes up military service before joining his appointment to any service, class or category shall, on his appointment to such service, class or category, on his return from the said military service, be determined in accordance with the order of preference shown in the authoritative list of candidates approved for appointment to the service, class or category.

Rule 34. Preparation of integrated or common Seniority List of persons belonging to different units of appointment: Where as integrated or common seniority list of a particular class, or category or grade in any service belonging to different units of appointment has to be prepared for the purpose of promotion or appointment by transfer to a class or category having different units of appointment or for any other purpose, such an integrated or common seniority list shall be prepared with reference to the provision of sub-rule (a) of rule 33, provided that the seniority list of the persons inter-se belonging to the same units shall not be disturbed.

Explanation: The principle specified in this rule shall be applicable even where a common integrated list is required to be prepared for categories in different services classes or categories.”

57. In view of Rule 33 (a) of the General Rules, the seniority of a person in a service, class, category or grade shall be determined by the date of first appointment to such service, class or grade. There cannot be any dispute on the submission of the learned counsels for the respondents to that effect based on rule 33 of the Rules 1996.

58. In ***K. Meghachandra Singh v. Ningam Siro***⁶ the Hon'ble Apex Court held that the seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant Service Rules. The seniority cannot be given to an employee who is yet to be born in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.

59. But, when it comes to the matter of promotion, the promotion can be made only against the post under the promotion quota. The petitioners specific objection was to place the direct recruits jointed in the year 2012 in the substantive vacancies occupied by the promotes as per the Rules 1996. Consequently the 2nd respondent was required to consider this aspect of the matter, if the promotion was made within the promotion quota posts or promotion was granted against the posts which should have been earmarked as per rule 4(b)(iii) of the General Rules for direct recruitment.

60. The promotees can have no right of promotion against the posts earmarked for direct recruitment in the absence of any specific provision. They will

⁶ (2020) 5 SCC 689

have right to promotion against the posts falling under promotion quota and if the promotions were made in excess of promotion quota affecting the quota for direct recruitment, the same shall certainly adversely affect the seniority matter of Royalty Inspector coming into cadre by direct recruitment. This will also have an impact on the consideration of the date of entry / birth in the cadre of Royalty Inspectors by direct recruitment or/and by promotion, under rule 33 (a) of the General Rules.

61. In the present case rule 4(b), explanation-(ii) of the General Rules clearly provides that the posts earmarked for direct recruitment shall be filled by direct recruitment strictly, and not by any other mode and as such any promotion made contrary to rule 4(b) would not enure to the benefit of such promotes for grant of seniority over the direct recruits. Rule 33 (a) of the General Rules cannot be read ignoring rule 4(b) of the same General rules.

62. In ***C. Yamini v. State of A.P.***⁷ the Hon'ble Apex Court held that the claim of seniority will depend upon several factors, nature of appointment, rules as per which the appointments are made and when appointments are made, were such appointments to the cadre posts or not, etc.

63. In ***Vinod Giri Goswami*** (supra), the promotions made in 2004 were in clear violation of the rules. The High Court treated the *ad hoc* appointment of the promotees, while granting them seniority, to be only procedural defect. The Hon'ble Apex Court held that it was not the procedural defect. There, the rule 24(4) of the Service Rules 2005 provided that the promotee was entitled to count ad hoc service provided he continuously worked till he was regularly promoted in a test within the

⁷ (2019) 17 SCC 228

promote quota. The Hon'ble Apex Court held that the High Court did not record any finding on this very important prerequisite whether promotes appointed on ad hoc posts in 2004 continuously worked in a post within the promote quota. The Hon'ble Apex Court held that the promotes were not entitled to claim seniority from the date of initial appointments as Deputy Collectors.

