
(1999) 04 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 34849 and 35775 of 1997 and 6758 of 1998

Mohd. Ashfaq Ahmed Khan and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 30-04-1999

Acts Referred:

Andhra Pradesh Police Subordinate Service Rules, 1966 — Rule 2

Citation : (1999) 3 ALT 474

Hon'ble Judges : Vaman Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : K.G. Krishna Murthy and P. Gangaiah Naidu, for the Appellant; G.P., for Home for Respondent Nos. 1 to 3 and 5 and J.R. Monohar Rao, in W.P. 34849/97 and for R-1 in W.P. 6758/98, for the Respondent

Judgement

Vaman Rao, J.—Writ Petition Nos. 34849 and 35775 of 1997 have been filed challenging the common order of the A.P. Administrative Tribunal, Hyderabad passed in O. A. Nos. 219 and 1267 of 1997 respectively, whereas, Writ Petition No. 6758 of 1998 has been filed questioning the orders passed in V.M.A. No. 448 of 1997 in O.A. No. 1670/97 for not vacating the interim orders passed by the Tribunal directing the respondents not to consider the claim of the 4th respondent therein (the petitioner herein) who was a promotee on the basis of seniority given in G.O.Ms. No. 201 dated 23-5-1994 which was passed regularising the services of the petitioner herein with effect from the date of his promotion.

2. The petitioner (Sri Mohd. Ashfaq Ahmed Khan) in W.P. No. 34849 of 1997 and the petitioner (Sri G. Narasimham) in W.P. No. 35775 of 1997 were originally appointed as police constables in Andhra Pradesh Police Service. Considering their meritorious service, they were appointed as out of seniority Sub-Inspectors with effect from 25-8-1984 and 3-12-1983 respectively and they continued to serve as Sub-Inspectors. The services of these petitioners were regularised in the cadre of Sub-Inspectors from the dates of their respective temporary

appointments as out of seniority Sub-Inspectors in view of their continued outstanding performance.

3. It is stated by the petitioners in their respective affidavits that these regularisations were effected on the basis of their representations by relaxing the rules and after reports were obtained from respondents 2 and 3 by the 1st respondent. The first respondent accordingly issued orders in G.O.Ms. No. 37 dated 23-1-1996 and in G.O.Ms. No. 9 dated 4-1-1996 regularising the services of the petitioners retrospectively with effect from the dates of their appointment as out of seniority Sub-Inspectors by relaxing the relevant rules. It is stated by the petitioners in their respective affidavits that their services were regularised in respect of the vacancies of 30% earmarked for promotees under the rules and that the unofficial respondents were not adversely affected at all. It is seen that in the additional counter-affidavit filed on behalf of respondent No. 1-the Government before the Tribunal, it was specifically stated by the Assistant Secretary concerned that regularisation of the petitioners was in respect of posts within 30% limit meant for promotees. On these grounds, the petitioners pray that the Tribunal erred in setting aside the orders of the Government regularising the services of the petitioners in the above mentioned impugned Government Orders.

4. On behalf of the unofficial respondents, counter-affidavits have been filed disputing the averments of the petitioners. It is stated that there is no provision under the A.P. Police Subordinate Service Rules for relaxation of the rules and hence relaxation ordered in favour of the Writ Petitioners is illegal. It is also contended that even if there is such a power, relaxation cannot; be granted in respect of rules relating to recruitment. It is stated that basic rules of recruitment cannot be relaxed under Rule 47 (new Rule 31) of the A.P. State and Subordinate Service Rules (for short "the General Rules"). It is stated that unless a person is appointed or promoted in accordance with the Rules, he is not entitled to seniority in that cadre from the date of temporary appointment. It is further stated that regularisation of the petitioners with effect from the date of promotion has adversely affected the seniority of the unofficial respondents. It is further contended that no opportunity was given to the unofficial respondents for being heard before the impugned orders were passed by the Government. It is also stated that the Writ Petitioners and others were temporarily appointed as out of seniority Sub-Inspectors in the vacancies to be filled up by the direct recruitment and were allowed to continue temporarily till the candidates were appointed by direct recruitment. It is stated that the temporary promotees appointed in the vacancies meant for direct recruits were continued on temporary basis till some other vacancies arose subsequently.

