
(2007) 05 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal No's. 1712-1713 of 2002

P. Sudhakar Rao and Others

APPELLANT

Vs

U. Govinda Rao and Others

RESPONDENT

Date of Decision : 02-05-2007

Acts Referred:

Andhra Pradesh Engineering Service Rules, 1966 — Rule 1(2), 2, 4, 6
Andhra Pradesh State and Subordinate Service Rules, 1962 — Rule 10, 23A
Constitution of India, 1950 — Article 14, 16, 309, 371D

Citation : (2007) 6 SCALE 377 : (2007) 12 SCC 148 : (2008) 2 SCC(L&S) 467

Hon'ble Judges : P. K. Balasubramanyan, J;A. K. Mathur, J

Bench : Division Bench

Advocate : H.S. Gururajan Rao and Subodh Markandeya, Y. Ramesh, Y. Vaishami, B.V. Niren, Y. Raja Gopala Rao, Chitra Markandaya, Vinod Chauhan, G. Ramakrishna Prasad and C.S.N. Mohan Rao, Anoop G. Chaudhary and Bhaskar Gupta, Manoj Saxena, Rajnish Kr. Singh, Rahul Shukla, T.V. George and Y. Prabhakara Rao, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—These appeals are directed against the Full Bench decision of the High Court of Andhra Pradesh in Writ Petition Nos. 5922 & 6360 of 1999 by which the Full Bench has set aside the order of the Andhra Pradesh Administrative Tribunal at Hyderabad. Hence, the present appeals.

2. Shorn of detailed facts, principal question arises for our consideration is the validity of the rule by which retrospective seniority benefit was given to the Junior Engineers by G.O. Ms. No. 54 Irrigation (Service IV-2) dated 15.2.1983. Relevant amendment which is the subject matter of present controversy reads as under:

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Andhra Pradesh hereby makes the following amendments to the Special Rules for the Andhra Pradesh Engineering

Service, issued in G.O. Ms. No. 285 PWD, dated 22.2.1967 and as subsequently amended from time to time.

2. The amendments hereby made shall be deemed to have come into force from the 28th February, 1972.

AMENDMENT

In the said Special Rules:

(1) In Rule 2, the entry in column 2 of the Table against category-6 Junior Engineers, shall be lettered as Clause (a) and after it is so lettered the following entry shall be added namely:

(b) Recruitment by transfer of Supervisors of the Andhra Pradesh Engineering Subordinate Service who have acquired the B.E. or A.M.I.E. (India) qualification and who are approved probationers in that category.

NOTE : The Provisions of General Rule 6 shall not appointment either by the direct recruitment or by transfer to the category of Junior Engineers.

2. In column (2) and of the Table under Rule 4 against the category of Junior Engineers, the following entries shall be added at the end namely:

Recruitment by transfer Must possess B.E. or A.M.I.E, (India) qualification in Civil or Mechanical Engineering. 3. After Note (2) below the Table under Rule 4 the following shall be inserted namely:

Note (3) A Supervisor who is appointed by transfer as Junior Engineer on or after 28.2.1972 shall be entitled to count 1/3rd of the Service rendered as Supervisor before appointment as Junior Engineer, subject to a maximum of 4 years weightage for the purpose of computing the service as Junior Engineer, which will render eligible for consideration for promotion as Asst. Engineer, and subject to the following conditions:

(i) The seniority of a Supervisor, who is appointed as Junior Engineer shall be fixed in the category of Junior Engineers with reference to the notional date arrived at after giving weightage of service aforesaid;

(ii) A Supervisor who is appointed as Junior Engineer shall put in a minimum service of one year on duty as Junior Engineer, after such appointment, and a total service of five years as Junior Engineer, inclusive of the period given as weightage to become eligible for promotion as Asst. Engineer;

(iii) No Supervisor shall ordinarily be eligible for appointment as Junior Engineer, unless he has put in a minimum service of three years as supervisor;

(iv) A Supervisor with less than three years of service, who is appointed as Junior Engineer for any special reasons shall not be entitled to any weightage of his past service as Supervisor.

3. This litigation has a very long history and we will refer to relevant part of the history in our judgment wherever it is necessary but the core issue before us is the validity of this Rule. This rule was challenged by the direct recruit Junior Engineers coming from various parts of the State before the Andhra Pradesh Administrative Tribunal, Hyderabad by filing various original applications. A preliminary objection was raised that the original applications were not maintainable as the Tribunal has no jurisdiction to examine this controversy as the rule had already been up-held by this Court in 270134 and 277013 . As against this, it was contended that in both these cases amendment to the rule was not in issue and what was in issue was only the executive instructions issued prior to the amendment. It was submitted that the matters were not decided on merits.

