
(2003) 07 AP CK 0096

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2868 and 2904 of 2002

K. Ananda Reddy

APPELLANT

Vs

APPSC and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Constitution of India, 1950 — Article 16(1), 21, 226

Citation : (2003) 6 ALD 803 : (2003) 6 ALT 614

Hon'ble Judges : Tamada Gopala Krishna, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : J.R. Manohar Rao, for the Petitioner in WP No. 2868 of 2002 and Noory Rama Mohana Rao, for the Petitioner in WP No. 2904 of 2002, for the Appellant; P. Naveen Rao and A.A.G., for Respondent Nos. 2 to 9 in WP No. 2868 and for Respondent Nos. 2 to 4 in WP No. 2904 of 2002, for the Respondent

Judgement

G. Bikshapathy, J.—Both the writ petitions are being disposed of by this order as they arise common questions of law.

2. Unemployment in the country has reached its peak level as to force the unemployed persons to penetrate into the functioning of the State administration also. The present case is an apt illustration, where the unemployed educated youth are trying to find deficiencies on the part of State Government in fulfilling the constitutional obligation of providing employment to its citizens and seeking direction to the Government to fill up certain posts, which were advertised by the Andhra Pradesh Public Service Commission (for short "the A.P.P.S.C.").

3. Coming to the actual matrix of the facts, the Andhra Pradesh Public Service Commission (for short "A.P.P.S.C.") issued advertisement bearing No. 10 of 1999 dated 28-12-1999 for recruitment to various posts under Group-n Services, which are required to be filled by direct recruitment. The executive posts as well as non-executive posts in 27 departments of Government have been notified and the procedure of making an application and the options to be given by each of the applicant have been stipulated in the said advertisement. In respect of the

few departments number of posts to be filled have been mentioned in the justification, but in majority of cases in column "Number of Posts" it was mentioned "awaited". It is also stated that the present employment notification is issued for Group-n Services after a gap of nearly one decade. Pursuant to the advertisement notified by the A.P.S.C., large number of candidates i.e., over three and half lakh candidates, had applied and appeared for the tests. But, however, the grievance of the petitioners is that vacancies have not been filled up, but only a microscopic appointments were made, that too in the cadre of Municipal Commissioner Grade-III; Assistant Commercial Tax Officers and Assistant Labour Officer in Executive posts; and in non-executive cadre, only Assistant Section Officers. Except these posts, other posts have not been filled up.

Therefore, assailing the inaction on the part of the State as violative of Articles 14 and 16 of the Constitution of India, O.As were filed before the Tribunal seeking directions to the respondents to fill up the posts on the basis of the selections made in pursuance of the Advertisement No. 10 of 1999.

4. The learned Tribunal after hearing the matter at length disposed of the O.A. Nos. 7443 of 2000 and batch by a common order dated 21-11-2001 directing the Government to act with due rationale and take up the recruitment process at the earliest after the surplus manpower is adjusted, if not already adjusted and in case, if it is already adjusted, notify the balance of vacancies due to be filled up by direct recruitment by not making any promotions to the posts earmarked for direct recruitment. The relief granted by the Tribunal relating to the recruitment in the cadre of Assistant Section Officer has become infructuous as the said posts have now been filled up. As on today, there is no grievance about the said direction.

5. But, however, the Tribunal refused to grant any directions with regard to the filling up the posts in the remaining cadres and it observed as follows:

"....Though we do not like to give any direction to the Government at this juncture regarding the vacancies that ought to have been filled through direct recruitment in various other categories of posts, we expect the Government to act with due rationale and take up the recruitment process at the earliest after the surplus manpower is adjusted, if not already adjusted and in case, if it is already adjusted, notify the balance of vacancies due to be filled by direct recruitment by not making any promotions to such posts earmarked for direct recruitment."

6. Aggrieved by the said directions, some of the applicants have filed writ petitions before this Court.

7. Learned Counsel appearing for the writ petitioners Mr. Nooty Rammohan Rao and Mr. J.R. Manohar Rao submit that the order of the Tribunal in not granting positive directions to the respondents to fill up the vacancies as notified in the Advertisement No. 10 of 1999 is illegal and offends Articles 14 and 16 of the

