

(1994) 08 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 340 and 341 of 1993

P. Komaraiah and Others

APPELLANT

Vs

A. Yegneswarudu and Others

RESPONDENT

Date of Decision : 22-08-1994

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 — Regulation 30, 34
Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations, 1964 — Regulation 3
Constitution of India, 1950 — Article 14, 16
Road Transport Corporations Act, 1950 — Section 45

Citation : (1995) 1 ALT 338

Hon'ble Judges : A. Lakshmana Rao, Acting C.J.; N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : K. Subrahmanya Reddy, Y. Suryanarayana, Avula Venkateswarulu, C.V. Srinivasa Reddy and G. Hariharanadha Reddy, V. Rajagopal Reddy, for the Appellant; M. Surender Rao, for the Respondent

Final Decision : Allowed

Judgement

N.Y. Hanumanthappa, J.—These two writ appeals are directed against a common judgment passed by His Lordship Sri Justice B. Subhashan Reddy in Writ Petition Nos. 5837 and 5838 of 1993. Since the questions of law, facts involved and the grounds of challenge are almost identical in both the appeals the same are clubbed and disposed of by a common Judgment.

2. The appellants and respondents in these two appeals are officers of the Andhra Pradesh State Road Transport Corporation (hereinafter called "the Corporation"). They are borne on the cadre either as Assistant Traffic Managers or Assistant Mechanical Engineers (hereinafter referred to as A.T. Ms. and A.M.Es. respectively). The issue to be considered in these appeals relates to one of fixation of seniority of promotees vis-a-vis direct recruits to the next higher post. As far as the service conditions of either employees or officers of the

Corporation are concerned, they are governed by two sets of Regulations, which came to be framed by the Corporation in view of the powers conferred by Section 45 of the Road Transport Corporations Act, 1950. The said two sets of Regulations are: The Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations, 1964 {hereinafter referred to as "the Service Regulations"} and The Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 (hereinafter referred to as "the Recruitment Regulations")- The relevant provisions of these two Regulations which will have bearing on the issue involved will be dealt with at a little later stage. The Respondents herein were the petitioners in the Writ Petitions. At the time of filing of the Writ petitions, they were working as either A.T.Ms, or A.M.Es. Aggrieved by the notification dt. 28-12-89, relating to seniority of A.T.Ms and A.M.Es. they approached this Court in two writ petitions referred to above for the relief that (i) the said notification dt. 28-12-1989 be quashed, (ii) a writ of mandamus be granted declaring that the writ petitioners are entitled to count their seniority from the date of their initial appointment and (iii) to declare that the Corporation's Regulation prescribing the quota rule has been broken down and as such placing the direct recruits appointed subsequent to the promotion of the writ petitioners, in the seniority list is arbitrary, illegal and discriminatory, thus violative of Articles 14 and 16 of Constitution of India. So also the Regulations relating to Service and Recruitment of the employees of the Corporation are vitiated.

3. A few facts which are necessary to resolve the real issue involved, as told by the parties, are as follows:- According to the Writ petitioners, they were all appointed in different capacities by the Corporation prior to 1971. As per the Recruitment Regulations of the Corporation, the Corporation is empowered to appoint to the post of A.T.Ms, or A.M.Es., which are posts of Class I Junior Scale Officers, either by direct recruitment, or by promotion, or by transfer or deputation. The Corporation was filling up the posts of A.M.Es. and A.T.Ms, by both sources, namely, promoting from the cadre of Mechanical Foreman or by direct recruitment. From 1966 till 1989, in a span of 25 years, the posts of A.M.Es. and A.T.Ms. were filled up by direct recruitment only for 7 times i.e., in the years 1966, 1971, 1973, 1977, 1984, 1986 and 1988. As and when the necessity to fill up the post was existing in order to see that the administration of the Corporation runs smoothly, the said posts were being filled up by way of promotion, drawing the suitable and qualified candidates from the feeder categories and after selection. Between 1966 and 1986, nearly 80 people were promoted after due selection. From the date of their promotion, the Writ petitioners are working in the promotion post, without any break. For the said posts there was selection by way of direct recruitment in the year 1984, preceded by its earlier direct recruitment in the year 1977. Thus there was no direct recruitment for a period of 7 years. It was given to understand that when the posts were not filled up by direct recruitment, the Corporation was filling the posts by promotion. In all the promotion orders, the condition imposed was that

the promotions are purely temporary and are under Regulations 30 or 34. Regulation 30 of the Recruitment Regulations does not apply to the case of the writ petitioners, as they were all promoted after subjecting them for strict scrutiny and selection. Since their promotions were purely on the basis of merit and performance, their promotions are deemed to have been regularised, in spite of using the word in the promotion orders as "temporary". Their promotions were neither on ad hoc basis nor to meet the exigencies nor to avoid delay in filling up of the direct recruitment. Their promotions were not by way of any fortuitous circumstances. Since their promotions were purely regular, they were entitled for all the benefits which the direct recruits are entitled, particularly, in view of their continuance in service for a long period. If the Corporation was very much interested in making appointments by way of direct recruitment, it should have made as and when the vacancy had arisen, in stated of waiting for a considerable period of time. When the writ petitioners had been discharging their duties in the promotion posts without any blemish drawing increments and enjoying other benefits, it was not proper on the part of the Corporation to push them down in the list of seniority and placing the direct recruits above them, who in fact were recruited very recently and are also quite young in age. The action of the Respondent Corporation in treating the writ petitioners as juniors to their own juniors does not stand to reason, that too when the so called direct recruits were still born when these writ petitioners were promoted. It is most unfair and also a fraud on the part of the Corporation in treating these direct recruits who were appointed nearly 8 to 10 years subsequent to the dates of promotion of the Writ petitioners, as their seniors in the absence of convincing reasons. The above action of the Corporation was quite illegal and resulted in taking away the long years of accumulated service put in by the writ petitioners, thus running contrary to law laid down by the Supreme Court of India and other High Courts, in similar set of circumstances.

