

J.G. PRASADA RAO ETC. ETC.

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v.

THE SECRETARY TO GOVERNMENT AND ORS. ETC. ETC.

SEPTEMBER 7, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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Service Law

Andhra Pradesh Accounts Officers Service Rules, 1980/Manual of Standing Orders (Administration) of Comptroller and Auditor General of India.

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Rule 6/Paragraph 320—Divisional Accountants—Seniority Criterion—Divisional Accountants/SAS Accountants/SAS passed Auditors—Absorbed in A.P. Divisional Accountants Service—Inter se seniority—Held, date of passing Divisional test is the criterion—Factum of drawing higher pay or holding higher responsibilities irrelevant due to operation of Rules.

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The State Government of Andhra Pradesh obtained from Accountant General, A.P. the services of Divisional Accountants, SAS Accountants and SAS passed Auditors on deputation as Divisional Accountants. Later, the Finance and Planning Department of the Government of Andhra Pradesh constituted the cadre of Divisional Accountants consisting of Divisional Accountants Grade-I and Divisional Accountants Grade-II with effect from 19.9.1980; and all the deputationists applied for and were absorbed in the said cadre on the respective grades with effect from 1.1.1980, G.O. Ms. No. 304 dated 20.11.1979 issued in this regard laying down the service conditions, provided that in the cadre of Divisional Accountants, Divisional Accountant Grade- I would be a promotional post from Divisional Accountant Grade- II. It also provided that *inter se* seniority of the Divisional Accountants borne on the Accountant General's cadre of Divisional test passed Divisional accountants taken over to the State service would be fixed in the State cadre based on their *inter- se* seniority as Divisional Accountants in the Accountant General's gradation list on the date of taking over. The State Government issued G.O. Ms. No. 290 dated 11.11.1982 constituting the Andhra Pradesh Divisional Accounts Officers Service under the Andhra Pradesh Divisional Accounts Officers Service Rules, 1980. Rule 6 of the Rules prescribing the special qualifica-

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A tions, method of recruitment etc. provided that for the promotion to the post of Divisional Accounts Officer Grade-I, a candidate should have put in service of not less than three years as Divisional Accounts Officer Grade-II and must have passed the required test. The appellant in C.A. No. 4172 of 1995 claimed that he having passed the test prior to some of the respondents was senior to them. His claim was rejected.

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 In the appeals, filed by the appellant and some others before this Court, the respondents contended that in view of G.O. Ms. No. 304 providing that SAS Accounts Officer/SAS passed Auditors who held the higher scale of pay since declared to be entitled to Grade-I, they were entitled though some of them passed the Divisional test subsequent to the appellant, to be promoted as Grade-I Divisional Accounts Officer and cannot be made junior to the appellants.

Allowing the appeal, this Court

D HELD: 1.1. The appellant had passed the Divisional test earlier to some of the respondents. He is entitled to be treated as senior to the respondents who passed the said test subsequent to him, in Grade-II post of Divisional Accountants in the list sent by the Accountant General for absorption in the Divisional Accountants Service constituted by the State Government. The factum of drawing higher pay or holding higher responsibilities became irrelevant due to operation of the A.P. Divisional Accounts Officers Service Rules, 1980. [418-B]

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 1.2. Passing of Divisional test is a pre-condition for promotion as Divisional Accounts Officer Grade-I. Paragraph 320 of the Manual of Standing Orders (Administration) of Comptroller and Auditor General of India expressly prescribes that the date of passing Divisional test is the criterion for determination of *inter-se* seniority. Though the SAS Accounts Officers or the clerks who passed the SAS examination had held higher scale of pay or higher responsibility, to determine their *inter-se* seniority, date of passing Divisional test is a criterion. The *inter-se* seniority shall be reckoned with reference to the date on which the respective candidates passed the Divisional test. [417-H; 418-A]

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 1.3. The Government would reckon *inter-se* seniority with reference to the date of appellant's passing the Divisional test and *inter-se* seniority H should be determined in the relevant records prepared by the State accord-

ingly. [418-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4172 of 1995 Etc.

From the Judgment and Order dated 23.1.95 of the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.NO. 5557 of 1993.

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J.G. Prasada Rao-in-person for the Appellant.

A. Subba Rao, A.D.N. Rao and K. Ram Kumar for the Appellants.

D. Rama Krishna Reddy, and Mrs. D. Bharati Reddy for the Respondents.

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The following Order of the Court was delivered :

C.A. 4172/95

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We have heard the appellant in person, who prepared the case thoroughly and argued very neatly and meticulously, point by point, making analytical presentation of the case with reference to various orders issued by the Government and cleared the clogs crept in the controversy.

The Government of Andhra Pradesh had obtained from Accountant General, A.P., the services of Divisional Accountants, SAS Accountants and SAS passed Auditors on deputation to the State Government as Divisional Accountants. A three member Committee appointed to advice the Government on the desirability and feasibility to absorb them in the State service, had recommended for absorption. On consideration thereof, in G.O. Ms. 304 Finance and Planning, dated November 20, 1979, Government had decided to take them over from the administrative control of the Accountant General, A.P. subject to the terms and conditions stated therein.

