

Andhra Pradesh High Court - Amravati

T S Venkatesh vs State Of Ap on 5 March, 2021

Bench: R Raghunandan Rao

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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W.P.Nos.23770, 37479, 39248, 42902, 43887 of 2017 W.P.Nos.1942, 2975, 3474, 3489, 3809, 4641, 6533, 7572, 8804, 9841, 9932, 10813, 13723, 15724, 20227, 21520, 22226, 23194, 33051, 33349, 36716, 44932, 47427, 47458 of 2018 W.P.Nos.218, 465, 486, 1752, 10496 of 2019 And W.P.No.12589 of 2020 W.P.No.23770/2017 Between:

# 1. Dr. M. Reddi Bhaskar Reddy, S/o. M. Narayana Reddy, R/o. H.No. 13-8-16, Tataiah Gunta, Near TUDA office Tirupathi - 517501, A.P. India.

2. Dr. Y.P.Venkata Subbaiah, S/o. Y.V. Subba Rangaiah, R/o. Flat No.301, M.V.S. Buildings, Besides Manasa Function Hall, Chinna Chowk, Kadapa, A.P. India.

3. Dr. G. Vijay Kumar Reddy, S/o. Late G. Prakash Reddy, R/o. Flat No.503, Sri Sapthagiri Shadan, Vidhyanagar Colony, Tirupathi-517502, A.P. India.

... Petitioners AND \$ 1. State of Andhra Pradesh, Rep. by its Principal Secretary Department of Higher Education, 4th block, 1st Floor, Room No.268, Secretariat Office, Amaravathi, A.P.

2. University Grants Commission (UGC), rep. by its Secretary, Bahadur Shah Zfar Marg, New Delhi-110 002.

3. Sri Venkateswara University, rep. by its Registrar, Tirupathi-517502,

4. High Power Committee, rep. by its Chairman Flat No.102, Jaya Residency 11-4-646, D-1/B, A.C Guards Hyderabad-500004.

... Respondents Date of Judgment pronounced on : 05-03-2021 HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers : Yes/No May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : Yes/No to Law Reporters/Journals:

3. Whether the Lordship wishes to see the fair copy : Yes/No Of the Judgment?

2 RRR,J W.P.No.23770 of 2017 & batch \*IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI \* HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO + W.P.Nos.23770, 37479, 39248, 42902, 43887 of 2017 W.P.Nos.1942, 2975, 3474, 3489, 3809, 4641, 6533, 7572, 8804, 9841, 9932, 10813, 13723, 15724, 20227, 21520, 22226, 23194, 33051, 33349, 36716, 44932, 47427, 47458 of 2018 W.P.Nos.218, 465, 486, 1752, 10496 of 2019 And W.P.No.12589 of 2020 %

Dated:05-03-2021 W.P.No.23770/2017 Between:

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... Respondents

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W.P.No.23770 of 2017 & batch

! Counsel for petitioners : Sri Vedula Venkata Ramana Sr. counsel Sri A. Satya Prasad, Sr. counsel Sri J. Sudheer Sri P. B. Vijay Kumar Sri J. Ugranarasimha Sri P.V. Ramana M/s. Indus Law Firm Sri Penjuri Venugopal ^Counsel for Respondents : Additional Advocate General Sri P.S.P. Suresh Kumar Sri P. Venugopal.

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? Cases referred:

1. (2007) 8 SCC 785

2. (2010) 12 SCC 204

3. 2017 SCC Online all 2729 :: (2017) 6 ALL LJ 722

4. (1995) 2 SCC 745

5. AIR 1980 SC 1612

6. (2019) 12 SCC 410

7. [1992 Supp (3) SCC 217

8. (1995) 5 SCC 173

9. (2006) 4 SCC 1 4 RRR,J W.P.No.23770 of 2017 & batch HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO W.P.Nos.23770, 37479, 39248, 42902, 43887 of 2017 W.P.Nos.1942, 2975, 3474, 3489, 3809, 4641, 6533, 7572, 8804, 9841, 9932, 10813, 13723, 15724, 20227, 21520, 22226, 23194, 33051, 33349, 36716, 44932, 47427, 47458 of 2018 W.P.Nos.218, 465, 486, 1752, 10496 of 2019 And W.P.No.12589 of 2020 COMMON ORDER:

Heard Sri Vedula Venkata Ramana, learned Senior Counsel, Sri A.