5. In this case, the contention of the petitioners that their promotion as Sub-Inspectors by way of out of turn promotion was effected because of their displaying outstanding merit and devotion to duty and their subsequent retrospective regularisation was also done on that ground is not countered by the

unofficial respondents. On the other hand, this contention is fully supported by the counter-affidavit and additional counter-affidavit filed on behalf of the first respondent the Government before the Tribunal.

6. Here, it may be pointed out that the learned Tribunal has recorded a finding following the various decisions of the Supreme Court that the Government in exercise of their powers conferred on them under Rule 47 of the General Rules have the power to relax the rules relating to the service conditions and also to relax the rules with retrospective effect. But, purporting to follow the decision of the Constitution Bench of the Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, , the Tribunal held that the services rendered by the unofficial respondents in the O. As. (as out of seniority Sub Inspectors) cannot be counted as officiating service for determining their seniority as the unofficial respondents before the Tribunal (Petitioners herein) were not qualified for appointment as Sub-Inspectors and that promotion was not in accordance with the Rules and consequently their appointment to the post was not in accordance with the Rules and on this ground allowed the O.As.

7. There is another aspect on which no arguments were addressed across the Bar and the learned Tribunal has also not recorded any finding. In these cases, the petitioners herein made a specific assertion that the regularisation of their services with effect from their initial date of temporary appointment was done within the 30% quota allocated to the promotees. There is no specific denial of this fact in the counter affidavit filed by the non-official respondents herein before the Tribunal though an attempt was made to show that when the petitioners herein were promoted there were no vacancies available within the quota of the promotees and that those appointments were made in the vacancies meant for direct recruits as there was some delay in finalisation of the appointments by direct recruits. But there is no specific assertion that as on their date of appointment, vacancies in the promotees quota were not available for the purpose of regularising the services of the petitioners herein. In fact, on behalf of the Government respondent No. 1 the Assistant Secretary, Home filed an additional counter-affidavit in the Tribunal specifically supporting the contention of the petitioners herein that the regularisation of their services was made in respect of vacancies available out of the quota of the promotees. The Tribunal has not recorded any finding on this aspect. This question was not addressed in this Court by the learned Counsel for the unofficial respondents herein. For the purpose of these writ petitions and in the absence of any clinching material, the statement made in the affidavit filed on behalf of the Government has to be accepted and it must be presumed that the regularisation directed to be effected under the impugned G.Os. was in respect of the vacancies available in the quota meant for the promotees.

8. In view of these pleas taken by the petitioners and the unofficial respondents, the following question arises for consideration:

(i) Whether the relaxation granted under Rule 47 (new Rule 31) of A.P. State and Subordinate Service Rules in favour of the petitioners with retrospective effect is permissible? and whether in pursuance of such relaxation, regularising the services of the petitioners with effect from the date of their temporary promotion as Sub-Inspectors ordered under the impugned G.Os. is valid? and whether the unofficial respondents can question their placement in the seniority list below the petitioners in the cadre of Sub-Inspectors?

9. The learned Counsel for the unofficial respondents contends that by virtue of the orders regularising the services of the petitioners with effect from the date of their appointment passed long after the unofficial respondents were appointed by direct recruitment, the petitioners cannot be placed higher in the seniority list vis-a-vis the non-official respondents. In support of this contention, the learned Counsel for the unofficial respondents relies on several decisions of the Supreme Court.