64. It is apt to refer paragraphs – 17 to 19 of ***Vinod Giri Goswami*** (supra) as under:

“17. Essentially, two points require to be determined in these appeals. The first relates to the right of the promotees to count the period of their *ad hoc* service for the purpose of seniority. The second pertains to the correctness of the Office Memorandum dated 21-10-2015. In *Direct Recruit Class II Engg. Officers' Assn. [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339]*, this Court held that the seniority of a person has to be counted from the date of his initial appointment if he was appointed in a post in accordance with the Rules. The corollary is that where the initial appointment is only *ad hoc* and not according to Rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for determining seniority. It was further held that the period of officiation can be counted if the initial appointment is not made by following the procedure laid down by the Rules but the appointees continued in the post uninterruptedly till the regularisation of his service in accordance with the Rules. This Court settled a controversy relating to the application of the principles laid down in *Direct Recruit Class II Engg. Officers' Assn. [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339]* by a judgment in *State of W.B. v. Aghore Nath Dey [State of W.B. v. Aghore Nath Dey, (1993) 3 SCC 371 : 1993 SCC (L&S) 783]*. It was held as follows: (*Aghore Nath Dey case [State of W.B. v. Aghore Nath Dey, (1993) 3 SCC 371 : 1993 SCC (L&S) 783]*, SCC pp. 382-83, paras 22-25)

“22. There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly

excluded by conclusion (A). We may, therefore, first refer to conclusion (A). **It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed “according to rules”.** The corollary set out in conclusion (A), then is, that ‘where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such posts cannot be taken into account for considering the seniority’. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stopgap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority.

23. This being the obvious inference from conclusion (A), the question is whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the corollary in conclusion (A), since the two conclusions cannot be read in conflict with each other.

24. The question, therefore, is of the category which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A).

25. In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, ‘if the initial appointment is not made by following the procedure laid down by the “rules” and the latter expression ‘till the regularisation of his service in accordance with the rules’. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural

requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A).”

“18. In the instant case, the promotees were appointed on *ad hoc* basis in the year 2004. There is no dispute regarding their appointment on a regular basis in the year 2007. According to the 1982 Rules and the 2005 Rules, appointment by promotion to the post of Deputy Collector shall be as per the promotion for selection in Consultation with the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970. Procedure for promotion is laid down in the 1970 Rules which provide that the eligibility list or lists have to be forwarded by the State Government to the Commission which conducts the selection. The appointment of the promotees in the year 2004 is on *ad hoc* basis for a period of

one year without following the procedure prescribed under the Uttaranchal Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 2003.”

“19. As the promotions in 2004 were made in clear violation of the Rules, the promotees are not entitled to claim seniority from the dates of initial appointments as Deputy Collectors. The High Court committed an error in treating the *ad hoc* appointments of the promotees to be only procedurally defective to give them the benefit of the *ad hoc* service by applying the judgment in *Direct Recruit Class II Engg. Officers' Assn. [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339]* The High Court further went wrong in holding that the promotees were entitled for the benefit of *ad hoc* service in view of proviso to sub-rule (4) of Rule 24 of the 2005 Rules. No doubt, according to the proviso to sub-rule (4) of Rule 24 a promotee is entitled to count *ad hoc* service provided he continuously worked till he is regularly promoted in a post within the promotee quota. No finding is recorded by the High Court on this very important prerequisite whether promotees appointed on *ad hoc* basis in 2004 continuously worked in a post within the promotee quota.”

65. Though the present is not a case of any right of the promotes to count their *ad hoc* service for the purpose of seniority but the principle of law, which has clearly been laid down is that, to enable seniority to be counted from the date of initial appointment the incumbent of the posts has to be initially appointed according to the rules, and consequently the determination of the number of posts falling under direct recruitment and promotion quota and that the promotions were made within the promotion quota or in excess thereof became relevant in view of rule 4(b) of the General Rules.

66. In ***R. K. Mobisana Singh v. KH. Temba Singh***⁸, *ad hoc* promotes were granted retrospective regularization. The Hon'ble Apex Court held that although it could confer other service benefits on the officer concerned, but the same cannot be held to be of any assistance for reckoning seniority with retrospective effect. In some of the cases, it was found that the procedure had not been followed, and therefore, the question of their acquiring seniority over the direct recruits does not arise.

67. Therefore, the following exercise was legally required to be done by the 2nd respondent in the light of Rule 4 (b) of the Rules 1996, before finalizing the seniority list.

