

(1991) 08 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2147 of 1989

M. Bhagwanth Reddy

APPELLANT

Vs

The Andhra Pradesh Agriculture University and Another

RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

Andhra Pradesh Agricultural University Act, 1963 — Section 43(6A)
Constitution of India, 1950 — Article 226

Citation : (1991) 3 ALT 312

Hon'ble Judges : Parvatha Rao, J

Bench : Single Bench

Advocate : R. Venugopala Reddy and A. Narayana Reddy, for the Appellant; B. Siva Reddy, S.C. for Respondent No. 1 and Government Pleader Land Acquisition, for the Respondent

Final Decision : Allowed

Judgement

Parvatha Rao, J.—The petitioner in this Writ Petition was appointed as Fieldman in the department of Agriculture of the erstwhile Hyderabad State on 15-7-1952. In the year 1963, the Andhra Pradesh Agricultural University (the 1st respondent herein) was established under the Andhra Pradesh Agricultural University Act, 1963 (hereinafter referred to as "the Act") and the petitioner was allotted to the Agricultural University on the transfer of the research wing of the Agriculture Department to the 1st respondent as the petitioner was working at that time in the said research wing. In the 1st respondent-University, the post of Fieldman was re-designated as the post of Sub-Assistant. Sub-Assistants were eligible for promotion as Agricultural Assistants on selection basis and Fieldman in the Government service were eligible for promotion as Assistant Agricultural Officers at that time. As the petitioner found that the promotional opportunities to the post of Agricultural Assistant in the 1st respondent-University were not within sight, he submitted a representation to the concerned authorities of the 1st respondent that he should be promoted as Upper Division Clerk. A Sub-Assistant was not eligible to be promoted directly as Upper Division Clerk; only Lower

Division Clerk was so eligible. In Proceedings No. 1563/Services.III/68 dated 9-9-1968 the Registrar of the 1st respondent appointed the petitioner by transfer as Store-keeper at the Maize Research Station, Amberpet where he was working as Fieldman. The post of Store-keeper was equivalent to the post of Lower Division Clerk.

2. As the petitioner was not getting any promotion, he represented his case to the High Power Committee constituted for resolving the problems of the Telangana employees. The said Committee took up the petitioner's case as Case No. 339/F & A and on 18-2-1972 it was decided as follows: -

"Sri M. Bhaganth Reddy (the petitioner herein) is present He has put in more than 15 years service as Field Man (Sub-Assistant) and under the cadre & recruitment rules of erstwhile Hyderabad State he is eligible for promotion as Agricultural Assistant. The Dept. representative has stated since those posts transferred to Agricultural University have been declared to continue as Government Servants alone by High Court all their cases are now being examined for promotion to the higher cadre of Agricultural Assistant and that Sri Bhagawanth Reddy's case will also come up for review. We, therefore make the following recommendation:

(1) that the review must be completed as quickly as possible as their promotions within the quota of 10% are overdue.

(2) that in case the Bhaganth Reddy is not satisfied with the final orders passed by Department with regard to his promotions, it is open to him to make an appeal to State Government."

Even after that the petitioner was not considered for promotion to which he was held to be eligible.

3. The petitioner approached this Court by way of Writ Petition No. 1377 of 1978 on 6-4-1978 alleging that even though he completed 25 years of service, he was not even given the post of selection grade and that some Sub-Assistants who were recruited like him as Fieldmen in the erstwhile Hyderabad State and were subsequently allotted to the 1st respondent and who were juniors to him, were given selection grade in the 1st respondent's Proceedings No. 1225/Ser.111/75 dated 26-7-1975 and that he was included in the seniority list of Ministerial Service of the 1st respondent-University by its Memo. No. 3048/Ser.111/75 dated 9-8-1975 wherein he was assigned the rank of 102 showing him as first appointed only from 9-9-1968 ignoring his total service of 16 years by then as Fieldman. He also stated in the affidavit in support of the said writ petition that in view of the stagnation, he opted to go back to his parent department in the Government of Andhra Pradesh under sub-section (6-A) of Section 43 of the Act which was introduced by the Andhra Pradesh Agricultural University (Amendment) Act, 1974. In the said Writ Petition, the petitioner contended that as he completed 15 years of service as Fieldman, he was entitled to be promoted to the post of Agricultural Assistant in the 1st respondent being the first stage of