4. As an answer to these contentions, the Corporation as well as the direct recruits who were the appellants herein and respondents in the Writ petition filed detailed counter. The respondents have stated in the counter-affidavit that no illegality has been pointed out by the writ petitioners in preparing the seniority list, dt. 28-12-1989. According to them, the petitioners not entitled for the reliefs thy sought They have denied that any fraud or favouritism was shown by the Corporation in placing the direct recruits above the promotees. They have stated that recruitment and fixation of seniority are governed by recruitment Regulations and Service Regulations. Any promotion that is governed by any particular set of rules, shall be as per the said rules. Any contravention will not confer any right on the promotees to treat their officiating service as regular service from the date of their appointment by way of promotion or their officiating period shall be counted for the purpose of regularisation. When there are two sources of recruitment and a particular quota has been ordered to be maintained, any selection shall be as per the quota and rota system prevailing. As per the Recruitment Regulations and Service Regulations of 1966 and 1964

respectively, which got approval of the Government u/s 45 of the Road Transport Corporation Act, 1950 the recruitment shall be from two sources, namely, direct recruitment and/or by promotion, and the seniority of both the categories shall be fixed as per Regulation 3 of the Service Regulations. Any length of officiation will not confer any right on the promotees to seek that they shall be placed above the direct recruits. The promotions of the writ petitioners, if any, were made subject to certain conditions, the important one being that their promotions are purely temporary. They were promoted to meet the exigencies in the department. The first appointment of the petitioners and their subsequent promotions were in accordance with Regulation 34. When the petitioners got benefit under Regulation 34, it is not open for them to contend that Regulation 34 is not applicable to their case. Unless the probation is completed, promotees are not entitled for promotion. Age of the appellants or the fact that by virtue of their direct recruitment though they worked for lesser period in the said post than the writ petitioners, but incorrectly made seniors to promotees, are not the factors to be looked into to grant the reliefs to the writ petitioners. Neither there is arbitrariness nor illegality nor discrimination on the part of the Corporation in placing the appellants above the promotees in the seniority list of A.M.Es. or A.T.MS.

5. The case of the Corporation in the counter filed on writ side was one of denial of contentions raised and allegations made in the writ petition. It denied showing of any favouritism or playing of fraud to place the direct recruits above the promotees in the seniority list of A.M.Es. on A.T.Ms. Regulation 30 of the Recruitment Regulations empowers the Corporation to make appointments purely on ad hoc or temporary basis to meet any emergency situation, when immediate direct recruitment to fill up the said posts is not possible. Any such promotion will be purely temporary, taking into consideration the qualifications, and not looking into the comparative merit. According to the Corporation, Regulation 30 of Recruitment Regulations provide for promotion of a suitable person on temporary basis, but not as a regular channel of promotion. Thus, filling up of a post by promotion on a temporary basis does not confer any right. The Writ petitioners got four promotions within a span of 10 to 12 years. So far as the seniority is concerned, it is not Regulation 34 of Recruitment Regulations that deals with appointment on a temporary basis and provides that such promotee shall make way as and when a regular recruitment is made, that governs. Thus, only Regulation No. 3 of Service Regulations of the Corporation deals with fixation of seniority. Any recruitment shall be as per Regulation 3 of Service Regulations. In making promotions, seniority and quota rule shall have to be strictly observed. After recruitment, the direct recruits have reported for duty and are discharging their functions more effectively. Regulation 30 deals with temporary promotion, which further envisages that as and when a regular appointment is made, the person appointed temporarily shall make way for the direct recruit. A person promoted under Clause (1) or (2) of Regulation 30 of the Recruitment Regulations cannot be regarded as a probationer in the higher category or be

entitled for preferential claim for future promotion merely on the basis of officiation. The period of probation will start from the date of subsequent promotion or any earlier date as the appointing authority decides and determines. The promotees were only officiating in the posts meant for direct recruits. Meanwhile, the direct recruits were undergoing training and as soon as they completed training successfully, they were selected and posted against the vacancies meant for direct recruitment, in which the petitioners were officiating temporarily. During this period, some vacancies in promotees' quota arose and some of the petitioners were also appointed by promotion on regular basis against those vacancies. During the period 1981-84, there was a total ban on direct recruitment for all the posts under the Corporation. Subsequent to this due to nationalisation of routes and expansion of its activities, the number of posts of Dy. Mechanical Engineers or equivalent cadre arose and the same were filled up by both the categories. The seniority list referred to has been reprepared on the basis of quota and rota system. The seniority of both the categories of employees was fixed, taking into consideration of the ratio of 3:1. Subsequent to 1984, as and when the vacancies across, the quota of promotees was also made good. The probation of the promotees was declared as per the Regulations. There is neither arbitrariness, nor illegality nor discrimination by the Corporation in making selection by way of direct recruitment to the posts in question and subsequently fixing the seniority. The further case of the Corporation is that since the seniority is well in accordance with the Regulations, contentions raised by the petitioners are devoid of merit.

6. Both the parties submitted their arguments before the learned Single Judge, on the basis of the averments made in the respective affidavit and counter affidavit.

7. The learned Single Judge, after hearing both sides and also placing reliance on the authorities cited, found that the respondent Corporation was not justified in placing the direct recruits above the promotees, by its notification dt. 28-12-1989, ignoring the period for which the promotees worked in officiating capacity either as A.M.Es. or A.T.Ms. According to the learned Single Judge, the Corporation which failed to fill up the posts which were available for direct recruitment and on the other hand filled the posts by way of promotion, should not have disturbed it after a long lapse of time. It in fact means that it was a clear case of breaking down of the rule and promotion of the writ petitioners on a regular basis. Having utilised their services for more than 8 to 10 years and later pushing down is not only arbitrary, illegal and discriminatory in nature, but also against judicial verdicts given by this Court and Supreme Court in similar circumstances in a number of cases. In the course of his Judgment, the learned single Judge observed that decisions relied upon by the respondents which are rendered by this Court while interpreting the scope of Regulations 30 and 34 and particularly the Judgment rendered in Writ Appeal Nos. 480, 485 and 492 of 1975 in Krishna Murthy v. A.P.S.R.T.C., 1987 (1) ALT 520 are no longer good law. The learned Single Judge found that the decision of the Corporation in placing

the direct recruits above the promotees is contrary to the decision rendered by the Supreme Court in A. Janardhana Vs. Union of India (UOI) and Others, . Thus observing the learned fringes judge allowed the writ petitions and declared that seniority or or the Writ Petitioners in the cadre of A.T.Ms, and A.M.Es. shall be reckoned from the date of their entering into service and be fixed over and above the direct recruits with consequential benefits.