- 1) Determination of number of posts for direct recruitment, out of total posts of Royalty Inspectors, as per General Rule 4(b)(iii) which should not fall short of 30%, as the special rules do not provide for any percentage over and above 30%.
- 2) Determination of the posts falling under the promotion quota from the post of technical assistants.
- 3) Determination, if respondents 3 to 13 over whom the petitioners claim seniority, were granted promotion within the promotion quota posts or in excess thereof, encroaching upon the posts earmarked for direct recruits.
- 4) The effect of above determination on the date of first appointment of promotes to the post of Royalty Inspector.

⁸ (2008) 1 SCC 747

68. The above, is not to say that the promotion granted to the respondents 3 to 13 was not as per law nor that it was contrary to law, but it is to say that it was a relevant factor to be considered by the 2nd respondent and it was though clearly mentioned in the memo dated 02.12.2019 that Rule 4 (b) shall be considered but it was not considered in passing the impugned memo dated 21.01.2020.

69. Sri J. Sudheer, learned counsel for the petitioner, submitted that in the absence of any rule in A. P. Mining Service Rules indicating the cycle and order, and considering that initially the post of assistant geologist was the initial first level gazette post (Mining Service) for which the method of recruitment was by promotion from the post of royalty inspector as also direct recruitment, the same cycle as prescribed i.e., 7:3 out of 10 posts should be made applicable to the post of royalty inspector, which now become the first level gazette post (mining service) for which also the same method of direct recruit and promotion are prescribed.

70. The Court is not convinced with the aforesaid submission of the learned counsel for the petitioners.

71. Firstly, it is for the Rule making authority to consider to apply same cycle or order for the post of Royalty Inspectors as was applicable to the posts of assistant geologist earlier or to frame some other cycle or order. Pursuant to the General Rules, the gap, with respect to the cycle or order of filling of vacancies is to be filled by the rule making authority or by the executive. The Rules of 1996 also leave it i.e., providing for cycle or order to the special rules.

72. In ***K. Meghachandra Singh*** (supra) the judgment in the case of ***All India Judges' Assn.(3) v. Union of India***⁹ was referred, in which in paragraph-29 it was observed that "hardly if ever there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited." The Hon'ble Apex Court clarified that it would refer to an incumbent whose roster points have been fixed after their recruitment as per the prescribed quotas, and that judgment in ***All India Judges' Assn.(3)*** (supra) did not propose to say that seniority by roster points be fixed, ignoring the date, when the person is recruited. That judgment was not considering a situation where seniority is being fixed even before the incumbent is borne in service.

73. It is apt to refer paras-44 & 45 of ***K. Meghachandra Singh*** (supra) as under:

"44. It is now necessary to deal with Mr Patwalia's final contentions in reply, placing reliance on *All India Judges' Assn. (3) v. Union of India* [*All India Judges' Assn. (3) v. Union of India*, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] . He emphasises the following passage in para 29 of the judgment : (SCC p. 271)

"29. ... Hardly if ever there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited."

45. The above would, however, refer to an incumbent whose roster points have been fixed after their recruitment as per the prescribed quotas. The cited judgment does not propose to say that seniority by roster points be fixed, ignoring the date, when the person is recruited. The judgment obviously was not considering a situation, where seniority is being fixed even before the incumbent is borne in service. In any case, having regard to the specification made in the MPS Rules, 1965, which squarely governs the litigants here, the ratio in *All India Judges' Assn. (3)* [*All India Judges' Assn. (3) v. Union of India*, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] would be of no assistance, for the appellants."

74. Thus, the seniority by roster points is to be fixed when roster points have been fixed after recruitment of the incumbent as per the prescribed quotas,

⁹ (2002) 4 SCC 247

however, the date of recruitment cannot be ignored and seniority cannot be fixed from a date even before the incumbent was born in service.

75. The Court now proceeds to consider the submission of the learned counsel for respondents No.3 to 13 as also the learned AGP for Services-II that the gap in the rules can be filled by the executive instructions to supplement the rule in conformity with the provisions of the rules and the High Court in the exercise of its power of judicial review under Article 226 of the Constitution of India, would not issue directions to the executive or legislative to frame the rules or to frame rules in a particular manner.

