

(2001) 10 AP CK 0044
In the Andhra Pradesh High Court
Case No : Writ Petition No. 12826 of 2000

B. Manga Rao

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 10-10-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 10(3), 19
Andhra Pradesh State and Subordinate Service Rules, 1962 — Rule 10(1), 24
Andhra Pradesh Treasury and Accounts Subordinate Service Rules, 1963 — Rule 3, 9
Constitution of India, 1950 — Article 141, 320, 371

Citation : (2002) 1 ALD 85

Hon'ble Judges : S.B. Sinha, C.J.; V.V.S. Rao, J

Bench : Division Bench

Advocate : P. Balakrishna Murthy, for the Appellant; Government Pleader for Services-III, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, CJ.

1. Effect of application of the Presidential Order in relation to a State project vis-a-vis the seniority of the employees is the question involved in this petition.

FACTS:

2. The President of India in exercise of his powers conferred upon him under Article 371D of the Constitution of India promulgated A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 with effect from 18-10-1975 in relation whereunto G.O. Ms. No.694, General Administration (SPF-A) Department, dated 29-10-1975 was issued.

3. The petitioner herein was appointed temporarily as a Supervisor under Rule 10 (a)(I) of the A.P. State and Subordinate Service Rules, 1962. Various gazetted and non-gazetted posts were excluded for the purpose of appointment from the purview of the A.P. Public Service Commission by reason of G.O.Ms.No.646,

General Administration (Ser-A) Department, dated 14-9-1979 which reads thus:

AD HOC REGULATION

It shall not be necessary for the Andhra Pradesh Public Service Commission to be consulted as respects all appointments made by direct recruitment to any posts in any category at all levels in the State and Subordinate services and arc continuing temporarily on 9th August, 1979 regarding any of the matters mentioned in Clause (3) of Article 320 of the Constitution of India :

Provided that the above provision shall not apply to appointments made by direct recruitment to the categories of Assistants and Upper Division Stenographers in the Departments of Secretariat.

It shall not also be necessary for the Andhra Pradesh Public Service Commission to be consulted as respects appointments to be made of persons specified in the above proviso to the lower posts of Junior Assistants and Lower Division Stenographers regarding any of the matters mentioned in Clause (3) of Article 320 of the Constitution of India.

4. The employees who are appointed under the Chief Engineer's general proceedings dated 28-2-1978 are regularised in service in terms of G.O, Ms. No.647, dated 14-9-1979. Pursuant to or in furtherance of the said G.O. Ms. No.647 the services of the petitioner are regularised and his probation period commenced in terms of General Rule 24(a)(ii) on or about 16-4-1980. The petitioner was allotted to Zone III by Engineer-in-Chief on 31-8-1981. He completed his period of probation on 27-3-1982.

5. The major development project of which the petitioner was an employee was brought under the purview of the Presidential Order by reason of G.O. Ms. No.455, dated 3-10-1985 stating:

In exercise of the powers conferred by Clauses (1) and (2) of Article 371D of the Constitution, the President hereby makes the following order further to amend the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 namely: -

1. This order may be called the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Amendment Order, 1985.

2. It shall come into force on the date of its publication in the official gazette.

In paragraph 14 of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 for Clause (c) the following clause shall be substituted, namely:-

"any post other than a post belonging to any of the non-gazetted categories in the ministerial and technical services in a major development project; and"

6. The petitioner obtained the qualification of Degree in Engineering i.e., B.Tech on 4-2-1988 and the Degree of M.Tech on 11-5-1993. The petitioner was

appointed as an Assistant Executive Engineer by transfer on or about 8-7-1988. As the petitioner was sought to be placed in Zone II he made a representation on 14-7-1997 to include his name in Zone III for consideration of his promotion to the post of Deputy Executive Engineer. As he did not get any relief at the hands of the State, he filed an application u/s 19 of the Administrative Tribunals Act before the A.P. Administrative Tribunal on or about 21-8-1997 which was marked as OA No.5213 of 1997 praying for the following relief:

To issue an appropriate order or direction directing the respondents herein to consider the case of the applicant for promotion to the post of Deputy Executive Engineer in Zone III by declaring any action taken in the preparation of the panel contrary to the aforesaid proceedings or the rules and pending clearance as being arbitrary, illegal, unconstitutional and null and void and accord all consequential and other attendant benefits as regards arrears of pay, seniority and such other benefits and pass such other and further orders or orders as may be found expedient or the interests of justice warrant.