4. The question of seniority and promotion in the Engineering Department of the State of Andhra Pradesh has been dragging since last 40 years. It was also pointed out that at the time of formation of the State in the year 1956, there was a single P.W.D. Engineering Department. The Madras Engineering Service Rules issued in G.O. Ms. No. 2690 Public (Services) dated 28.9.1953 applied to the State Services which included the category of the post of Assistant Engineer (now called as Deputy Executive Engineer) as the initial category. The appointment to the other higher categories in the State Service like Executive Engineer, Superintending Engineer and Chief Engineer was being made by promotion from the immediate lower category. The Madras Engineering Subordinate Service Rules framed in G.O. Ms. No. 2732, Public (Services) dated 30.9.1953 governed the conditions of service of the subordinate Services which included the posts of Junior Engineer, Supervisor, Draughtsman Grade I etc. These Rules were continued in the State of Andhra Pradesh with suitable adaptation. In the year 1960, four separate Engineering Departments were formed. The Andhra Pradesh Engineering Service Rules, 1966 were issued on 22.6.1967 under proviso to Article 309 of the Constitution of India which replaced the Madras Rules. Thereafter, separate Rules under proviso to Article 309 of the Constitution were also framed in the State known as Subordinate Engineering Service for other three Engineering Departments namely, R & B Department, Public health and Municipal Engineering Department and Panchayat Raj Engineering Department. In Madras State, the posts of Junior Engineer and Supervisor were both in Subordinate Engineering Service and they were carrying the same pay scale. If a Graduate was recruited he was described as a Junior Engineer and given a higher start in the same pay scale. A diploma holder on recruitment was described as a Supervisor and was placed in the same scale of pay, but the nomenclature of both of them were different i.e. Engineering Graduates were called Junior Engineers and Diploma holders were called Supervisors. Both were discharging similar duties. The eligibility criteria for recruitment by transfer to the post of Assistant Engineer (now Deputy Executive Engineer) in the State Service was five years of service for Junior Engineers and ten years of service for Supervisors. The Supervisors on being re- designated as

Junior Engineers in order to protect their earlier service and for the purpose of eligibility for appointment by transfer as an Assistant Engineer, were given suitable weightage of Supervisors' service. Subsequently, on 9.6.1971, Government of Andhra Pradesh took a decision to constitute a separate category of Junior Engineers distinct from Supervisors and the posts of Junior Engineers were made gazetted and they became part of the State Service i.e. the Junior Engineers were designated in the State Service whereas the Supervisors continued to be in the Subordinate Service. The selection for direct recruitment for both the posts was through the State Public Service Commission. The State Service Rules were amended and the Junior Engineers were included in the State Service as category 6 after the Assistant Engineers and amendment was given retrospective effect from 28.2.1972. Therefore, the Junior Engineers became the feeder category for appointment by promotion as Assistant Engineers. Likewise amendment was brought about in the Subordinate Service Rules also and for appointment to the post of Assistant Engineer, Supervisors and Draughtsmen were also made eligible and that Junior Engineer who has put in five years of service was made eligible for appointment by promotion to the post of Assistant Engineer. Some representations were made by the Supervisors seeking relief for promotion by transfer of Assistant Engineer. Therefore, on 15.6.1972 the State Government amended the Andhra Pradesh Engineering Service Rules and declared that the amendment was to come into effect from 2.1.1968 till 29.2.1972. This was the period prior to the post of Junior Engineer being made gazetted. By virtue of this amendment the Supervisors who had obtained Graduate qualification and were designated as Junior Engineers prior to 28.2.1972, were to be given weightage of earlier service in the cadre of Supervisors for the purpose of eligibility for appointment by transfer to the post of Assistant Engineer in the State Service. Thereafter, some development took place and Article 371D of the Constitution, a special provision in the Constitution with respect to the State of Andhra Pradesh was introduced by the 32nd Constitutional amendment in 1974. Then again some Supervisors made representations with regard to giving the same benefit to the Junior Engineers who had acquired Graduate qualification. Government of Andhra Pradesh felt persuaded and issued G.O. Ms. No. 451 dated 10.6.1976. The Supervisors who had acquired Graduate qualification while in service should be appointed temporarily as Junior Engineers prospectively with immediate effect and accordingly the Chief Engineer was directed to take necessary steps. In consequence thereof, other issue relating to weightage of seniority was also examined by the Government and Government issued an order indicating that the Supervisors who have acquired Graduate qualification may be appointed as Junior Engineers on or after 28.2.1972 subject to availability of vacancies in the cadre of Junior Engineers. It was also mentioned in the order dated 18.7.1977 that the Junior Engineers will not be entitled for appointment as Junior Engineers automatically from the date of acquisition of degree qualification and a supervisor who is appointed as Junior Engineer would be entitled to count one-third of the service rendered by him before his appointment as Junior Engineer,