76. In ***Distt.Registrar, Palghat*** (supra) and ***K. Dheenadhayalan*** (supra) upon which learned AGP-II placed reliance, it has been laid down by the Hon'ble Apex Court that if there exist any gap or void in the rules on a particular matter, not otherwise, the administrative instructions can be issued to supplement the statutory rules, which cannot supersede, supplant or superimpose on the statutory rules. In ***Mallikarjun Rao*** (supra) it has been held that the Court cannot usurp the functions of the executive or the legislature and even indirectly would not require the executive or the legislature to exercise its rules making power or to exercise the same in a particular manner.

77. Paras 12 and 13 of ***Mallikarjuna Rao*** (supra) upon which much emphasis was laid by the learned AGP-II read as under:

“12. This Court relying on *Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh* [(1971) 2 SCC 747: (1972) 1 SCR 940] and *State of Himachal Pradesh v. A Parent of a Student of Medical*

College, Simla [(1985) 3 SCC 169] , held in *Asif Hameed v. State of Jammu & Kashmir* [1989 Supp (2) SCC 364] as under: (SCC p. 374, para 19)

“When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive....”

“13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India.”

78. Generally, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if it is not so, the Court must strike down the action, and while doing so the Court would not be acting as appellate authority and ordinarily would not direct in the matters of policy or of matters which lies within the sphere of the legislature or the executive.

79. It is also settled in law that the Court's function, primarily is to interpret the law and not to legislate. It has been held by the Hon'ble Apex Court in the case of ***V. K. Naswa v. Home Secretary, Union of India***¹⁰ held that the Court can neither legislate nor issue a direction to the legislature to enact the law in a particular manner. The Court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the Court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner.

80. At the same time there are judgments of the Hon'ble Apex Court on the other line as well.

81. In ***Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers***¹¹ it was held by Hon'ble the Apex Court that while dealing with the issue, in exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution, till such time the legislature acts to perform its role by enacting proper legislation to cover the field.

82. In ***Eera v. State (NCT of Delhi)***¹² the Hon'ble Apex Court held that if the purpose of legislation is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in supplying a word wherever necessary. It was further held that the Judge has to release himself from the chains of strict linguistic interpretation and pave the path that serves the

¹⁰ (2012) 2 SCC 542

¹¹ (2011) 8 SCC 568

¹² (2017) 15 SCC 133

soul of the legislative intention and in that event, he becomes a real creative constructionist Judge.

83. It is apt to refer para-64 of *Eera* (supra) as under:

“64. I have referred to the aforesaid authorities to highlight that legislative intention and the purpose of the legislation regard being had to the fact that context has to be appositely appreciated. It is the foremost duty of the Court while construing a provision to ascertain the intention of the legislature, for it is an accepted principle that the legislature expresses itself with use of correct words and in the absence of any ambiguity or the resultant consequence does not lead to any absurdity, there is no room to look for any other aid in the name of creativity. There is no quarrel over the proposition that the method of purposive construction has been adopted keeping in view the text and the context of the legislation, the mischief it intends to obliterate and the fundamental intention of the legislature when it comes to social welfare legislations. If the purpose is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in supplying a word wherever necessary. Authorities referred to hereinabove encompass various legislations wherein the legislature intended to cover various fields and address the issues. While interpreting a social welfare or beneficent legislation one has to be guided by the “colour”, “content” and the “context of statutes” and if it involves human rights, the conceptions of Procrustean justice and Lilliputian hollowness approach should be abandoned. The Judge has to release himself from the chains of strict linguistic interpretation and pave the path that serves the soul of the legislative intention and in that event, he becomes a real creative constructionist Judge.”