promotion after 1-11-1956. According to the petitioner, the University by its proceedings dated 18-3-1972 informed him that his case was being considered for promotion in view of the recommendations of the High Power Committee. The Government of Andhra Pradesh also informed him on 23-4-1973 that his case for promotion would be considered if he opted for departmental service. As the petitioner opted to go back to his parent department under the Government he was entitled to be considered for promotion to the post of Assistant Agricultural Officer which is equivalent to the post of Agricultural Assistant in the 1st respondent-University. However, the petitioner was neither permitted to go back to the Government by the University, nor was he promoted as Agricultural Assistant. In the said Writ Petition he alleged that by proceedings dated 28-3-1978 several of his juniors were being called for interview and selection to the higher post of Agricultural Assistant ignoring him and his entire service of 16 years till 1968. As the selection was to be held on 7-4-1978 and as he was not even called as a candidate for interview, the petitioner filed the said Writ Petition No. 1377 of 1978 for directing the University to implement the said recommendation of the High Power Committee forthwith by promoting him as Agricultural Assistant with consequential benefit of seniority and monetary benefits etc. On 21-1-1980 the following order was passed in the said Writ Petition:

"Mr. S. Ramachandra Rao, the learned counsel for the petitioner represents that this Writ Petition has become infructuous. It is therefore dismissed."

Thus in the said Writ Petition the merits of the petitioner's case were not considered and it was dismissed only because the petitioner's counsel represented that it had become infructuous.

4. Even after that, the petitioner continued to make representations both to the University as well as to the Government. In Memo No. NARP/Estt/1678/84 dated 11-2-1985 of the Associate Director of Research, Regional Agricultural Research Station, Palem read with Memo No. 55523/Ser.V(A-1)/82 dated 1-2-1985 of the Registrar of the 1st respondent, the petitioner, who was then working as Lower Division Clerk in Agricultural Research Station at Amberpet, was transferred and posted as Sub-Assistant at Fruit Research Station, Sangareddy. Thereafter, in Proceedings No. 1005/ Ser.V(A-2)/85 dated 2-8-1985 the 1st respondent appointed the petitioner to the special temporary promotion post scale of Rs. 750-30-1020-35-1300 with effect from 1-4-1981 notionally and with monetary benefit from 14-2-1985. The reasons given by the 1st respondent in the said proceedings are as follows: -

"1. Sri M. Bhagawanth Reddy, now working as Sub-Assistant, was first appointed as Sub-Assistant on 15-7-1952 in the Department of Agriculture. Subsequently he was transferred to the University along with Research Stations. Later on Sri M. Bhagawanth Reddy, was appointed by transfer as L.D.C. on 16-9-1968. Sri M. Bhagawanth Reddy was appointed to Special Grade Post Scale of Rs. 450-15-660-20-700 in the cadre of L.D.C. in Proceedings No. 83/Ser.V/83 dated

27-1-1983 as he completed 10 years of service in that cadre.

2. Sri M. Bhagawanth Reddy, represented that his juniors in the cadre of Sub-Assistants in the Department of Agriculture appointed before 1-11-1956 in the Erstwhile Hyderabad Government were appointed to the posts of Assistant Agricultural Officers in the scale of Rs. 750-30-1020-35-1300; that in the University also the Sub-Assistants who were appointed prior to 1-11-1956 and transferred to the University were appointed to the posts of Agricultural Assistants in the scale of Rs. 750-30-1020-35-1300; that he is a transferred employee and opted to go back and therefore requested to repost him as Sub-Assistant and promote him to the post of Agricultural Assistant in the Scale of Rs. 750-30-1020-35-1300.

3. The request of Sri M. Bhagawanth Reddy, for posting him back as sub-Assistant was examined having regard to the fact that he is a transferred employee opted to go back and therefore his status is that of a Government servant on deputation and was given posting as Sub-Assistant in Memo. No. 55523/Ser.V(A-1)/82, dated 1-2-1985. He joined as Sub-Assistant on 14-2-1985 at Fruit Research Station, Sangareddy.

4. Sri M. Bhagawanth Reddy, having been appointed as Sub-Asst. (formerly Fieldman) prior to 1-11-1956 and completed 15 years of service is eligible for first stage promotion as Agricultural Assistant according to Hyderabad Cadre & Recruitment Rules. In view of this he is eligible for special temporary promotion post scale of Rs. 750-30-1020-35-1300."