Satya Prasad, learned Senior Counsel, learned Additional Advocate General, Sri P.B. Vijayakumar, Sri P.V. Ramana, Sri J. Sudheer, Sri P.S.P. Suresh Kumar, Sri Ugra Narasimha, and Sri N.V. Sumanth, Advocates for the parties.

2. There are 14 State Universities in the State of Andhra Pradesh. The teaching staff in these Universities consist of lecturers, readers and professors. These posts were redesignated as Assistant Professors, Associate Professors and Professors. Until the year 1982, reservation was provided only for the posts of lecturers. The Government, by way of G.O.Ms.No.927 Education Department dated 20.11.1982 extended reservations to the posts of readers also. The method of implementing the reservation for these posts was set out in G.O.Ms.No.995, Education (c) Department, dated 16.12.1982. The relevant portions of the G.O. are set out below:

"Point No.(1):

The principle of carry forward of vacancies in Government posts has been clearly indicated in Rule 22 of Andhra Pradesh State and Subordinate Service Rules. The same procedure shall be adopted by the Universities, constituent colleges and Post Graduate centres also in regard to carry forward of vacancies.

Point No.(2):

Keeping in view the decision taken in the Vice- Chancellors' conference held at Tirupathi on 09.04.1981 Government directed that the reservation in the Teaching Posts should be made by grouping the faculties as indicated below:

Group I Arts, Commerce, Business Management, Law, Social Sciences and Education including all languages.

Group II	Sciences
Group III	Engineering and Technology

Each group should be treated as a single unit and the roster system prescribed in Rule 22 of the General Rules should be followed.

Point No.(3):

All appointments of Readers to be made with effect from 20.11.1982 shall be in accordance with the orders issued in G.O.Ms.No.927, Edn., dated 20.11.1982 and the carry forward rule shall be applicable for the vacancies that arise on and from 20./11.1982. Scheduled castes/ Schedules Tribes/Backward Class candidates selected and appointed on merit against open competition should not be counted against the reserved quota."

3. The above method was slightly modified by way of G.O.Ms.No.420, dated 18.11.1995. By G.O.Ms.No.928, dated 6.10.1995, Rule 22-A of the Andhra Pradesh State and Subordinate Service Rules was amended providing reservation to women in public services. By G.O.Ms.No.456, Education Department, dated 21.12.1995 the Government extended this reservation given to women, to teaching and non-teaching staff of the Universities by adopting sub-rule (2) of Rule 22-A of the State and Subordinate Service Rules for Universities. The relevant provisions being:

"3. The Government after careful consideration, hereby order that sub-rule 2 of rule 22-A of the State and Sub-

Ordinate Service Rules shall be adopted by all the 6 RRR,J W.P.No.23770 of 2017 & batch Universities for the purpose of recruitment to the teaching and non-teaching posts in the Universities, subject to the following guidelines:-

(i) In each of the 3 groups, roster shall be maintained arranging the subjects in alphabetical order within the particular group. The Vacancies computed in a particular group will be distributed among different categories i.e., O.C., S.C., S.T., BC-A., BC-B., BC-C., & BC-D., as per the 100 point roster.

(ii) The vacancies earmarked for each category, i.e., S.C., S.T., BC-A., BC-B., BC-C., & BC-D., & O.C., etc., will be extracted and arranged in the same alphabetical order of subject in the group. Then the gender roster intended for women reservation shall be super-imposed on the list so prepared. This gender roster shall consist of 100 points in each category;

i.e., S.C., S.T., BC-A., BC-B., BC-C., & BC-D., & O.C.,. The distribution of points to women candidates shall be as follows:-

3, 7, 10, 13, 17, 20, 23, 27, 30, 33, 37, 40, 43, 47, 50, 53, 57, 60, 63, 67, 70, 73, 77, 80, 83, 87, 90, 93, 97, 100.