7. During pendency of the said proceedings the juniors to the petitioner were promoted to the post of Deputy Executive Engineer in Zone III. The petitioner's request to consider his promotion in Zone III was rejected by a Government memo dated 25-11-1997.

8. In the counter-affidavit filed in the said original application the respondents took the stand that the services of the petitioner having been regularised by reason of G.O.Ms.No.647, he neither falls under zonal allottee (para 4 of the Presidential Order) nor under Zonal recruitee (para 5 of the Presidential Order) and hence he cannot claim promotion in Zone III.

9. By reason of the impugned judgment dated 16-3-2000 the learned Tribunal dismissed the application inter alia holding that the petitioner may produce his study certificate for the purpose of showing the Zone III should be allotted to him and not Zone II.

SUBMISSIONS:

10. Mr. P. Balakrishna Murthy, the learned Counsel appearing on behalf of the petitioner, took us through the entire Presidential order and submitted that having regard to the fact that G.O. Ms. No.455, dated 3-10-1985 had not been given a retrospective operation the petitioner who was holding the post of a supervisor which was a non-gazetted post must be held to have been absorbed in the State services as an existing employee and in that view of the matter paragraph 4 of the Presidential Order would be applicable and not paragraph 7 thereof as contended by the State. Study certificates, contends the learned Counsel, cannot have any relevance at this stage for the purpose of allotment of areas keeping in view the fact that the same has lost relevance in view of the fact that not only the petitioner was appointed as far back as on 28-2-1978, but his services had been regularized and he has also completed the period of probation.

11. The learned Counsel would submit that already 655 employees are in excess in Zone II. The learned Counsel would contend that all the candidates cannot be dumped in Zone II which would be in contravention of the decision of the Apex Court in G.S. Venkat Reddy and others etc. etc. Vs. Government of Andhra Pradesh and others, .

12. Mr. Samson Babu, the learned Counsel appearing on behalf of the respondents, on the other hand, submitted that the petitioner himself having filed a representation for consideration of his case for promotion in Zone III, cannot now be permitted to turn round and contend that he should be treated to be an existing employee in Zone III for the purpose of allotment. The learned Counsel would, therefore, submit that para 5 (2) and para 7 of the Presidential Order would apply in this case. Strong reliance in this connection has been placed on Vijay Kumar, I.A.S. Vs. State of Maharashtra and Others, , which has been followed in Government of Andhra Pradesh v. B. Satyanarayana Rao AIR 2000 SC 1729.

SCHEME OF THE PRESIDENTIAL ORDER:

13. Para 3 of the Presidential Order ordains the State Government to organize classes of posts in the civil services into different local cadres for different parts of the State. Para 4 provides for the manner in which persons holding posts shall be allotted to such cadres.

14. Para 5 of the Presidential Order reads thus:

Local cadres and transfer of persons:-(1) Each part of the State for which a local cadre has been organised in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters as may be specified by the State Government, in respect of that category of posts.

15. Para 6 provides as to how a district and zone shall be regarded as district and zonal areas. Para 7 stipulates the criteria as to when a candidate for direct recruitment to any post shall be regarded as a local candidate in relation to a local area. Para 8 provides for the percentage of the posts to be filled by direct recruitment at any time.

16. Para 11 provides for a non-obstanate clause.

17. By reason of para 113, any appointment and promotion made after the commencement of the order and before any local cadre has been organised under the provisions of the Order to any post which is required to be included in such cadre shall be provisional and shall be reviewed within a period of 12 months after such organisation. Para 14 saves certain posts from the application of the Order.

ISSUE:

18. Whether in view of the fact that major development projects are brought

under the purview of the Presidential Order by reason of G.O. Ms. No.455, dated 3-10-1985, the petitioner can be directed to produce study certificate.

FINDINGS:

19. The Presidential Order admittedly deals with two types of services: (a) those who were in service as on 18-10-1975 on which the said order came into force pursuant whereunto allotment of persons was made to various local cadres constituted in terms of para 3 having regard to the guidelines provided in para 4; (b) those who are appointed after 18-10-1975 as direct recruits are to be allotted to various zones or local cadres in terms of para 6, 7 and 8 which in turn would mean that their unit of appointment to the local cadre or zone would be such to which they were recruited.