9-A. In the case of Direct Recruit Class-II Engineering Officers' Association (1st cited supra), a Constitution Bench of the Supreme Court laid down the law that once the appointment is made to a post according to the rules, the seniority of persons so appointed is to be counted from the date of appointment but not according to the date of confirmation. It was also held that the corollary of the above rule is that where the initial appointment is only ad hoc and not according to the rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. It may, however, be seen that in the same judgment it was also held in para 44 (B); "If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

10. In the case of S.K. Saha v. Prem Prakash Agarwal 1994 (1) SLR 37, the appellant was initially appointed as Foreman Class-III post (non-gazetted) on contract basis and he was subsequently appointed directly through Public Service Commission as a Foreman on 12-5-1960. In 1964, the State Government decided to transfer the unit in which the appellant was working to M.P. Udyog Nigam, a Government Corporation. The employees in that unit were given an option either to join the services of the Corporation or be absorbed in any other Department of the Government. It was stipulated that if no option was received within the time, it shall be deemed that an employee had opted to join the service of the Corporation. The appellant was accordingly deemed to have joined the said Corporation and continued his service in the said Corporation as he did not give any option. Thus, the appellant in 1972 on his own request was appointed as Assistant Director of Industries in the Government Department. The Government passed order in 1960 appointing the appellant with retrospective effect from 4-1-1957 to cover the period spent on contractual basis as Foreman. The appellant, was given seniority with effect from 4-1-1957. As the notification

for the appointment to the post was issued in 1959 and as the appellant was appointed in 1960 in pursuance of the said notification on the basis of the recommendation by the Public Service Commission, it was held that the order appointing him with effect from 4-1-1957 to the said post was illegal being violative of Articles 14 and 16 of the Constitution of India inasmuch as it adversely affected the seniority of the respondents.

11. Yet another decision relied upon by the learned Counsel for the unofficial respondents is *V. Sreenivasa Reddy and Ors. v. The Government of Andhra Pradesh and Ors.* 1995 Supp. (1) SCC 572. In this case, it was held that the appointments made under Rule 10 (a) (i) (I) of the A.P. General Rules cannot be said to be the appointments in accordance with the Rules for the purpose of determining seniority. In that case, the Government passed orders for the regularisation of their appointments with effect from the date immediately anterior to the date of appointment of direct recruits. The promotees challenged that order of the Government. In this back-ground, the Supreme Court held that the direct recruits became members of service from the date of their appointments but the promotees did not become from the date of initial appointments and it was held that the order of the Government regularising the services placing them in seniority below the direct recruits does not suffer from any infirmity and does not violate Article 14 of the Constitution of India.

12. In *State of Bihar v. Sri Akhouri Sachindra Nath*, 1992 (3) SLR 94, the Supreme Court observed that no person can be promoted with retrospective effect from the date when he was not borne in the cadre so as to adversely affect others' seniority. It was also held that the seniority amongst the members of the same grade has to be reckoned from the date of initial entry into the service. It was also observed that the promotees not borne in the cadre at the time when the direct recruits were appointed cannot be given seniority in service over the direct recruits. In this case, respondents 1 to 5 before the Supreme Court were directly appointed in Bihar Engineering Service Class-II as Assistant Engineers of the Irrigation Department on the recommendation of the Bihar Public Service Commission as per Rules and they assumed office in 1961. Respondents 6 to 23 therein were working in the lower cadre as Overseers. In pursuance of the decision of the Government to allot 25% posts of Assistant Engineers for being filled by promotion, some of them were promoted to the posts of Assistant Engineers by notifications dated 18-6-1964 and 27-8-1964. Some others were appointed by promotion by notification dated 21-7-1969. The promotees were shown as juniors to the direct recruits. But, on a representation to the Government, the Government passed order on 21-7-1975 whereby the date of promotion of various respondents 6 to 23 was changed from 21-7-1962 to 27-2-1961 thereby making respondents 1 to 5 as juniors to them. Subsequently, the Government passed an order promoting some of the respondents with effect from 1958. Thus, by an executive order, the date of promotion of respondents 6 to 23 was pushed back making them seniors to respondents 1 to 5. In this context, the Supreme Court held that no person can be promoted with

retrospective effect from the date when he was not borne in the cadre so as to adversely affect the seniority among the members of the same grade.

