

**(1998) 03 AP CK 0080**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 14946 of 1996**

K.L. Narasimha Rao

APPELLANT

Vs

District Collector and Others

RESPONDENT

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**Date of Decision :** 03-03-1998

**Acts Referred:**

**Citation :** (1998) 2 ALD 667 : (1998) 5 ALT 117

**Hon'ble Judges :** B.S.A. Swamy, J

**Bench :** Single Bench

**Advocate :** Mr. V. Veera Reddy, for the Appellant; Mr. G. Chandraiah and Mr. K. Chinna Bab, for the Respondent

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## **Judgement**

1. All these three matters can be disposed of by a common order as they relate to the promotion to the post of Senior Assistant in the District Schedule Caste Cooperative Society Limited, Khammam (for short "the Society"), and the parties are referred in this order as they are arrayed in Writ Petition No. 14946 of 1996.

2. One K.L. Narasimha Rao who is working as incharge Senior Assistant in the Engineering Wing of the Society, filed Writ Petition No.14946 of 1996, questioning the promotion of the 4th respondent S.Suryanarayana Sarma, who is no other than the petitioner in Writ Petition No. 14960 of 1996, as Senior Assistant vide proceedings Rc.No.AI/595/SC/90, dated 17-07-1996, of the Executive Director of the Society, by contending that he is the senior most among the categories of employees in the Society and in fact, working as incharge Senior Assistant since 1994. But, on the basis of the orders of this Court in Writ Petition 3631 of 1996, dated 29-02-1996, the 4th respondent has been promoted. He also stated that he preferred an appeal to the Chairman of the Society against this irregular promotion and as the Chairman failed to pass any order rectifying the injustice he was constrained to approach this Court, questioning the promotion of the 4th respondent.

3. At the stage of admission, having satisfied that the petitioner is the senior-

most from the seniority list published by the respondent Society, I directed the respondents therein, to review the promotion of the 4th respondent and consider the claims of all seniors in accordance with rules and promote the person selected. When this order has not been complied with, the petitioner filed Contempt Case No.9 of 1997 to take action against the contemnors for flouting the orders of this Court. After notice the contemnors filed counter, stating that the 4th respondent filed Writ Petition No.3631 of 1996, by contending that he was the only qualified person for promotion to the post of Senior Assistant, but the respondent was not considering his case for promotion on the ground that he has not put in minimum service of three years as Junior Assistant and they are trying to fill up the vacancy by a deputationist, though the Rule provides for promotion of a candidate who has put in a minimum service of two years in case candidate who has completed three years is not available. In those circumstances, this Court directed them to consider the case of the 4th respondent before filling up the vacancy by a deputationist. As he was not the senior-most candidate eligible for promotion, the Society did not take any action to promote him. Aggrieved by the said action of the Society, the 4th respondent filed Contempt Case No.626 of 1996, and though the Society brought to the notice of the learned Judge that there are seniors to him in the Society, the learned Judge directed the Society to give temporary ad hoc promotion to the 4th respondent and closed the contempt case. Pursuant to the orders in the contempt case, the 4th respondent was given temporary ad hoc promotion on 10-07-1996.

4. The respondents also brought to my notice that the 4th respondent having not satisfied with the temporary ad hoc promotion filed writ petition No. 14960 of 1996, seeking a direction from this Court to promote him on regular basis. At this stage, the Counsel appearing for the 4th respondent intervened and started contending that the petitioner is not eligible for promotion as his services were not regularised and his probation was not declared, whereas the services of his client (4th respondent) were not only regularised but, his probation was also declared. But, from the provisional list submitted, it is seen that while the petitioner joined service in the Engineering wing of the Society in the year 1987, the 4th respondent joined service in the Administrative Wing of the Society only in the year 1993. Having noticed this glaring irregularity, I directed the Registry to post Writ Petition No. 14960 of 1996 along with the writ petition and contempt case, so that all the matters can be heard together and the controversy can be resolved once for all. Thus all these cases are now listed before me for final hearing.