Example: If the number of vacancies in a Group say

- Science group are 40, the vacancies in the first place in 100 point general roster shall be distributed category-wise in the following manner:

O.C. - 21, BC - 10, SC - 6, ST - 3.

Out of 21 vacancies, the vacancies at points 3, 7, 10, 13, 17 & 20 in the roster shall be reserved for Women. Similarly, the third vacancy shall be reserved to women out of the 6 vacancies available for SCs. The same shall be applicable to the 3 vacancies available for STs where the 3rd vacancy shall be reserved for women. Out of the 10 vacancies available for BCs., they have to be first earmarked group-wise i.e., BC-A, BC-B, BC-C, and BC-D and then similar procedure shall be adopted for distributing them among the women candidates.

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(iii) If for any reason, suitable women candidates are not available against their points, such posts shall be filled by male candidates subject to their availability. Sliding of vacancy points shall not be allowed under any circumstances. These orders are applicable to all cadres of teaching posts in the Universities where there is direct recruitment i.e., Lecturers, Readers and Professors.

(iv) Those orders extending 30% reservation to women shall also be applicable to the direct recruitment of non-teaching staff in the Universities.

4. The Registrars of all the Universities are requested to follow these orders by adopting them immediately and no recruitment shall here-after take place without following the rule relating to reservation to women."

4. The Andhra Pradesh State and Subordinate Service Rules were substituted by a new set of rules through G.O.Ms.No.436 dated 15.10.1996. However, Rule 22 and 22-A of the rules for all practical purposes remained unchanged. After the Judgement of the Hon'ble Supreme Court in *Rajesh Kumar Daria v. Rajasthan Public Service Commission*<sup>1</sup> and *Public Service Commission, Uttaranchal v. Mamta Bisht*<sup>2</sup>, the Government, issued G.O.Ms.No.40, dated 25.07.2016, stipulating that the

reservations provided for women would be treated as Horizontal reservation and not vertical reservation. The percentage of reservation for women was increased from 30% to 33.3% by G.O.Ms.No.237 General Administration (Ser-V) department dated 28.05.1996.

5. In a set of parallel proceedings, the University Grants Commission (UGC) also issued guidelines for providing reservations to (2007) 8 SCC 785 (2010) 12 SCC 204 8 RRR,J W.P.No.23770 of 2017 & batch deprived sections of society. In 2006, the UGC issued "Guidelines for strict implementation of Reservation Policy of the Government in Universities, Deemed to be Universities, colleges and other Grant in Aid Institutions and centres". Guidelines 6 to 8 are relevant and read:

6. Coverage and Applicability:

(a) Reservation is applicable to all teaching posts such as the posts of Lecturers, Readers, Professors, or by whatever other nomenclature the posts are known, and to all posts of non-teaching staff of all the Universities, Deemed to be Universities, Colleges, and other grant-in-aid or research Institutions and Centres;

(b) .....

(c) In the cases of reservations referred to in clause (a) above, the Instructions issued by the Central Government for grouping of posts shall be resorted to wherever applicable, especially when more than one University functions under a single Act, or several colleges function under one University; grouping of posts are mandatory if the posts concerned are transferable on an inter-university or inter-college levels. The practice of creating department-wise cadres, which tends to create single posts or cadres with artificially reduced number of posts in order to avoid reservation, is strictly forbidden;

(d) .....

(e) .....

7. Extent of Reservation:

(a) In all the educational institutions referred to in clause 6

(a) above, the extent of reservation applicable is 15% for SC and 7.5% for ST;

(b) Without prejudice to the provisions contained in the clause (a) above, in all the educational institutions referred to in clause (a) above and functioning within any State shall follow the percentage of reservation prescribed by the respective State Government.