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The cadre of the Divisional Accountants was constituted with the Finance and Planning Department of the Government to exercise administrative control. It called for options from them which were subject to their accepting service conditions of the State Government and the State's scale of pay. Admittedly, all the deputationists had opted for and the service was constituted w.e.f. January 1, 1980. In paragraph 8 thereof it was

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A stated that

B "The *inter se* seniority of Divisional Accountants, Selection Grade
 C Divisional Accountants and Section Officers/S.A.S. Divisional Ac-
 D countants borne on the Accountant General's cadre of Divisional
 E Test passed Divisional Accountants taken over to the State Service
 will be fixed in the State cadre based on their *inter se* seniority as
 Divisional Accountants in the Accountant-General's gradation list
 on the date of taking over. Appointment to the posts of Divisional
 Accountants, Grade-I shall be made based on seniority-cum-merit.
 The present pay and Dearness Allowance actually drawn by the
 S.A.S. Divisional accountants/Section Officers under the Account-
 ant-General on the date of take over will be protected in the case
 of those opting to State service, when fixing their pay in the State
 D.A.'s scale of pay admissible to them according to their seniority
 in the gradation list of Divisional Accountants. Their fixation of
 pay in the State D.A.'s scale will be made on the basis of their
 notional pay in the Central D.A.'s scale which they would have
 drawn but for their promotion as Section Officer/S.A.S. Divisional
 Accountants under the Accountant-General. The difference be-
 tween the pay and dearness allowance drawn by them under the
 Accountant-General and the pay and dearness allowance admis-
 sible to them in the State scale will be given as personal pay to be
 absorbed in future increments."

F G.O. Ms. No. 290 dated 11.11.1982 was issued by the Government
 exercising the power under proviso to Article 309 of the Constitution,
 constituting the A.P. Divisional Accountants Service under the A.P.
 Divisional Accountants Officers Service Rules, 1980 which came into force
 w.e.f. January 1, 1980. In terms of G.O. Ms. No. 304, the gradation was as
 Divisional Accountants Grade-I and Divisional Accountants, Grade-II.
 The Divisional Accountant Grade-I is a promotional post from Divisional
 Accountant Grade-II, and Divisional Accountant Grade II are to be filled
 G up by direct recruitment from open market. In Note (1) thereof, it was
 stated that "all the Divisional Accountants Officers borne on the Account-
 ant General Office, who exercised their option to come over to the State
 service, shall be deemed to have been taken over on 1.1.80 to the State
 Divisional Accountants officers service against grade I or grade II, as the
 H case may be." In Rule 6, the special qualifications, method of recruitment

and qualifications have been mentioned as under :

"Category	Method of	Qualifications
Divisional Accounts Officers Gr.I	By promotion	shall have put in service of not less than 3 years as Divisional Accountants Officer, Grade-II (Category-II) and must have passed the 'Divisional Test'.

We are not concerned with Category II. However, it is relevant to mention about that. With regard to existing S.A.S. passed Divisional Accounts Officers, Accountants or SAS Passed Auditors under the administrative control of the Accountant General, A.P. Prior to the take over of the cadre by the State Government, they were directed to reckon their total service under the category as Divisional Accounts Officers, Grade II.

In G.O. Ms. No. 314 Planning and Finance, dated 30.11.1982 statutory orders under proviso of Article 309 were issued accepting the options given by the deputationists and taken over as Divisional Accounts Officers Grade I and Grade II, as the case may be. The Notification reads thus :

"The Senior Grade and Junior Grade Divisional Accountants, who opted to the State Service consequent to the take-over of the cadre of Divisional accountants by the State Government from the Accountant General, Andhra Pradesh as shown in the Annexure are deemed to have been absorbed into the State Service subject to the terms and conditions laid down in G.O. Ms. No. 304. Finance and Planning (Finance Wing WA.1) Department, dated 20.11.1979."

Second paragraph thereof states that Senior Grade Divisional Accountants and the Junior Grade Divisional Accountants shown in the Annexure to the Order are deemed to have been absorbed into the State Government Service in the posts shown against their names w.e.f. 1.1.1980, subject to the terms laid down in G.O. Ms. No. 304. In sequel thereof, statutory rules were issued in G.O. Ms. No.139, dated 30.4.1982, constituting AP Accounts Service, stating therein that Grade I Divisional Accountant is a feeder post for appointment by promotion to the post of Assistant Pay and Accounts officer. For promotion as officers in Category 3, i.e.,

A Assistant Pay and Accounts Officer, the proviso says that the service rendered as Senior Grade Divisional Accountant after promotion from Grade II shall alone be taken into account by the State Government for reckoning the qualifying service for promotion as Assistant Pay and Accounts Officer.