Constitution of India. They also submit that the posts were advertised by the A.P.S.C. basing on the availability of vacancies and, the candidates were subjected to test and other selection process and therefore, they have legitimate expectation of appointment. Learned Counsel would also submit that the Government has been adopting unfair yardsticks in regard to the filling up of vacancies by direct recruitment. Under the relevant service rules in various cadres, the ratio between promotees and direct recruits is stipulated and the Government not only filled up the vacancies meant for in-service candidates by promotion, but even encroached on the quota meant for direct recruits creating illegal imbalance among the direct recruits and the promotees. Such a course of action is illegal and contrary to law. By that process the learned Counsel would submit that the very purpose of reserving the vacancies for the candidates by direct recruitment is frustrated and eligible candidates are not allowed to get employment in Government service. It is their case that though the petitioners have no constitutional right for appointment, yet they have a right to be considered for appointment. This meagre right is not being allowed to be enjoyed by the unemployed. The Government thus has been circumventing the process of filling up the vacancies meant for direct recruitment. Thus, learned Counsel would try to launch three pronged attack viz., the Government has not been able to maintain balance of sanctioned cadre strength in the stipulated ratio in each cadre and that the promotees quota has been filled up to 100%; apart from that the quota meant for direct recruitment has also been filled by promotees in some cases. Thus creating imbalance between these two cadres which is wholly unjust and the same has to be set aside. While the Government has the power available either to issue appointment orders or to cancel the same, which power is solely rests with the sovereign Government and such power ought to be exercised in a fair and reasonable manner. In the instant case, respondents have flouted the relevant statutory recruitment rules. Thus, they submitted that the order of the Tribunal is liable to be set aside.

8. Learned Counsel would also rely on the judgment of the Karnataka High Court in Nanjunda Swamy v. State of Karnataka, 1980 (1) SLR 836.

9. On the other hand, learned Additional Advocate General would vehemently submit that de hors the merits of the case, it is the prerogative of the Government either to fill up or not to fill up the posts and there cannot be any mandamus from the High Court to direct the Government to fill up the vacancies and he relies on the decisions of the Supreme Court, which will be referred to in the course of considering the issues.

10. Learned Additional Advocate General would, however submit that a specific procedure has been prescribed by the Government for making recruitment to various posts. According to G.O. Ms. No.275 Finance and Planning Department, dated 14-12-1995 (for short "the G.O. Ms. No. 275"), the departments, where the vacancies exist, should send a specific requisition to the Finance Department and the Finance Department has to consider the same with reference to the

necessity to fill up the vacancies duly taking into consideration the aspect of surplus man power and also the financial implications. In the cases on hand, this exercise was not done by the requisitioning department and wherever the requisition was sent in conformity with the G.O. Ms. No. 275, those cases were cleared. The other vacancies, which were notified by the A.P.P.S.C., did not have the approval from the Finance Department. He further contends that no requisition was sent to the Finance Department by the heads of the department to fill up the vacancies by direct recruitment and, therefore, the State Government cannot be found fault with for not appointing the candidates. When no indent is placed by the departments concerned, the question of appointing the candidates would not arise, even though the recruitment process has taken place by the A.P.P.S.C., it is his case that except four departments for which recruitment was conducted by the A.P.P.S.C., no requisition was sent to the A.P.P.S.C. for filling up the other posts. He thus submits that the notification issued by the A.P.P.S.C. is not binding on the State Government. Hence, the order of the Tribunal is quite valid.

11. Learned Additional Advocate-General relies on the decisions of the Supreme Court in *The State of Haryana Vs. Subash Chander Marwaha and Others*, , *Union of Public Service Commission Vs. Gaurav Dwivedi and Others*, , and *Vinodan T. and Others Vs. University of Calicut and Others*, .

12. Learned Counsel for the A.P.P.S.C., would submit that while accepting that there is no direct requisition from the Finance Department of the Government of Andhra Pradesh, but yet in some cases, it is stated, that as per the usual practice and taking into consideration Rule 3 of the Rules of Procedure framed by the A.P.P.S.C., the vacancies will be notified and the recruitment will take place pending the clearance of appointments by the Government depending upon the various vacancy position. Therefore, A.P.P.S.C., has followed the procedure, which was hitherto being followed in the earlier recruitments. It is also submitted that they have conducted the tests for the posts advertised in pursuance of the notification and the selection process has been completed and as soon as the requisition is received from the Government for placement the final selection list will be released.

13. The issue that arises for consideration is whether the order of the Tribunal in refusing to grant direction to the Government to fill up the vacancies as advertised in the Notification No. 10 of 1999 is sustainable.

14. We may make it clear that, we are not concerned with the posts, which have already been filled up viz., Municipal Commissioners-Grade-III, Assistant Labour Officers and A.C.T.Os. in executive cadre and Assistant Section Officers in the A.P. Secretariat Services in non-executive posts. In the notification, in respect of some of the posts, number of vacancies have not been specified but under the said column it is stated "awaited". But we cannot loose sight of what was the nature of advertisement i.e., direct recruitment under various service rules. It is also not in dispute that service rules were framed under proviso to Article 309 of