8. Aggrieved by the said order, the direct recruits preferred these writ appeals.

9. They sought to attack the order of the learned Single Judge on several grounds, amongst them a few important are as follows:-According to them (1) the learned Single Judge erred in holding that the promotees are entitled to seek for fixation of their seniority above the direct recruits on the basis of their initial appointment to the posts in question by way of promotion, (2) the order of the learned Single Judge is not sustainable as the same has been passed without taking into consideration the true effect of Recruitment Regulations and Service Regulations of the Corporation, (3) the observation of the learned Single Judge that earlier decisions of the Division Benches of this Court on the scope of Regulations 30 and 34 of the Recruitment Regulations are no longer good law, in view of some of the decisions of the Supreme Court, is unsustainable and is the result of not properly understanding the true scope and facts involved in the cases decided by the Supreme Court, (4) the learned Single Judge should have noticed that the probation period of the promotees will start not from the date of their entering into service, but from the date of their regularisation, (5) when regulations prescribe different modes viz., direct recruitment and promotion and also speak about fixation of seniority by providing for quota and rota, and the same are mandatory, (6) delay in making direct recruitment, cannot be a ground to hold that the Corporation had no intention of making the appointments by way of direct recruitment or that it resulted in breaking down of the rule; (7) the learned Single Judge should have noticed that any post held by a promotee which was meant for direct recruit has to be vacated when a direct recruit is available and it will not confer any right on the promotee, (8) when quota rule exists providing for rota also, filling up of posts shall be in accordance with the said quota and rota system only, (9) the delay, if any, in making direct recruitment was due to ban on recruitment imposed during the period 1981 to 1984 for all posts in the Corporation. If the said ban was not there, the vacancies meant for direct recruitment during the said period of 1981-84, would have been filled up by direct recruitment, (10) if any promotion to these posts was made, the same would be irregular and the continuance of promotees on officiating basis will not enure to claim seniority over direct recruits, (11) it is also contended that the principles laid down by the Supreme Court in the decisions referred to by the learned Single Judge are on all fours, with the present case and they are in favour of the direct recruits and not against them, (12) due to ban on appointments and for other relevant reasons, direct recruitment was not made during the period 1981-84, (13) the learned single Judge should have appreciated the bona fides of the Corporation and upheld the seniority list dt.

28-12-1989.

10. The writ petitioners sought to support the Judgment of the learned Single Judge by taking us through the observations made in the Judgment. They reiterated that ignoring the case of the promotees, the Corporation placed the direct recruits above the promotees in the seniority list, without counting their continuing or officiating service and this is quite arbitrary, illegal and violative of Articles 14 and 16 of Constitution of India, including Regulations 30 and 34 of the Recruitment Regulations. It was contended on their behalf that the authorities relied upon by them before the learned Single Judge, the conclusions reached on the basis of the information furnished and the observations made in that regard, are quite appropriate and the order of the learned Single Judge is sustainable.

11. In support of the rival contentions, both the parties relied upon seven authorities some of which in fact were referred to by the learned Single Judge Those are:

Krishna Murthy v. A.P.S.R.T.C. (1 supra)

Janardhan v. Union of India (2 supra) .

Direct Recruit Class II Engg. Officers" Association v. State of Maharashtra, AIR 1970 SC 1607

AIR 1977 251 (SC)

S.B. Patwardhan and Another Vs. State of Maharashtra and Others,

G.S. Lamba and Others Vs. Union of India (UOI) and Others,

V.D. Badami v. State of Mysore, AIR 1980 SC 1406

Sonal v. State of Karnataka, AIR 1987 SC 2359

Keshav Chandra Joshi and others etc. Vs. Union of India and others,

A.N. Sehgal and others Vs. Raje Ram Sheoram and others,

Delhi Water Supply and Sewage Disposal Committee and Others Vs. R.K. Kashyap and Others,

S.G. Jaisinghani Vs. Union of India (UOI) and Others,

Bishan Sarup Gupta Vs. Union of India (UOI) and Others,

Bishan Sarup Gupta and Others Vs. Union of India (UOI) and Others,

P.C. Sethi and Others Vs. Union of India (UOI) and Others,

General Manager, A.P.S.R.T.C. v. Mathur, 1976 (2) AWR 389

Chaudhar v. State of P & H., 1987 (1) SLR 295 (P & H)

Pathak v. Secretary to Govt., 1987 (1) SLR (SC) 789

State of Maharashtra v. AK Sete, 1993 (5) SLR 77 (Bom.)

O.P. Singla and Another Vs. Union of India (UOI) and Others,

Keshav Chandra Joshi and others etc. Vs. Union of India and others,

S.L. Chopra and others Vs. State of Haryana and others,

State of W.B. and Others Vs. Aghore Nath Dey and Others,

S.K. Shaw v. Premprakash Agarwal, 1994 (1) SLR 37

Union of India v. Hindusthan Development Corporation, 1993 (4) SCC 499

12. In order to resolve the controversy involved, it would be proper to go through the relevant provisions both in Recruitment Regulations and Service Regulations, as proper understanding of these provisions will help us to resolve the controversy in the matter of direct recruitment/promotion to the posts under consideration and the fixation of inter se seniority.

13. The said revisions are extracted as follows:-

A.P.S.R.T.C. Employees (Recruitment) Regulations, 1966.

Regln. 2(v) APPROVED CANDIDATE means a candidate whose name appears in an authoritative list of candidates approved for appointment to any service, class or category.

2 (vii): CORPORATION means the Andhra Pradesh State Road Transport Corporation established u/s 3 of the Act:

2 (xi): PROMOTION means the appointment of an employee to a higher

2 (xiv): SELECTION means the selection of a person for appointment to a post in the service of the Corporation by the selection committee, if any, appointed for the purpose under Regulation 6 or by the appointing authority in its discretion when no selection committee has been appointed, provided that the regulations as regards the method of recruitment and qualification in respect of the post for which the selection is made, are fulfilled.

2 (xv): SELECTION POST means a post which is declared as such by a resolution of the Corporation.

2 (xvi): SERVICE means service in the Corporation.

Regln. 3 APPOINTMENT AND QUALIFICATIONS:

(1) Appointment to the posts in the Corporation shall be made:-

(a) by direct recruitment; or

(b) by promotion; or

(c) by transfer or deputation of an official already in the service of a Department

of the Central or State Government or a State Transport Undertaking.