5. To resolve the above controversy, the factual background needs to be referred, and is as hereunder:

The Government in its wisdom felt it desirable to register an Apex Society, A.P.Scheduled Castes Cooperative Financial Corporation at the State Level and District Scheduled Castes Cooperative Societies at the District level, affiliated to

it to undertake various programmes for economic upliftment of the Scheduled Castes in the State. From among other things, the Apex Cooperative Society has to Coordinate, supervise and control the activities of the affiliated Societies. The Primary Societies at the District level were also registered under the provisions of the A. P. Cooperative Societies Act (for short "the Act") and it is a body corporate by itself having perpetual succession and common seal. As far as service conditions of the employees are concerned, each Society is a unit by itself and their service conditions are governed by special bye-laws framed by the Board of Directors and got approved by the General Body and registered by the Registrar. Under bye-law 29-VI, the Executive Officer of the Society is competent to appoint members of staff according to bye-laws governing the service conditions of the employees framed by the Society. Though each Society can frame its own special bye-laws governing the service conditions of its employees, to have a uniform method of recruitment, promotion, etc., the Corporation was giving guidelines to all the District Societies on the service conditions of the employees of each of the Societies for adoption by the General Body. The Managing Director of the Society in his Circular No.E.1/3331/APSC/90, dated 12-1-1990, issued guidelines governing the service conditions of the employees of the Society. As per this Circular, a Junior Assistant/ L.D.Steno/Typist, who is a graduate and who passed Accounts Test Part-I, conducted by the A.P.Public Service Commission, is eligible for promotion as Senior Assistant. (2) The promotion should be made on the basis of merit-cum-seniority. (3) One must have put in minimum service of 3 years in the lower cadre. At this stage it is useful to refer to one more aspect, i.e., as the District Societies are taking up various economic development programmes like construction of shopping complexes, poultry complexes, rural artisan complexes, dairy complexes and various other programmes, the Government felt it desirable to strengthen the District Society by creating an Engineering Wing to each of the Societies and the expenditure has to be met from major and petty supervision charges and accordingly, issued G.O.Ms.No.200 S.W.(SCP.III) Department, dated 12-09-1985. While a Superintending Engineer will be heading the Engineering Wing at the State level, Executive Engineer will be heading the Engineering Wing at the District level. Each Society will have one Divisional Office headed by Executive Engineer and two Sub-Divisional Officers headed by two Dy. Executive Engineers and each of these officers are provided with a post of Senior Assistant.

6. The petitioner seemed to have been appointed in the Engineering Wing since its inception at Khammam and it is not in dispute that he is in service since 1987. But, as different Managing Directors are taking different views with regard to the status of the staff working in the Engineering Wing, the Services of the ministerial staff working in the Engineering Wing could not be regularised all these years. In the meantime, the Dy. Executive Engineer kept the petitioner in full additional charge of the post of the Senior Assistant in his office with effect from 31-3-1994, consequent upon the transfer of the incumbent to Horticulture Section. By that time the Senior Assistant working in the Divisional Office on

deputation basis was repatriated to his parent Department after completion of the period of deputation and the Executive Engineer i.e., the 3rd respondent kept the petitioner in full additional charge of the post of Senior Assistant from 1-6-1994. Thus the petitioner is discharging the duties of Senior Assistant from 31-3-1994, without interruption,

7. Coming to the case of the 4th respondent, he seemed to have appointed as a Section-Writer on daily-wage basis on 11-8-1987. When his services sought to be terminated, he seemed to have filed a writ petition and this Court by order dated 24-12-1992, directed the respondents to consider the case of the 4th respondent along with others for regularisation. Ultimately, he seemed to have been appointed in a regular vacancy on 6-10-1993 and thereafter his services seemed to have been regularised on 27-12-1995 with effect from 6-10-1993 and his probation was also declared with effect from 6-10-1995. Taking advantage of the regularisation order, he filed Writ Petition No.3631 of 1996, seeking a direction to the respondents to promote him as Senior Assistant in the vacancy that is left un-filled all these years in the Engineering Wing, without insisting that he should complete three years of service, as he fulfilled all other qualifications and the Rule itself provides consideration of the cases of the employees who have put in a minimum of two years service. The circumstances leading to his appointment were already referred supra.

8. In the above factual background, the Court is called upon to decide the following issues:

(1) Whether the post of Senior Assistant is a selection post to be filled in on the basis of merit and ability as contended by the respondents or the post has to be filled in on the basis of merit-cum-seniority?