By letter dated 22-2-1986 addressed to the 1st respondent, the petitioner represented that even though juniors to him in the cadre of Sub-Assistants were promoted as Agricultural Assistants, he was not considered for promotion as Agricultural Assistant but he was extended only a special temporary promotion post scale of Rs. 750-30-1020-35-1300. In the said letter, he also stated that he was appointed prior to 1-11-1956 as Sub-Assistant and that he completed 15 years of service and that he was eligible for the promotion post of Agricultural Assistant under the Cadre and Recruitment Rules of Hyderabad Government and he requested that he should be promoted as Agricultural Assistant at an early date and to accord the pay protection on par with other Sub-Assistants who were transferred along with him and those promoted as Agricultural Assistants under the Cadre and Recruitment Rules of Hyderabad Government. He followed the said letter with reminders to the 1st respondent dated 11-6-1986, 22-9-1986, 10-4-1987, 27-7-1987 and 9-2-1988. In some of those letters (11-8-1986, 27-7-1987 and 9-2-1988) he also drew the attention of the 1st respondent to the fact that he completed 33 or 34 years of service (17 years as Sub-Assistant and 16 years as L.D.C.) without promotion and that he discharged his duties to the utmost satisfaction of his superiors. To all the said letters, there was no response from the 1st respondent. The petitioner then sent a letter through his Advocate by registered post acknowledgment due on 19-3-1988 to the 1st respondent which was received on 21-3-1988. In the said letter, it is

stated inter alia as follows:-

"Even though the Government has permitted our client to opt back to the Department and promised promotion through their Memos dt. 24-9-1973 and 23-4-1973 respectively, the University neither repatriated our client nor given him the promotion, in spite of the repeated requests made on 4-6-1973,2-8-1974,30-5-1977 and 10-2-1978. However pursuant to the said requests, you have once again made our client to believe that his case is being considered for promotion by issuing Memo No. 55523/Ser-V(A-1) 82, dt. 1-2-1985.

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Surprisingly again, our client had been made a target of discrimination when his juniors and colleague similarly situated were given a regular promotion of Assistant Agricultural Officers through your Proceeding No. 1210/Ser.IV/85 dated 29-10-1985. To be more specific one Sri T.Upendra Reddy was joined in service in the Agricultural Department of A.P.Govt. on the very same day as our client i.e., 15-7-1952, was promoted by the said proceedings from 14-7-1967 notionally and with monetary effect from 1-5-1978. Our client had brought this injustice to your notice through his representation Dt. 22-2-1986 which was followed by his reminders Dt. 11 -6-1986,22-7-1987 and 9-2-1988. Though two years have passed since the first representation of our client, nothing is heard about the same.....

It is, therefore, called upon you to issue appropriate proceedings immediately promoting our client Sri M. Bhagawanth Reddy Sub-Assistant (STP) as Assistant Agricultural Officer with effect from 14-7-1967 notionally and with monetary benefit from 1 -5-1978, failing which we have instructions to proceed against you in an appropriate legal forum to vindicate the rights of our client....."

5. As there was no action from the 1st respondent even after the said letter addressed by the petitioner through his advocate, the present Writ Petition is preferred by the petitioner for a Writ of Mandamus etc., directing the 1st respondent herein to promote him forthwith as Assistant Agricultural Officer with effect from 14-7-1967 nationally and with monetary benefit from 1-5-1978 and consequently to effect and pay the attendant promotion and monetary benefits respectively to him as an employee of erstwhile Government of Hyderabad who has put in more than 22 years of service including the Special Promotion Scale. II i.e., 1980-80-2,780-90-3,500 with effect from 1-7-1986 etc.

6. The learned counsel for the petitioner drew my attention to the proceedings of the 1st respondent in Proceeding No. 1210/Ser.IV/85 dated 29-10-1985 wherein several Sub-Assistants like Sri T. Upendra Reddy, referred to above, were allegedly promoted to the post of Assistant Agricultural Officers. The stand of the 1st respondent as regards Fieldman/Sub-Assistants transferred from Government and working in the 1st respondent is clearly stated in the said proceedings as follows: -

"Under the Hyderabad cadre and recruitment Rules issued in Notification No. 444 G.A.D (19) R.R. S.R.C. 52, dt. 30-3-1986 of the Government of Hyderabad, 10% of the total vacancies of Agricultural Assistants were to be filled up by promotion of Sub-Assistants/Fieldman and the remaining 90% of the vacancies by direct recruitment.

Under Section 43(8) of the A.P.A.U Act, 1963 the Research Institutions and personnel working therein in the Agricultural Department were transferred to AP.A.U. w.e.f. 1-7-1966. Among the employees so transferred there are 115 Research Assistants (Asst. Agril. Officers cadre). On the representation of the Sub-Assistants of erstwhile Hyderabad Government for giving them promotion towards the 10% Quota earmarked for them for promotion as Agril. Officers, promotions were given to them in Government in the year 1972 vide Director of Agriculture Letter No. Estt.II(2)/2132/77, dt. 29-3-1985.

