

A R. VENKATA RAMUDU & ANOTHER ETC.

v.

STATE OF A.P & OTHERS

B (Civil Appeal Nos. 9856-60 of 2016)

SEPTEMBER 27, 2016

[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]

Service Law:

C *Andhra Pradesh Engineering Service Rules, 1967 – rr. 1, 6, 8*
– *Andhra Pradesh State & Subordinate Service Rules, 1996 – r. 16*
– *Extension of period of probation and fixation of revised dates of*
D *commencement of probation – Legality of – Temporary appointment*
of first appellant as Assistant Executive Engineer by direct
recruitment, on 18.4.1992 – Placed on probation with retrospective
effect from 18.4.1992 for a period of two years within the continuous
period of three years – In terms of r. 6(2), appellant passed the
E *Account test on 20.1.1997 – However, there was no need to pass*
the language test in Telugu, in view of the relevant Rules –
Subsequently, issuance of memo by the Government whereby the
period of probation extended and revised dates of commencement
of probation fixed – Challenge to, and directions sought to consider
the appellant for promotion to the next post – Tribunal held that the
impugned proceedings were perfectly valid and legal – High Court
upheld the order – Held: Note appended to Rule 8 stipulates that it
F *expressly prohibits the probationer from being discharged for failure*
to pass the Account test, and it stipulates that the probation shall be
extended until the probationer passes the test – Such extension is
mandated only in those cases where the probationer does not pass
the relevant test – Note does not prevent the probationer from being
discharged at the end of the period of probation if his performance
G *is otherwise unsatisfactory – Thus, Note is a legislative device and*
part of the Rule 8(c) – It carries same degree of efficacy as the Rule
itself – In appellant’s case, in view of the declaration contained in
the Note appended to Rule 8, there was neither any need nor occasion
much less the authority in law for the exercise of power either under

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Rules 17(a)(ii) or 17(b) or 16(e) or 31 of the General Rules – By a statutory declaration the period of probation stands extended until the Assistant Executive Engineer passes the prescribed test – There is no other material on record to indicate that the performance of the appellant during the period of probation is otherwise not to the satisfaction of the appointing authority – Conclusion of the Tribunal that those persons who pass the Account test within the prescribed period of probation constitute a different class than those who pass the Account test after securing the benefit of extended period of probation and such later class shall not gain advantage by way of seniority over the class mentioned earlier is without any basis in the text of the Rules – Further, the technical qualification of the appellant and the experience gained in utilizing such technical qualification for the service of the State is relevant than the knowledge of Accounts, which is of incidental significance – Assistant Executive Engineer even if he passes the Account test within the prescribed period of probation would not be considered for promotion till he completes 5 years of service – Thus, the logic employed by the tribunal and as upheld by the High Court cannot be accepted – Impugned judgment cannot be sustained and is set aside.

K. Haridas v. High Court of Kerala & Others (2000) 9 SCC 717; State of M.P. v. Ramkinkar Gupta & Others (2000) 10 SCC 77; S.P. Badrinath v. Govt. of A.P. & Others (2003) 8 SCC 1 – referred to.

Case Law Reference

(2000) 9 SCC 717 referred to Para 41

(2000) 10 SCC 77 referred to Para 41

(2003) 8 SCC 1 referred to Para 41

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 9856-9860 of 2016

WITH

C. A. NO. 9861 OF 2016.

A From the Judgment and Order dated 18.12.2008 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Petition No. 16807, 16801, 23093, 23404 & 23101 of 2008.

B P. P. Rao, B. Adinarayana, Sr. Advs., P. B. Suresh, Vipin Nair, Prithu Garg, Tishampati Sen, J. R. Manohar, R. Santhnan Krishnan, Aditya Kr., Venkateswara Rao Anumolu, Prabhakar Parnam, C. S. N. Mohan Rao, V. N. Raghupathy, Advs. for the Appellants.

C Krishna K. Singh, S. Udaya Kumar Sagar, K. Maruthi Rao, K. Subba Rao, Aniruddha P. Mayee, G. Seshagiri Rao, Rajesh Babu, Sridhar Potaraju, Guntur Prabhakar, Ms. Prerna Singh, M/s. Venkat Palwai Law Associates, Advs. for the Respondents.

The following order was delivered

ORDER

D 1. Leave granted.