the Constitution of India stipulating the method and manner of appointment to each cadre post by earmarking ratio between promotees and direct recruits. It is also admitted that the posts for appointment have to be filled up through two channels. One method is by means of promotion from cadres in accordance with rules and the other method is by direct recruitment. We are not concerned with the filling up of posts by promotion; and it is according to the learned Additional Advocate General that they have been filling up vacancies and there is no grievance about it before us. As far as the filling up of vacancies by direct recruitment is concerned, it is to be noticed that when the service rules provide creating two channels for filling up the posts, it is all the more necessary that they should always maintain equilibrium between direct recruits and promotees and it is not open for the State to contend that they can only fill up the posts through the means of promotions and not by direct recruitment as it has got a prerogative right in the matter of filling up of vacancies. However, by this process the State cannot create imbalance between the unemployed youth seeking direct recruitment and promotees. The very purpose will be frustrated if the outsiders were not considered and the unemployed will be unemployed forever. As already noticed earlier, more than three lakhs candidates have appeared for the recruitment process and out of this, a paltry number of posts - about 245 posts - were filled up in the cadre of Municipal Commissioner Grade-III, Assistant Commercial Tax Officer and Assistant Labour Officer and Assistant Section Officer, but major chunk of the recruitment is yet to be filled up. It is also on record that in certain cases, the heads of the department have also filled up certain vacancies by promotions, which were meant to be filled up by direct recruitment putting a condition in promotion orders that as soon as the candidates are selected by way of direct recruitment, they will be reverted back to their respective posts. By this process, it is clear that some of the posts meant for direct recruitment have also been occupied by promotees with a condition referred to supra.

15. The State has framed the respective service rules fixing the cadre strength in each category of post and method of recruitment. To illustrate if the cadre strength is fixed at 100 and the method of recruitment is by promotion and direct recruitment in the ratio of 1:1, it has to be ensured that at any given point of time there should be 50 promotee officers and 50 direct recruits. Filling the posts meant for direct recruits by promotees or vice versa beyond the stipulated ratio amount to violation of the statutory rules. It is also equally impermissible to keep the posts meant for direct recruits vacant and fill up the promotees quota. It not only disturbs the equilibrium of cadre strength but defeats the very purpose of opening entry to the unemployed educated youth who are languishing at the Employment Exchange corridors for years and decades. Though the right under Article 16(1) cannot be construed as an absolute right for appointment, yet, closing their entry clandestinely and suppressing their right to be considered for appointment would be nothing but negation of the right of public employment as envisaged under Article 16(1) of the Constitution of India.

16. The Supreme Court is very categorical on the issue. It has laid down that so long as the quota rule remains in force, neither promotees could be allotted substantive vacancies in the quota or direct recruits, nor could direct recruits be allotted promotional vacancies. One group cannot claim the quota fixed for the other group on the ground that quota was not filled up or the number of vacancies was in excess of quota. Once quota has been fixed according to rules, it could not alter except by fixing a fresh quota under the relevant rules and that too by following the prescribed manner. (See: V.B. Badami and Others Vs. State of Mysore and Others, , Keshav v. Union of India, (1992) 1 SCC 371, Prafulla v. Prakash (1993) Supp. 3 SCC 131).

17. The State Government tried to relax under the penumbra of Supreme Court decisions in State of Haryana v. Subash Chander Marwaha (supra), Union of Public Service Commission v. Gaurav Dwivedi (supra) and Vinodan T. v. University of Calicut case (supra). The learned Additional Advocate General submits that the sovereign Government has the prerogative either to fill up the vacancies or not to fill up and that the selected candidates have no legal voice to seek mandamus. He also submits that the very notification was issued by the A.P.P.S.C. without the approval of the Finance Department as required under G.O. Ms. No. 275, dated 14-12-1995, and therefore, the entire recruitment was invalid and not binding on the Government. The learned Counsel for A.P.P.S.C. submits that the notification was issued as per the usual method of recruitment and even on earlier occasions also the same procedure was followed.

18. The aforesaid contention prima facie appears to be appealing, but the same cannot be sustained, if a deeper scrutiny is made. The A.P.P.S.C. is a constitutional body established under Article 315 of the Constitution of India to serve the needs of the Union or State as the case may be particularly in respect of the matters relating to employment and appointments. It is an autonomous body constituted with all men of high integrity and qualifications. Therefore, when a notification was issued by the A.P.P.S.C., it does not lie in the mouth of the State to contend that they were not aware of the notification or that the A.P.P.S.C. has issued notification without the clearance from the State Government. Moreover, as admitted by the learned Counsel for the parties that the notification for the recruitment for appointment to the Group-II Services was issued after a gap of 10 years. The earlier notification was issued in 1990 and this is the next notification for such services. More than half million people responded to the notification and nearly 31/2 lakhs unemployed Graduates and Post Graduate youths have appeared for the test which took nearly two years for finalising the process. So, in such an event, it would not be open for the State to contend that they were not aware of the notification and it is also incomprehensible to digest such a contention. Moreover, the State did not take any steps to cancel the notification issued by the A.P.P.S.C. It is only when a grievance was made by the unemployed youth who have appeared for the selection process and awaiting for entry into Government service, such a contention is sought to be pressed into service.