The question of promoting the Government transferred Sub-Assistants/ Field Assistants of erstwhile Hyderabad Government working in A.P.A.U. to the post of Asst Agril. Officers as was done in Government came up for consideration in 1978. The Selection Committee constituted for the purpose after taking into consideration the educational qualifications, experience, performance in the interview and the confidential reports of the 28 available candidates has recommended all of them in order of Merit. The Board of Management at its meeting held on 20-4-1978 approved the proposal to appoint the first 19 persons in the panel as Agril. Assts. in the 19 available vacancies as on 1-4-1978 and to appoint the remaining persons as and when fresh vacancies arose. Accordingly the first 19 candidates in the approved panel were promoted as Agril. Assistants in this University's Proceeding No. 594/Ser.IV/78, dt. 29-4-78. Before the remaining candidates in the panel could be promoted, six candidates in the panel retired on 28-2-83. The remaining three candidates who were in service were considered and were promoted as Agril. Assts. on 10-8-1984.

In Govt. the Sub-Assistants/Field Assistants promotees were given monetary benefit from the actual date of promotion as Assistant Agricultural Officers. Some of the Assistant Agricultural Officers promotees filed a petition before the Administrative Tribunal for giving promotion from the date on which they become eligible on completion of 15 years of service. Keeping in view of the decision of the High Power committee to give promotions with retrospective effect and also give them consequential benefits like seniority increments etc., and the direction of the Administrative Tribunal, the matter was considered by Government Based on the instructions issued by Government in Memo No. 3797/Agri.V(1)/78-2, dated 17-7-1980, the Director of Agriculture, A.P. Hyderabad issued orders in Proceeding No. Estt.II(2)/385/70, dated 22-9-1983 giving Sub-Assistant promotees notional promotion with reference to the date of completion of 15 years of service and availability of vacancies.

The Sub-Assistants/Field Assistants of Government transferred to A.P.A.U. who were also promoted in A.P.A.U. as Agricultural Assistants following the procedure

laid down by the Government, have requested to issue orders promoting them also with retrospective effect, from the date of completion of 15 years of service and to allow them monetary benefit w.e.f. the dates on which they actually joined as Agricultural Assistants on par with their counter parts in the Department of Agriculture. This matter has been examined and in consultation with the Director of Agriculture A.P. Hyderabad and with the approval of the Board of Management it has been decided in principle to extend the benefit of notional fixation to the Sub- Assistants/Field Assistants promoted as Agricultural Assistants.

As per the Hyderabad Cadre and Recruitment Rules, 10% of the posts are to be filled up by promotion of Sub-Assistants/Field Assistants to the higher cadre of Assistant Agricultural Officer's. Accordingly as on 1-7-1966 12 posts are identified for being filled up by promotion of Sub-Assts/Field Assts. as Agricultural Assistants. In the 12 vacant posts identified the following 12 candidates are appointed as Agricultural Assistants with notional effect from the dates indicated in Col.(6) against each name- and they will be eligible for the benefit of the fixation of pay with effect from date of notional promotion with monetary benefit of fixation due from the date of their actual joining duty as Agricultural Assistants after their promotion as on 29-4-78, as indicated in Col. (7) below:

S.No.	Name	Date of first completion	Date of promotion	Date of monetary benefit	Date of 15 yrs. ment.	Date of 10% benefit	Notional promotion
1.	K. Visweswara Rao	18-1-51	17-1-66	29-4-78	17-1-66	1-5-78	2.
2.	K. Balawantha Reddy	15-7-52	14-7-67	29-4-78	14-7-67	1-5-78	3.
3.	T. Narasaiah	2-2-52	1-2-67	29-4-78	14-7-67	5-5-78	4.
4.	Md. Khajasharif	6-6-51	5-9-66	29-4-78	14-7-67	2-5-78	5.
5.	M.A. Sattar	29-5-52	28-5-67	29-4-78	14-7-67	1-5-78	6.
6.	T. Upendra Reddy	15-7-52	14-7-67	29-4-78	14-7-67	1-5-78	XXX
7.							XXX

SARVASRI: 1. K. Visweswara Rao 18-1-51 17-1-66 29-4-78 17-1-66 1-5-78 2. K. Balawantha Reddy 15-7-52 14-7-67 29-4-78 14-7-67 1-5-78 3. T. Narasaiah 2-2-52 1-2-67 29-4-78 14-7-67 5-5-78 4. Md. Khajasharif 6-6-51 5-9-66 29-4-78 14-7-67 2-5-78 5. M.A. Sattar 29-5-52 28-5-67 29-4-78 14-7-67 1-5-78 6. T. Upendra Reddy 15-7-52 14-7-67 29-4-78 14-7-67 1-5-78 XXX XXX XXX XXX

In view of the present difficult financial position of the University the benefit of the pay fixation will be given for the present only from 1-9-1985.

The arrears due to them on account of the above revision from the date of actual officiation to 31-8-85 will be given only after the grant is received from the Government."