(2) Whether the ministerial staff working in the Engineering Wing of the Society has to be treated separately from the staff working in the Administrative Wing of the Society, more so, for the purpose of promotion?

(3) Whether the 4th respondent is entitled to have preference over others for the purpose of promotion to the post of Senior Assistant on the ground that his services were regularised and his probation was also declared ignoring the claims of the seniors as their services were not regularised for no fault of theirs?

I adjudicate the above issues in seriatum;

ISSUE No. 1:

As stated supra, it is not in dispute that the Corporation is empowered to Coordinate, supervise and control the activities of the affiliated Societies. In exercise of the said power, the Corporation issued Circular NO.E.1/8535/APSC/86, dated 02-12-1986, prescribing the method of recruitment, promotion and qualifications for holding the posts. As per this Circular, each District Society is provided with a Senior Assistant with the time scale of pay and the post of Senior Assistant has to be filled in by promotion from the post of Junior Assistant/

L.D.Steno/ Typist. In other words, all the three categories of posts were treated as feeder posts to Senior Assistant and the post can be filled in from among these categories of posts, and one must be a graduate in Arts/Science/Commerce and must also pass Accounts Test Part-1, conducted by the A.P.Public Service Commission. The note appended to this circular states that all promotions to the posts shall be on grounds of merit-cum-seniority. The instructions given in the above circular were revised in Circular No.E.I/331/APSC/89, dated 12-01-1990. In paragraph No.3, of the circular it is stated as hereunder:

"all appointments by promotion made at the District level should be restricted to the District Society only, since it is a registered Society with a District as a Unit."

9. As far as method of recruitment and educational qualifications for filling up the posts of Senior Assistants are concerned, the method of merit-cum-seniority continued. Basically, the circular seemed to have issued to clear some of the aspects not covered by the earlier G.O., like Unit of appointment, observation of rule of reservation, probation on promotion and the appointing authority. As per this circular, the District Collector, Ex-Officio Chairman of the Society is the appointing authority for these posts. Subsequently, there seemed to be a change in the incumbent and his views with regard to the above issue were communicated to all the District Societies in Lr.No.E1/965/APSC/96, dated 7-5-1996. The preamble and other Rules make it very clear that these Rules are applicable to the staff working in the Corporation, but not the staff working in the District Societies, it will be useful to extract the relevant portion of the preamble:

"These regulations shall be called as staff recruitment and service regulations of A.P.S.C.C.F. Corporation Limited, Hyderabad 1996, and these regulations shall apply to all the employees of the APSCCF Corporation Ltd., already working and to those appointed in future in various categories of posts."

From the above, it is evident that these rules have no application to the Staff working in the District Societies, but in the light of the contentions of the respondents, one or two aspects of these regulations have to be referred.

10. The staff working in the Corporation were divided into seven categories. Category No.5 deals with the posts carrying time scale of pay of Rs.2195-4560 including that of Senior Assistant. Under Regulation No.7, to fill up the posts by promotion for each of these categories, selection Committees are constituted. For the post of Senior Assistant, the Selection Committee consists of Managing Director, General Manager incharge of administration and an officer from the Corporation nominated by the Managing Director. Under Regulation No.7(3), all promotions shall be made on grounds of merit and ability, seniority is considered where merit and ability are approximately equal. One must complete 5 years of service in the feeder category as per the annexure to these regulations.

11. Thereafter the Managing Director in his wisdom decided to invite applications from the staff working in the District Societies to fill up certain vacancies of

Senior Assistants in the Head Office and issued proceedings Rc.No.E.1/3709/APSC/96, dated 8-7-1996. Subsequently, a written test was conducted on 30-7-1996 to all the eligible candidates who applied for the posts. Both the petitioner and 4th respondent seemed to have appeared for the test. In this selection, while the petitioner seemed to have not come up for selection, the 4th respondent seemed to have been selected. Consequently, the Managing Director in his Proceedings No.Rc.No.E.1/ 3706/APSC/96, dated 31-07-1996, appointed him by promotion as Senior Assistant in the Head Office, though he has not completed 5 years of service as required under the regulations.