19. Under those circumstances, we have to necessarily reject the contention of the learned Advocate General and hold that the Government shall be deemed to have the knowledge of the notification and the selection process undertaken by the constitutional body like A.P.P.S.C. The further contention of the learned Advocate General that the State has a prerogative either to appoint or not to appoint and that merely because the selection process was made by the A.P.P.S.C., it is not incumbent on the part of the Government to appoint the candidates, various considerations have to be taken into consideration and one of such condition is financial permissibility. It is always open for the Government to withhold appointments if the finance of the State Government would not permit such an expenditure to the State. It is true that the Government is a supreme body, which could come to a decision whether appointments should be made or not, even though the selection process has attained the finality. Mere selection by the A.P.P.S.C. would not confer any right on the selection of candidates for appointment. But, at the same time that principle cannot be invoked by the State at all times and in all events.

20. In Subash Chander Marwha's case (supra), the Supreme Court held that mere fact that certain candidates were selected for appointment to vacancies pursuant to an advertisement did not confer any right to be appointed to the post in question to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment.

21. It further held that the mere fact that candidates were chosen for appointment in respect of the advertisements did not entitle them to appointment. No right had vested in the candidates that their names having been entered in the select list, it is for the Government not to make appointment therefrom and fill the vacancies.

22. In I.J. Divakar and Others Vs. Government of Andhra Pradesh and Another, , the Supreme Court held thus:

"Inviting the applications for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application, as such at least the applicants had no right to challenge the Government order withdrawing the advertised post from the purview of the Commission"

23. However, the Supreme Court in order to do justice between the parties directed the Commission to finalise the select list on the basis of the viva voce tests conducted and marks assigned and forward the same to the Government within two months and further directed that if the appellants or any one of them fall within the zone of selection, they must be first appointed according to their place in the select list before any outsider is appointed to the post.

24. In Shankarsan Dash Vs. Union of India, , it was held that even, if number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to appointment against the existing vacancies. It was pointed out that ordinarily the

notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. The State is under no legal duty to fill up all or any of the vacancies by appointing candidates selected for that purpose. Albeit, the State must act in good faith and must not exercise its power mala fide or in an arbitrary manner.

25. In *S. Prakash and Another Vs. K.M. Kurian and Others*, , again it was reiterated by the Supreme Court that a candidate selected and kept in the selection list does not acquire any absolute right to appointment. It is open for the Government to decide how many candidates have to be appointed in service on the basis of the ratio or percentage prescribed in the Service Rules.

26. In *Jai Singh Dalai v. State of Haryana*, 1993 Supp. (2) SCC 600, the Supreme Court held thus:

"The law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection according to revised criteria. In the present case, the selection was yet to be made by the Commission. Therefore, the petitioners cannot even claim that they were selected for appointment by the Commission. The selection process had not been completed and before it could be completed the State Government reviewed its earlier decision and decided to revise the eligibility criteria for appointment. No right of petitioners has been violated."

27. In *Government of Orissa v. Haraprasad Das*, AIR 1998 SC 375, the Supreme Court observed thus:

"Mere empanelment or inclusion of one's name in the selection list does not give him a right to be appointed. So also if the Government decides not to make further appointments for a valid reason, it cannot be said that it has acted arbitrarily by not appointing those whose names are included in the selection list. Whether to fill up a post or not is a policy decision and unless it is shown to be arbitrary it is not open to the Tribunal to interfere with such decision of the Government and direct it to make appointments."

28. In *Vinodan T. and Others Vs. University of Calicut and Others*, , the Supreme Court observed thus:

"Persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open for the authorities to decide how many appointments should be made. However, the selected candidates have a right to compel such an authority, not to make appointments by travelling outside the list and to make the selection for appointment strictly in the order the candidates have been placed in the list."

29. In this regard, it has to be kept in view that each case has to be considered and decided on its own merits. We cannot apply the decisions in a straight

jacket formula. The line of decisions also indicate that when the Government violates its own rules, they can be directed by issue of mandamus to follow the statutory rules in making recruitment and appointment. In these cases, we are dealing with pre-appointment matters, yet, they fall within the wide sweep of right to employment.

30. We are concerned with the direct recruitment to Grade-II Services. Para I of the notification clearly spells out that the applications were invited for appointment to the posts in Grade-II Services by direct recruitment. The minimum educational qualification is graduation apart from other additional qualifications. It is not a case of mere preparation of panel of appointment.

31. Right to public employment is envisaged under Article 16 of the Constitution of India, of course, with certain limitations. Article 16(1) assures equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. This right also includes, the right to make an application for any post under the State and further right to be considered on merits for the post applied for. But, the Article does not guarantee right to be appointed. (See: Krishan Chander Nayar Vs. The Chairman, Central Tractor Organisation and Others, , Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others, , The High Court, Calcutta Vs. Amal Kumar Roy,).