13. In the case of V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others, , relied upon by the unofficial respondents herein, the appellants were directly recruited as Assistant Engineers in the Public Health Engineering Department of the State of Bihar. The contesting respondents were initially appointed to the post of Engineering Assistants and later promoted as per the quota fixed for the promotees to the next higher post of Assistant Engineers on different dates but they were given retrospective promotion with effect from 22-8-1970 though some of them were initially appointed only on 22-7-1972. Some of them were actually promoted on 26-6-1976 but were given retrospective promotion with effect from 12-7-1971 and 15-4-1972. Thus, all the respondents were promoted retrospectively with effect from 22-8-1970 and on the basis of such promotion they were shown as seniors to the appellants in the gradation list prepared by the Government which was challenged. It is, in these circumstances, the Supreme Court held that no person can be promoted with retrospective effect from the date he was not borne in the cadre so as to adversely affect the others.

14. The principles laid down in the above cited authorities of the Supreme Court which are germane to the cases before this Court may be summarised as follows:

(i) Once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others,

(ii) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others,

(iii) Temporary appointments made under Rule 10 (a) (i) (I) of the A.P.State and Subordinate Service Rules are not appointments in accordance with the rules for the purpose of determining the seniority and they are not members of the service until they are duly appointed and their services subsequently regularised. V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others,

(iv) Direct recruits take seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed de hors the rules or on ad hoc basis gets seniority from the date of regular appointment. V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others,

(v) While regularising the services of a temporary employee appointed under Rule 10 (a) (i) (1) and under Rule 23 (a) of A.P. State and Subordinate Services Rules, the appointing authority has been invested with the discretion to fix the date of initial appointment or subsequent date as the commencement of the date of the probation. *V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others*,

(vi) An employee cannot be appointed with retrospective effect with effect from the date on which he did not occupy the post and notional seniority cannot be given with retrospective effect when it affects the seniority of those who have already entered into service. (1994 (1) SLR 37)

(vii) No person can be promoted with retrospective effect from the date when he was not borne in the cadre so as to adversely affect the others. (1992 (3) SLR 95) (1995 (7) SLR 713)

15. The facts in *State of Bihar v. Sri Akhouri Sachindra Nath* (4 supra), *S.K. Saha's case* (2 supra) and *Vinodanand Yadav's case* (5 supra) are distinguishable on facts to the extent that in those cases promotions and seniority were assigned with effect from the date which was anterior to the date on which they were appointed to the post. However, in this case, regularisation of services of the petitioners was effected from the date of their actual promotion to the post of Sub-Inspectors.

15-A. As held by the Supreme Court in *V. Sreenivasa Reddy and others case* (3 supra), the temporary promotions of the petitioners under Rule 10 (a)(i)(1) of the A.P. General Rules cannot be treated as regular appointments with effect from the date of their promotion. But, the contention of the learned Counsel for the petitioners is that the temporary promotions have been regularised with effect from the date of their temporary promotions by relaxing the Rules with retrospective effect under powers vested in the Government under Rule 47 of A.P. State and Subordinate Services Rules. If the petitioners succeed in showing that regularisation of their services with effect from the date of their promotion on temporary basis is legal and valid, then the principles laid down in the above authorities that seniority cannot be fixed with retrospective effect cannot apply to these case. In fact, in *V. Sreenivasa Reddy and others case* (3 supra), it has been observed that the Government have the discretion to regularise the services of the temporary employees in accordance with the rules either from the date of their temporary appointment or with effect from any subsequent date.

16. The learned Counsel for the petitioners contends that the Government have the power under Rule 47 of the A.P. General Rules to relax the rules with retrospective effect. On the other hand, it is strenuously urged by the learned Counsel for the non-official respondents that such a retrospective regularisation is impermissible. It was further contended that at any rate, the rules of recruitment cannot be relaxed.