2. These two appeals arise out of a common judgment dated 18.12.2008 of the High Court of Judicature of Andhra Pradesh at Hyderabad (as it then was) in writ petition nos. 16807, 16801, 23093, 23404, 23101 and 17219 of 2008.

E 3. These two appeals arise out of Writ Petition (C) No. 16807 of 2008 and Writ Petition (Civil) No. 17219 of 2008 respectively.

F 4. It is agreed that the facts w.r.t. all the three appellants involved in these two appeals are similar. We therefore, take the facts of appeal arising out of SLP(C) No. 6906-6910 of 2009 as representative facts.

G 5. The first appellant R. Venkata Ramudu of the above-mentioned appeal, was temporarily appointed, by order dated 23.3.1992, as an Assistant Executive Engineer by direct recruitment. Recruitment was by a process of selection conducted by the then Andhra Pradesh Public Service Commission. He was allotted to Irrigation Department.

H 6. The post of Assistant Executive Engineer is the category VI post of the service constituted under Rule 1 of the Andhra Pradesh Engineering Service Rules, 1967 (hereafter "SPECIAL RULES") made under the proviso to Article 309 of the Constitution of India. The Rules

provide for various aspects of the service including the constitution, recruitment and other matters incidental thereto. Direct recruitment is one of the modes of recruitment for the said post. A

7. Rule 6(2) of the SPECIAL RULES stipulates that “every person appointed ... as Assistant Executive Engineer by direct recruitment shall, from the date on which he joins duty, be on probation for a total period of two years on duty within a continuous period of three years”. Rule 8(c) stipulates that “an Assistant Executive Engineer appointed by direct recruitment shall, within the period of his probation, pass the Account Test for P.W.D. Officers and Subordinates”. B

8. Admittedly, R. Venkata Ramudu passed the Account test on 20.1.1997. C

9. By proceedings dated 17.7.2003 of the Engineer-in-Chief, Irrigation and CAD (Commander Area Development) Department, Hyderabad, the following was communicated to R. Venkata Ramudu:-

“Sri R. Venkata Ramudu, A.E.E.(D.B.3.6.64) Zone-IV was selected by the A.P.P.S.C. during 1992 and allotted to this Department. Accordingly he was appointed as Assistant Executive Engineer in this office proceedings 1st cited and joined duty on 18.04.1992 FN. D

Under rule 16(a) of A.P. State and sub-ordinate Service Rules, 1996, Sri R. Venkata Ramudu, Asstt. Exec. Engineer (DOB: 03.06.1964) Zone-IV is hereby placed on probation with effect from 18.04.1992 FN for a period of two years within the continuous period of three years. E

He should pass the Account test for P.W.D. Officers and Subordinates and language test in Telugu within a probation period for the purpose of satisfactory declaration of probation. F

He is informed that his placement of probation is subject to the condition that his services are liable to be terminated any time before declaration of probation under General Rules with one month notice or pay in lieu thereof. G

Sd/-
L. Banda Reddy,
Engineer-in-Chief,(Admn)”

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- A The substance of the proceedings is that more than a decade after R. Venkata Ramudu joined the service (on 19.4.1992), the Engineer-in-Chief purported to have placed R. Venkata Ramudu on probation with retrospective effect from 18.4.1992^{FN1} for a period of two years within the continuous period of three years. Interestingly, the communication further commands R. Venkata Ramudu to pass two tests. (i) Account test for PWD Officers and Subordinates and (ii) language test in Telugu within the probation period for the purpose of satisfactory declaration of probation! Admittedly, the question of R. Venkata Ramudu passing the language test in Telugu did not arise in view of the relevant rules¹. Admittedly by the date of the said communication (17.7.2003), R. Venkata
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- C Ramudu had already passed the Account test for the PWD officers, some six years prior to the communication!

10. The said communication is purportedly made in exercise of the power under Rule 16(h) of the Andhra Pradesh State & Subordinate Service Rules 1996 (hereinafter referred to as “GENERAL RULES”).