(2) The method of recruitment to each post specified in column of Annexure-A shall be shown in the corresponding entry in column (3) thereof and the qualifications prescribed for each such post shall be as shown in the corresponding entry in column (4).

(3) Notwithstanding anything in Clause (2) the Corporation may at any time appoint suitable officers of the State or Central Government or any State Transport Undertaking to any of the posts specified in Annexure-A on "Foreign Service" terms.

(4) Where suitable departmental candidates are not available for promotion to any of the posts specified in Annexure-A where the posts are to be filled by promotion only, such posts may be filled by direct recruitment by selection, provided that recruitment to all the higher posts from the lower posts shall be made by way of promotion, and resort had to direct recruitment only when suitable and qualified persons are not available for promotion.

RegIn. 4: APPROVED CANDIDATES:

(1) All direct recruitment shall be made by the appointing authority from a list of approved candidates. Such list shall be prepared, subject to any general or special orders of the Corporation, by the Selection Committee, if any, appointed in this behalf.

Where the candidates in such list are arranged in and order of preference, appointments to the service shall be made in such order.

The inclusion of candidates name in a list of approved candidates for any posts shall not confer on him any right to appointment to such post otherwise than in accordance with these regulations.

(2) A vacancy in any service, class or category not being a vacancy which shall be filled by direct recruitment under these regulations, shall not be filled by appointment of a person who has not commenced his probation in such service, class or category when an approved probationer or a probationer therein is available for such appointment

RegIn. 12: RESERVATION OF APPOINTMENTS:

(1) Direct recruitment posts in all classes of services both Technical and non-technical shall be filled up as per the reservations given hereunder:

(a) Scheduled Castes14%

(b) Scheduled Tribes4%

(c) Backward Classes ...25%

The Corporation may also at its discretion extend concessions in appointments to

the vacancies to Emergency Commissioned Officers and Physically Handicapped persons.

Note:- (1) For the purpose of the above reservation, the list of Backward Classes, Scheduled Castes and Scheduled Tribes as notified by the State Government from time to time shall be adopted.

(2) The reservation of vacancies for Backward Classes as above will be for a period of 10 years with effect from 24-5-72 in the first instance and the position shall be reviewed thereafter.

(3) The Unit appointments for the purpose of this regulation shall be one hundred.

(2-A) The 25% of reservation of posts or appointments made in favour of the Backward Classes shall be allocated among the four groups of Backward Classes as shown below and an order of subrotation shall be fixed for the distribution of posts among the four groups.

Group (a) ...7%

Group (b) ...10%

Group (c) ...1%

Group (d) ...7%

12 (c) (i): When no suitable candidate is available for the post reserved for any particular group of backwards classes, the post will accrue to the next group in the order of rotation and only if no suitable candidate is available in any of the four groups then the reserved post would lapse to the general pool.

Regln. 17 (6): Notwithstanding anything in these regulations, if and when a temporary post is created as an addition to the cadre of a service and the holder thereof is required by the corporation to possess any special qualifications, knowledge or experience, any person who possesses such qualifications, knowledge or experience, and is considered to be the best suited to discharge the duties of such post may, irrespective of other considerations, be appointed to that post by the appointing authority but the person so appointed shall not by reason only of such appointment be regarded as a probationer in such service, class category nor shall be acquired thereby any preferential right to future appointment to such service, class, category or posts.

Regln. 18: DATE OF COMMENCEMENT OF PROBATION OF PERSONS APPOINTED TEMPORARILY:

If a person, having been appointed temporarily under Clauses (1), (3) or (6) of Regulation 17 to a post borne on the cadre of any service or having been appointed to any services otherwise than in accordance with the Regulations governing appointment thereto is subsequently appointed to the service in accordance with these regulations, he shall commence his probation from the

date of such subsequent appointment or from such earlier date (not being earlier than the date of his first appointment on a temporary basis) as the appointing authority may determine. He shall also be eligible to draw increments in the time scale of pay applicable to him from the date of commencement of his probation but, shall not be entitled to arrears of pay unless otherwise ordered by the corporation. Regln. 30 (1)

(i) Where it is necessary in the administrative interest to fill emergency a vacancy in a post borne on the cadre of a higher category in a service or a class by promotion from lower category and if the filling of such vacancy in accordance with these regulations is likely to result in undue delay, the appointing authority may promote a person temporarily otherwise than in accordance with these regulations. (ii) No person who does not possess the qualifications, if any, prescribed for the said service, class or category shall ordinarily be promoted under Sub-clause (i). Every person who has been or is promoted under Sub-clause (i) shall be replaced as soon as possible by promoting a person possessing such qualifications.

Regln. 30 (6):

If any person referred to in Clause (4) is subsequently promoted to the higher category in accordance with these regulations, he shall commence his probation in such category from the date of such subsequent promotion or from such earlier date as the appointing authority may in its discretion determine. He shall also be eligible to draw increments in the time scale of pay applicable to him, from the date of commencement of his probation, but shall not be entitled to arrears of pay unless otherwise ordered.

Regln. 34

If in any of the following categories a sufficient number of approved candidates who have successfully completed their training is not available for filling posts reserved to be filled by direct recruitment such posts may be filled temporarily by departmental promotion until approved candidates who have successfully completed their training become available to replace the promotees and the reverted person shall subsequently be considered for repromotion. against the quota of vacancies reserved for being filled by promotion.

(a) Asst. Mechanical Engineer and Asst. Works Manager

(b) Asst. Traffic Manager

(c) Chargeman

(d) Traffic Inspector Grade II and Head Depot Clerk

(e) Artisans

Annexure A to the Regulations runs as follows:-

Annexure-A

Class I Special Scale Services

S. No

Category of Post

Method of Recruitment

Qualifications

(1)

(2)

(3)

(4)

1.

* A s s t . Mechanical Engineer & Asst. Works Manager.

(1) In a unit of five vacancies, the first, the third and fifth shall be filled in by appointment of an Officer Under Training, who was successfully completed his training and the second and fourth by promotion of a Forman.

1. For Promotion - The Forman, (a) must hold LME or LAE Diploma from a Govt. Polytechnic or any other recognised Institution or possess an equivalent qualification; and years of service as such

(2) A member of the Supervisory staff who has passed sections "A" and "B" of the Associate Membership Examination of the Institute of Engineers (India) and who has shown outstanding merit may also be considered for promotion along with the Foreman.