20. The petitioner was not appointed through Public Service Commission. He was appointed by the Chief Engineer as supervisor on 28-2-1978 by way of temporary appointment. His services have been regularized and completion of his satisfactory probation was also declared. The petitioner, therefore, does not fall in any one of the above two groups viz., employees working as on 18-10-1975 and who had been allotted to various zones of direct recruits to the zonal cadre after 18-10-1975 in relation whereunto paras 6 to 8 of the Presidential Order would be applicable.

21. The Presidential Order does not contemplate how such employees should be treated to be belonging to one local cadre or the other. It is not in dispute that the major development project like Nagarjuna Sagar project, Srisaïlam project were initially exempted from the purview of the Presidential Order in terms of para 14 thereof. By reason of G.O. Ms. No.455, dated 3-10-1985 the said order was amended by substituting Clause (c) in the following terms:

any post other than the post belonging to any of the non-gazetted category in the ministerial and technical services in the major development project.

22. The petitioner admittedly had been working in Nagarjuna Sagar project and Srisaïlam project from the date of appointment till date, which falls in Zone III. It is also not in dispute that he had not worked at any point of time in any other zonal posts much less in Zone II.

23. It is also not in dispute that the Amendment in the Presidential Order has not been given retrospective effect and retroactive operation. In that view of the matter it goes beyond any cavil of doubt that the said amendment shall operate only from 3-10-1985 and applicability of one or the other provisions of the Presidential Order has to be considered having regard to the fact situation obtaining as on the said date.

24. Having regard to the aforementioned facts, applicability of para 6 to 8 of the Presidential order is ruled out. For the self-same reason even para 4 cannot be given effect to in such a case inasmuch as the criteria laid down therein viz., local area (para 6), local candidate (para 7) and reservation in the matter of

direct recruits (para 8) would not be applicable.

25. Study certificate is required to be filed only in relation to cases of local candidates in terms of para 7.

26. The petitioner while is service passed B.Tech and M.Tech and thus production of study certificates during employment would be wholly irrelevant.

27. It is, therefore, evident that I purported to be on the basis of study certificate the petitioner cannot be allotted to Zone II as the same is applicable only to direct recruitment in local cadres for the purpose of identification of local candidate and that too for the purpose of recruitment to a zonal post. We are, therefore, of the , opinion that the stand of the respondents to allot Zone II to the petitioner basing upon his study certificate is based on a wrong premise.

I 28. We may also notice the categorical statement made to the effect that there are more than 655 excess recruits in Zone II.

29. Another aspect of the matter must also be taken note of. The respondents as also the Tribunal have relied upon the judgment dated 15-6-1995 passed by the Tribunal in OA No.6116 of 1993. But the said judgment has been set aside by the Apex Court in SLP (Civil) No.23765 of 1995, dated 15-1-1997 remitting the matter back to the A.P. Administrative Tribunal whereafter the matter was heard and disposed of by a Full Bench of the Tribunal on 11-12-1998. As the aforementioned order dated 15-6-1995 passed in OA No.6116 of 1993 was set aside by the Apex Court, it is idle to contend that one or the other part of the said order had not been set aside.

30. In the aforementioned situation, in our opinion, a rule of purposive construction has to be taken recourse to.

31. By reason of Constitution (Thirty Second Amendment) Act, 1973, Article 371D was inserted in terms whereof emphasis was laid on equal distribution and balanced cadres.

32. Having regard to the fact that in the counter-affidavit itself it has been stated that there is already 655 excess recruitment to Zone II, we are of the opinion that in a case of this nature the applicability of para 8 of the Presidential Order is ruled out and the petitioner could not have been allotted Zone II purported to be on the basis of a study certificate or otherwise.

33. It is true that para 4 of the Presidential Order may not per se be held to be applicable, but for the aforementioned purpose the same will have a role to play having regard to the purport and object of the Presidential Order viz., equitable distribution and balanced cadre in so far as it would not be equitable to allot Zone II to the majority of the employees as a result whereof they would lose their right of seniority and promotion for ever.

34. The petitioner had been serving the organization from 28-2-1978. He, therefore, as on the date of coming into force of G.O.Ms.No.455 was an existing

employee. Under the general rule of seniority, his seniority is to be counted from the date of initial appointment. He, therefore, having not worked in any other zone, cannot lose his seniority. Seniority is a civil right. No employee, in absence of a clear provision in a statute can lose his seniority in the cadre to which he belongs and consequently lose his chance of promotion. In service jurisprudence an employee even ordinarily cannot be transferred from one cadre to the other save and except in terms of a statute, without his consent. What would be relevant, therefore, would be to determine his cadre as on the date of application of the Presidential Order in a case of this nature.