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11. Subsequently, by a memo dated 20th January, 2007 issued by the Government of Andhra Pradesh purportedly in exercise of the power under Rule 16(a) of the GENERAL RULES, the Government purported to (i) extend the period of probation, and (ii) fix the revised dates of commencement of probation in respect of 210 Assistant Executive Engineers specified in the annexure to the said proceedings.
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12. The relevant portion of the proceedings dated 20th January, 2007 reads as follows:-

- F “In the circumstances reported by the Engineer-in-Chief, Irrigation and CAD Department, Hyderabad in the Letters cited and after careful consideration of the matter, Government hereby extend **the probation and fix the revised date of commencement of probation** in respect of 210 Assistant Executive Engineers, as indicated in the Annexure enclosed (zone-Wise), in terms of Rule

G ¹ The requirement of passing a test in Telugu is a stipulation contained only in the GENERAL RULES (Rule 13) but Rule 14 clarifies that such requirement does not apply to the class of probationers specified therein.

H Rule 14 (a) Language Test – exemption :- (a) A person who has passed the SSC or its equivalent examination or any other higher examination with Telugu as the medium of instruction and examination or with Telugu as one of the subjects, shall be exempted from passing the 2nd class language test in Telugu.

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16(h) of A.P. State and Subordinate Service Rules, 1996 read with Rule 6 of A.P. Departmental Test Rules, 1965. A

2. The Engineer-in-Chief (AW), Irrigation & CAD Department, Hyderabad is requested to take necessary further action, as per rules in force in the manner.”

13. R. Venkata Ramudu and the two other appellants before us are among the said 210 Assistant Executive Engineers. According to the annexure to the said proceeding, R. Venkata Ramudu was shown to have passed the Account test on 20.1.1997. However, he was shown to have completed probation on 27.7.2000. B

Annexure
(to Govt. Memo No. 8477/Ser.1.2/2006-9, Dated 20-1-2007)

STATEMENT OF ASSISTANT ENGINEERS WHO PASSED ACCOUNTS TEST FOR PWD OFFICERS AND SUBORDINATES BELATEDLY

S N O	NAME OF THE A.E.E.	DATE OF BIRTH	ACTUAL DATE OF COMMENCEMENT OF PROBATION	DATE OF PASSING OF ACCOUNT TEST FOR PWD OFFICERS & SUBORDINATES PASSED	DATE OF COMPLETION OF PROBATION WITH REFERENCE TO RULE 6 OF A. P., DEPT. L. TEST RULE 1965 I.E. LAST THURSDAY	REVISED DATE OF COMMENCEMENT OF PROBATION AS PER RULE 16(H) OF A.P.S. & S.S. RULES		
*	*	****	*****	*****	*****	*	*	*
23	R. VENKATA RAMUDU	30.06.1964	18.04.1992	20.01.1997	27.07.2000	A N	27.07.1998	A N
*	*	****	*****	*****	*****	*	*	*

14. It may be noted that Rule 16(h) does not provide for altering the date of successful completion of the probation. It only provides for alteration of the date of commencement of probation. The Andhra Pradesh Departmental Test Rules, 1965 relied upon for the fixing up of a different date for completion of probation are not placed before us. C

15. Aggrieved by the communication dated 20.1.2007 referred to supra (which in turn relied upon the proceedings dated 17.7.2003 of the D

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A Engineer-in-Chief), R. Venkata Ramudu (and others) initially approached the A.P. State Administrative Tribunal by praying² that the said proceedings be declared as illegal and arbitrary and for further directions to consider the case of R. Venkata Ramudu for promotion to the post of Deputy Executive Engineer by taking into account his initial date of appointment etc.

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16. The Administrative Tribunal by a common order (in a number of connected applications) dated 28.7.2008 dismissed all the original applications. Aggrieved by the same, the unsuccessful applicants including R. Venkata Ramudu unsuccessfully carried the matter in a batch of writ petitions to the High Court which culminated in the judgment under appeal.

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17. The Administrative Tribunal framed an issue at para 20:

“20. The facts of the case lead us to decide a single issue which is as follows:

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Whether the applicants who were all Assistant Executive Engineers belonging to the A.P. Engineering Services are entitled to retain the date of commencement of services originally assigned to them by virtue of Note under Rule 8 of the Special Rules.”

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and after discussing the pleadings and rival contentions before it at para 34 of its order recorded certain conclusions:

“34. The sum and substance of the above discussion leads us to the following conclusions :

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1) All the applicants were appointed by way of direct recruitment and therefore, they commence their probation from the date of joining upon first appointment initially by the mandate of Rule 6 of the Special Rules.