2. For Direct Recruitment - The Candidate

(a) must hold a degree in Mechanical Engineering from a recognised University or have passed Sections "A" and "B" of the Associate Membership Examination of the Institution of Engineers (India) or hold a diploma or a certificate recognised by the Institution of Engineers (India) as exempting him from Selections "A & B" of the Associate Membership Examination.

Amended vide Resolution No. 184/ 84, dated 3-12-83 and notified through Lr.No. PI/93(8)/ 83-PD, dated 26-3-1984.

(3) If a suitable candidate is not available in a particular category for filling up a vacancy reserved for that category the vacancy may be filled in by a suitable candidate from the other category.

(b) must have served a regular Apprenticeship of not less than two years duration in Mech. Engineering, preference being given to one who has served his apprenticeship in a workshop, engaged in either the manufacture and assembly

or the repair, overhaul and maintenance of commercial vehicles;

(4) If no suitable candidate is available in any of the categories mentioned above, the post may be filled in by direct recruitment by selection.

(c) must have had subsequent to his training not less than two years experience as an Executive in control of large and well organised workshop engaged in either the manufacture and assembly or the repair, overhaul and maintenance of commercial motor vehicles; and

(d) must not be above 30 years of age as on 1st July of the year, in which the recruitment is made.

2.

* Asst . Mechanical Engineer (Tyres) Amended through Resolution No. 28/ 1982, Dt. 6 March, 1982 and notified through Lr.No. P-I/93(2)/ 81-PD, dated 21 May, 1982 Amended vide Resolution No. 184/ 84, dated 3-12-83 and notified through Lr.No. PI/93(8)/ 83-PD, dated 26-3-1984.

By promotion of a Foreman (Tyres), where a suitable Foreman (Tyres) is not available, by transfer of an AME duly trained in Tyres Department.

1. FOR PROMOTION: The Foreman (Tyres) must have put in not less than 5 years of service as such

3.

*Assistant Traffic Manager Amended vide Resolution No. 184/ 84 dated 3-12-1983

In a unit of four-(1) The first and third vacancy shall be filled in by appointing an officer under Training, who has successfully completed his training and the second and fourth by promotion of a Chief Inspector

(1) FOR PROMOTION: The Chief Inspector must have put in not less than 5 years of service as such. FOR DIRECT RECRUITMENT: THE CANDIDATE (a) must hold a degree in Mechanical Engineering from a recognised university or have passed sections

and notified through Lr .No. PI/93/ (8)/83-P.D,dated 26-3-1984.

(2) If a suitable candidate is not available in a particular category for filling up a vacancy reserved for that category, the vacancy may be filled in by a suitable candidate from other category.

"A & B" of the Associate Membership Examination of the Institution of Engineers (India) or hold a diploma or a certificate recognised by the Institution of Engineers (India) as exempting him from Section "A & B" of their Associate Membership Examination.

(3) If no suitable candidate is available in any of the categories mentioned

above, the post may be filled in by direct recruitment by selection.

(b) must have had experience for not less than four years as Traffic Executive in large size passenger Road Transport organisation exclusive of the period of training, if any, preference will be given to a candidate who is a graduate member of the Indian Institution of Road Transport or any other recognised institution of Transport; and

(c) must not be above 30 years of age as on 1st July of the year in which the recruitment is made.

A.P.S.R.T.C Employees (Service) Regulations, 1964. -o0o-

RgglN. 2 (ii): CADRE means the strength, of a service or a, Dart thereof sanctioned as a separate unit.

2(iv): DUTY: A person is said to be "on duty" as member of a service:

(a) when he is performing the duties of a post borne on the cadre of such service; or

(b) when he is on joining time; or

(c) when he is absent from duty on authorised holidays or on casual leave taken in accordance with the instructions regulating such leave issued by the Corporation having been on duty immediately before and immediately after such absence; Or

*(d) when he is deputed by a competent authority to attend an authorised course of instruction or training.

*Incorporated through Resolution No. 37/69, dt. 6-2-69 and notified through Circular No. B-1/392 (1)/69-BS, dt 30-6-69.

EXPLANATION: If an employee is deputed by a competent authority to attend a course of instruction or training in the interest of the Corporation, and he is required to execute an undertaking to serve the Corporation, on return, for a minimum period, the period spend on the journey to and from the place of training or instruction as the case may be, be treated as duty. On the other hand, if an employee on his own attends a course of training or instruction in order to acquire a special qualification then the period of absence shall not be treated as duty if the qualifications which he proposes to acquire are likely to be of use in connection with his work in the Corporation it may be treated as leave due to him or as study leave, if such leave is admissible.

2(x): OFFICIATE: An employee "Officiates" in a post when he performs the duties of a post on which another employee holds a lien; a competent authority may appoint an employee to officiate in a vacant post on which no other employee holds a lien except when the appointing authority otherwise expressly directs all appointments shall be considered to have been made in an officiating

capacity only.

Regln. No. 3: SENIORITY:

(a) The "Seniority" of a person in service class, category or grade shall unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade. If any portion of the service of such person does not count towards probation his seniority shall be determined by the date of commencement of his service which Courts towards probation.

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service fix the order of preference among them; and where such order has been fixed seniority shall be determined in accordance with it.

(c) The transfer of a person from one category or grade of a service to another category or grade carrying the same pay or scale of pay shall not be treated as a first appointment to the latter for purposes of seniority and the seniority of a person so transferred shall be determined with reference to the date of his first appointment to the category or grade from which he was transferred. Where any difficulty or doubt arises in applying this regulation, seniority shall be determined by the appointing authority.

(d) Where a member of any service, class, category or grade is reduced to a lower service, class, category or grade, he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall take rank in such lower service, class, category or grade next below any specified member thereof.

14. From the facts narrated and arguments advanced by the learned senior advocates Sri Subrahmanya Reddy and Sri Suryanarayana for appellants and Sri Vada Rajagopal Reddy, learned counsel for the Corporation and Sri surender Rao, learned Counsel for the respondents the points which arise for consideration are as follows:-

1. In case of fixation of inter se seniority between promotees and direct recruits, whether it is mandatory to follow the quota and rota rule, if the same governs the field ?
2. Whether any continuous service or officiation, though one was appointed on a temporary or ad hoc or stop gap arrangement will confer any right on such an employee or officer to claim as a matter of right for regularisation of his service and count such service for fixation of seniority ?
3. In the case on hand, was there any break down of quota rule ?
4. Whether promotees have acquired any right to challenge the seniority list, published by the Corporation on 23-12-1989 and to seek for a relief that they shall be placed above the direct recruits in the seniority list ? and

5. In view of the circumstances prevailing and promotions made prior to 1981, whether the situation warrants any adjustment in the seniority list of A.T.Ms, and A.M.Es ?