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(c) No restriction of percentage is applicable while filling-up of back-log/short-fall vacancies of SC/ST.

8. Procedure to be followed in matters of reservation for teaching as well as non-teaching staff:

(a) Without prejudice to any procedure prescribed under various instructions from the Central Government from time to time, the following guidelines are to be followed:

- (i) .....
- (ii) .....
- (iii) .....
- (iv) .....
- (v) The Roster, 40-point or 100-point as the case

may be, shall be applied to the total number of posts in cadre only, (R.K. Sabharwal v. State of Punjab (AIR 1995 SC 1371); cadre is best indicated by seniority list governing the members with the same pay-scale;

(vi) Total number of vacancies shall be calculated, and Roster as referred above shall be applied only excluding the back-log vacancies, if any;

(vii) Percentage of reservation shall be applied separately for each recruitment year, and not whenever the vacancies arise, or interviews take place, or recruitment/appointment is made;

6. The Banaras Hindu University, which is a Central University, had issued an advertisement calling for applications for various teaching positions in the University. This notification sought to treat the entire university as a "unit" for all teaching vacancies of Assistant Professor/Associate professor/Professor and applied the 100 point roster system on the vacant posts. This notification was challenged along with Guideline 6(c) and 8 (a) (v) of the 2006 UGC guidelines in Vivekanand Tiwari & Anr., v. Union of India<sup>3</sup>, before the Hon'ble High Court of 2017 SCC Online all 2729 :: (2017) 6 ALL LJ 722 10 RRR,J W.P.No.23770 of 2017 & batch Allahabad. The Hon'ble High Court, after reviewing the law and precedents on this issue, had set aside the notification issued by the Banaras Hindu University as well as Guideline 6(c) and 8 (a) (v) of the 2006 UGC guidelines. This judgement has been affirmed by the Hon'ble Supreme Court.

7. After the said judgement, UGC had issued proceedings No.F.1-5/2006 (SCT) dated 05.03.2018 introducing new Guideline 6(c) and 8 (a) (v) of the 2006 UGC guidelines, which read as follows:

"(i) Clause 6(c):

In case of reservation for SC/ST, all the Universities, Deemed to be Universities, Colleges and other Grant-in-aid Institutions and Centres shall prepare the roster system keeping the Department / Subject as a unit for all levels of teachers as applicable.

(ii) Clause 8(a) (v):

The roster, department-wise, shall be applied to the total number of posts in each of the categories [(e.g.) Professor, Associate Professor, Assistant Professor] within the Department/Subject".

The above decision may also be circulated to its constituent and affiliated colleges for immediate follow up action.

You are requested to prepare fresh rosters within one month of receipt of this letter under intimation to UGC."

8. The Central Government also considered the impact of the Judgement and initially promulgated The Central Educational Institutions (Reservation in Teachers cadre) Ordinance, 2019. This was replaced by the Central Educational Institutions (Reservation in Teachers cadre) Act, 2019. This Act, which is to apply to central Educational institutions, provided that, for the purposes of reservation of posts, a Central Educational Institution shall be regarded as one unit. This Act, in view of 11 RRR,J W.P.No.23770 of 2017 & batch its definition of "Central Educational Institution" does not apply to any of the 14 Universities which are involved in the present recruitment process.

9. In another development, the State of Andhra Pradesh, with a view to rationalise the staff pattern in all the Universities had, in the year 2015, appointed a committee known as the Raghavulu committee to look into the staffing pattern of the Universities and for recommendations relating to rationalisation of the said posts, by way of G.O.Rt.No.390, dated 10.08.2015. The committee had submitted a report dated 31.10.2015. This report, apart from recommendations relating to rationalisation of the posts, had stated that about 1385 posts were vacant and needed to be filled up in the 14 Universities. These recommendations were accepted by the Government and G.O.Ms.No.201, dated 19.10.2016 was issued for filling up of 1104 posts in phase-I and 281 posts in Phase-II. This G.O. was suspended by this Court on the ground that the Government could not have taken a unilateral decision, as the Universities have full autonomy to decide their staffing pattern etc. Thereupon, the approval of the report of the committee was obtained from all the Universities. On that basis G.O.Ms.Nos.28 to G.O.Ms.No.41 dated 30.06.2017 were issued, in supersession of G.O.Ms.No.201, for undertaking recruitment for the posts vacant in each university.