7. Referring to the said proceedings dated 29-10-1985, the learned counsel for the petitioner contends that the petitioner also was first appointed as Fieldman on 15-7-1952 like K. Balawantha Reddy and T. Upendra Reddy, whose names are found at serial Nos. 2 and 6 respectively in the above table, and that whereas all the three of them completed 15 years of service on 14-7-1967, K. Balawantha

Reddy and T. Upendra Reddy were shown as actually promoted as Agricultural Assistants on 29-4-1978 and they were shown as entitled to notional promotion from 14-7-1967 and were given the monetary benefit from 1-5-1978, but the petitioner was given special temporary promotion post scale of Rs. 750-30-1020-35-1300 with effect from 1-4-1981 notionally and with monetary benefit from 14-2-1985 under proceeding No. 1005/Ser.V(A.2)/85 dated 2-8-1985. The learned counsel for the petitioner contends that the petitioner is discriminated and unfairly treated for no fault of his from others like K. Balawantha Reddy and T. Upendra Reddy who are similarly placed as the petitioner. He submits that just as those two were given promotion as Assistant Agricultural Officers with effect from 14-7-1967 notionally and with monetary benefit from 1-5-1978, he should also be given the said promotion with effect from 14-7-1967 notionally and with monetary benefit from 1-5-1978 with consequential benefits. It is also further contended that the petitioner is further entitled to special promotion post scale-II because he completed more than 22 years of service by 15-7-1974.

8. The learned counsel for the petitioner also points out that pursuant to the option given under sub-section (6-A) of Section 43 of the Act, the petitioner opted to revert to the service under the Government in spite of which the 1st respondent did not relieve him to go back to Government service and the 2nd respondent did not take him back. In fact, even prior to the introduction of sub-section (6-A) in Section 43 by the Andhra Pradesh Agricultural University (Amendment) Act, 1974 which came into force on 24-4-1974, the petitioner addressed letters to the Director of Agriculture, Andhra Pradesh, and the Office of the Director of Agriculture, Andhra Pradesh by Memo No. Estt.VII (4) 2165/71 dated 23-4-1973 informed the petitioner that his case for promotion as Agricultural Assistant would be considered as and when he opted to Government service and reverted to Agricultural Department. On 4-6-1973 the petitioner wrote to the Director of Agriculture stating; "I have not so far exercised option to come under University Services and therefore I still continue to be Government servant working on deputation. Since I am a Government servant, the Department may take immediate action to revert me to my parent department and consider my case for promotion". Thereafter by Memo No. Estt. VII(4) 2690/73 dated 24-9-1973 the Office of the Director of Agriculture informed the petitioner that a draft amendment would enable the Government employees in the Andhra Pradesh Agricultural University to exercise option whether to remain in the University service or to revert to the Government service and that the petitioner's case for reverting to Agricultural Department would be considered only after options were obtained from all the Government employees working in the University and after passing of the bill. After exercising his option as per sub-section (6-A) of Section 43 of the Act, the petitioner addressed letter dated 2-8-1974 to the Director of Agriculture bringing to his notice that he exercised option in favour of the department on 22-6-1974 and requesting for necessary action to revert him to the Agricultural Department and consider his case for

promotion at the earliest. The petitioner once again addressed letter dated 10-2-1978 to the Director of Agriculture repeating the said request, but to no effect.

9. In the counter affidavit of April, 1991 filed by U. Satyanarayana Murthy, Assistant Secretary to Government, it is stated that the petitioner was first appointed as fieldman in the Department of Agriculture in the former Hyderabad State on 15-7-1952 and the said post was re-designated as Sub-Assistant and that he was transferred to the 1st respondent-University on 1-7-1966 and that he also made representation for his repatriation to the Agricultural Department and that the Government by its letter No. 258/Agri.IIV76-56 dated 27-3-1982 addressed to the 1st respondent requested the University not to repatriate and transfer employees until the issues were finally settled by the Government and that regarding repatriation of the employees, the same was under active consideration of the Government and that the same will be solved in near future. In the counter affidavit dated 18-3-1991 filed on behalf of the 1st respondent by its Registrar, it is not denied that the petitioner exercised his option to revert to the service under the Government as required under the Act. It is on the other hand stated that though the-petitioner gave option to go back to Government, he could not be repatriated as no orders were issued by the Government and that whenever the Government issued repatriation orders, he would be repatriated. It is further stated therein that the total number of transferred employees who opted to go back to the Agricultural Department under Class-I and Class-II Officers is 610 and that the services of some Officers have already been repatriated and that personnel working in subordinate, ministerial services are still in the University service although they opted to Government service because the 2nd respondent in its Letter No. 258/Agri.III/76-56 dated 27-3-1982 requested the 1st respondent not to repatriate the transferred employees as proposed until the issues were finally settled by the Government and that the issue is still pending in the Government.