15. Points 1 and 2 are inter linked, as such they are dealt with together. If there are two sources of appointment for a particular post, the appointment can be made from either of the sources unless the rules provide otherwise. But if the rules governing the service conditions fix the quota amongst the two sources, it is needless to say that the quota rule prevails. If the quota rule itself or any other rule fixes the rotation also, the same governs the fixation of inter se seniority amongst the employees recruited from the two different sources. Time and again the Supreme Court and various High Courts have held that where quota and rota have been fixed under a statutory rule, observance of quota and rota rule is mandatory. In the case of *Jayasinghani v. Union of India* (12 supra), while dealing with the requirements of following the quota and rota rule pertaining to recruitment and promotion and also fixation of seniority, where the same are governed by Service Rules of the department, and considering the facts of the case involved therein and the effect of service Rules which had a binding effect on the service conditions of the employees, the Court held that the Government having fixed the quota, will have no discretion to alter the quota-later according to exigencies of situation or to deviate from the quota in any particular year, at its own will and pleasure, because the quota rule linked up with seniority rule. Finding that the Government in the said case without observing the quota rule, had promoted in excess of the prescribed quota for each year, in an illegal manner, the Supreme Court observed that the Government was bound to adjust the seniority list of the direct recruits and prepare a fresh list of seniority, after adjusting the recruitment in accordance with the quota rule.

16. Similar was the view of the Supreme Court in Subsequent case of *B.S. Gupta v. Union of India* (13 supra), wherein it was observed that promotees are entitled for the quota fixed by the Rules.

17. Again in *Bishan Sarup v. Union of India* (14 supra) and *P.C. Sethi v. Union of India* (15 supra) above view was upheld, with an observation that merely because the promotees were originally appointed on temporary basis and continued to work in such posts for a long period, they are not entitled to claim seniority by the rule of length of continuing service, contrary to the provisions of rule of quota and rota which are required to be observed strictly.

18.Regarding Rules envisaging a particular quota and rota, in *O.P. Singla v. S. Union of India* (20 supra), the Supreme Court held that prescribing such rota is not illegal or unconstitutional.

19. Under similar circumstances and in fact interpreting the scope of Regulations 30 and 34 of present Recruitment Regulations, Division Bench of this Court on two different occasions held that observance of Rules in the matter of seniority

between promotees vis a vis direct recruits, is mandatory.

20. The first one is the case of General Manager, A.P.S.R.T.C. v. Mathur (16 supra) wherein, after going through the relevant provisions, coupled with Regulation 34 of Recruitment Regulation and considering the effect of filling up vacancies by way of promotion for a considerable period totally ignoring direct recruitment as envisaged in the Rules, it was held as follows:-

"If direct recruitment had not been made in proper time it is the fault of the Corporation. Having fixed the quota between direct recruits and promotees, it is expected of them to make direct recruitment as and when vacancies were anticipated. When they did not do so and allowed the vacancies to be filled up by the promotees, then the rules made under the regulations cannot be defeated. If that is permitted, all the requirements of the rules and the quota can be defeated by not making direct recruitment. To say that the respondents have been appointed earlier than the petitioners were recruited or before they completed their training is tantamount to saying that the quota fixed should be ignored.

It follows that the seniority will be fixed between the direct recruits and the promotees inter se according to the quota fixed in Clause (1) of Items 9 and 10 of Annexure A.

.....

Contrary to the Regulations which govern the recruitment and seniority, the Corporation went on promoting candidates from lower category to these posts without making direct recruitment, as required by the quota system envisaged by Items 9 and 10 of Annexure A. Therefore, haphazard promotions resulted. Reading the language of the two items, it is beyond doubt that it is a mandatory requirement. In the case of Assistant Mechanical Engineers in a unit of five vacancies the first, third and fifth places shall be filled by transfer of Probationary Assistant Mechanical Engineers, and in the case of Assistant Traffic Managers in a unit of four vacancies, the first and third shall be filled by transfer of Probationary Assistant Traffic Managers, who have successfully completed their training. This is a mandatory requirement and this is very much emphasized by Regulation 34. Therefore, the Regulations enjoin upon the appointing authorities to follow this quota as a mandatory provision. If the Corporation has failed to observe this mandatory requirement, then it has to blame itself and not anybody. For that reason the rights declared by the Regulations in favour of the direct recruits cannot be defeated".

21. A Division Bench of Punjab & Haryana High Court in the case of Chaudhri vs. State of P & H. (7 supra) dealing with similar controversy, namely, fixing of seniority and following of quota rule, held that no promotee has to be confirmed against a vacancy falling in the quota of direct recruits, nor a direct recruit is to be confirmed against a post falling vacant in the quota of promotees. When promotions were made purely on ad hoc basis to fill up the posts meant for direct recruits such promotions will not confer any right on such promotees. It was also

observed that wherever rules provide for more than one source of appointment to the service and quota is fixed for a given source and in regard to integrated seniority of the two sources, the rules prescribed the date of confirmation in the service as the determining factor, then the same has to be followed. Thus, while fixing the seniority where quota and rota are prescribed the same shall be strictly followed.

22. From the above, it is clear that when Rules or Regulations govern how the appointments and promotions are to be made and quota has been fixed for two different sources, its compliance is mandatory and its transgression will not confer any right on the promotees to contend that they shall be placed above the direct recruits, merely because they worked continuously for some period in the posts meant for direct recruits.

23. In the case of Krishna Murthy v. A.P.S.R.T.C (1 supra) a Division Bench of this Court while considering the scope of Regulation 34 held that where a promotee was promoted subject to the conditions envisaged in Regulations 34 of the Recruitment Regulations, he cannot claim his seniority ignoring Regulation 34, on the basis of his officiating service. A promotee cannot claim seniority on the basis of continuance in temporary service, unless he was promoted on a regular basis.