2) Rule 16(h) of the General Rules over rides the provisions of

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². “Hence in the interest of justice it is prayed that this Hon’ble Tribunal may be pleased to call for the records relating to impugned Memo No.8477/Ser.1.2/2006-9 dated 20.1.2007 and quash the same in so far as applicants are concerned by declaring the action of the respondents as illegal, bad and arbitrary and further direct the respondents to consider the case of the applicants for promotion to the post of Deputy Executive Engineer by taking into account their initial date of appointment with all consequential benefits and to pass such other order or orders as this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.”

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- the Special Rules. Further note under Rule 8 of the Special Rules cannot be read in isolation in the absence of any provision with regard to the declaration of probation in the Special Rules. A
- 3) The said note under Rule 8 of the Special Rules has to be read in consonance with the rules pertaining to the declaration of probation in the General Rules. B
- 4) The Note under Rule 8 cannot take away the effect of the rule itself and further it has to yield the mandatory overriding provisions of Rule 16(h) of the General Rules.
- 5) There is no need for the appointment order to specifically require the appointees to pass the tests in accordance with the special and general rules. The moment an appointment is made by way of direct recruitment, the mandate of rule 6 would require the appointees to pass the required tests as laid down in the General as well as in the special rules within the stipulated periods. C
D
- 6) The Government not only invoked their powers under Rule 31 of the General Rules but also exercised the powers under Rule 16 (h) thereof. The inter se seniority among the direct recruits which has to be fixed in accordance with the rule 33(a) & (b) of General Rules has to yield to the overriding clause in Rule 16(h).” E

and eventually dismissed the O.As, the operative portion of the order reads as under:

“48. In view of the above circumstances, the issue framed must be answered against the applicants in terms of the conclusion already stated above. Therefore, it is held that the impugned proceedings together with all such consequential orders are perfectly valid and legal and the same were issued in accordance with the Special Rules read with General Rules. As a result, the O.As., are liable to be dismissed. Accordingly, all the O.As, are dismissed. VMAs are allowed.” F
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18. The High Court took note of the conclusions recorded by the Administrative Tribunal and did not find any reason to interfere with the order of the Tribunal. In other words, the High Court endorsed both the logic and conclusions recorded by the Tribunal. H

A 19. The reason assigned by the High Court for such conclusion are to be seen at para 11 of the judgment under appeal:

B “11. Obviously as rightly contended by learned Government
C Pleader the petitioners have passed the departmental test beyond
D the prescribed period of probation, though they are directly
E recruited through A.P.P.S.C. as Assistant Executive Engineers.
F Since the petitioners themselves did not qualify or pass the
G departmental test within period of probation and the provision in
H Note to Rule 8(c) only saves them against discharge from service
and the Special Rules are silent on the method of extension of
probation, in view of Rule 16(h) which operates qua to any other
provisions either in general rules or special rules the Tribunal rightly
came to the conclusion that normal principle of determination of
seniority based on ranking has no application in cases where the
employees does not pass the prescribed test within the probation.
In the instant case the Government vide impugned proceedings
extended the period of probation of the petitioners in the first
instance and thereafter fixed the date of commencement of
probation as mandated by Rule 16(h) of the Rules. Admittedly,
the power to extend the period of probation is vested with the
Government and therefore the Government issued the impugned
proceedings fixing the revised date of commencement of probation
in respect of the petitioners having extended their probation vide
first part of the impugned order. The Government thereupon
invoked Rule 16(h) of the Rules revising the date of
commencement of probation. In view of clear and categorical
expression of Rule 16(h) that notwithstanding anything contained
in Special Rules or Sub-Rules (a) and (b) of Rule 33 of General
Rules, Rule 16(h) will over ride any provisions under the Special
Rules, including the Note under Rule 8 thereof insofar as the date
of commencement of periods of probation of the individuals who
do not pass the departmental tests within the period of probation
or extended period of probation are concerned.

G 20. Before we examine the correctness of the judgment under
H appeal, we deem it appropriate to examine the scheme of the RULES
relevant to the context of the case.

