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S. SREEDHAR REDDY &amp; ORS.

v.

GOVERNMENT OF ANDHRA PRADESH &amp; ORS.

(Civil Appeal No. 795 of 2017)

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JANUARY 23, 2017

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

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*Service Law – Seniority – Inter-se seniority – Appellants and the private respondents appointed as Station Fire Officers (SFOs) by direct recruitment – SFO appointed through direct recruitment required to pass three tests, within the period of probation – However, in the instant case, Government exempted SFOs from third test – Fire Service Department vide memorandum/G.O. issued final seniority list by which appellants were placed above the private respondents on basis that they had passed prescribed tests (other than exempted test) within the period of probation and private respondents had passed the tests thereafter – Aggrieved, private respondents filed O.A. against memorandum/G.O. before Administrative Tribunal, which was dismissed – However, High Court quashed the memorandum/G.O. – On appeal, held: In the instant case, firstly, respondents successfully cleared probation – Secondly, respondents passed two tests – Thirdly, Government itself exempted the respondents from appearing in the third test – Lastly, the Rules did not provide for creation of two classes between employees working in one cadre (SFO) – No justification on part of Government for issuing memorandum/G.O. for determination of inter-se seniority by making classification – Thus, High Court rightly quashed the memorandum/G.O. being irrational, unreasonable and contrary to the Rules – Andhra Pradesh Fire Subordinate Service Rules – rr. 9, 12 – A.P. State and Subordinate Service Rules, 1996 – r.16(h).*

**Dismissing the appeals, the Court**

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**HELD: 1.** In the instant case, it is not in dispute that the private respondent herein (original applicants before the Tribunal) being the direct recruits had cleared two tests as provided in Rule 12(i) and (ii) of the Andhra Pradesh Fire Subordinate Service Rules though late but with the permission of the State. It is also

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not in dispute that so far as the third test, as provided in Rule 12 (iii) was concerned, the respondents and all others alike them in the same cadre were exempted from passing vide G.O.Ms No.454 of 2009 dated 6.11.2009 issued by the State Government. It is further not in dispute that the private respondents had also completed their probation successfully. [Para 28] [910-B-C]

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2.1 In light of the undisputed facts, it is clear that the G.O./ memorandum in question had created two classes amongst SFOs for determination of their *inter se* seniority, namely, one class which cleared the two tests in time and other class which cleared the tests late. The two classes created by the impugned GO dated 22.05.2012 for determination of *inter se* seniority of SFOs had resulted in disturbing the seniority list. [Para 29] [910-D-E]

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2.2 On a perusal of the relevant Rules, which have bearing over the controversy at hand, namely, A.P. Fire Subordinate Service Rules and A.P. State and Subordinate Service Rules, it is seen that these Rules do not empower the State to make the classification as was sought be done by the State for determining the *inter se* seniority of SFOs in this case. [Para 30] [910-F]

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2.3 Taking into account the undisputed facts mentioned above and the Rules governing the probation and the seniority, there was neither any justifiable basis for creation of such classification nor it satisfied the requirement of the Rules which governed determination of their *inter se* seniority. In other words, firstly, when the respondents successfully cleared their probation, secondly, when the respondents cleared two tests, thirdly, when the Government itself exempted the respondents from appearing in the third test, and lastly, when the Rules did not provide for creation of two classes between the employees working in one Cadre (SFO), there was no justification on the part of the Government to have issued G.O. dated 22.05.2012 for determination of *inter se* seniority by making classification. [Para 31] [910-G-H; 911-A-B]

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3. The High Court had rightly quashed the GO dated 22.05.2012 being irrational, unreasonable and contrary to the Rules. The findings of the High Court are correct and there is no good ground to interfere in its reasoning. [Para 33] [911-D]

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A *R. Venkata Ramudu and Another Etc. v. State of A.P. & Ors.* 2017 (1) SCALE 652 – relied on.

**Case Law Reference**

2017 (1) SCALE 652                      relied on                      Para 32

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 795 of 2017.

From the Judgment and Order dated 20.09.2013 of the High Court of Andhra Pradesh at Hyderabad in WP No. 5161 of 2013

WITH

C C. A. Nos. 796, 797-798, 800-801 and 802 of 2017.

B. Adinarayana Rao, S. Gururaj Rao, Sr. Advs., Venkateswara Rao Anumolu, Prabhakar Parnam, Ch. Leela Sarveswar, A.V. S. Raju (for V. N. Raghupathy), J. R. Manohar Rao, R. Santhnan Krishnan, Aditya Kr., C. S. N. Mohan Rao, Guntur Prabhakar, Ms. Prerna Singh, D S. Udaya Kumar Sagar, Mrityunjai Singh, Advs. for the appearing parties.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Applications for impleadment are allowed.

E 2. Leave granted.