24. In K.C. Joshi v. Union of India (21 supra), the Supreme Court, while following earlier decision of the Supreme Court in Direct Recruit's case (3 supra) held as follows:-

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. While the initial appointment is only ad hoc and not according to rules and is made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority. The appointment to a post must be according to rules and not by way of ad hoc or stop gap arrangement made due to administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service cannot be counted for seniority. In other words, the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date. If the concerned rules provide the procedure to fix inter se seniority between direct recruits and promotees,, the seniority had to be determined in that manner. It is notorious that confirmation of an employee in a substantive post would take place long years after the retirement. An employee is entitled to be considered for promotion on regular basis to a higher post if he/she is an approved probationer in the substantive lower post. An officer appointed by promotion in accordance with Rules and within quota and on declaration of probation is entitled to reckon his seniority from the date of promotion and the entire length of service, though initially temporary, shall be counted for seniority. Ad hoc or fortuitous appointments on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority, even if the

appointee was subsequently qualified to hold the post on a regular basis. To give benefit of such service would be contrary to equality enshrined in Article 14 and 16 of the Constitution as unequal would be treated as equals. When promotion is outside the quota, the seniority would be reckoned from the date of the vacancy within the previous services fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16. Therefore, the rules must be carefully applied in such a manner as not to violate the rules or equality assured under Article 14 of the Constitution.

25. In the case of *Chopra v. State of Haryana* (22 supra), Supreme Court took the same view, that if a promotee holds the cadre post within the quota of direct recruits, his period of service from the date of initial promotion till the date of availability of a cadre post is rendered fortuitous. A direct recruit though promoted later steals a march over the promotee and thereby becomes senior to the officiating promotee.

26. In *A.N. Sehgal v. Rajaram Sheoran* (10 supra) the Supreme Court while dealing with the inter se seniority of the promotees and direct recruits held that the officiating period of the promotee between the dates of initial promotion and the date of the availability of the cadre post would be rendered fortuitous and stands excluded. A direct recruit on appointment within his quota, though later to the promotee, interjects the promotee and steals a march over him in the fixation of seniority. Mere officiating appointment by promotion to a cadre post outside the quota, and continuous officiation therein would not clothe the promotee with any right to claim seniority over the direct recruit. The necessary conclusion would, therefore, be that the direct recruit shall get seniority from the date of recruitment to a post within his quota and according to the rota.

27. Similar was the view in *K. Shaw v. Premprakash Agarwal* (24 supra).

28. By placing reliance on the principles laid down by the Supreme Court in *V.D. Badami v. State of Mysore* (7 supra), *Delhi W.S. & S. Disposal Committee v. R.K. Kashyap* (11 supra), *N.K. Chauhan v. State of Gujarat* (4 supra), *Pathak v. Secretary to Govt.* (18 supra) *Union of India v. Hindusthan Development Corporation* (25 supra) (for the principle of legitimate expectations) and *Direct Recruit Class 11 Engg. Officers' Association v. State of Maharashtra* (3 supra), learned counsel for the promotees contends that when once promotion is made, whether on ad hoc or temporary or on officiating basis and such promotee is allowed to continue for a considerable period, it is implied that such promotee

can legitimately expect that he would be placed always above the direct recruit who may be recruited later.

29. To take first the Direct Recruit's case (3 supra), while considering the case on different aspects, the Supreme Court summed up its view at para 44 of Judgment, which is extracted.

(A) Once an incumbent is appointed to a post according to rule, 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.

(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.

(C) When appointments are made from more than one source, it is permissible to fix the ration for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should

In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the state of Maharashtra belonged to the single cadre of Deputy Engineers.

30. In *G.S. Lamba v. Union of India* (6 supra), the Supreme Court took the

similar view.

31. While in *V.D. Badami v. State of Mysore* (7 supra) that Court laid down the guide lines regarding fixation of seniority in *S.B. Patwardhan v. State Of Maharashtra* (5 supra) and *Chaudhri v. State of P&H.* (17 supra), the Court ruled that while fixing the seniority efficiency and experience shall also be guiding factors. But in these decisions the Supreme Court did not say that when officiation was for a long period, and there are rules governing fixation of seniority, the seniority can be fixed on the basis of officiating service contrary to rule governing fixation of seniority. The true effect of para 44 of *Direct Recruit's* case (3 supra) has been further explained by the Supreme Court in *State of West Bengal v. Aghorenath Dey* (23 supra). The relevant portion is extracted hereunder:

The Supreme Court decisions in *A. Janardhan* and *Narender Chadha* cases giving benefit of ad hoc service for seniority related to inter se seniority of direct recruits and promotees and there was quota for them. This quota was leading to rota for confirmation and the seniority was based on the date of confirmation. The dispute in those cases arose as a result of promotions being made in excess of quota. Law laid down in those cases cannot be applied to present cases because writ petitioners are claiming benefit of ad hoc service prior to their regular appointment as direct recruits.

It is also to be noted that the Constitution Bench in *Direct Recruit* case while considering *Narender Chadha* case laid emphasis on an unusual situation existing therein that promotees had worked continuously for a long period of nearly 15 to 20 years without being reverted and taking into account this fact, the Constitution Bench confirmed the principle of counting towards seniority the period of continuous officiation. The decision in *Narender Chadha* cannot be applied to cases where initial appointment was not according to rules.

.....

It is clear from conclusion A (in *Direct Recruiters* case), that to enable seniority to be counted from date of initial appointment and not from date of confirmation, the incumbent of the post has to be initially appointed "according to rules". The corollary set out in conclusion (A) lays down that made as a stop gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority". Thus the corollary expressly excludes the category of cases where initial appointment is only ad hoc and not according to rules, being made only as a stop gap arrangement. The case of the writ petitioners squarely falls within the corollary.

Conclusion (B) (in *Direct Recruit's* Case) was added to cover a different kind of situation, where appointments are other wise regular except for the deficiency of procedural requirements laid down ay the rules. This is clear from opening words, namely, "if the initial appointment is not made by following the procedure laid down by the rules" and the latter expression "till regularisation of his service

in accordance with the rules". In order to reconcile (B) with (A), (B) is to be read to cover cases where initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and there is deficiency in procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any fault of the employee, and the appointee must continue in the post uninterruptedly till regularisation of his service in accordance with the rules. The appointee, in such cases, is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stop gap arrangement and not according to rules.

The initial ad hoc appointment of writ petitioners was in violation of recruitment rules because the appointments contemplated in Rule 11 of the recruitment rules are those appointments which are made during emergency only by advertisement and interview, through the Public Service Commission. The requirements were not followed and were made only as a stop gap arrangement for a fixed period as expressly stated in the appointment order itself. Such appointments are covered under corollary in conclusion (A) and therefore benefit of ad hoc service is not admissible.