subject to a maximum of four years for the purpose of computing his service as Junior Engineer which would render him eligible for consideration for promotion as Assistant Engineer. It was also decided by the same communication dated 18.7.1977 that the seniority of the Supervisors for appointment as Junior Engineers would be fixed with reference to the notional date arrived at after giving weightage of service. It was also mentioned that the Supervisor who was appointed as Junior Engineer should put in one year of service as Junior Engineer for becoming eligible for promotion as Assistant Engineer. It was also mentioned that no Supervisor should be eligible for appointment as Junior Engineer unless he has put in three years of service as Supervisors. This was an executive instruction and the Government was moved for necessary amendment in the Andhra Pradesh Engineering Service Rules. Rules were amended and in the rule direct entry in column 2 of the table against category 6- Junior Engineer shall be included as Clause (a) and after this Clause (b) should be inserted with recruitment by transfer of Supervisors of Andhra Pradesh Engineering Subordinate service who have acquired B.E. or A.M.I.E. qualification and who are approved probationer in that category. Note 3 which is more relevant reads as under:

NOTE (3) A Supervisor who is appointed by transfer as Junior Engineer on or after 28.2.1972 shall be entitled to count 1/3rd of the service rendered as Supervisor before appointment as Junior Engineer, subject to a maximum of 4 years weightage for the purpose of computing the service as Junior Engineer, which will render eligible for consideration for promotion as Assistant Engineer, and subject to the following conditions:

- (i) The seniority of a Supervisor who is appointed as Junior Engineer shall be fixed in the category of Junior Engineers with reference to the notional date arrived at after giving weightage of service aforesaid;
- (ii) A Supervisor who is appointed as Junior Engineer shall put in a minimum service of one year on duty as Junior Engineer, after such appointment and a total service of five years as Junior Engineer, inclusive of the period given as weightage to become eligible for promotion as Asst. Engineer;
- (iii) No Supervisor shall ordinarily be eligible for appointment as Junior Engineer, unless he has put in a minimum service of three years as Supervisor;
- (iv) A Supervisor with less than three years of service, who is appointed as Junior Engineer for any special reasons shall not be entitled to any weightage of his past service as Supervisor.

5. By virtue of this amendment the Supervisors who had done graduation during his service career and also appointed as Junior Engineer was eligible for promotion for the post of Assistant Engineer provided he fulfilled all the necessary criteria as quoted above. Thereafter, in this background, on 15.2.1983 Government of Andhra Pradesh brought the amendment which is the subject matter of challenge in these appeals.