12. But, the 4th respondent without reporting to duty seemed to have represented for his retention in Khammam itself. Acceding his request the then Managing Director, while passing orders retaining him in Khammam in the existing post of Senior Assistant made it explicit that his request for Senior Assistant in Head Office in future cannot be considered as he belongs to the District Society Cadre strength vide Lr.Rc.No.E.1/3706/APSG/96, dated 12-08-1996. This is patently an illegal order. Firstly, he not being the appointing authority for any of the posts in the District Society, would not have given this order. Secondly, without knowing the factual position and without verifying whether the interests of any of his seniors will be adversely affected issued the order. Thirdly, the Managing Director, in exercise of his supervisory power is expected to give instructions on policy matters and matters of general importance, and the same cannot be extended to give appointment orders in the District Society by-passing the appointing authority. Lastly, the 4th respondent might have mislead the Managing Director by stating that in view of the promotion orders given by the District Society on 10-07-1996, he may be allowed to continue as Senior Assistant in Khammam District itself without disclosing the factual background of that order.

13. Now, on the basis of his selection for appointment to the post of Senior Assistant, the official respondents as well as the 4th respondent started contending that as the petitioner has not come up for selection, he has no claim for promotion to the post of Senior Assistant without reference to the rule position.

14. I have no hesitation to hold that the contention of the respondents is devoid of merits for the simple reason that the District Society has nothing to do with the Corporation and the District Society is an Unit by itself for the purpose of appointment, promotion, retrenchment etc. According to the circulars dated 02-12-1986 and 12-01-1990, governing the service conditions of the employees working in the District Societies, the post of Senior Assistant has to be filled in, on the basis of merit - cum - seniority, but not on the basis of merit and ability. As stated supra the staff regulations framed by the Managing Director on 7-5-1996, cannot be made applicable to the employees working in the District Societies and they are intended only for the employees working in the Corporation Hence, the selection of 4th respondent in the Corporation has no

bearing on the appointment of Senior Assistant by promotion in the District Society, and that post has to be filled in only by following the principle of merit-cum-seniority.

15. The Counsel for the 4th respondent relied on circular Lr.No.Lc/1914/APSC/96, dated 08-04-1997 in support of his contentions that the post of Senior Assistant in the District Society is a selection post. But, the circular except stating that a written test has to be conducted for filling of the existing vacancies of Senior Assistants in the District Society nowhere it is stated that it is a selection post. Perhaps the Managing Director in office at that time felt that through written test, best among the eligible candidates can be selected. A look at the circular reveals that the Managing Director while directing the District Societies to fill up the large number of Senior Assistant posts fallen vacant due to promotions given to Senior Assistants M & EOs opined in that way. But as long as the staff regulations are not suitably amended the post of Senior Assistant cannot be treated as selection post. Further, the Managing Director in Lr.LC/1914/APSC/96, dated 08-04-1997 informed the District Societies that the Corporation has submitted comprehensive rules and revised staffing pattern to the Government and its approval is awaited. From this it is seen that the rules framed by the Corporation have to be approved. In other words, the government is the final authority to frame rules and the Corporation is only a recommending authority. It is not the case of the respondents that the Government approved the actions of the Managing Director in this regard.

16. In the light of the "foregoing discussion, I hold that the post of Senior Assistant in District Society is not a selection post, but it has to be filled on the basis of merit-cum-seniority.

#### ISSUE No. 2:

Prior to the year 1985, the economic development programmes undertaken by the District Societies used to be executed by the Panchayat Raj Engineering Department. The Government felt it necessary to provide an Engineering wing in each of the Societies for speedy implementation of the programmes and for effective coordination between the administrative and Engineering wings of the Society, issued orders in G.O.Ms.No.200. S.C. (SCP.II) Department, dated 12-9-1985, creating an Engineering wing in each of the District Societies. As per Annexure, each District Society will have one Divisional Office with Executive Engineer as head of the Division and two Sub Divisional Offices with Dy. Executive Engineers as heads of the office with supporting staff. From among other staff one post of Senior Assistant both in the Divisional Office and in the two sub Divisional Offices were created under the said G.O. In the G.O., it is observed that while the Government provided about Rs.88.00 lakhs from the Special Central Assistance to meet the non-recurring expenditure, the recurring expenditure of the engineering wing has to be met from the supervision charges permitted under the executive instructions. As a matter of fact, the recurring expenditure towards payment of salaries and other allowances to the staff

