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**(1998) 04 AP CK 0040**  
**In the Andhra Pradesh High Court**  
**Case No : W.A. No. 591 of 1998**

N.H.V. Subba Rao

APPELLANT

Vs

APSRTC, Musheerabad, Hyd. and others

RESPONDENT

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**Date of Decision :** 16-04-1998

**Acts Referred:**

Constitution of India, 1950 — Article 12, 15(3), 15(4), 16(2), 4

**Citation :** (1998) 4 ALD 1

**Hon'ble Judges :** Umesh Chandra Banerjee, C.J.;C.V.N. Sastri, J

**Bench :** Division Bench

**Advocate :** Mr. Tirumala Rao Mamidala, for the Appellant; Mrs. A. Vyjayanthi, SC for APSRTC, for the Respondent

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## Judgement

Umesh Chandra Banerjee, CJ.

1. This Writ Appeal is directed against the order of rejection of the Writ Petition by the learned single Judge.

2. The contextual feet depicts that Writ Petitioner-appellant sought compassionate appointment as Conductor in the Andhra Pradesh State Road Transport Corporation on the ground that his father had completed 25 years of service in the Corporation and on the basis of a Circular issued by the Vice Chairman and Managing Director, APSRTC dated 5-10-1987. Be it noted that the Circular dated 5-10-1987 stands cancelled and set aside by reason of the subsequent Circular dated 15-2-1995 issued by the Corporation. As a matter of fact, the circular dated 15-2-1995 categorically mentions that the earlier circular stands withdrawn by the issuance of the 1995 Circular. As such, no advantage can be derived from the former circular.

3. It has been the definite contention of the learned advocate appearing in support of the appeal that since the application for compassionate appointment was made during the period when the earlier circular was in vogue, the case of the writ petitioner ought to have been considered in the light of the earlier

circular and the question of applicability of the 1995 Circular to the case of the writ petitioner does not and cannot arise. The issue has been squarely dealt with by a Division Bench of this Court in Shaik Ahmad Ali Shah and Another Vs. The Divisional Manager, APSRTC and Another, wherein this Court in paragraphs 13 and 14 of the Judgment observed as follows:

"13. In the light of these decisions, it should be held that the circular issued by the Vice-Chairman-cum-Managing Director of the APSRTC dated 5-10-1987 in so far it provided preferential treatment/ discrimination in favour of the children of the serving employees who had put in 25 years of minimum service in the Corporation should be held to be based on the ground only of descent and consequently is void being violative of Article 16(2) of the Constitution. If that is so, whether we can enforce such invalid, unconstitutional circular by issuing a writ of mandamus 1 It cannot be done. It is settled law by the decisions of Apex Court in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., and in State of Bihar and others Vs. Ramdeo Yadav and others, that no mandamus would be issued directing the State to disobey the law.

14. Generally speaking, equality of rights, privileges and capacities should be the aim of the law; special privileges are obnoxious, and discriminations against persons or classes are "still more so. There are unquestionably cases in which the State may grant privileges or favours to specified individuals or groups without violating any Constitutional principle or limitation, because, from the nature of the case, it is impossible they should be possessed and enjoyed by all; but, in all such cases the Constitution itself sanctions departure from the general rule of equality, for example, Articles 15(3) and 15(4) and Articles 16(4) and 16(4-A). Any departure from the general rule without Constitutional sanction would be a nullity."

4. Having due regard to the facts and circumstances of the case and having due regard to the factum of issuance of subsequent circular, we cannot but lend our concurrence to the observations of this Court as noted above. The earlier circular stands withdrawn by the subsequent circular and as such the question of having its validity extended after its withdrawal does not and cannot arise. It is a policy decision of the Corporation and the Law Courts would not be justified in interfering with the policy decisions of the authority within the meaning of Article 12 of the Constitution of India. Writ of Mandamus being a high prerogative writ and in vogue as a Crown privilege ought not to be issued or be directed to be issued to disobey the existing law, neither there cannot be any interference as regards the policy decision of a Public Authority. The learned advocate appearing in support of the appeal strongly relied on another Division Bench Judgment of this Court in A. Seshapathi Vs. The Divisional Manager, APSRTC and Others, . This decision which was earlier in point of time was considered by the later Division Bench of this Court in Shaik Ahmad AH Shah's case, without, however, any expression of opinion. But the contextual facts in the instant case are different in nature than the facts of the matter in issue in the case before the

earlier Division Bench of this Court. The earlier Division Bench has clearly distinguished the facts and circumstances of the case and as such we need not dilate on that score again.

5. Having, however, recorded our concurrence to the observations of this Court in Shaik Ahmad AH Shah's case (supra) and the observations as noted above, we do not find any merit in the peculiarities of the matter under consideration. As such, we do not find any infirmity in the order of the learned single Judge.

6. The Writ Appeal, therefore, fails and is accordingly dismissed. There shall, however, be no order as to costs.