32. A learned Single Judge of Karnataka High Court in Nanjunda Swamy v. State of Karnataka, case (supra), the rules framed under the proviso to Article 309 of the Constitution regulating the services of the State servants have statutory force and the State Government is under a statutory duty to act in accordance with the quota rules. Further if prompt steps are not taken to make direct recruitment, the very object of attracting and having younger persons with higher academic qualifications and experienced officials promoted from the lower cadres in the prescribed proportion in a given cadre at all times, which is the object and purpose of prescribing recruitment from these two sources would be defeated. Moreover, unless direct recruitment vacancies are advertised as and when they become available, the candidates who have acquired the necessary academic qualifications are likely to become disqualified on the ground of age if for a number of years the vacancies are not advertised resulting in deprivation of equality of opportunity for employment guaranteed under Clause (1) of Article 16 of the Constitution.

33. In A.K. Bhatnagar v. Union of India, 1991 (1) SLR 191, the Supreme Court held thus:

"On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation.

Very often Government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the Government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs."

34. The Supreme Court while interpreting the expression "matters relating to employment or appointment" held to include all matters in relation to employment both prior and subsequent to appointment. (See: State of Maharashtra Vs. Chandrabhan Tale,).

35. In K.V. Subba Rao and Others Vs. Government of Andhra Pradesh and Others, , the Supreme Court observed thus:

"Though Rule 3(h) fixes the ratio as 1:1 in respect of substantive vacancies, the recruitment has not been regular and systematic. We have come across several instances where the State Governments do not take steps to give effect to their own rules and, therefore, though there is one mode of prescription, in action a different situation is brought about. Rules have binding effect and they bind the State and the citizens alike once they are in force. In order that law may regulate conduct, the State has to feel bound by its own laws and by willingly abiding by the law exhibit an ideal situation for the citizens to emulate. We disapprove of the callous conduct of the State and direct that the rule shall henceforth be followed scrupulously by effecting recruitment at regular intervals according to the scheme of the rule. The State shall within four months from to-day compute the substantive vacancies in the cadre and determine the quota of direct recruits to the rank of Deputy Tahsildars and after working out the vacancies available to be filled by the direct recruitment on the basis of 50 per cent of the total number, fill up the same by making direct recruitment within a period of four months thereafter. Once that is done and regular recruitment is effected, the impasse which has now been created would not continue. The State is directed to draw up the seniority list on the basis of Rule 4(c) on or before 31-12-1988. We have given a long time to eliminate the scope for making of an application for extension."

36. In AIR 1997 3127 (SC) , Justice K. Ramaswamy speaking for himself observed thus:

"The Constitutional Courts alone are competent and is their primary constitutional duty to exercise the power of judicial review to pronounce upon the constitutionality of the Act, Rules and orders. Judicial review, therefore, is the basic feature upon which hinges the checks and balances blended with hindsight in the Constitution as people's sovereign power for their protection and establishment of egalitarian social order under the rule of law. The judicial review, therefore, is an integral part of the Constitution as its basic structure. The object of judicial review is to maintain constitutionalism and to uphold the constitutionality of the legislative Acts, administrative actions and quasi-

legislative orders within the confines of the Constitution, it is basically directed against the actions of the State or its instrumentalities.

Judicial review is an unavoidable necessity wherever there is a constant danger of legislative or executive lapses, and appalling erosion of ethical standards in the society. The absence of judicial review in the Indian Constitution would have created extreme social and economic revolutions leading to the complete annihilation of democracy and once again loss of sovereignty leading the country into perpetual slavery. Judicial review is a moral guarantee wrapped in legal commands. The judicial review is the basic feature of the Constitution, which has been entrusted to the Constitutional Courts, namely, the Supreme Court of India and High Courts under Article 32 and Articles 226 and 227 respectively. It is the constitutional duty and responsibility of the constitutional Courts, as assigned under the Constitution, to maintain the balance of power between the Legislature, the Executive, and the Judiciary. In a Parliamentary democracy, for the constitutional democracy to remain a living moral and intellectual force, it would be enforced through judicial review as an arch of democracy and rule of law. The judicial review is life breath of constitutionalism; Judicial review passes upon constitutionality of legislative Acts or administrative actions. The Courts either would enforce valid Acts/ actions or refuse to enforce them when found unconstitutional.

Judicial review does not concern itself with the merits of the Act or action but of the manner in which it has been done and its effect on constitutionalism. It, thereby, creates harmony between fundamental law namely, the Constitution and the executive action or legislative Act. Its fundamental object is to exert moral force upon the Legislature and the Executive to remain within the limits set by the Constitution and to save the people from tyranny of the legislative/executive actions. It protects personal liberties of the people their fundamental freedoms and creates social and economic harmony maintaining constitutional balance and justice in the society, equality of opportunity and of status with dignity of person. Social stability, progress and order under rule of law are the goals set by the Constitution.