10. As regards the reason for differently treating the petitioner from K. Balawantha Reddy and T. Upendra Reddy and others referred to in proceedings No. 1210/Ser. IV/85 dated 29-10-1985 of the 1st respondent, it is stated in the counter affidavits filed on behalf of the 1st respondent that they were interviewed, considered and selected for promotion as Agricultural Assistants (Assistant Agricultural Officers in the Government) by the Selection Committee constituted for that purpose by the 1st respondent, and that the Board of Management of the 1st respondent at its meeting held on 20-4-1978 approved the panel recommended by the Selection Committee, and that they were promoted as Agricultural Assistants on 29-4-1978, and that ever since they have been working as Agricultural Assistants. It is further stated that the petitioner was not considered for promotion as Agricultural Assistant by the said Selection Committee in the year 1978 along with them because he was not working as Sub-Assistant then like those others as "he was transferred as Store-Keeper (L.D.C) on his own request from 16-9-1968" and that he was re-transferred as Sub-

Assistant only in August, 1985 at his request and that therefore, the case of the petitioner was different from that of T. Upendra Reddy. In this connection, it is also stated in the said counter affidavit that the petitioner filed Writ Petition No. 1377 of 1978 praying for a direction to the 1st respondent to consider his case for promotion taking into his 25 years of service as Sub-Assistant and L.D.C. and that the same was dismissed on the ground that it became infructuous. In the counter affidavit dated 19-2-1991 filed on behalf of the 2nd respondent also it is asserted that the petitioner was transferred as Store-Keeper (L.D.C.) on his request on 16-9-1968 and that he was not promoted as U.D.C. as he did not get his turn for promotion according to the seniority list. In another counter affidavit of April, 1991 filed on behalf of the 2nd respondent it is stated as follows:-

"I submit as there was no promotion avenues from the post of Sub-Assistant to that of Agricultural Assistant, the petitioner made a representation to promote him as Upper Division Clerk. As he was not qualified to promote as Upper Division Clerk directly basing on his application he was transferred as Store-Keeper equivalent to the post of Lower Division Clerk by an order dated 16-9-1968. The petitioner opted and joined in that post for getting future promotion".

11. The learned standing counsel for the 1st respondent placed before me a copy of the Proceeding No. 1563/Services.III/68 dated 9-9-1968 whereunder the petitioner was appointed by transfer as Store-Keeper. It is stated therein:

"Sri M. Bhagawanth Reddy, Fieldman, Maize Research Station, Amberpet, is temporarily appointed by transfer as Store-Keeper at the Maize Research Station, Amberpet vice.....

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The above appointments are purely temporary and liable to be terminated at any time without notice and without assigning any reasons. The appointments do not confer upon the appointees any kind of rights for further continuance or for future regular appointment".

The learned standing counsel could not place before me any letter of the petitioner wherein he requested that he should be transferred and posted as Store-Keeper, much less temporarily as Store-Keeper. The petitioner asserts that he only requested the 1st respondent to consider his case for promotion as U.D.C. as there were precedents in the Agricultural Department for the same in the case of Fieldman who reached the maximum of the time scale. This is supported by the statement in the counter affidavit of April, 1991 filed on behalf of the 2nd respondent wherein it is stated that the petitioner made a representation to promote him as U.D.C. From this it follows that the statement in the counter affidavit dated 15-3-1989 filed on behalf of the 1st respondent by its Registrar that on petitioner's request he was transferred as Store-Keeper (L.D.C.) on 16-9-1968 is not correct. But, the fact remains that the petitioner worked as Store-Keeper/L.D.C. from September, 1968 to 14-2-1985 when he