3. These appeals are filed against the common final judgment and order dated 20.09.2013 passed by the High Court of Andhra Pradesh at Hyderabad in Writ Petition Nos. 5161 and 7297 of 2013 whereby the High Court allowed the writ petitions and set aside the order dated 01.02.2013 of the A.P. Administrative Tribunal, Hyderabad in O.A. No. 4283 of 2012 and batch, in consequence thereof, quashed memorandum No. 83/E1/2001 dated 22.05.2012 of the Director General of the State Disaster Response and Firer Services, Andhra Pradesh, Hyderabad.

G 4. Facts of the case need mention, in detail, *infra* to appreciate the controversy involved in the appeals.

5. The dispute in these appeals essentially relates to *inter se* seniority of the Station Fire Officers (for short, "SFOs").

H 6. In the year 1993, the appellants and the private respondents were appointed as SFOs by direct recruitment, which is a multi-zonal

post, after passing the test conducted by the Andhra Pradesh State Level Police Recruitment Board (hereinafter referred to as “the Board”). By virtue of that examination, 59 candidates were selected in the Multi Zone-I and Multi Zone-II. The said post is covered by the Andhra Pradesh Fire Subordinate Service Rules (for short, “the Rules”) issued under G.O. Ms. No. 568, Home (Prisons-A) Department, dated 24.11.1992. According to Rule 12 of the Rules, an SFO appointed through direct recruitment must pass three tests, namely, (i) Accounts Test for Subordinate Officers Part-I; (ii) Andhra Pradesh Fire Service Manual; and (iii) A certificate course of competence in wearing and instructions on Breathing Apparatus, within the period of probation which, in turn, described in Rule 9 of the Rules.

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7. The first and second tests were conducted from time to time but the Government did not conduct the third test for years together for one reason or the other.

8. According to the appellants, they cleared the first and second tests and taking note of the fact that the third test was not conducted by the Government itself, the Fire Services Department vide Rc. No. 83/E1/2001 dated 31.07.2003 issued a provisional Seniority List of SFOs in Multi Zone-I and Multi Zone-II. In this provisional Seniority List, the appellants were placed below the private respondents based on select list ranking. The Department called for the objections to the said Seniority List. The appellants objected to the said Seniority List by filing representations.

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9. The Fire Services Department vide Rc. No. 83/E1/2001 dated 15.11.2007 issued revised Seniority List of SFOs in Multi Zone-I and Multi Zone-II. In this Seniority List also, the appellants were put below the private respondents.

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10. According to the appellants, the Government of A.P. vide G.O. Ms. No. 454 of 2009 dated 06.11.2009 exempted 59 SFOs of 1993 batch of direct recruits belonging to Multi Zone-I and Multi Zone-II from undergoing the third test, i.e., certificate course of “competence in wearing and instructions on Breathing Apparatus test” as prescribed in Rule 12 of the Rules, as a special case, as the training in Wearing Breathing Apparatus Set is included in the syllabus of Refresher Course and will meet the requirements of certificate course and all the SFOs have successfully undergone and passed the similar training during the year 2006.

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A 11. The Fire Services Department vide Memo No. 8206/PRI.A/  
A2/2009-8 dated 27.01.2010 issued certain clarifications regarding the  
B completion of probation of SFOs mentioning that the penal provisions of  
Rule 16(h) of the A.P. State and Subordinate Service Rules 1996 (for  
C short “the Subordinate Rules”) shall not be applied to the SFOs of 1993  
D batch but the same shall apply on the employees, who failed to acquire  
E the qualifications within the period of probation due to their lapse. As  
F per this memorandum, the penal provision of Rule 16(h) of the Subordinate  
G Rules shall be applicable to the private respondents only.

C 12. Though Seniority List was not finalized based on the provisional  
Seniority List, the appellants and the private respondents were promoted  
D from SFOs to the post of Assistant District Fire Officers on 14.10.2010.

D 13. The Fire Services Department vide Rc. No.83/E1/2001 dated  
23.12.2011 issued revised provisional Seniority List of SFOs in Multi  
Zone-I and II. In this list also, the appellants were placed below the  
private respondents and again objections were called for.

D 14. On 03.04.2012, the Fire Services Department vide  
memorandum Rc. No. 83/E1/2001, after quoting the legal opinion of the  
Government Pleader for Home (Services), A.P. High Court received,  
mentioned that the decision was taken to decide the dates of  
E commencement and completion of initial period of two years for passing  
F the tests as the basis for the seniority. It was also mentioned that the  
penal provisions of Rule 16(h) of the Subordinate Rules should also be  
G taken into consideration and the final Seniority List would be prepared  
on that basis.

F 15. The Fire Services Department vide Rc. No. 83/E1/2001 dated  
22.05.2012 issued final Seniority List of SFOs in Multi Zone-I and II  
taking the dates of commencement and completion of initial period of  
two years for passing the tests as the basis for the seniority. The penal  
provision of Rule 16(h) of the Subordinate Rules was also applied in  
preparing this final Seniority List. In the said list, the appellants were  
G placed above the private respondents on the basis that they passed the  
prescribed tests (other than exempted test) within the period of probation.

H 16. Aggrieved by the final Seniority List dated 22.05.2012, the  
private respondents filed O.A. No. 4283 of 2012 before the A.P.  
Administrative Tribunal at Hyderabad (for short, “the Tribunal”) for  
quashing the memorandum No. 83/E1/2001 dated 22.05.2012.