35. In *G.S. Venkat Reddy and others etc. etc. Vs. Government of Andhra Pradesh and others*, , the Apex Court has laid down the law as to how seniority of the concerned persons would be fixed. The said decision is binding on the State.

36. In *State of Andhra Pradesh and Another Vs. V. Sadanandam and Others*, , the Apex Court was considering a question as to whether amended Rule 3 of the A.P. Treasury and Accounts Subordinate Service Rules was violative of the A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975. The amended Rule 3 was struck down by the Tribunal as violative of the Presidential Order. The Apex Court did not agree with the reasonings of the learned Tribunal holding inter alia that the decision of the Full Bench whereupon reliance was placed for arriving at the said conclusion was not apposite as it was concerned with unamended Rule 3 which was framed long before the Presidential Order. The observations of the Apex Court are to the following effect:

.....We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. As already stated, the question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the Rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the policy of transfer adopted by the Government cannot be struck down by Tribunals or Court of law.

37. The decision of the Apex Court cannot be said to be apposite in the instant case inasmuch as this Court in this case is concerned with the applicability of one or the other provisions of the Presidential Order particularly having regard to the fact that the Presidential Order when originally framed did not contemplate a situation of this nature.

38. In *Sadanandam (supra)* the question centered round as to whether the State has power to fill a vacancy in a zone by transfer in relation whereto the

Government can exercise its overriding power under para 5 (2) of the Presidential Order. In the instant case, such a power has not been exercised by the State. The State has proceeded to pass the impugned order on a wholly wrong premise and on unjustifiable ground. In *B. Satyanarayana Rao's* case (supra) the only question which arose for consideration is as to whether the decision in *V. Sadanandam* (supra) was rendered per incuriam. The Apex Court held it was not.

39. It is a well settled principle of law that where the law is not clear, recourse must be taken to purposive interpretation.

Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, it was held:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

40. In *Anantha Kumar Bej v. State of West Bengal* 1999 (4) SLR 661, a Division Bench of the Calcutta High Court has noticed the authorities as regards purposive construction thus:

It is a well settled principle of law that despite absence of a rule, the Selection Committee is entitled to short list the candidates. Rule 9 (c)(ii) of the rules only gives a statutory recognition to the aforementioned service jurisprudence. In a case of this nature, therefore, the doctrine of purposive interpretation should be invoked, and in such a situation the word "written test" must be held to be incorporated within the word "interview". The answer to the question posed in this appeal, thus in the opinion of this Court, should be rendered in affirmative as otherwise the word "written examination" would become totally otiose. Such a construction is permissible by taking recourse to the doctrine of strained construction, as has been elaborately dealt in by Francis Bennion in his *Statutory Interpretation*.

41. In Francis Bennion's *Statutory Interpretation*, (Second edition), as regards the rule of "purposive construction", it has been stated at Section 304 as under;

A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in the Code called a purposive-and-literal construction);

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).

42. In *Jones v. Wrotham Park Settled Estates* (1980) AC 74 the law is stated in the following term:-

.....I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a Court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it. *Kammins Ballrooms Co. Limited v. Zenith Investments (Torquay) Limited* 1971 AC 850 provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and parliament had by inadvertence overlooked, and so omitted to deal with an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a Court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which parliament has passed.

43. In *Hameedia Hardware Stores*, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, , the "rule of addition of word" had been held to be permissible in the following words:-

We are of the view that having regard to the pattern in which Clause (a) of Sub-section (3) of Section 10 of the Act is enacted and also the context, the words "if the landlord required it for his own use or for the use of any member of his family" which are found in Sub-clause (ii) of Section 10(3)(a) of the Act have to be read also into Sub-clause (iii) of Section 10(3)(a) of the Act. Sub-clauses (ii) and (iii) both deal with the non-residential buildings. They could have been enacted as one Sub-clause by adding a conjunction "and" between the said two Sub-clauses, in which event the cause would have read thus: in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord required it for his own use or for the use of any

member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own; and in case it is any other non-residential building, if the landlord or member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own." If the two Sub-clauses are not so read, it would lead to an absurd result.