The Constitutional Courts as sentinel on the qui vive, have fundamental duty and responsibility to build up an egalitarian social order under rule of law. In the exercise of the power of judicial review the Judges of the Constitutional Courts must, of necessity, be judicial statesmen. The judicial review is a linkage between the individual liberties and so social interest, political stability to counter balance the ultra virus the Acts or actions by judicious decision."

37. While upholding the fixation of ratio between the direct recruitees and the promotees as constitutionally permissible observed thus:

"The object of inducting young blood by direct recruitment into the Service and experienced officers by promotion is constitutionally permissible and valid to augment efficiency of service to inculcate discipline, honesty, integrity and

excellence in higher echelons of service. The prescription of the ratio between direct recruits and promotees is equally constitutionally permissible and the permissible limits shall not be altered by executive action unless the Executive has power. For exercise of such power it should give proper, valid and satisfactory explanation in writing prior to exercise of the said power, for deviation of the quota rules and that too as a short term arrangement to tide over administrative expedience."

38. In *K. Siva Reddy v. State of Andhra Pradesh*, 1988 (1) SLR 695, the Supreme Court observed that when the State Government by rules duly framed prescribed the method of recruitment and put the scheme into operation it had the obligation to comply with it. The explanation offered by the State Government for non-compliance of the requirements of the rules does not at all impress us. It was a case where, the Government was required to fill 62 1/2% of the vacancies by promotees and 37 1/2% by direct recruitment. But however, the Government has filled up the vacancies meant for direct recruits also by the promotees as a result of which the dispute for seniority between the direct recruits and promotees had cropped up. The Supreme Court observed that promotees should be confined to 62 1/2% while 37 1/2% of the vacancies should be filled by the direct recruits and that even if the promotees are placed in the posts meant for direct recruits, their seniority shall not be counted and the State Government was directed to make the recruitment of the shortfall in the direct recruitment vacancies up to the limit of 37 1/2% of the total substantive vacancies up to 31-12-1987 within four months by following the normal method of recruitment rules.

39. In *S. Ramanathan v. Union of India*, (2001) 2 SCC 118, the Supreme Court while observing that it is no doubt true that while exercising the discretionary jurisdiction, Courts examine the question of administrative chaos or unsettling the settled position, but in the absence of any material on record, the Court will not be justified in accepting the apprehension of any administrative chaos or unsettling the settled position. The Supreme Court further held "although infraction of the aforesaid provisions does not confer a vested right with an employee for requiring the Court to issue any mandamus, nonetheless in case of such infraction, if no explanation is forthcoming from the Central Government, indicating the circumstances under which the exercise could not be undertaken, the aggrieved party may well approach a Court and a Court in its turn would be well within its jurisdiction to issue appropriate directions, depending upon the circumstances of the case. When certain power has been conferred upon the Central Government for examining the cadre strength, necessarily. The same is coupled with a duty to comply with requirements of the law."

40. The State is bound to implement the Service Rules framed by it, which have statutory force. It is also solemn duty of the State to ensure that the right conferred under Article 16(1) of the Constitution of India should blossom into a right in reality and not a mirage right, It is the duty of the State to ensure that

the fundamental rights are to be implemented and enforced rather than curtailed on the superfluous plea of omnipotent power of the State Government in the matters of employment. The Government owes a duty to the public to be transparent in all its activities more especially when dealing with the enforcement of the fundamental rights of the citizens. No acceptable explanation is forthcoming as to how the Government could fill up the cadre strength only by promoting the in-service officers and keeping this slot meant for direct recruitment vacant or filled up by promotees with a condition that they will be reverted back as and when direct recruits are recruited. The violation of Service Rules is not only writ at large, but also aims at curtailing right of unemployed. The continued suppression of employment opportunities on the premise that the State had no sufficient revenues, would amount to suppressing the rights of livelihood enshrined under Article 21 of the Constitution of India. When the cadre strength has been fixed and inflow ratio has been stipulated, the Government cannot contend that they can fill up the posts as far as the promotional channel is concerned and refuse to make the appointments under direct recruitment for various reasons thereby violating the quota rule. The Supreme Court on all such occasions in cases referred to supra, has viewed the matter very seriously and directed the Government to maintain the quota at all times. Of course leeway was permissible under exceptional circumstances. But the executive fiat cannot be stretched to the extent of violating the solemn rules. The contention of financial constraint though there is no material whatsoever in this regard moreover, cannot be countenanced which if permitted would be nothing, but blowing hot and cold to suit the convenience of the Government.