17. The Tribunal, vide its judgment and order dated 01.02.2013 in O.A. No. 4283 of 2012 and connected matters dismissed all the O.As filed by the private respondents. A

18. Aggrieved by the said judgment/order, the private respondents filed petitions being W.P.Nos. 5161 and 7297 of 2013 before the High Court. B

19. The High Court, by impugned judgment dated 20.09.2013, allowed the writ petitions and set aside the judgment and order dated 01.02.2013 passed by the Tribunal in O.A. No. 4283 of 2012 and batch consequently, quashed the G.O./Seniority List dated 22.05.2013. C

20. On the basis of the impugned judgment, the Director General, State Disaster Response and Fire Services, Hyderabad (respondent No.2 herein) issued revised seniority list on 10.11.2013 whereby the appellants were placed below the rank of private respondents herein. Further 15 days' time was given to raise objections. D

21. Before the expiry of the period of raising objections, the appellants have filed these appeals by way of special leave before this Court on 21.11.2013.

22. This Court issued notice to the respondents and directed that until further orders, the appellants shall not be reverted. E

23. Heard Mr. B. Adinarayana Rao, learned senior counsel for the appellants and Mr. S. Gururaj Rao, learned senior counsel for the private respondent, Mr. G. Prabhakar, learned counsel, for the State of A.P. and Mr. S. Udaya Kumar Sagar, learned counsel for the State of Telangana. F

24. Mr. B. Adinarayana Rao, learned Senior Counsel appearing for the appellants reiterated the submissions which were urged by the appellants before the High Court while opposing the writ petitions filed by the private respondents against the appellants. G

25. In reply, learned counsel for the respondents supported the impugned order and prayed for dismissal of the appeals and, in consequence, prayed for upholding of the order of the High Court, which had set aside the order of the Tribunal and quashed the memorandum dated 22.05.2012 and, in consequence, the seniority list. H

A 26. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.

B 27. In our considered opinion, the High Court was justified in its reasoning and the conclusion in allowing the writ petition filed by the private respondents (original applicants before the Tribunal) and quashing of Memorandum No. 83/E-1/2001 dated 22.05.2012 impugned in OA before the Tribunal out of which the aforementioned writ petitions arose.

C 28. It is not in dispute that the private respondents herein (original applicants before the Tribunal) being the direct recruits had cleared two tests as provided in Rule 12 (i) and (ii) of the Rules though late but with the permission of the State. It is also not in dispute that so far as the third test, as provided in Rule 12 (iii) was concerned, the respondents and all others alike them in the same cadre were exempted from passing vide G.O.Ms No. 454 of 2009 dated 6.11.2009 issued by the State Government. It is further not in dispute that the private respondents had also completed their probation successfully.

D 29. In the light of these undisputed facts, the question before the High Court was whether Rc. No.83/E1/2001 dated 22.05.2012 which created two classes amongst SFOs for determination of their *inter se* seniority, namely, one class which cleared the two tests in time and other class which cleared the tests late, was legally justifiable and, if so, whether it was in conformity with the Rules for giving effect to it for determination of their *inter se* seniority. The two classes created by the impugned GO dated 22.05.2012 for determination of *inter se* seniority of SFOs had resulted in disturbing the seniority list.

F 30. We have perused the relevant Rules, which have bearing over the controversy at hand, namely, A.P. Fire Subordinate Service Rules and A.P. State and Subordinate Service Rules. In our view, these Rules do not empower the State to make the classification as was sought be done by the State for determining the *inter se* seniority of SFOs in this case.

G 31. In our opinion, taking into account the three undisputed facts mentioned above and the Rules governing the probation and the seniority, there was neither any justifiable basis for creation of such classification nor it satisfied the requirement of the Rules which governed determination of their *inter se* seniority. In other words, firstly, when the respondents successfully cleared their probation, secondly, when the respondents

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cleared two tests, thirdly, when the Government itself exempted the respondents from appearing in the third test, and lastly, when the Rules did not provide for creation of two classes between the employees working in one Cadre (SFO), then in our view, there was no justification on the part of the Government to have issued G.O. dated 22.05.2012 for determination of *inter se* seniority by making classification.

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32. Our view also finds support from the view recently taken by this bench in the judgment rendered in Civil Appeal No.9856-9860 of 2016 R. Venkata Ramudu and Another Etc. vs. State of A.P. & Ors. decided on 27.09.2016.

33. We are, therefore, not impressed by the submissions urged by the learned counsel for the appellants which, in our view, were rightly repelled by the High Court while allowing the writ petitions filed by the private respondents herein which rightly quashed the GO dated 22.05.2012 being irrational, unreasonable and contrary to the Rules. We concur with the findings of the High Court and find no good ground to interfere in its reasoning.

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34. In view of foregoing discussion, we find no merit in these appeals, which are devoid of any merit. As a consequence, the appeals are dismissed.

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Nidhi Jain

Appeals dismissed.