6. Aggrieved against this notification, direct recruit Engineers filed original applications before the Andhra Pradesh Administrative Tribunal. The Tribunal after considering the matter concluded that the Rules framed under G.O. Ms. No. 54 Irrigation (Service IV-2) Department dated 15.2.1983 giving retrospective effect from 1972, the introduction of the note under Category-6 in Rule 2 by excluding the applicability of General Rule 6; introduction of Note 3 under Rule 4 providing for weightage in seniority in the cadre of Junior Engineers for those appointed by transfer from the post of Supervisor and the exclusion of Junior Engineers appointed by transfer from Supervisors from the requirement of being put on probation under special rule-6 were void and they were quashed. Certain other directions were given by the Tribunal with which we are not concerned. Aggrieved against this order of the Tribunal, Special Leave Petitions were filed before this Court by S.Ramallaian and others which came to be registered as Civil Appeal No. 387 of 1997 and was disposed of by this Court by order dated 15.1.1997. This Court after considering the matter, observed that preliminary objection was raised before the Tribunal with regard to the maintainability of the proceedings on the ground that the Tribunal had no jurisdiction to examine the controversy as it had already been settled by this Court in *Devi Prasad and K.S. Muralidhar (supra)*, though the Tribunal held that preliminary objection was without any substance and overruled the same on the ground that in *Devi Prasad and K.S. Muralidhar (supra)* the controversy was that both the posts of Junior Engineer and Supervisor were in subordinate cadre and were governed by the same rules for the period prior to 1972 and that after 1972 the post of Junior Engineer was made a gazetted post in the State service. So far as *Muralidhar's* case was concerned, the controversy about the effect of executive instructions in G.O. Ms. No. 451 of 1976 and G.O. Ms. No. 559 of 1977 were considered but neither the amendment to the statutory rules providing for direct recruitment nor the effect of the Presidential order was brought to the notice of this Court by the State Government. Therefore, for this reason the Tribunal held that both the aforesaid decisions did not examine the validity of the Rules. The Tribunal also took into consideration the decision of this Court in 287614 and *Narayanan's* case AIR 1991 SC 55. It was also brought to the notice of this Court that the decision given by the Tribunal on 1.8.1983 concluded this question where the validity of the rule was upheld and that judgment was binding on the Principal Bench of the Tribunal which disposed of the case by the judgment dated 15.6.1995. It was submitted that judgment dated 1.8.1983 was not considered by the Full Bench of the Tribunal and the previous judgment of the Bench ought to have been considered by the subsequent Bench. This Court observed that conflict in the decision by two Benches is apparent therefore, this Court quashed the judgment dated 15.6.1995 and remitted the matter back to the Tribunal to decide the question of validity of the impugned rules keeping in view the earlier judgment of the Tribunal dated 1.8.1983. On being remanded by this Court, the matter again went to the Tribunal and the Full Bench of the Tribunal by its order dated 11.12.1998 examined the validity of the aforesaid rule and affirmed the validity of the rule and observed as follows:

(1) The Junior Engineers on acquisition of Degree qualification in Engineering would be entitled for weightage of those appointments are made or deemed to have been made under the rules providing for such appointments and weightage with reference to their dates of appointment (not with reference to acquisition of degree qualification) against a vacancy in the cadre of Junior Engineer.

(2) The Government is advised to consider fixing ratio between direct recruits and those appointees by appointment by transfer to the post of Junior Engineer (now Assistant Executive Engineer) to the post of Assistant Engineer (now Deputy Executive Engineer).

7. Aggrieved against this order dated 11.12.1998 passed by the Tribunal, writ petitions were filed before the High Court of Andhra Pradesh and the Full Bench of the High Court of Andhra Pradesh reversed the judgment of the Tribunal dated 11.12.1998 by its order dated 23.11.2001 and ultimately the Full Bench concluded as follows:

We are, therefore, of the opinion that the impugned rule to the extent challenged is violative of Articles 14 and 16 of the Constitution of India in so far as vested right of the junior engineers who are senior to them is sought to be taken away

8. It was also observed that the weightage can be given only from the date of the appointment of the Junior Engineers. The net result of this decision of the Full Bench of the High Court was that the retrospective effect of the rule would result in hardship to direct recruit but the rule can be applied with prospective effect. Hence, aggrieved against this judgment supervisors have filed present appeals.

9. We have heard learned Counsel for the parties and perused the records. The principal submission of learned senior counsel for the appellants was that after decision given in the case of Devi Prasad and K.S. Muralidhar (supra) it was not proper for the Full Bench of the High Court to have reversed the judgment of the Full Bench of the Tribunal. Learned Counsel submitted that in view of the clear decisions of this Court cited above, the question of validity of the rule is beyond the challenge and the Full Bench of the High Court has not properly considered the decisions in Devi Prasad's case and K.S. Muralidhar's case (supra), which has caused miscarriage of justice. Therefore, in this background, we shall examine the validity of the aforesaid Rules and various decisions of this Court to see whether the validity of the Rules is no more res integra or not. In this light we would first consider the first decision in point of time i.e. Devi Prasad's case (supra).