84. In *Eera* (supra) on the point of importance of separation of powers doctrine where the judiciary should not transgress from the field of law making into the field of legislative law making, Hon'ble *R.F.Nariman, J* in a separate but concurrent judgment observed and held as under in paragraphs-117 and 118:

“117. All this leads to whether Judges do creatively interpret statutes and are unjustifiably criticised as having in fact legislated, or whether in the guise of creative

interpretation they actually step outside the “*Lakshman Rekha*”. As Justice Cardozo has picturesquely put it : The Judge is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness (*see* : Cardozo, *Nature of Judicial Process*, p. 141). Opposed to this rather conservative view is the view of Holmes, J. in a celebrated dissent, in *Southern Pacific Co. v. Jensen* [*Southern Pacific Co. v. Jensen*, 1917 SCC OnLine US SC 117 : 61 L Ed 1086 : 244 US 205 (1917)] : (SCC OnLine US SC para 24 : US p. 221)

“24. ... I recognize without hesitation that Judges do and must legislate, but they can do so only *interstitially*; they are confined from molar to molecular motions.”

(emphasis supplied)

118. The Supreme Court of India has echoed the aforesaid statement in at least two judgments. In *V.C. Rangadurai v. D. Gopalan* [*V.C. Rangadurai v. D. Gopalan*, (1979) 1 SCC 308 : (1979) 1 SCR 1054] , Krishna Iyer, J. when confronted with the correct interpretation of Section 35(3) of the Advocates Act, 1961, held : (SCC pp. 312 & 313, paras 8 & 11 : SCR pp. 1059 & 1060)

“8. Speaking frankly, Section 35(3) has a mechanistic texture, a set of punitive pigeon holes, *but we may note that words grow in content with time and circumstance, that phrases are flexible in semantics, that the printed text is a set of vessels into which the court may pour appropriate judicial meaning.* That statute is sick which is allergic to change in sense which the times demand and the text does not countermand. That court is superficial which stops with the cognitive and declines the creative function of construction. So, we take the view that “quarrying” more meaning is permissible out of Section 35(3) and the appeal provisions, in the brooding background of social justice sanctified by Article 38, and of free legal aid enshrined by Article 39-A of the Constitution.

11. ... Judicial “Legisputation” to borrow a telling phrase of J. Cohen, is not legislation but application of a given legislation to new or unforeseen needs and situations broadly falling within the statutory provision. **In that sense, “interpretation is inescapably a kind of legislation” [Dickerson : *The***

Interpretation and Application of Statutes, p. 238]. This is not legislation stricto sensu but application, and is within the court's province.”

(emphasis supplied)

85. In *Eera* (supra) the judgment in *Directorate of Enforcement v. Deepak Mahajan*¹³ was referred, which referred to the case of *Seaford Court Estates Ltd. V. Asher*¹⁴ in which *Lord Denning* observed that “when the defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written word so as to give “force and life” to the intention of the legislature. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases”. The judgment in *Chandra Mohan v. State of U.P.*¹⁵ was also referred, in which it was held that the fundamental rule of interpretation is that in construing the provisions of the Constitution or the Act of Parliament, the Court “will have to find out the express intention from the words of the Constitution or the Act, as the case may be and eschew the construction which will lead to absurdity and give rise to practical inconvenience or make the provisions of the existing law nugatory”.

86. In *Eera* (supra) the Hon’ble Apex Court reaffirmed that it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical

¹³ (1994) 3 SCC 440

¹⁴ (1949) 2 KB 481

¹⁵ AIR 1966 SC 1987

inconvenience may result and the legislative exercise and its scope and object may not become futile.”

87. Recently, in ***State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd.***¹⁶ the Hon'ble Apex Court, pointing out the difference between interpretation and judicial legislation, observed that it is a fine one observing further that it has repeatedly been held that Judges do not merely interpret the law but also create law. The golden rule in determining whether the judiciary has crossed the 'Lakshman Rekha' in the guise of interpreting a statute has really iron out the creases or whether he has altered the material of which the Act is woven. In short, the difference is the well known philosophical difference between 'is' and 'ought'.

88. Consequently to submit that in no circumstance the Court can fill the *lacuna*, is too broad a submission. Generally, it is not the function of the Courts to legislate but while interpreting any law or in giving effect to a law, if the Court finds some *lacuna* or gap for which there are no executive/administrative instructions to fill the gap, the Courts would ordinarily not leave the matter, as it is, but would certainly interpret the law in a manner to fulfill and advance the object of the legislation and in doing so would be within its jurisdiction to issue necessary directions.