H 21. The erstwhile State of Andhra Pradesh initially made Rules
known as Andhra Pradesh State and Subordinate Rules, 1962 in exercise

of the power conferred by the proviso to Article 309. The said rules contain various stipulations regarding the various aspects of employment under the State, the details of which may not be necessary for the present purpose. The said Rules were superseded by the GENERAL RULES (1996 Rules referred to supra). A

22. Under Rule 1(d) of GENERAL RULES, it is stipulated as follows:- B

“1(d) Relation to Special Rules:- If any provisions in these rules are repugnant to the provisions in the special rules applicable to any particular service in regard to any specific matter, the latter shall, in respect of such service and such specific matter, prevail over the provisions in these rules.” C

In substance, providing that in the event of conflict between the GENERAL RULES and any special Rules applicable to any particular service, the special Rules prevail over the GENERAL RULES. The expression “Special Rules” is defined under Rule 2(31)³. It is not in dispute that the Andhra Pradesh Engineering Service Rules, 1967 are Special Rules within the meaning of Rule 2 (31) of the GENERAL RULES. D

23. We shall now examine the SPECIAL RULES relevant in the context. E

24. Rule 6⁴ of the SPECIAL RULES prescribes both the date of commencement of probation and the period of probation of persons appointed as Assistant Engineers by direct recruitment.

25. Rule 8(c)⁵ stipulates that an Assistant Executive Engineer shall within the period of his probation pass the “Account test for PWD officers and subordinates”. F

³ Rule 2 (31) **Special Rules** - “Special Rules” mean the rules applicable to each service or class or category of a service, which include *ad-hoc* rules applicable to temporary posts in a service, or class or category, which are not covered by the special rules.

⁴ **Rule 6—Probation**—(1)XXXXX.....XXXXX.....XXXXX
(2) Every person appointed as Deputy Executive Engineer or Asst. Executive Engineer by direct recruitment shall, from the date on which he joins duty, be on probation for a total period of two years on duty within a continuous period of three years. G

⁵ Rule 8(c) An Assistant Executive Engineer appointed by direct recruitment shall, within the period of his probation, pass the Account Test for P.W.D. Officers and Subordinates. H

A A Note appended to Rule 8 stipulates as follows:-

“Any such Assistant Executive Engineer on probation **shall not be discharged** for failure to pass the above test within the period of his probation, **but his probation shall be extended** and his increment stopped till he passes the test.”

B 26. It can be seen from the above note that (i) it expressly prohibits the probationer from being discharged for failure to pass the Account test, and (ii) it stipulates that the probation shall be extended until the probationer passes the test. Such extension is mandated **only in those cases** where the probationer does not pass the relevant test. The note does not prevent the probationer from being discharged at the end of the period of probation if his performance is otherwise unsatisfactory.

C 27. It is agreed on all hands that the said Note is a legislative device and part of the Rule 8(c). Therefore, it carries the same degree of efficacy as the Rule itself. While Rule 8(c) obligates a probationer to pass the Account Test within the period of probation, the consequences of not passing the test are provided in the Note.

D 28. Hence, the 1st part of the 4th conclusion of the Tribunal that the Note “cannot take away the effect of the Rule itself” is an inaccurate statement in law.

E 29. We now examine the second part of the Conclusion No. 4 that the note appended to Rule 8 has to “yield to the mandatory overriding proviso of Rule 16(h)” of the GENERAL RULES. To determine the correctness of the said conclusion, an examination of the relevant GENERAL RULES is required.

F 30. Rule 16 of the GENERAL RULES deals with various aspects of the probation of direct recruits, such as the commencement of probation (16(a)), period of probation (16(c)), passing of tests or acquiring qualifications prescribed either in the GENERAL or SPECIAL RULES (16(e)).

G 31. Any person appointed to public services is normally kept on probation for some period. The period of probation is fixed by law for any service. Rule 16(c) stipulates different periods of probation for different classes of people appointed through different modes of employment. The relevant clauses of Rule 16 read as under:

H “(c) **Period of Probation** – Unless otherwise stated in the special rules or in these rules, the period of probation shall be as follows:

(i) Every person appointed **by direct recruitment** to any post shall, from the date on which he commences his probation be on probation for a period of two years on duty within a continuous period of three years; A

(ii) Every person appointed to any post either **by promotion or by transfer** (not by transfer on tenure) shall, from the date on which he commences his probation, be on probation for a period of one year on duty within a continuous period of two years.” B

(e) Tests to be passed during probation:- A person who has commenced his probation in a service, class or category shall, within the period of probation, if so required in the special rules or these rules, pass such tests or acquire such qualifications as may be prescribed in these rules or in the special rules applicable to such service, class or category. C