10. The controversy whether weightage can be given to Junior Engineers who have acquired graduate qualification is ragging right from 1967 which led to filing of writ petition and ultimately reached to this Court in the case of Devi Prasad and Ors. (supra). In Devi Prasad's case, same question came up for consideration in relation to A.P. Engineering Subordinate Service Rules, for post of Supervisor. In that case diploma holders were recruited as supervisors and

degree holders were recruited as Junior Engineers. They were discharging substantially same functions. However, for promotion to the post of Assistant Engineer, a degree holder who put in five years" service was eligible while for diploma holders, minimum service of 10 years was prescribed. Thereafter, the Government vide GOMs No. 893 laid down that if a Supervisor acquires a degree while in service and renders service as Supervisor, he would be given weightage as Junior Engineer for half the period of his service as Supervisor subject to a maximum of four years for promotion to the post of Asstt. Engineer. This was challenged on the evil of Articles 14 and 16. The relevant note appended to Rule reads as under:

Note 2-Supervisors who acquire, while in service, B.E.M.I.E. (India) qualification shall be entitled to count 50 per cent of their service rendered as Supervisor prior to acquisition of such qualification, subject to a maximum limit of 4 years as if it had been in the post of Junior Engineers for the purpose of consideration for appointment by transfer to the post of Assistant Engineer from Junior Engineers and subject to the following conditions:

- (1) They should render a minimum service of one year after acquisition of B.E. or A.M.I.E. (India) qualification:
- (2) They should be considered to have been placed below the list of the Junior Engineers of the year after giving weightage as indicated above.
- (3) They should put in a total service of 5 years as Junior Engineer inclusive of the period given as weightage.
- (4) The benefit of weightage given above shall be given effect for the purpose of all selections that are made by Public Service Commission pertaining to the years from 2nd January, 1968 onwards till 28th February, 1972.

In that context, Their Lordships held:

To decide what weightage should be given as between two categories of Government servants rendering somewhat similar kind of service. In the present case, there may be truth in the case of the appellants that they are hit hard because of the new rule. Dr. Chitale tried to convince us of the hardship that his client sustain consequent on this rule and weightage conferred thereby. But more hardship without anything arbitrary in the rule does not call for judicial intervention, especially when it flows out of a policy which is not basically illegal. However, government must be interested in keeping its servants specially in strategic areas like engineering contented and efficient. In so producing contentment, it may have to evolve a flexible policy which will not strike a group as inflicting hardship on them.

It was further held:

In the present case the Supervisors and the Junior Engineers were discharging substantially similar functions; the Supervisors were eligible to get the special

weightage only if they acquired an engineering degree and the weightage to be given was only for half of the period they had served as Supervisors. In spite of the two discharging substantially similar functions there was inequality of opportunity in matters of promotion of the Supervisors vis-?-vis the Junior Engineers and, therefore, the government tried to mitigate the hardship by framing the weightage rule. Thus, in the light of the wide experience and basic qualification of the Supervisors, there is nothing capricious in giving them the limited benefit or weightage under the new rule. The waitage rule is not, therefore, violative of Articles 14 and 16.

11. Validity of this Rule was upheld by this Court. Their Lordships observed "in the light of their wide experience and basic qualification, we are unable to say that there is anything capricious in giving them the limited benefit or weightage under the new rule." Therefore, the controversy of giving them the benefit of the service as a supervisor to the extent of 50 per cent after obtaining degree and maximum limit of four years was upheld way back in 1980 by this Court.

12. Similarly, again this matter came up before this Court in the case of K.S. Murlidhar (supra) and also a weightage of four years in respect of upgraded Junior Engineer was held to be reckoned from the date of appointment and not from the date of their acquiring the degree qualification and on the basis of that, notional date has to be arrived at for fixation of seniority. The case of Devi Prasad (supra) was reiterated and reaffirmed. Though a question with regard to Special Qualifying Test was also there but we are not concerned with that. There is also a GOMs No. 451 dated June 15, 1976 came up for consideration. This was with regard to appointment of Supervisors who acquired graduate qualification while in service. In that context, the Government laid down a policy which will speak for itself. The Government Order reads as under:

GOVERNMENT OF ANDHRA PRADESH ABSTRACT

Establishment-Irrigation and Power Department- Appointment of Supervisors who have acquired Graduate Qualification as Junior Engineers-Orders-Issued. Irrigation and Power (Ser. II) Department G.O. Ms. No. 451 Dated: 10-6-1976

ORDER:

Consequent on the declaration of the posts of Junior Engineers as Gazetted with effect from 28.2.1972, the upgradation of Supervisors who acquired Graduate Qualification while in service, as Junior Engineers, ceased. Since then representations have been made to Government by several Associations that the benefit of upgradation should be extended also to Supervisors who acquired the Graduate qualification on or after 28.2.1972.