41. No doubt it is true that it is the prerogative of the Government to fill up the vacancies according to its choice taking its financial exigencies etc., into consideration and it is also true that the High Court sitting under Article 226 of the Constitution of India cannot issue a mandamus compelling the Government to fill up the vacancies. But, in the instant case, the facts are entirely different. The A.P.P.S.C. without any direction from the Government has been conducting examinations and sending the same to the Government for ratification and the Government is ratifying the same. This is clear from the Notification No. 9/90 issued earlier. Similarly, A.P.P.S.C. under the Rules conferred taking various factors into consideration issued the present notification in the year 1999 for which almost three and half lakh candidates responded and the A.P.P.S.C. has completed the entire procedure i.e., conduct of written examination etc. At this juncture in view of precedents, it is not open for the Government to contend that it never directed the A.P.P.S.C. to notify the vacancies and the stand taken by the Government that it cannot be forced to fill up the vacancies particularly when the selection process is over and there are vacancies is highly reprehensible.

42. The Government being the model employer has to set an example to be emulated by private employers. But, in the guise of untenable pleas and by violating the statutory rules, it cannot extricate itself by trying to swim into the protective umbrella under the decisions referred to above. Thus, we hold that the

action of the respondents in not filling up the posts as advertised by the A.P.S.C. in the Notification No. 10 of 1999 is wholly illegal, mala fide and arbitrary. The Tribunal having recorded a finding that the Government itself violated the Statutory Rules refused to grant appropriate directions and thus failed to exercise the jurisdiction vested in it. It is to be noted that when once it is established that the Government has violated the statutory rules, it is always open for the Tribunal or this Court to issue appropriate directions to implement such statutory rules in their letter and spirit.

43. However, when the matter landed before this Court, this Court directed the Government to file fresh affidavits with regard to the vacancy position in various departments. Accordingly, the counter-affidavits were filed bringing out clear picture of the situation. On a thorough analysis of the counter-affidavits and statistics of the vacancies furnished by the Government, it is crystal clear that there are number of vacancies in various departments covered by the notification and they continued to be unfilled even till today thereby creating imbalance in the ratio to be maintained in each particular service. It is not the case of the Government that they have down sized the cadre strength of the each department. Therefore, the Government is bound to fill up the vacancies, which are meant for direct recruitment. We cannot also appreciate the action of the Government in filling up those posts by promotees for indefinite period, which would be nothing, but denying right of employment opportunities to the unemployed citizens of the State.

44. On directions issued by this Court from time to time, the State Government has filed successive counters. But, however, final and consolidated counter was filed in September, 2002. The Government in the said counter furnished the following information with reference to the Notification No. 10 of 1999 which reads as follows:-

"The information pertaining to posts advertised in 10/99 Notification of APPSC has since been received from concerned departments and is submitted to the Hon"ble High Court as annexures to this affidavit. For the sake of convenience the information previously supplied and now received is consolidated and updated and given as follows:

(1) Annexure-I pertains to 26 out of 27 Executive and Non-Executive posts notified by the APPSC in 10/99. For the post of Assistant-cum-Typist (Suit land No. 24 of APPSC list), one of the Head of Departments have furnished any vacancies. They have separately given vacancy position for typists which are covered in Annexure-IV.

(2) Annexure-II pertains to all other Executive posts not covered by the APPSC's notification.

(3) Annexure-III pertains to Head of Department-wise break up of posts of Junior Assistants covered by the APPSC's Notification in 10/99."

45. From the annexures the following is the vacancy position as far as Notification No. 10 of 1999 is concerned:

Statement Showing the Vacancies Meant For Direct Recruitment in Government Departments as per APPSC Advertisement of 10/99 as on 30-4-2002

Sl. No Name of the Sectt. Dept/Head Of Deptt/Post Vacancies Available from 1995 for Direct recruitment Filled through SMPC Filled through direct recruitment through APPSC and others means of recruitment Balance as on 30-4-2002 Remarks