(f) (i) If within the period of probation a candidate fails to pass such tests or acquire such qualifications as may be prescribed in these rules or in the special rules, the appointing authority shall, by order, discharge him from the service unless the period of probation is extended under the sub-rule (b) of Rule 17 and if within such extended period also, the candidate fails to pass such tests or acquire such special qualifications, the appointing authority shall discharge him from service.” D E

32. While Rule 16(e) obligates a probationer to pass the prescribed tests within the period of probation, Rule 16(f)(i) prescribes the consequences of the failure to pass the prescribed tests. It mandates “the appointing authority shall by order discharge” the probationer from service “unless the period of probation is extended under sub-rule (b)⁶ of Rule 17”. Rule 17(b) specifically authorises the appointing authority (for short “AA”) to extend the period of probation by not more than one year of a probationer who fails to pass the prescribed test only for the purpose of enabling the probationer to pass the test. F

⁶ Rule 17. Suspension, termination or extension of probation-

xxx xxx xxx xxx
(b) In the case of any probationer failing to pass the tests or acquire the prescribed qualifications, the appointing authority may extend his probation to enable him to pass the prescribed tests or acquire special qualifications, as the case may be. Such extension by the appointing authority shall not exceed one year, whether on duty or otherwise in such service, class or category. G H

A 33. Rule 17(a)(ii)⁷ stipulates that the AA may either extend the period of probation or terminate the probation and discharge the probationer. Obviously such a decision is required to be taken by the AA at the end of the prescribed period of probation of a probationer⁸. The considerations relevant for the exercise of such power are also indicated in Rule 17(a)(ii).

B “.....on account of unsatisfactory performance or progress during training or unsatisfactory performance of duties or unsatisfactory conduct or for any other sufficient reason to be recorded in writing.”

C 34. Whether failure to pass the prescribed tests is one of the grounds under Rule 17(a)(ii) for either terminating the probation or extending it, is required to be examined.

In our view, it is not. Because the aspect of the matter is dealt under Rule 16(e) and (f) and Rule 17(b).

D 35. The existence of specific provisions in Rule 16(e) and f (i) obviously would not permit a construction that the power under Rule 17(a)(ii) to take within its sweep the power to deal with the cases of the probationers who fail to pass in the prescribed tests. Neither Rules 16(e) and (f) or 17(a) and (b) contain a non-obstante clause providing

E ⁷ Rule 17(a)(ii). The appointing authority may, at any time, before or after the expiry of the prescribed period of probation either extend by not more than on year, whether on duty or otherwise, the period of probation of a probationer, in case the probation has not been extended under sub-rule (b) of this rule or terminate his probation and discharge him from service after giving him one month's notice or one month's pay in lieu of such notice, on account of unsatisfactory performance or progress during training or unsatisfactory performance of duties or unsatisfactory conduct or for any other sufficient reason to be recorded in writing.

F ⁸ Rule 18. Declaration of probation :- (a) At the end of prescribed or extended period of probation, as the case may be, the appointing authority shall consider whether the probationer should be considered to have satisfactorily completed his period of probation and after taking a decision in this regard, he shall issue an order declaring the probationer to have satisfactorily completed his probation.

G (b) (i) The decision whether the probationer has satisfactorily completed his probation or whether his probation should be extended, shall be taken soon after the expiry of the prescribed period of probation. If any lapses are noticed during the period of probation by the appointing authority or a higher authority, such lapses should be communicated to the probationer, as soon as such lapse is noticed, so as to enable the probationer to rectify such lapses. A decision whether a probationer could be considered to have satisfactorily completed his probation or his probation should be extended or discharged or suspended shall be taken within a period of 8 weeks after the expiry of the prescribed period of probation.”

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for overriding effect to them over the special Rule 8 of SPECIAL RULES. A

36. Rule 18⁹ of the GENERAL RULES deals with the conclusion of probation. Rule 18(a) stipulates that **at the end of the prescribed period of probation or the extended period of probation**, the appointing authority shall determine whether the probationer satisfactorily completed his probation and make a declaration of the satisfactory completion of probation, if the appointing authority is satisfied in that regard. The Rule stipulates that such a declaration is to be made at the end of the period of probation or the extended period of probation. B

37. Rule 16(h) contains a stipulation which is in the nature of an exception to the stipulation contained in Rule 16(a)¹⁰. While 16(a) declares that a direct recruit shall commence his probation “from the date of his joining the duty or from such other date as may be specified by the appointing authority”, Rule 16(h)¹¹ stipulates that a probationer who does C

⁹ See F/N 8.