44. Further, a decision is an authority for what it decides and not what can be logically deduced therefrom. In *Dias on Jurisprudence*, fifth Edition at page 143, it is stated-

Pronouncements of law, which are not part of the ratio decidendi are classed as obiter "dicta and are not authoritative. Rationale and dicta tend to shade into each other. The former have law-quality and are binding on lower Courts; dicta, too, have law quality but are not binding at all. Vis-a-vis a higher Court even the ratio decidendi of a lower Court decision has only persuasive force like that of a dictum. It has been pointed out that some dicta are so authoritative that the distinction between ratio and dictum is reduced to vanishing point. Dicta, which have no force, are propositions stated by way of illustration or on hypothetical facts. Greater difficulties attend rulings of law which are subsequently relegated to the status of dicta by interpretation. The distinction in such cases between ratio and dictum is but a device employed by subsequent Courts for the adoption or rejection of doctrine expressed in previous cases according to the inclination of the Judges. An example would be the treatment of Lord Atkin's neighbour proposition in subsequent cases.

In *Salmond on Jurisprudence* 12th Edition, page 29, it is stated -

One of the essential features of the doctrine of precedent in the common law is that rules of law are developed in the very process of application. This means that they are created by judges and not by teachers and other academic lawyers. However, learned they may be. It also means that they are created by judges only when acting as Judges i.e., when deciding cases and not for example when giving lectures or other addresses; statements made by judges in their extra-judicial capacity, like other extra-judicial opinions, are without binding authority. For the fundamental notion is that the law should result from being applied to live issues raised between actual parties and argued on both sides.

In the course of his judgment, however, a Judge may let fall various observations not precisely relevant to the issue before him. He may for instance illustrate his general reasoning by reference to hypothetical situation and the law which he considers to apply to them. Here of course, since the issue is not one that arises between the parties, full argument by Counsel will be lacking, so that it would be unwise to accord the observation equal weight with that given to his actual decision. Or again, having decided the case on one point, the Judge may feel it unnecessary to pronounce on the other points raised by the parties, but he may nevertheless want to indicate how he would have decided these points if

necessary. Here again we are not given the Judge's final decision on a live issue, so that once more it would be unwise to endow it with as much authority as the actual decision. These observations by the way, obiter dicta are without binding authority, but are nonetheless important, not only do they help to rationalize the law but they serve to suggest solutions to problems not yet decided by Courts. Indeed dicta of the House of Lords or of Judges who were masters of their fields, like Lord Blackburn, may often in practice enjoy greater prestige than the rationale of lesser Judges.

45. In Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , Dr. A.S. Anand, J (as the learned Judge then was stated the law in the following terms:

.....It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court....."

46. In Jaya Sen v. Sujit K.R. Sarkar, 2000 (1) ILR A and N 145, it was held-

It is now well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well known that even a slight distinction in fact or an additional fact may make a lot of difference in decision making process (See Quinn v. Lealhain 1990 AER I, Krishna Kumar v. Union of India 1990 (4) SCC 2070), Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , The Regional Manager and Another Vs. Pawan Kumar Dubey, and Municipal Corporation of Delhi v. Gurnam Kaur 1988 (1) SCC 101.

47. It is also a settled law that a decision is not an authority on a point which was not argued [see Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut,].

48. In A-One Granites v. State of UP. 2001 AIR SCW 848, it is observed:

The first question which falls for consideration of this Court is as to whether the question regarding applicability of Rule 72 of the rules in relation to the present lease is concluded by the earlier decision of this Court rendered in Prem Nath Sharma Vs. State of U.P. and another, . From a bare perusal of the said judgment of this Court it would be clear that the question as to whether Rule 72 was applicable or not was never canvassed before this Court and the only question which was considered was whether there was violation of the said rule.

This question was considered by the Court of Appeal in Lancaster Motor Co., (London) Limited v. Bremith Limited (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment.

49. In *Arnit Das Vs. State of Bihar*, , the Apex Court observed:

A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined.

50. A decision, having regard to the aforementioned authoritative pronouncements of the Apex Court must, thus, be read in the context in which the same has been rendered. A decision as is well known cannot be read as a statute. The ratio must be culled out from a decision upon reading the judgment in its entirety and not in isolation.

51. For the reasons aforementioned, we are of the opinion that the learned Tribunal committed a manifest error in holding that the petitioner should be allotted to Zone II in terms of his study certificates. It is set aside accordingly.

52. In the result the writ petition is allowed. There shall be no order as to costs.