B A reading of these statutory orders vis-a-vis the administrative decisions taken by the Government in G.O. Ms. No. 304 would clearly establish that the deputationists, who have been designated as Grade I and Grade II officers and given their unconditional options for absorption into the State Service, were absorbed in the "Divisional Accountant Service" constituted by the Government as Gr. I and Gr. II officers. The previous service rendered as either Grade I or Grade II officers has been reckoned for the purpose of their respective eligibility to the promotion to the higher cadre. But for promotion as Assistant Pay and Accounts officer in category III of A.P. Accounts Service, the qualifying period of service is as Grade I Divisional Accountants in A.P. Accounts Division Service. They must have passed Divisional Accounts test and after promotion as Divisional Accounts Grade-I must have put in the minimum qualifying service.

E The question is whether the appellant is senior to some of the contesting respondents. The contention of the appellant is that by virtue of his passing the Divisional Accountants test earlier, though the respondents were holding posts carrying higher pay, all of them cannot be reckoned as seniors to him as some of them had passed this later. On the other hand, their seniority requires to be reckoned from the date of their passing Divisional Accountant test. Since some had passed the test later to him they are juniors to him.

F It is contended on behalf of the respondents that in G.O. Ms. No. 304, in particular para 8, it is clearly mentioned that the S.A.S. Accounts Officer/S.A.S. passed Auditors, who held the higher scale of pay since declared to be entitled to Grade-I, they are entitled, though some of them passed the Divisional Accountant test later to the appellant, to be promoted as Grade- I Divisional Accountants and some of them had been so promoted, and so, they cannot be made juniors to the appellant. At this juncture we may make it clear that respondent Nos. 3 to 6, 10 and 11 had passed Divisional Accounts test earlier to the appellant. Respondent Nos. G 7, 9, 12 and 13 had admittedly passed Divisional Accountant test sub-

sequent to the appellant. It is also not in dispute that the appellant was promoted as a Divisional Accountant Grade I on 6.7.1987 while respondent Nos. 7, 9, 12 and 13 were promoted on July 27, 1991. A

The question, therefore, is who, among them, is senior to each another. Prior to taking over on January 1, 1980, admittedly, all of them were governed by the Manual of the Accountant General issued by the CAG of India. Chapter V deals with Subordinate Accounts Service which consists of the confirmed apprentices, SAS Accountants on probation, Accounts Clerks in their office and the Divisional Accountants under their control. Para 320 of the Manual prescribes the method of computation of seniority on passing the Divisional Accountants test which reads thus : B C

"320. Clerks recruited from sources (1) and (2) who pass the Divisional Test Examination (paragraph 322) are placed on a waiting list but allowed to retain their liens on their substantive appointments till they are confirmed in the Divisional Accountants' Cadre. Their relative seniority will be determined with reference to the date of their passing the Divisional Test Examination (the *Viva-Voce* part of it in the case of S.A.S. Examination passed clerks). The Divisional Accountants who pass the same Divisional Test will be senior to all the Divisional Accountants who pass in subsequent tests. The *inter se* seniority of Divisional Accountants who pass the same test will be decided on the basis of the marks obtained by them in the aggregate in the Divisional Test Examination." D E

The rest of the para being not material for the purpose of this case is omitted. F

It would thus be clear that the S.A.S. Accountants on probation, Divisional Accountants and Clerks who passed the SAS examinations are the feeder posts for the Subordinate Accountants Service. Similarly, in the statutory rules issued, referred to earlier, for Grade-I posts of the Divisional Accountants, Grade II is the feeder posts. Passing of Divisional Accounts test is a pre-condition for promotion as Divisional Accounts Grade-I. Paragraph 320 expressly prescribes that the date of passing Division Accounts test is the criteria for determination of *inter se* seniority. Though the SAS Accounts Officers or the clerks who passed the SAS examinations had held higher scale of pay or higher responsibility, to H

- A determine their *inter se* seniority, date of passing Divisional Accounts test is the criterion. The *inter se* seniority shall be reckoned with reference to the date on which the respective candidate passed the Accounts test.

- B In view of the admitted position that the appellant had passed the Accounts test earlier to the aforesaid respondents, he is entitled to be treated as senior to these respondents in the Grade II post of Divisional Accountant, in the list sent by the Accountant General for absorption in the Divisional Accountants Service constituted by the State Government.
- C The factum of drawing higher pay or holding higher responsibilities became irrelevant due to operation of the rules. The Government, therefore, is directed to reckon *inter se* seniority with reference to the date of his passing Accounts test and *inter se* seniority should be determined in the respective Annexures prepared by the State accordingly. The reliance on G.O. Ms. No. 449 dated 16.9.1983 for upgradation into Divisional Accountants Grade I does not have any relevance as regards the service under the Divisional Accountants Service Rules of the P.W.D.

- D The appeal is accordingly allowed but in the circumstances without costs.

C.A. NOS. 8417-18 & 8419/95

@ SLP (C) Nos. 7050-51/95 AND 9506/95

- E Leave granted.

In view of the judgment rendered above in C.A. 4172 of 1995, the appeals are allowed. No costs.

R.P.

Appeal allowed.