10. The 14 Universities issued separate notifications between December, 2017 and June, 2018 calling for applications for the posts which were vacant in the respective Universities. After this notification, Act 3/2018 was enacted entrusting the conduct of written examination to the A.P. Public Service Commission. The written examinations were conducted and interviews were held for some of the posts. At that stage, the 12 RRR,J W.P.No.23770 of 2017 & batch notifications and



relevant G.Os., came to be challenged before this Court by way of the present batch of cases.

11. During the pendency of the writ petitions, the Government constituted a three man committee for the purpose of reviewing the rationalisation process enacted by the erstwhile five man committee. However, this committee did not submit any report till date. In a parallel proceeding, the A.P. State Council for Higher Education appointed a new committee consisting of two former Vice Chancellors and Secretary to conduct the same exercise. This committee submitted its report on 31.08.2020 recommending that the earlier rationalisation process be scrapped, as it is not in compliance with the guidelines issued by the University Grants Commission. On the very same day, the A.P. State Council for Higher Education forwarded the report to the Government. It is stated in the counter filed by the Government that this recommendation was being accepted by the Government.

12. Some of the unsuccessful candidates have approached this Court by way of various writ petitions challenging G.O.Ms.No.995, G.O.Ms.No.420, G.O.Ms.No.456, G.O.Ms.Nos.28, 30 and 40, dated 30.06.2017, and G.O.Ms.No.99, notifications issued by the Universities for recruitment and Rule 22 and 22A of the A.P. State and Subordinate Service rules to the extent they apply to Universities. Another set of Writ petitions have also been filed by various candidates, who are hopeful of being appointed to various posts and are seeking an early completion of the process of recruitment.

13. The grounds of challenge in the first set of writ petitions are to the effect that the process of implementing reservations under the relevant G.Os., and notifications issued by the Universities is flawed and 13 RRR,J W.P.No.23770 of 2017 & batch requires to be set aside and that the process of rationalisation undertaken by the State/Universities, on the basis of Raghavulu committee report, is in violation of the guidelines issued by UGC and has to be set aside and the entire process would have to be redone in accordance with the guidelines of UGC before any recruitment can be done.

14. Within the first set of writ Petitions, the Petitioners in W.P.Nos.1942/2018, 2975/2018, 3474/2018, 3489/2018 and 36716/2018 are persons who have been working on ad hoc/contractual basis as teaching staff for quite some time in their respective Universities and are seeking regularisation. Their contention is that they have been recruited by way of a process akin to the regular recruitment process and have been working for quite some time and are entitled for regularisation in view of their long service. In W.P.Nos.2975/2018 and 3489/2018, a further contention is that a two man committee was appointed to consider the issues of regularisation in Acharya Nagarjuna University and Krishna University and the recruitment process was undertaken without waiting for the report of the committee, which is arbitrary and affects the rights of the contractual teaching staff.

15. The challenge to the implementation of the reservation policy is as follows:

a) The Universities are following a system of grouping all the teaching posts in the university into three groups, viz., Arts, Science and Engineering and taking each group as a unit for applying the roster points. This group method is said to be impermissible in view of the judgment of the Allahabad High Court in Vivekanand Tiwari case, which has been affirmed by the Hon'ble Supreme

Court, holding that only the department/subject can be treated as a unit. By virtue of these judgments 14 RRR,J W.P.No.23770 of 2017 & batch the unit for reservation has to be the department/subject and not the aforesaid grouping.

b) The reservation policy has been extended under the impugned notifications only to the posts of Assistant Professor and Associate Professor. The posts of Professors also need to be included for the purpose of reservation as the UGC guidelines 2006 provide for reservation for the posts of Professor also and the same is binding on all the Universities including the State Universities. However, the State has taken the stand that there is no reservation for the post of professor, which is incorrect.