joined duty as Sub-Assistant at Fruit Research Station, Sangareddy. As it transpires that the petitioner never asked for being appointed by transfer as Store-Keeper or as L.D.C., the said transfer cannot be treated as on the request of the petitioner. The very proceeding No. 1563/ Services.III/68 dated 9-9-1968 referred to above, where under the petitioner was stated as temporarily appointed by transfer as Store-Keeper and that the said appointment was purely temporary and was liable to be terminated at any time without notice, on the face of it, is absurd because the petitioner was a permanent Government servant allotted to the 1st respondent against his will. He was being continued in the service of the 1st respondent in spite of the statutory option exercised by him as long back as 22-6-19"/"4 as per sub -section (6-A) of Section 43 of the Act. On the facts and circumstances of the case and in the absence of any request from the petitioner for being transferred as Store-Keeper or L.D.C, it has to be held that the said transfer of the petitioner from the post of Sub-Assistant to the post of Store-Keeper/L.D.C. was effected by the 1st respondent on its own initiative and for its own administrative reasons. The mere fact that the petitioner did not protest or mutely accepted the treatment meted to him, cannot make any difference and cannot deprive him of his chances of promotion to which he was entitled to as Sub-Assistant or as Fieldman. There is no doubt that the petitioner was treated very shabbily and callously by the respondents. The fact that his earlier Writ Petition No. 1377 of 1978 was dismissed on the representation of his then counsel that it had become infructuous, cannot make any difference because there was no decision on merits. It is also not possible for me to comprehend how the said Writ Petition filed on 6-4-1978 had become infructuous on 21-1-1980 when the prayer in the Writ Petition was for Mandamus directing the respondent therein i.e., the 1st respondent herein, to implement the recommendation of the High Power (Committee in Case No. 339/F& A dated 18-2-1972 by promoting the petitioner as Research Assistant forth with with consequential benefits etc.

12. In this connection, it is to be noticed that the petitioner completed 15 years of service as Fieldman in Government service by 14-7-1967 like K. Balawantha Reddy and T. Upendra Reddy i.e., even before he was transferred and posted as Store-Keeper in the 1st respondent-University on 16-9-1968. He was therefore eligible even by then for promotion as Agricultural Assistant as pointed out by the High Power Committee in Case No. 339/F & A as long back as 18-2-1972 even though the petitioner was then working as Store Keeper/L.D.C. as per the version of the 1st respondent. As already stated earlier, the Director of Agriculture, Andhra Pradesh in his letter No. Estt. VII (4) 2165/71 dated 23-4-1973 assured the petitioner that his case for promotion as Agricultural Assistant would be considered as and when he opted to Government service and reverted to the Agriculture Department. His innumerable letters to both the 1st respondent as well as the 2nd respondent over two decades had not evoked any response or any sympathetic chord from them based on a fair and pragmatic understanding and appreciation of the petitioner's predicament. Viewed from the

point of view of the fact that the petitioner completed 15 years of service Fieldman re-designated as Sub-Assistant even by the time the petitioner was transferred to the 1st respondent, there is no basis whatsoever for appointing the petitioner to the special Temporary Promotion Post Scale of Rs. 750-30-1020-35-1300 with effect from 1-4-1991 notionally in the 1st respondent's proceeding No. 1005 /Ser.V (A.2)/85 dated 2-8-1985 while treating K. Balawantha Reddy and T. Upendra Reddy who were also first appointed along with the petitioner on 15-7-1952 as notionally promoted with effect from 14-7-1967. Therefore, the petitioner is also entitled to be promoted notionally from 14-7-1967 as in the case of K. Balawantha Reddy and T. Upendra Reddy.

13. The question that next arises is whether the petitioner is entitled to monetary benefit with effect from 1-5-1978 as in the case of K. Balawantha Reddy and T. Upendra Reddy. The learned standing counsel Mr. K. Siva Reddy, appearing for the 1st respondent points out that the petitioner in the present Writ Petition is only questioning proceeding No. 1005/Ser.V(A.2)/85 dated 2-8-1985 of the 1st respondent which was issued pursuant to proceedings No. 158/Budget/82 dated 9-3-1982 implementing the scheme of the 1st respondent in G.O.Ms.No. 117, Finance & Planning (Finance Wing P.R.C.I) Department dated 25-5-1981 providing for Special Grade Posts Special Temporary Promotion Posts and special Ad hoc Promotion Posts. The learned standing counsel further points out that both K. Balawantha Reddy and T. Upendra Reddy were promoted as Agricultural Assistants in proceedings No. 594/ Ser.IV/78 dated 29-4-1978 and that they assumed charge as Assistant Agricultural Officers from 1-5-1978 and from that date they already became entitled to the scale of Rs. 750-30-1020-35-1300 and that the petitioner was then working as Store-Keeper (L.D.C) and that he did not pursue his Writ Petition No. 1377 of 1978 for a decision on merits and that he cannot complain about it now in the present Writ Petition. The learned standing counsel contends that the scheme relating to creation of special temporary promotion post itself came into existence under G.O.Ms.No. 117 dated 25-5-1981 and that therefore, the petitioner cannot claim the scale of pay attached to the said post from a date earlier than 25-5-1981. He further submits that the petitioner will have to agitate his claim for promotion as Agricultural Assistant in the 1st respondent-University or as Assistant Agricultural Officer in Government service in separate proceedings before, appropriate forums and not in this Writ Petition. I agree with the learned standing counsel for the 1st respondent that the petitioner cannot claim the benefit under G.O.Ms.No. 117 dated 25-5-1981 which was adopted in toto by the 1st respondent-University, from a date anterior to the date when the scheme appended to the said G.O.Ms.No. 117 was brought into effect i.e., 1-4-1981. In view of the fact that the petitioner undoubtedly completed 15 years of service as Fieldman/Sub-Assistant by 14-7-1967 he cannot be denied the special temporary promotion post to which the petitioner is entitled to under the said scheme from 1-4-1981.