¹⁰ **Rule 16(a) – Commencement of probation for direct recruits** – A person appointed in accordance with the rules, otherwise than under Rule 10, by direct recruitment shall commence his probation from the date of his joining the duty or from such other date as may be specified by the appointing authority : D

Provided that a person having been appointed temporarily under Rule 10 to a post in any service, class or category or having been so appointed otherwise than in accordance with the rules governing appointment to such post, subsequently appointed to the same post, in the same service or class or category, in the same unit of appointment, in accordance with the rules, shall commence his probation from the date of such subsequent appointment or from such earlier date as the appointing authority may determine, subject to the condition that his commencement of probation from an earlier date shall not adversely affect any person who has been appointed earlier or simultaneously, to the same service, class or category in the same unit. E

¹¹ **Rule 16(h) - Change of date of commencement of probation** - Notwithstanding anything contained in the special rules or sub-rules (a) and (b) of Rule 33, a probationer who does not pass the prescribed tests or acquire the prescribed special qualifications within the period of probation or within the extended period of probation under Rule 17 and whose probation is further extended by the Government by an order under Rule 31, till the date of his passing such tests or acquiring such qualifications, shall be deemed to have commenced the probation with effect from the date to be fixed by the Government, which would be anterior to a date to his passing such tests or acquiring such special qualifications, so, however, that his passing such tests or acquiring such special qualifications, so, however, that the interval between the two dates shall be equivalent to the prescribed period of probation, whether on duty or otherwise and seniority of such probationer shall be determined with reference to the date so fixed : F

Provided that nothing in this sub-rule shall apply in the cases of persons appointed to the class, category or grade in a service prior to the 9th March, 1981 and whose seniority in the said class, category or grade was fixed under sub-rule (b) of Rule 33, prior to the said date. G

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A not pass the prescribed test “shall be deemed to have commenced the probation with effect from the date to be fixed by the Government”. It creates a fiction by which the date of commencement of probation is altered from the actual date of commencement.

B 38. However, the occasion for the exercise of power to fix an altered date of commencement of probation under Rule 16(h) arises in two contingencies: (i) a probationer does not pass the prescribed test within the prescribed period of probation, and (ii) a probationer does not pass the prescribed test within the extended period, either under Rule 17 or Rule 31, of probation.

C 39. Having regard to the scheme of Rules 16(h) and 17, which authorise the extension of the period of probation only by a period not exceeding one year, cases of the probationers, whose period of probation is extended beyond a period of one year, are obviously not within the sweep of Rule 16(h). No doubt that Rule 31 enables the Government to extend the period of probation even beyond one year in contradistinction of the stipulation contained in Rule 17 for extension of period of probation by one year. But in the cases of probationers whose probation is extended automatically by a declaration under law, such as the case on hand, the question of extending the probation by resorting to the powers under Rule 31 does not arise. Therefore, the authority conferred under Rule 16(h) to fix an altered date of commencement of probation of those probationers who do not pass the prescribed test within the prescribed period of probation must be understood having regard to the later part of the rule dealing with the extension of probation. The non-obstante clause occurring in the opening part of Rule 16(h) must be understood as only enabling the fixation of an altered date of commencement of probation in the cases of those probationers governed by SPECIAL RULES, where the SPECIAL RULES do not provide for the extension of period of probation, either by a definite or indefinite period. In the context of the SPECIAL RULES on hand though the Note to Rule 8 provide for the extension of probation, in those cases where the Executive Engineers do not pass the Account test, there is nothing in the SPECIAL RULES which provides for the extension of probation of the Assistant Executive Engineers who pass the Account test within the period of probation, but their performance otherwise is not to the satisfaction of the appointing authority. It is in these circumstances the power under Rule 17(a)(ii) or Rule 31 could be invoked. In cases of such extension of the probation, G Rule 16(h) would be applicable and the requirement of fixation of the H

altered date of the commencement of probation arises.