32. Thus wherever the rules are in vogue in respect of appointment, promotion and fixation of seniority, their observance is mandatory and transgression, if any, does not confer any right on an officiating official to contend that by virtue of his continuous service he shall be considered to be a senior. If appointment by way of promotion is made against a vacancy reserved for a direct recruit, as and when direct recruit comes, the promotee shall make way to such direct recruit, and such a promotee cannot claim seniority over a direct recruit who replaces him;

33. From the discussion made and the reasoning adopted in several judicial pronouncements, answer to points 1 and 2 will be that: Observance of quota rule in fixing seniority between the promotees and direct recruits is mandatory and

non-observance of such rule will not entitle a promotee appointed against a vacancy meant for direct recruit, to claim for seniority over such direct recruit merely on the basis that he worked for a long period in a post meant for direct recruit. The decisions relied upon by the promotees to support their case are not applicable to the case on hand, because in most of the cases relied upon by them, either rules were not existing or if existing, they are not similar to the Regulations of A.P.S.R.T.C, which are required to be considered.

34. Point No. 3: Observance of rules while making recruitment or promotion or fixing seniority is mandatory on the part of the controlling authority. As far as possible the vacancies available in a particular year shall be filled up. Failure to fill up available posts for a considerable period, from the sources earmarked, but filling up of the same by way of temporary promotions and allowing for a long period officiation and making such officials to expect that their promotions would be regularised or they will be placed above the subsequent direct recruits, will definitely lead to an interference that there was a break down of the quota rule.

35. In the case on hand, it was explained by the Corporation that promotions were given upto 1981, including a few posts meant for direct recruits. Though the Corporation wanted to fill up the posts meant for direct recruits from 1981 onwards, it could not do so because of the ban on recruitment. As such the Corporation was unable to fill up the vacancies meant for direct recruits. In the A.T.Ms. and A.M.Es. were sent for training. After completion of training they were absorbed in the posts. Earlier to this direct recruitment, promotion of some of the writ petitioners, was made purely in the administrative exigencies and that too on temporary basis, which was made clear in the promotion orders. Failure to recruit for a particular period was beyond the control of the Corporation. Non-appointment by direct recruitment and giving promotions on temporary basis to some of the writ petitioners was purely with a bona fide intention to run the administration smoothly. Writ petitioners were never assured that their promotion would be regularised. Expectation of the writ petitioners that by virtue of their continuous officiation, the promotions will be regularised and legalised to attract the principles of legitimate expectation is unwarranted. As such, there was no long gap as to apply the principle of breaking down the rule or the principle of legitimate expectation. In view of the law laid down in *State of Maharashtra v. A.K. Sete* (19 supra) by merely allowing promotees to work for a long period it cannot be said that there was breaking down of rule. Thus, point No. 3 has been answered to the effect that there was no breaking down of the rule while filling the posts either by promotion or direct recruitment in the present case. Further the principle of legitimate expectation, as explained by the Supreme Court in *Hindusthan Development Corporation* (25 supra) cannot be made applicable to the case of the writ petitioners,

36. Point No. 4: A promotee will have no right when his service conditions are governed by rules, to say that by virtue of his continuous service, he is entitled for being placed above the direct recruits. Further, the promotees are disentitled

to contend that Recruitment Regulations and Service Regulations will not apply to their case, for the reason that prior to their promotion either as A.M.Es. or A.T.Ms., their earlier appointments and promotions were made purely on the basis of recruitment Regulations and Service Regulations of the Corporation. Having availed of the benefits under Regulations earlier, it-is not open to them now to say that Regulations are not applicable to their case. Thus, they cannot blow both hot and cold at the same time. As rightly contended by Sri Subrahmanya Reddy, learned senior counsel for the direct recruits, the writ petitioners did not choose to challenge the Regulations in question. The Writ petitioners are, therefore, not entitled to claim seniority over the direct recruits and contend that the seniority list, dt. 28-12-1989 is incorrect, illegal or arbitrary. Apart from that, when the provisional seniority list was circulated to all the concerned prior to its publication, the writ petitioners failed to raise any objections. Since the appointment of the writ petitioners was purely a temporary one, no right has accrued to them. As and when the direct recruits who were entitled to occupy the said posts came and occupied, the Corporation placed them above the writ petitioners and the same is quite legal, proper, just (sic) reasonable. Hence point No. 4 is answered against the writ petitioners/promotees.

37. Point No. 5: Though on merits the promotees are not entitled for the relief, at least a few of them are entitled to request the Corporation to read just the seniority of both promotees and direct recruits in respect of posts of A.M.Es. and A.T.Ms, which fell vacant prior to 1981. The explanation offered by the Corporation why it did not fill up the vacancies existing prior to 1981 by direct recruitment, is not convincing in nature. In all fairness all the vacancies existing in a particular year should have been filled up in the same year, or least the backlog should have been cleared in the next year. Instead of following this principle, the Corporation allowed promotees to continue. For the fault of the Corporation, the promotees, who were appointed by way of promotion during the years prior to 1981 shall not be penalised. It is the duty of every authority, more so in case of a public authority like the Corporation, always to act in a just and fair manner, without giving room for a feeling in any quarter that the action of the authority has resulted in causing injustice to an employee.

38. For the reasons given above, we are constrained to hold that the action of the Corporation in issuing the notification dt. 28-12-1989 was neither illegal, nor improper and the notification is not vitiated by the vice of arbitrariness or discrimination.

39. The reasoning adopted by the learned Single Judge that the earlier decisions of this Court in Writ Appeal Nos. 480, 485 and 492 of 1975 are no longer good law, in view of the decisions rendered by Supreme Court in Direct Recruit's case {3 supra) and clarified in Aghorennth Dey's case (23 supra), in our considered view, is not correct.

40. Accordingly, these Writ Appeals are allowed. Judgment in Writ Petitions No.

5837 and 5838 of 1991, dt. 19-3-1993 is set aside.

41. However, while parting with the case, we observe that the Corporation shall adjust the seniority of the promotees and direct recruits appointed for the period prior to 1981 and prepare a fresh seniority list of such officers in the light of the observations made by us.

42. In the circumstances, there is no order as to costs.