2. On a reconsideration of the matter, the Government are of the view that some consideration should be shown to the Supervisors who have acquired the Graduate qualification while in service. Accordingly the Government have decided that the Supervisors in P.W. (Irrigation) Department who have acquired Graduate

qualification while in service should be appointed temporarily as Junior Engineers (Prospectively) with immediate effect. The Chief Engineer (General) is requested to take action accordingly, Orders regarding other consequential matters will issue separately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF A.P.)

M. GOPALAKRISHNAN, SECRETARY TO GOVERNMENT

13. In this GOMs, it is proposed to extend the benefit of up gradation to Supervisors who acquired the graduate qualification on or after February 28, 1972 but the second para makes it clear that they would be appointed temporarily as Junior Engineers and that too prospectively. The GOM No. 559 dated July 18, 1977 was issued by the Government which reads as under:

GOVERNMENT OF ANDHRA PRADESH ABSTRACT

ESTABLISHMENT-Irrigation & Power Department- Appointment by transfer of Supervisors who have acquired Graduate qualification from 28.2.1972 onwards as Junior Engineers-Further orders-Issued.

IRRIGATION & POWER (SERVICE - III) DEPARTMENT

G.O. Ms. No. 559 Dated 18th July, 1977

Read the following:

G.O. Ms. No. 451, Irrigation & Power (Ser.III) Department, dated 10.6.1976.

ORDER:

It was ordered in the G.O., cited that the Supervisors in the Public , Works (Irrigation) Department, should be appointed temporarily as Junior Engineers (Prospectively) with immediate effect. It was also indicated therein that orders regarding other consequential matters would issue separately.

2. Accordingly, matters relating to weightage, seniority, etc., have been examined by the Government, and the following orders are issued:

(i) Supervisors who acquire Graduate qualification may be appointed as Junior Engineers on or after 28.2.1972, subject to the availability of vacancies in the cadre of Junior Engineers.

They will not be entitled for appointment as Junior Engineers automatically from the date of acquisition of degree qualification;

(ii) A Supervisor, who is appointed as Junior Engineer, shall be entitled to count 1/3rd of the service rendered by him as Supervisor, before his appointment as Junior Engineer, subject to a maximum of four years, for the purpose of computing the service as Junior Engineer, which will render him eligible for consideration for promotion as Assistant Engineer.

(iii) The seniority of the Supervisors, who are appointed as Junior Engineers, shall be fixed with reference to the notional date arrived at after giving weightage of service;

(iv) A Supervisor, who is appointed as Junior Engineer, shall put in a minimum service of one year as Junior Engineer to become eligible for promotion as Assistant Engineer;

(v) No Supervisor shall ordinarily be eligible for appointment as Junior Engineer unless he has put in a minimum service of three years as Supervisors. A supervisor with less than three years of service, who is appointed as Junior Engineer for any special reason, shall not be entitled to any weightage for his past service.

3. Necessary amendment to the Special Rules for the Andhra Pradesh Engineering Service will be issued separately. The Transport, Roads & Buildings/ Panchayati Raj/Housing, Municipal Administration & Urban Development Department will issue amendments to the Special Rules with which they are concerned in accordance with the above decisions in consultation with the Andhra Pradesh Public Service Commission.

4. The cadre strength of Junior Engineers was last fixed in G.O. Ms. No. 240, Public Works (VI) Department, dated 28.2.1972. Since then a large number of posts of Junior Engineers/Supervisors have been sanctioned by Government. The Chief Engineer (General) is requested to submit proposals for suitably enhancing the strength of the two orders.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF A.P.)

M. GOPALAKRISHNAN, SECRETARY TO GOVERNMENT.

14. This order came up for consideration in Murlidhar's case. Their Lordships, after putting the Government Orders in chronological order, held that the effect would be that those Supervisors who acquired graduate qualification while in service, would be entitled to the weightage of four years of service for future appointment. It was clarified that GOMs does not anywhere indicate that the weightage should be from the date of acquiring the degree qualification. Their Lordships observed that it is only after acquiring such degree qualification that a Supervisor is appointed as Junior Engineer and having regard to the service rendered by him the Government as a policy decided to give weightage of four years for the purpose of considering the eligibility for promotion to the post of Assistant Engineer. It was contended on behalf of the direct recruits that giving benefit of past service to Junior Engineers retrospectively prior to their date of appointments would be detriment to their interest and would be arbitrary. This Court held "In this context the Tribunal has rightly pointed out that under Rule 23-A of the A.P. State and Subordinate Service Rules, 1962, if a person having been appointed temporarily under Rule 10 to a post borne on the cadre is subsequently appointed in the service in accordance with the Rules he shall