working in the administrative office also has to be met from supervision charges, not exceeding 2% of the cost of the scheme sanctioned. After the Engineering Wing was created, the petitioner was appointed as a typist in the year 1987 and since then he is continuously working in that capacity. In fact, in 1994, after repatriation of one Surya Prakasa Rao, who was working on deputation basis, the petitioner was kept incharge of the post of the Senior Assistant. As already referred above, no distinction is made between the staff working in the administrative wing and the engineering wing in the earlier circulars dated 2-12-1986 and 12-1-1990. Both the wings are treated as one unit for the purpose of promotion. This position was reiterated in Circular Rc.No.Insp/612/94, dated 14-6-1994. It is useful to extract the relevant clause of the said circular.

"1. At District level, there is only one registered body i.e., District SC Service Cooperative Society. the S.C. Engineering Wing is for all purposes, an integral part of the S.C.Society.

2. In view of the above, as far as the staffing pattern, transfer, promotion Disciplinary action, etc., is concerned the unit of administration is the District SC Service Cooperative Society only. Therefore, the District SC Service Cooperative Society shall maintain a common roaster for the staff working in the Society including those in the Engineering Wing. All service matters like maintenance of combined seniority should be taken up and only one common pool should be maintained."

17. But contrary to the above circulars, the Corporation addressed Lr.No.B.2/673/ APSC/94, dated 12-7-1994, to all the Collectors stating that the services of the persons appointed in the Engineering Wing are not to be regularised since the Engineering Wing has been created purely on temporary basis subject to earning of sufficient supervision charges/centage charges to meet the recurring expenditure towards salaries and allowances. The reasons given by the Managing Director for taking the above stand are the (1) There are no service rules for the Engineering Wing staff of the APSCCF Corporation Ltd., (2) Recurring expenditure towards the salaries of the Engineering Wing staff has to, be met from the supervision charges. (3) The costs towards the staff so appointed shall not exceed the permissible supervision charges (4). The working of Engineering Wing staff in the District shall be reviewed by the Collectors from time to time, on the basis of the workload and the staff so appointed shall be reduced whenever necessary with reference to the work-load. it is suffice to state that in the reorganisation of the Engineering Wing of the District Societies, the technical wing was strengthened by increasing the technical posts vide Government Memo No.312/SCP.II-2/90-56, dated 25-2-1997.

18. I have no hesitation to hold that all the reasons given by the Managing Director for not treating the staff as employees of the Society in engineering wing of the District Society are equally applicable to the staff working in the administrative wing of the Society. If there is no work either in the Administrative

Wing or in the Engineering Wing as opined by the Managing Director, it is always open to the appointing authority to retrench the services of those employees or to transfer their services to some other needy organisation with the explicit consent of the employees concerned. Further, when the Corporation and the District Societies are treated as a unit by themselves for the purposes of appointment, promotion and retrenchment, the Managing Director cannot say that because there are no service rules in the Engineering Wing of the Corporation, the employees working in the Engineering Wing cannot be treated as employees of the Society. The subsequent Managing Director also has taken the same view in Circular No.E.2/284/ APSC/88, dated 9-3-1988.

19. As I have already held that the reasons given by his predecessor in his letter dated 12-07-1994, cannot be sustained in law, the same reasoning is equally applicable for rejecting this circular also.

20. Further the views of these two Managing Directors run counter to the instructions given by the Government while creating Engineering Wing in each of the District Societies in Memo No.267/SCR.IT/ 85-3, dated 12-09-1985.

21. The relevant portion of the Memo is as follows:

"The District Collectors are authorised to appoint engineering staff to implement and supervise these works.

The staff appointed shall form part of the District Scheduled Castes Society and Constitute

22. The circular dated 14-6-1994 was already referred supra from the circular Rc.No.E.I/649/APSC/96, dated 5-07-1996, it is seen that the Senior Assistant working in Administration Wing and Engineering Wing are treated alike for promotion to the posts of M&E.Os.