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40. In view of the declaration contained in the Note appended to Rule 8 of the SPECIAL RULES, there is neither any need nor occasion much less the authority in law for the exercise of power either under Rules 17(a)(ii) or 17(b) or 16(e) or 31 of the GENERAL RULES in the context of Venkata Ramudu. By a statutory declaration the period of probation stands extended until the Assistant Executive Engineer passes the prescribed test. There is no other material on record to indicate that the performance of Venkata Ramudu during the period of probation is otherwise not to the satisfaction of the appointing authority and, therefore, the power either under Rule 17(a)(ii) or 31 was invoked to the probation of Venkata Ramudu.

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41. The only other consideration which weighted with the Tribunal is that by not altering the date of commencement of the probation of Venkata Ramudu, as required under Rule 16(h), he would gain an unfair advantage of seniority over his colleagues who joined the service alongwith him and successfully passed the Account test within the stipulated period of probation without taking benefit of the extension of probation.

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“47. A further consideration which persuaded is the fact that the employees who have scrupulously passed the departmental tests within two years from the date of joining and who failed to do so cannot constitute the same class. They have to necessarily belong to different classes since the persons who passed the tests earned their right for declaration of probation as per rules while those who failed to do so constitute an entirely different class since their probation can never be declared except by relaxing the rules themselves. In their case it is not a right earned by them but on gratis. Being un-equals in the eye of law, they cannot be treated equally.”¹²

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¹² For reaching such a conclusion, the Tribunal relied upon three earlier judgments of this Court reported in **K. Haridas v. High Court of Kerala & Others.** (2000) 9 SCC 717, **State of M.P. v. Ramkinkar Gupta & Others.** (2000) 10 SCC 77 and **S.P. Badrinath v. Govt. of A.P. & Others.** (2003) 8 SCC 1. Each one of the abovementioned cases turned on the construction of specific rules dealing with the seniority of the members of different services of different States. They do not lay down any general proposition that a probationer who does not pass the prescribed test during the period of probation should automatically be placed in the seniority below his colleagues recruited alongwith him who cleared the prescribed departmental test during the period of probation.

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A 42. SPECIAL RULES are silent with regard to the principles governing seniority, GENERAL RULES 33 deals with it. Rule 33, insofar as it is relevant, reads as under:

B “Rule 33. **Seniority** - (a) The seniority of a person in a service, class, category or grade, shall unless he had 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.”

C It can be seen from the above, the seniority of a person shall be determined by the date of his first **appointment** to such service. The date of appointment is different from the date of commencement of probation. Both under GENERAL RULES 16(a) and SPECIAL RULES 6(2), the commencement of probation is from the date on which a person **appointed joins the duty**. Therefore, appointment precedes the commencement of probation. Rule 33 does not make any reference to either the commencement or declaration of probation.

D Therefore, the conclusion of the Tribunal, (confirmed by the High Court) that those persons who pass the Account test within the prescribed period of probation constitute a different class than those who pass the Account test after securing the benefit of extended period of probation and such later class shall not gain advantage by way of seniority over the class mentioned earlier is without any basis in the text of the Rules.

E If the Rule making authority desired to make such a distinction it should have done so expressly. It is a different matter whether such a classification would stand the test of Article 14. We do not propose to examine the same in this case.

F 43. In the context of the service such as the one to which R. Venkata Ramudu belongs, what is more relevant is the technical qualification of the employee and the experience gained in utilizing such technical qualification for the service of the State than the knowledge of Accounts, a subject which is of incidental significance. Because knowledge of accounts is relevant only for the discharge of administrative responsibilities to be shouldered by the engineers. Their essential duty is to provide skills of technical knowledge to the State. That is why the Rules prescribe an experience of 5 years as an Assistant Executive Engineer for being promoted to the next higher category of Deputy Executive Engineer. An Assistant Executive Engineer even if he passes the Account test within the prescribed period of probation (2 years) will

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not be considered for promotion till he completes 5 years of service. A
Therefore, we are unable to agree with the logic employed by the Tribunal
and confirmed by the High Court in this regard.

44. For the abovementioned reasons, the judgment under appeal
cannot be sustained and the same is accordingly set aside. As a B
consequence, the OAs filed by R. Venkata Ramudu and others are
required to be allowed, as prayed for. Ordered accordingly.

Nidhi Jain

Appeals allowed.