1 2 3 4 5 6 7

/ . Executive Posts

1. Municipal Commissioner Gr.III in A.P. Municipal Administration Sub-Service 18 0 15 3

2. Assistant Commercial Tax Officer in A.P. Commercial Tax 164 0 0 164

3. Deputy Tahsildars in A.P. Revenue Sub-Service. 36 0 0 36

4. Sub-Registrar Gr.II in A.P. Registration Sub-Service. 38 0 4 34

5. Junior Employment Officer, in A.P. Employment Sub-Service. 13 0 0 13

6. Co-operative Sub-Registrars in A.P. Co-operative Sub-Service 299 0 32 267

7. Assistant Labour Officer in A.P. Labour Sub-Service 64 0 14 50

8. Extension Officer (Rural Dev.) in A.P. Panchayat Raj Sub-Service. 329 0 308 21

9. Excise Sub-Inspector in A.P. Excise Sub-Service 237 0 0 237

10. Executive Officer Gr.II in A.P. Panchayat Raj Sub-Service. 134 0 134 0

Total: 1332 0 507 825

/ . Non-Executive Post

11. Senior Accountant in A.P. Government Life Insurance Sub-Service 36 0 7 29

12. Auditor in A.P. Pay and Accounts Sub-Service. 30 7 0 23

13. Senior Accountant in A.P. Treasuries and Accounts Sub-Service. 95 0 8 87

14. Senior Auditor in A.P. Local Fund & Audit Sub-Service. 111 6 42 63

15. Assistant Section Officer in A.P. Secretariat Sub-Service. 141 0 107 34

16. Assistant Section Officer in A.P. Legislature Sub-Service. 0 0 0 0

17. Assistant Section Officer (Fin. & Plg. (Fin.) Dept.) in A.P. Secretariat Sub-Service. 17 0 0 17

18. Assistant Section Officer (Law Department in A.P. Secretariat Sub-Service. 6
0 4 2

19. Assistant Auditor in A.P. Pay & Accounts Sub-Service. 25 15 0 10

Total

20. Typist-cum-Assistant in A.P. Secretariat Sub-Service. 454 0 231 223

21. Typist-cum-Assistant in A.P. Legislature Sub-Service. 0 0 0 0

22. Typist-cum-Assistant (Fin. & Plg. (Fin.) Dept.) in A.P. Secretariat Sub-Service. 38 0 0 38

23. Typist-cum-Assistant (Law Department) in A.P. Secretariat Sub-Service. 11
0 1 10

24. Assistant-cum-Typist (Heads of Departments) in A.P. Ministerial Service.
377 15 162 200 As per Annexure -IV

25. junior Assistants (Heads of Departments) in A.P. Ministerial Service. 629 97
305 227 As per Annexure-III

26. Junior Accountant (Directorate) in A.P.Treasuries & Accounts Sub-Service.
114 52 11 51

27. junior Accountants (Directorate in A.P. Government Life Insurance Sub-Service. 48 42 3 3

Total 2132 234 881 1017

Grand Total 3464 234 1388 1842

46. From the aforesaid details, it is clear that as on 30-4-2002, 1,842 vacancies in various categories of posts as reflected in the aforesaid statement are earmarked for direct recruitment. Apart from that, as per the details furnished by the Government in Annexure-II relating to the vacancies meant for direct recruits in the Government departments, other than the department referred to in the statement appearing supra, the total vacancies to be filled up by the direct recruitment are 4,367 as on 30-4-2002.

47. Thus, a consolidated vacancies including the vacancies covered by the Notification No. 10 of 1999 in all the departments of the Government, the direct recruitment posts are available to the extent of 6,209. This itself indicates that large number of vacancies were existed in direct recruitment quota and these vacancies admittedly were not filled up and some of these posts out of the aforesaid vacancies have been filled up by promotees by making ad hoc promotions. However, we are only concerned with the posts advertised in Notification No. 10 of 1999, that too as on 30-8-2000. The vacancies which arose after 1-9-2000 have to be filled up by separate recruitment in which event separate notifications are required to be issued. We have already held that the

suppression of these vacancies and filling up the same by promotees is illegal and unfair. Since the vacancy position is available before this Court and the recruitment process has already been completed by the A.P.P.S.C., we find it appropriate to dispose of the writ petition with the following directions:

(a) That the Government shall assess the vacancy position in respect of the posts covered by the Notification No. 10 of 1999 as on 30-8-2002 and fill up the same by the candidates, who are selected by the Andhra Pradesh Public Service Commission duly observing the rules of reservation.

(b) The personnel, who are to be deployed and adjusted from the surplus manpower cell have already been reflected in the Annexure and the total vacancy position was arrived at after giving credit to the number of personnel deployed in the direct recruitment quota. However, if there is any surplus manpower still unadjusted as on 30-8-2000, the Government shall work out the same and deploy those persons and the appointment shall be made to the remaining vacancies.

(c) The persons, who were promoted and posted on temporary basis or ad hoc basis in the vacancies earmarked for direct recruitees shall be reverted back to their original posts.

(d) The Government shall strictly observe the rule relating to the ratio to be maintained between the direct recruitees and the promotees in accordance with the quota prescribed in the relevant Service Rules and neither excess intake shall be allowed to be crept in nor the deficiency is allowed to persist except in exceptional or unavoidable circumstances.

(e) The entire exercise shall be done within a period of six months from the date of receipt of a copy of this Order.

(f) It is also desirable that the Government takes appropriate and expeditious action to fill up the balance direct recruitment posts other than those which are notified under Notification No. 10 of 1999 which arose after 30-8-2000 in the posts covered by Notification No. 10 of 1999 and other posts not covered by the notification which continued to be unfilled for several years at the earliest possible time.

(g) The Government shall undertake review of vacancies every year and fill up the posts meant for direct recruitment in accordance with rules so as to maintain the ratio under the relevant Service Rules.

48. The Order of the Tribunal stands modified to the extent indicated above.

49. The writ petitions are accordingly disposed of.

50. No order as to costs.