23. The bone of contention of these officers is that as the Engineering Wings were established on temporary basis and the staff working in these wings will be continued as long as the District Societies earn their expenditure. Hence, the question of regularising their services does not arise. The Corporation as well as the District Societies were created to provide economic upliftment of the members of the Scheduled Castes in the State, by undertaking programmes for setting up employment oriented industries, cottage and small scale industries, village industries etc., and to provide technical know-how and managerial assistance, apart from financial assistance. In fact, the G.O., where in the Engineering Wings were established in each of the District Societies clearly indicates that the Society is undertaking economic development programmes by building up large number of complexes like poultry complexes, shopping complexes, rural artisan complexes, dairy complexes, so on so forth, the very existence of the District society depends upon the implementation of these schemes. Hence, the Engineering Wing is a must for speedy execution of these programmes. In other words, without Engineering Wing there may not be any

activity in the Society. As already observed, the, recurring expenditure towards pay and allowances of the staff working in the Administrative Wing is from the supervision charges and in case of Engineering Wing it will be met from the centage charges. In other words, one Wing is depending upon the other. Hence, the question of winding up of the Engineering Wing does not arise. Further, it is seen that while persons are being brought on deputation to fill up the technical posts, the ministerial posts like Junior Assistants, L.D. Stenos and Typists are being filled up from open competition. For any reasons, even if the Engineering Wing is closed, as their unit of appointment being the District Society, the respondent organisation cannot refuse to regularise their services and maintain common seniority for the purpose of promotion, retrenchment etc. In fact, the Government constituted a technical committee in G.O.Rt.No. 1068, dated 20-11-1995, to consider the feasibility of transferring the Engineering Wing from the control of the Corporation to another. The Committee having examined the issue at length while taking a decision to attach the office of the superintending Engineer working in the Corporation to the Chief Engineer, Welfare Wing, decided to continue the Engineering Wing functioning in the District Societies in Memo No.312/SCP-II-2/9056, dated 25-3-1997. The relevant portion of the minutes of the Expert Committee Meeting, as shown in the annexure to this Memo is extracted hereunder:

"At the outset, the staffing pattern proposed by the Members of the Technical Committee which met in the chambers of Engineer-in-Chief (Roads & Buildings) on 23-9-96 has been discussed at length and finally it was decided to have the following staffing pattern for the Scheduled Castes Service Co-operative Societies Engineering Wing.

1. For Each District (One Subdivision:

1. Deputy Executive Engineer 1 post 2. Asst. Executive Engineer 4 posts 3. Senior Assistant 1 post 4. Typist-cum-Assistant 1 post 5. Draughtsman Grade-II 1 post. 6. Attender-cum-Watchman- cum-Driver 4 posts. Work Charged:

1. Technical Work Inspectors 9 posts. (8 Civil & 1 Electrical) 2. Godown Watchman 1 post 2. For 2 Districts (One Division Office): 1. Executive Engineer 1 post 2. Asst. Executive Engineer 1 post 3. Divl.Acts.Officer (on deputation) 1 post 4. Senior Assistant 1 post 5. Typist-cum-Asst 1 post 6. Draughtsman Grade-II 1 post 7. Tracer/Blue Print Operator 1 post (This post will be in existence till the present incumbent retires/gets promotion) 8. Attender-cum-Watchmen- cum-Driver 4 posts."

24. Hence, there is no substance in the contention of the respondent-Corporation that the continuance of the Engineering Wing depends upon the earning of the centage charges and that being a temporary establishment, the services of the employees working in it cannot be regularised. Accordingly, the above contention is rejected, and a direction is given to the respondents to regularise the services of the ministerial staff working in the Engineering Wing from the date of their

appointment with all consequential benefits including promotion etc. The fallacy in the argument of the respondents is exposed from another angle also. The post of Senior Assistant to which the 4th respondent is claiming is the post in Engineering Wing of the Society. If there is any iota of truth in their contention, the 4th respondent cannot be considered for this post.