commence his probation from such subsequent date or the earlier date as the appointing authority may determine. We agree with the Tribunal that there is no bar to the retrospective regularisation of the service of the direct Junior Engineers." This Court reaffirmed the ratio of Devi Prasad's judgment (supra). "In Devi Prasad's v. Government of A.P. 1980 Supp. SCC 206 G.O. Ms. No. 893 referred to above was questioned on the ground of unreasonableness in the matter of giving weightage to the upgraded supervisors. This Court held that in the light of their experience there is nothing unreasonable in giving them limited benefit or weightage." Their Lordships quoted a passage from Devi Prasad's Case (supra). Their Lordships in para 19 summed up the ratio. It reads as under:

Having given our careful consideration particularly to the fact that this litigation has been pending for the last so many years, about two decades. We feel that it is high time a finality has to be reached by resolving the controversies and in this context we are of the view that the approval of the Public Service Commission in respect of these appointments need not be sought, if the Government has not already obtained the approval of the Public Service Commission. To sum up, our conclusions are as under:

- (i) The weightage of four years in respect of upgraded Junior Engineers as provided in G.O. Ms. No. 559 has to be reckoned from the date of appointment and not the date of their acquiring the degree qualification;
- (ii) On the basis of that notional date, their inter-se seniority has to be fixed;
- (iii) The regularisation of the degree-holder Junior Engineers who passed the SQT by giving retrospective effect cannot be held to be illegal, and their seniority among themselves shall be subject to the order of ranking given by the Public Service Commission on the basis of the SQT;
- (iv) The Government shall prepare a common seniority list of the degree-holders Junior Engineers and the upgraded Junior Engineers on the above lines and that list shall be the basis for all the subsequent promotions. Promotions, if any, already given shall be reviewed and readjusted in accordance with the said seniority list; and
- (v) The approval of the Public Service Commission in respect of these appointments and their seniority thus fixed need not be sought at this distance of time.

15. Therefore, the question of giving weightage to the Supervisors vis-?-vis the direct recruits were again reiterated and reaffirmed in this case with reference to Devi Prasad's case. So far as these two decisions are concerned, the principle of giving weightage of the service of graduate Supervisors as Junior Engineers has been upheld by this Court. In view of ratio laid down in above two decisions of this Court, the validity of Rule stands affirmed. It is true that prior to aforesaid amendment those were executive instructions, those executive instructions were incorporated by amendment in Rules under proviso to Article 309 of the

Constitution of India.

16. Therefore, the validity of these Rules were challenged in this third round of litigation. But difficulty arose when a contrary view was taken by this Court in the case of 282206 . In this case, an almost similar rule came up for consideration and here also in the State of Karnataka, a retrospective benefit was given to Supervisors on obtaining graduation degree. Their Lordships held that retrospectivity had no nexus with arrangements made by the Government to facilitate the acquisition of such qualification. Therefore, Rule 1(2) providing a retrospective operation from January 1, 1976 of the Karnataka Public Works Engineering Department Service (Recruitment) (Amendment) Rules, 1985 were struck down. Their Lordships referred to both decisions of Devi Prasad (supra) and Murlidhar (supra) and observed that though in neighbouring State of Andhra Pradesh in Devi Prasad's case a weightage has been upheld, Their Lordships observed "It was upheld by this Court in Devi Prasad's case as the Court did not find that the rule giving weightage for having served as Junior Engineer was unreasonable or shocking." Similarly, it was further observed "in Devi Prasad, this Court distinguished Desai case where period prior to appointment counted for determining seniority was not approved by this Court as the diploma holders in Andhra Pradesh were granted benefits under the rule." Then Their Lordships further observed "Devi Prasad's case was upheld by this Court because it was found, "as reasonable and in the circumstances fair". The dispute was between non-graduate diploma holders working as supervisors and graduates working as Junior Engineers. Since the Court found that there was functional parity between supervisors and Junior Engineers the rule framed by the Government giving weightage of four years to supervisors to make them eligible for appointment as Assistant Engineer was not invalid." Similarly, while referring Murlidhar's case Their Lordships observed "In State of A.P. v. K.S. Murlidhar, the temporary supervisor who had succeeded before this Court in Devi Prasad's case claimed seniority from the date of acquiring academic qualification. It was repelled and it was held that it could be from the date of appointment only." Lastly in Para 8, Their Lordships further recorded "so far as weightage is concerned such provision has been upheld by this Court in Devi Prasad's case. Even the appellants candidly stated that they were not against weightage." Therefore, after reviewing both these decisions. Their Lordships did not comment adversely and distinguished both these cases by observing that there was functional parity between Supervisors and Junior Engineers in Andhra Pradesh. It was observed by the Full Bench of the High Court that there is contradiction between the two decisions and it needs to be clarified. We fully agree with the observations made by the High Court that there is apparent contradiction between the two decisions given in K. Narayanan's case and Devi Prasad and Murlidhar's case. The matter does not end here. The matter is further confounded by another decision given in 287614 . In this case, the validity of the Rules of 1983 were not directly in question but in paragraphs 11 & 12 of the judgment while dealing with the question whether the Supervisors upgraded as Junior Engineers can claim