89. In the present case, the Court is neither legislating nor directing the State to legislate or to legislate in a particular manner. The Court in the fact situation considering the rules as they stand is only giving effect to those rules by issuing directions to comply with the rules operating in the field on the subject of seniority on the post of Royalty Inspector between direct recruits versus promotees, as per

¹⁶ (2021) 6 SCC 460

the intention of the legislature clear from rule 4 of the General Rules, in exercise of its constitutional obligation without encroaching upon the legislative field meant for legislature or the executive.

90. In ***Bharati Reddy v. State of Karnataka***¹⁷ the Hon'ble Apex Court held that interfering in exercise of writ jurisdiction is limited to judicial review of the decision-making process and not of the decision itself.

91. The decision making process required consideration of the petitioners' objection relating to seniority which have not been considered. Rule 4(b) has not been considered. The decision making process therefore is faulty.

92. In ***R. K. Mobisana Singh*** (supra) the Hon'ble Apex court held that seniority although is not a fundamental right but a civil right. Such a right of the direct recruits could not have been taken away without affording an opportunity of hearing to them.

93. Seniority, though not a fundamental right, but is a civil right and such right of the direct recruits/petitioners for consideration, could not have been settled, without consideration of their objections and thereby depriving them the opportunity of hearing.

94. In ***Mohd. Mustafa v. Union of India***¹⁸ the Hon'ble Apex Court held that the grounds on which administrative action is subject to judicial review are illegality, irrationality and procedural impropriety. It was further held that the conditions prompted by extraneous or irrelevant considerations are unreasonable and liable to be set aside by Courts in exercise of its power under judicial review. The Hon'ble

¹⁷ (2018) 6 SCC 162

¹⁸ (2022) 1 SCC 294

Apex Court further held that if the discretionary power has been exercised in disregard of relevant consideration, the Court will normally hold the action bad in law. Relevant, germane and valid considerations cannot be ignored or overlooked by an executive authority while taking a decision.

95. The matter requires a closure scrutiny afresh by the respondents, as the function relating to determination of *inter se* seniority is that of the State at the initial stage.

96. The competent authority/2nd respondent is therefore directed to determine the *inter se* seniority of the parties in view of the settled principles as also keeping in view the directions to follow, hereinafter.

97. For all the aforesaid reasons, the impugned final seniority list vide memo No.1376/E3/2013, dated 21.01.2020 deserves to be quashed and is accordingly quashed. The Writ Petition is allowed, with the following directions;

- 1) The 2nd respondent shall prepare the final seniority list of Royalty Inspectors;
 - a) after considering the petitioners' representations/objections dated 29.09.2018, 26.09.2018 and 28.09.2018 as mentioned in the Memo dated 02.12.2019; and
 - b) taking into consideration Rule-4(b) of A.P.State Subordinate Service Rules 1996, with respect to which the 2nd respondent, in the Office Memo dated 02.12.2019 clearly mentioned that Rule 4(b) of the Rules 1996 shall be taken into consideration; and
 - i. determining the number of posts of Royalty Inspector falling not below 30% for direct recruitment and accordingly determining

the number of posts falling in the promotion quota as well for technical assistants, and

- ii. determining whether the promotions made, from the posts of Technical Assistant to Royalty Inspector, were within the promotion quota posts or in excess thereof encroaching upon the posts under quota of direct recruitment, in violation of Rule 4(b) (ii) (iii) of the Rules 1996 and its effect on the date of their appointments on the post of Royalty Inspector under Rule 33 of the General Rules 1996.
- iii. confining the above exercise only with respect to the promotees over which the petitioners claim seniority, i.e., the respondents 3 to 13 herein.

c) With due opportunity of hearing to the Royalty Inspectors likely to be affected in such exercise.

- 2) It is open to the respondents 1 and 2 to frame rules or issue executive instructions indicating the cycle or order in which vacancies shall be filled by different methods of appointments pursuant to Rule 4 (b) (iv) of the Rules 1996.
- 3) The 2nd respondent shall complete entire exercise expeditiously and preferably within a period of 6 months from the date of production of copy of this judgment before the said respondent.

98. No order as to costs.

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

RAVI NATH TILHARI, J

Date: 02.09.2022

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Note:

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