17. In the case of *Government of Andhra Pradesh and Others Vs. Sri D.*

Janardhana Rao and Another, , the Supreme Court had an occasion to decide an identical question as to power of the Governor to relax the Service Rules under Rule 47 of A.P. State and Subordinate Services Rules. In that case, a panel of Deputy Tahsildars for promotion to the cadre of Tahsildars was to be prepared. The existing Rules required that for inclusion in the panel for promotion of Tahsildars, the Deputy Tahsildars should satisfy certain qualifications. Apart from other qualifications, they should be approved probationers and as Deputy Tahsildars they should have exercised Magisterial powers of II and III Class Magistrates. In that case, due to historical reasons, for the Hyderabad cadre of Deputy Tahsildars, no probation was prescribed and in Hyderabad Service for Upper Division Clerks passing of criminal judicial test was not mandatory and after promotion as Deputy Tahsildars, the question of their having exercised judicial powers did not arise as they did not pass criminal judicial test. Considering the historical reasons, the Government considered it unfair to exclude the Deputy Tahsildars from Telangana Area of Andhra Pradesh for inclusion in the panel for promotion of Tahsildars. Under these circumstances, the Government resorted to their powers under Rule 47 of the A.P. General Rules and relaxed relevant Rule 4 (a) of the Special Rules relating to promotion as Tahsildars. Rule 47 of the General Rules reads as follows;

Rule 47: Relaxation of rules by the Governor:

No rule made under the proviso to Article 309 of the Constitution of India or continued under Article 313 of the Constitution shall be construed to limit or abridge the power of the Governor to deal with the case of any class or category of persons for being appointed to any civil post, or of any person who is serving or has served in a civil capacity under the Government of Andhra Pradesh in such manner as may appear to him to be just and equitable:

Provided that, where any such rule is applicable to the case of any person or a class of persons, the cases shall not be dealt with in any manner less favourable to the person or class of persons than that provided by that rule..."

By granting relaxation, under this rule, they were included in the panel for promotion as Tahsildars. The action of the Government in this regard was challenged by the Deputy Tahsildars who were not included in the panel on the ground that relaxation under Rule 47 cannot be exercised with retrospective effect. Repelling this contention, the Supreme Court held that Rule 47 of the General Rules gives powers to the Governor to relax the rigour of the General Rules in such a manner as may appear to him to be just and equitable. It was pointed out that occasion may arise after the attention of the Government is drawn to a case where there has been a failure of justice that justice can be done only by exercising the powers under Rule 47 of the General Rules with retrospective effect.

17-A. In the case of M. Venkateswarlu v. Government of A.P. 1996 (2) SLR 871, the Supreme Court held that the Government is empowered to relax the rigour of

the General Rules in such a manner as may appear to him to be just and equitable in the interest of justice and equity. It was also observed that justice can be done exercising the powers retrospectively. Otherwise, the object and purpose of Rule 47 of the General Rules will be largely frustrated. In that case, the appellant before the Supreme Court fell short of 5 months service for purpose of period of two years as Senior Assistant and one year five months for purpose of total service of 8 years in the Revenue Department for promotion to higher cadre. Considering the facts and circumstances of the case, the Government relaxed the rules mandating this service requirement, which was upheld by the Supreme Court.

18. The facts in the case of Desoola Rama Rao and Another Vs. State of Andhra Pradesh and Others, , are nearer to the facts of this case. In that case, the services of two respondents were regularised retrospectively with effect from 19-5-1961 by an order of the Chief Engineer passed on 3-5-1967. It was observed in para 4 of the judgment of the Supreme Court that as the date from which regularisation has been directed to take effect is not anterior to their appointment as Assistant Engineers, the regularisation cannot be said to have been vitiated on account of arbitrariness. In the case before the Supreme Court, respondents 3 and 4 were temporarily appointed as Assistant Engineers on 14-8-1959 and 19-5-1960 respectively before the appellants were recruited as Assistant Engineers. In exercise of powers under Rule 23 (a) of the General Rules, the services of the two respondents had been regularised retrospectively with effect from 19-5-1961 by the Chief Engineer by orders dated 3-5-1967.