seniority over the temporary employees on the plea that they fall within the expression "last regular appointment", their Lordships gave historic background of the designation of Supervisors as Junior Engineers on graduation and the diploma holders Supervisors and in that context their Lordships observed as follows:

11. That takes us to the question whether the Supervisors upgraded as Junior Engineers can claim seniority over the temporary employees on the plea that they fall within the expression "last regular appointment". We have already pointed out the historical back-ground in regard to the appointment of supervisors and their designation as Junior Engineers on graduation. The entry qualifications for Supervisors and those of the Junior Engineers were undoubtedly different. While for Junior Engineers the minimum educational requirement was a Graduate in Engineering, a Supervisor need not be a graduate. The pay scale of the Supervisors was admittedly slightly below that of the junior Engineers. They, therefore, belonged to separate cadres. Even though both the Supervisors and Junior Engineers were selected through the State Public Service Commission, considerations for selection may be different. A Supervisor was redesignated as a Junior Engineer on his acquiring a degree in Engineering, subject to availability of posts. Such upgraded Junior Engineers could not claim weightage of service as Supervisors for counting their experience as Junior Engineers for further promotion. In SLP) No. 12 of 1975 decided on February 24, 1975 this Court clarified;

However, having studied the rules carefully and in the light of a decision of this Court in 291515 we are satisfied that the petitioner who is a degree holder must qualify under Rule 6 by being a junior Engineer of five years" experience. He cannot, when there is a shortfall in his period, make up by attracting his service as Supervisor.

The averment that a common seniority list of Supervisors and Junior Engineers was maintained has been disputed and there is no finding of fact recorded by the Tribunal in support thereof. It is, however, not in dispute that Supervisors as well as Junior Engineers were non-gazetted till the issuance of the orders dated June 7, 1976 made effective from February 28, 1972. After the said orders Supervisors who acquired a degree after the cut-off date, i.e. February 28, 1972, could aspire to be designated Junior Engineers (Gazetted) only by the mode of transfer in view of the amendment in the rules by GOMs No. 428 dated March 30, 1979. The note at the foot of the said GOMs is of relevance. By virtue thereof a Supervisor appointed Junior Engineer by transfer on or after February 28, 1972 became entitled to count 1/3rd of his service as Supervisor subject to a maximum of 4 years, for computing the service as Junior Engineer for further promotion as Assistant Engineer. This was however subject to the condition that he should have completed at least one year's service as Junior Engineer to become eligible for promotion to the said post of Assistant Engineer. But no such weightage was to be allowed to a Supervisor who had not completed three

years" service as Supervisor prior to becoming a Junior Engineer. The benefit of weightage is restricted to a Supervisor who has been appointed a Junior Engineer and who seeks further promotion as an Assistant Engineer.

17. Hence, we sum up the matter and frame the following question for determination for larger bench.

Whether the decision given in the cases of *Devi Prasad's v. Government of A.P.* 1980 Supp. SCC 206 & 277013 laid down the correct law or the decision given in the cases of 287614 , 293742 & 291515 laid down the correct proposition of law?

18. Therefore, in the facts and circumstances of the case, we refer these matters to a larger Bench. The Registry is directed to place these matters before the Hon"ble the Chief Justice of India for constitution of larger Bench so that the controversy could be finally put to rest.