### ISSUE No. 3:

25. It is not in dispute that the petitioner was appointed as a typist consequent upon the selection from among the candidates sponsored by the Employment Exchange, Khammam on regular basis on 27-7-1986 and since then he is continuing in that capacity uninterruptedly, whereas the 4th respondent was appointed initially as a Section-Writer on 11-8-1987, a post which does not find place in the staffing pattern approved by the Corporation. It is also on record that when his services were sought to be terminated in the year 1990, he filed a writ petition and pursuant to the orders given by this Court to consider his case along with other for regularisation his services were regularised only with effect from 6-10-1993 and on that basis only his probation was declared with effect from 6-10-1995. Both the above orders seemed to have been issued on 27-12-1995. But, the Supreme Court time and again held that the language employed in the appointment order is not final and the Courts have to look into the attendant circumstances to find out whether the appointment is a regular one or a temporary one. If the Court comes to the conclusion that the appointment is a regular-one, merely, on the ground that the appointing authority did not pass orders to that effect, the benefits that accrued to him in the service cannot be denied. It that being the legal position, there is no legal hitch for regularisation of the services of the petitioner herein. In the light of the view taken by me, the respondents are bound to regularise the services of the petitioner from the initial date of his appointment as he was appointed in a post created under G.O.Ms.No.200, on regular basis and he is continuing till now uninterruptedly. When once his services are regularised, his seniority in the District Society has to be counted from the date of his first appointment. If that has been done, the petitioner is certainly senior to the 4th respondent. In fact, in the provisional seniority list of L.D.C.S, Typists, etc., published on 7-6-1996 in the District Society, while the petitioner was shown at serial No.1, the 4th respondent was shown at serial No.6. The objections filed by the 4th respondent on 7-6-1996, were rejected by the District Society on 16-08-1996 and on the same day the final seniority list was also published, wherein the petitioner stands at serial No. 1. But, the 4th respondent who was appointed as a Section-Writer only on 11-8-1987 and who got his services regularised under the orders of this Court with effect from 6-10-1993 on they ground that his services were not only regularised but also his probation was declared, cannot claim promotion to the post of senior Assistant, ignoring the claims of all his seniors. Further, under the staff regulations one must put in three years of service to get considered his case for promotion to the post of Senior Assistant. But, the petitioner filed Writ Petition No.3631/96, seeking a direction to the Society to consider the claim

without insisting on the minimum qualified service. From the record it is seen that the petitioner filed the above writ petition suppressing the real facts and this Court simply directed the respondents to consider the petitioner's case, before filling up the vacancy by deputation. But, the respondents did not promote the petitioner as Senior Assistant as he is not the senior most eligible person to be promoted as Senior Assistant. Aggrieved by the orders of the respondents in not considering his case for promotion as Senior Assistant, the petitioner filed Contempt Case and under the orders in the contempt case, he was given ad hoc appointment as Senior Assistant. Now, having not satisfied with the ad hoc promotion given under the orders of the Contempt Case, the petitioner filed another writ petition i.e., the present writ petition, seeking a direction that he should be promoted as Senior Assistant on regular basis with effect from 24-4-1996.

26. It is not well settled principle that any order obtained by playing fraud on the Court is a nullity in the eye of law and it is liable to be ignored.

27. In the light of the above factual background, I have no hesitation to hold that the 4th respondent tried to outwit others and walk-away with the promotion to their detriment. Hence, the orders given by the respondents promoting the 4th respondent are liable to be revised and the cases of all the eligible candidates have to be considered for filling up the vacancies of Senior Assistants on the basis of merit-cum-seniority.

28. The promotion obtained by the 4th respondent is temporary, ad hoc and is liable for reversion as per the orders of the Executive Director in Rc.No. A. 1/595/SC/90, dated 10-7-1996. Hence, it cannot confer any right on the 4th respondent and it has to be revised in the light of the orders passed now. Accordingly, the posts of Senior Assistants in the District Society have to be filled up on the basis of seniority-cum-merit from among the eligible candidates. This exercise should be done within 4 weeks from the date of receipt of a copy of the order.

29. In the light of the foregoing discussion on various issues that have arisen for consideration, the Writ Petition No. 14946 of 1996, is allowed and consequently, the respondent is directed to fill up the vacancies of Senior Assistants by following the rule of seniority-cum-merit duly revising the ad hoc promotion given to the 4th respondent on 10-7-1996.

30. In the light of the decision in Writ Petition No. 14946 of 1996, the Writ Petition No. 14960 of 1996, filed by the 4th respondent does not merit consideration and the same is dismissed with costs. Advocate fee Rs.500/-.

31. In the light of the orders passed in the main writ petition, I cannot find fault with the official respondents in not implementing the orders of this Court. Accordingly, Contempt Case No.9 of 1997 is dismissed.