14. I already held that the fact that the petitioner was transferred and posted as Store-Keeper/L.D.C. i.e., on 9-9-1968 and that he worked as such till he was

once again transferred back as Sub-Assistant under Memo dated 11-2-1985 cannot make any difference and cannot deprive him of his chances of promotion to which he has been entitled as Sub-Assistant or as Fieldman. Therefore, the non consideration of the petitioner for promotion as Agricultural Assistant on the ground that he was working as L.D.C. in 1978 is bad. The fact that the petitioner was not actually promoted as Agricultural Assistant like K. Balawantha Reddy and T. Upendra Reddy , ought not to make any difference for the application of "completion of 15 years of service" principle. As held by me so far as the date of notional promotion is concerned, the petitioner cannot be discriminated and treated differently from K. Balawantha Reddy and T. Upendra Reddy. Therefore, the 1st respondent cannot deny the petitioner atleast the benefit under the scheme under G.O.Ms.No. 117dated25-5-1981 with effect from 1-4-1981. He is further entitled to fixation of pay under the said scheme with effect from the date of notional promotion i.e., 14-7-1967 with monetary benefit of fixation due from 1-4-1981.

15. In the same way the petitioner also cannot be denied the special promotion scale-II with effect from 1-7-1986 as he completed 22 years of service by 14-7-1974. I hold that the period the petitioner served as store-Keeper (L.D.C.) i.e., from 9-9-1968 to 14-2-1985 on which date he assumed charge as Sub-Assistant cannot be excluded in computing the 22 years of service for the purpose of considering the entitlement of the petitioner to special promotion scale-II.

16. I am leaving open the question whether the petitioner is entitled to a direction to the 2nd respondent to be taken back into Government service and if so what benefits the petitioner can claim. The petitioner will have to agitate the said questions separately before the appropriate forum. It is stated on behalf of the 2nd respondent that the question of repatriation of the petitioner to Government service is under active consideration. It is unfortunate that even after more than 15 years, the 2nd respondent has not taken a decision and that the petitioner should suffer for the same. In Writ Petition No. 13486, of 1984 filed in this Court, amandamus was sought by the petitioner therein for directing the Registrar of the 1st respondent herein to repatriate him to the service of the Osmania University and give him consequential promotions. In that case, the petitioner therein was earlier an employee of the Osmania University and he was allotted to the 1st respondent herein and he gave his option in accordance with Sub-section (6-A) of Section 43 of the Act and after waiting for nearly 10 years, as no formal orders were issued, he approached this court. After the said Writ Petition was filed, the Osmania University agreed that the Writ Petition should be allowed and accordingly the petitioner therein was directed to be repatriated to the Osmania University with immediate effect. This Court in *Ambadas v. Government of A.P.*, 1990 (3) ALT 215 held:

"It is settled law that when an employee is sent on foreign service from one organisation to another organisation, he is entitled, on his repatriation to the

parent department, to claim promotion to the post which he would have got had he continued in the parent department; See AIR 1968 S.C. 868. In other words, the tenure on foreign service should not be an adverse factor to deny the employee his right to be considered for promotion to the higher posts. Any interpretation to the contra would amount to arbitrariness falling within the inhibition of Article 14 of the Constitution of India, and also would be in breach of the equality clause in the matter of appointment and employment incorporated in Article 16(1) of the Constitution of India."

In the light of these decisions, it is for the respondents to take immediate action to redress the grievance of the petitioner and to set right the situation resulting from the gross injustice done to the petitioner. If the respondents persist in their inaction, the petitioner will have to agitate and seek relief before the appropriate forum. It is not possible to grant these reliefs in the present Writ Petition because its scope is restricted.

17. In the circumstances, the 1st respondent is directed to appoint the petitioner to the Special temporary promotion post scale of Rs. 750-30-1020-35-1300 with effect from 1-4-1981 with fixation of pay with effect from the date of notional promotion i.e., 14-7-1967 with monetary benefit of fixation due from 1-4-1981 and also to the Special Promotion Scale-II to which he is entitled and to pay the petitioner all the monetary benefits that thereby accrue to him within four weeks from the date of receipt of this judgment.

18. The Writ Petition is allowed to the extent indicated above with costs. Advocate's fee Rs. 300/-.