18-A. This case is an authority for two propositions, that the power of relaxation can be exercised retrospectively and that it can be exercised for the specific purpose of regularisation of services of a temporary appointee with retrospective effect from the date of his appointment under Rule 10 (a) of the A.P. General Rules.

19. In the cases before vis., the appointments of the petitioners under Rule 10 (a) (i) (1) were regularised by relaxing the relevant Rules under 2 (b)(i) and 11 (c) of A.P. Police Subordinate Service Rules and Standing Order No. 107 of the Andhra Pradesh Police Manual Part I by exercising the powers under Rule 47 of the A.P. General Rules. The learned Tribunal had recorded its finding that the power under Rule 47 of the A.P. General Rules can be exercised retrospectively. It may be repeated here that the Supreme Court in the case of V. Sreenivasa Reddy and others (3rd supra) has specifically held that the Government had discretion to regularise the services of a temporary employee either with effect from the date of temporary appointment or any subsequent date; and as seen above in the case of Direct Recruit Class-II Engineering Officers' Association (1st cited supra), the Supreme Court also held that "if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted for the

purpose of seniority. In this case, the Government for good reasons have chosen to regularise the services of the petitioners with effect from their date of temporary promotion as Sub-Inspectors under Rule 10 (a) (i) (1) of the General Rules. Recognition of and providing incentive for merit must be held to be in public interest. The learned Tribunal at page 45 of the judgment has observed that the appointment of the petitioners was not in accordance with the Rules and also, as their appointments were not made after considering the cases of all other eligible persons as per Rules, their services with effect from the date of their temporary appointment cannot be counted for seniority in the cadre of Sub-Inspectors. It may be pertinent to mention here that the petitioners were given out of seniority promotions on the basis of their individual extraordinary services and merit. The question of considering other eligible persons along with them would scarcely arise as in such cases it is only a particular individual based on his notable performance and merit would be picked up for out of seniority promotion as has been done in this case.

20. Two contentions raised on behalf of the unofficial respondents remain to be adverted to.

20-A. It is strenuously contended by the learned Counsel for the respondents that even if under Rule 47 of the General Rules, the Government have the power to relax the rules retrospectively, the rules relating to recruitment cannot be relaxed. In support of his contention, the case of J & K Public Service Commission v. Narinder Mohan 1994 (1) SLR 246, is cited. In that case, it has been laid down that once statutory Rules have been made relating to appointment to a post, such appointment should be made only in accordance with the Rules. In that case, the Rules provided for appointment to the post in question by direct recruitment by selection by Public Service Commission or by promotion from the feeder cadre. But, a person was appointed to a post directly otherwise than by the above method contrary to the Rules. It is pertinent to mention here that in that case, the incumbent was not appointed by promotion but appointed directly without following the mandatory procedures prescribed for direct recruitment. It was also found as a fact that the relevant rules framed u/s 125 of Jammu and Kashmir Constitution (Article 320 of the Constitution of India) did not expressly give power to the State Government to make ad hoc appointments. It was in this context, the Supreme Court observed that "...no express power was conferred and, in fact, can be conferred to relax the rules of recruitment". But, in the cases before this Court, the General Rules provide for ad hoc appointments under Rule 10 (a) (i) (1) of the General Rules. Further, in this case there is a provision for appointment by promotion and that is how the petitioners have been appointed.

20-B. The facts of these cases would disclose that there are two modes of appointment to the posts of Sub-Inspectors; one is direct recruitment and the other is by way of promotion. The petitioners herein were promoted out of seniority temporarily. For their regular appointments, they would have been

required to satisfy certain criteria as provided under Rule 2 (b) of A.P. Police Subordinate Service Rules. In the facts relating to these cases, it cannot be said that the Rules of recruitment have been relaxed. In fact, in this case Rule 2 (b) of A.P. Police Subordinate Service Rules itself has a provision exempting the rules in the case of Special Promotion in recognition of conspicuous merit and ability, which is extracted hereunder:

"Rule 2 (b) (i): Promotion to all non-gazetted Posts in this service shall be made in accordance with the seniority-cum-fitness provided they pass the tests, undergo training and fulfil all other conditions prescribed in the rules and in the instructions of the Andhra Pradesh Police Manual Note: The aforesaid provision shall not be applied to a case where-

(a) the Promotion of a member has been withheld as a penalty; or

(b) in such of the cases, where a member is given a special promotion in recognition of a conspicuous merit and ability."

21. What has been done in this case under the impugned orders is that by relaxing the relevant Rules of A.P. Police Subordinate Service Rules and the provisions contained in the Police Manual relating to promotion of Head Constables to the post of Sub-Inspectors, the temporary appointments by promotion of petitioners have been converted into regular appointments by promotion. As contemplated under Rule 23-A of the A.P. General Rules and by virtue of Rule 33-A of the Special Rules, their seniority would be determined with effect from the date of their first appointment.

22. The only other contention which needs mention is that at any rate the impugned orders of the Government would not affect the interests (seniority) of the unofficial respondents inasmuch as no notice has been given to them before the Government passed the impugned orders. It may be mentioned here, the impugned orders do not relate to fixing the inter se seniority within the cadre of Sub-Inspectors. The petitioners herein were promoted in their individual cases based on their exceptional merit and performance. If regularisation of their services by relaxing the rules under Rule 47 of the A.P. General Rules happens to affect the seniority of others, this itself does not support the contention that the impugned orders could not have been passed without prior notice to the unofficial respondents and others. Further, Rule 47 of the General Rules does not contemplate issuance of notice before the power is exercised under it. The Supreme Court in the case of M. Venkateswarlu (7th cited supra) has held that Rule 47 ex-facie does not contemplate any notice. It was also observed that it was not a case to consider inter se claims of any particular individuals and that it was a case of relaxing the eligibility requirement of a single individual as against many. In these circumstances, it was held that no notice was required.

23. The result of the above discussion is that the impugned orders passed by the Government regularising the services of the petitioners cannot be said to be contrary to the principles laid down by the judgments of the Supreme Court cited

by the learned Counsel for the unofficial respondents. The impugned orders of the Government in G.O.Ms. No. 37 dated 23-1-1996 and G.O.Ms. No. 9 dated 4-1-1996 must be held to be in conformity with law. The learned Tribunal having found that the Government had power under Rule 47 of the General Rules to relax the rules in favour of the petitioners with retrospective effect has not given effect to the logical extension of that finding and by misappreciating the judgment of the Supreme Court in Direct Recruit Class-II Engineering Officers' Association (1st cited supra) has erroneously held that the impugned orders regularising the services of the petitioners are bad in law. The findings and order of the Tribunal suffers from an error of law which deserves to be set aside and is accordingly set aside. In the result, the Government Order Ms. No. 37 dated 23-1-1996 and G.O.Ms. No. 9 dated 4-1-1996 are held to be valid and consequently the petitioners shall be entitled to all the benefits on the basis that their services have been validly regularised with effect from their respective dates of temporary promotions in the first instance as Sub-Inspectors.

24. In view of the above findings, the impugned order of the learned Tribunal in V.M.A. No. 448 of 1997 cannot stand. Since O.A. No. 1670/97 is pending, the Tribunal shall pass appropriate orders in the light of the above orders.

25. In the result, Writ Petition Nos. 34849 and 35775 of 1997 are allowed and Writ Petition No. 6758 of 1998 is disposed of in the above terms. No costs.