c) The State had issued G.O.Ms.No.456 dated 21.12.1995 providing for reservation for women for the posts of professors. However, no such provision has been made in the impugned notifications.

d) The roster point system is to be applied on the basis of posts and not on the basis of vacancies. However, the impugned notification provide for roster point of reservation on the basis of vacancies and not posts. It is submitted that even G.O.Ms.No.456 dated 21.12.1995, which provides for reservation for women candidates, also prescribes roster points on the basis of vacancies and not on the basis of the posts. This method of implementing the roster point system is violative of the directions of the Hon'ble Supreme court in R.K. Sabharwal v. State of Punjab<sup>4</sup> and subsequent judgements. Hence, G.O.Ms.No.995 Education

(c) Department dated 16.12.1982, G.O.Ms.No.420 Education (UE.I-I) Department dated 18.11.1995 and G.O.Ms.No.456 Education (UE.I-I) Department dated 21.12.1995 have to be set aside.

(1995) 2 SCC 745

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e) In the case of reservation for women and physically handicapped persons, the reservation is horizontal and specific slots cannot be allotted to them in the roster.

f) In W.P.No.44932 of 2018, it was contended that in the case of reservation for the physically handicapped category, the percentage of reservation is 4% under the Rights of persons with Disabilities Act, 2016. However, only 3% reservation has been provided for the physically handicapped category under G.O.Ms.No.99, General Administration (Services-D) dated 04.03.2013, which modified Rule 22 of the A.P. State and Subordinate service Rules, by reserving 6th, 31st and 56th (general Category) points in the 100 point roster for persons with disabilities. The assignment of roster points for persons with different disabilities is also challenged on the ground that roster

points cannot be allotted for horizontal reservations.

g) Rule 22 of the State and Subordinate Service Rules, which is being applied for implementing the roster point system, also provides for vacancy based roster point system and not post based roster point system, which is impermissible.

16. The objections to the rationalisation process applied to the present case are as follows:

A) The Raghavulu Committee had not visited or interacted with the faculty of the departments of each university to understand the work load, number of students etc., which is essential for determining the required faculty for each department. In the circumstances, the report of the Raghavulu Committee is divorced from ground reality and requires to be redone.

16 RRR,J W.P.No.23770 of 2017 & batch B) The UGC guidelines require maintenance of certain norms such as ensuring a minimum of 1 Professor, 2 Associate Professors, and 4 Assistant Professors in every department. The Committee made recommendations which resulted in a situation where there were no professors appointed to certain departments at all.

C) The report of the Committee does not say whether the recommendations were based on the workload norms for various categories of posts in a university and whether the UGC guidelines were taken as bench mark.

D) The report of the Committee is silent on rationale for merger of departments and the recommendations of such merger are not uniform or similar to all Universities.

E) The report of the Committee also does not give any justification for merging various positions of Professors, Associate Professors and Assistant Professors.

17. The Government has also accepted that the earlier rationalisation process was not done in an appropriate manner and has now taken the stand in the counter affidavit filed by it, that it proposes to set aside the rationalisation process undertaken on the basis of the recommendations of this Committee.

18. The candidates seeking continuation of the recruitment contend as follows:-

a) The Writs are not maintainable because the persons, who have participated in the process, cannot turn around and challenge the said process, as it would amount to approbate and reprobate 17 RRR,J W.P.No.23770 of 2017 & batch

b) The judgment of the Allahabad High Court does not have any ratio and in any event relates to a central university. As the recruitment in the present cases is to State Universities, the ratio of the Allahabad High Court, if any, would not apply.

- c) The judgement of the Allahabad High Court can only be prospective and not retrospective to affect the recruitment process, which was already underway.
- d) The Central Educational Institutions (Reservation in Teachers cadre) Act, 2019 would not apply to State Universities.
- e) The rationalisation of posts recommended by the Raghavulu committee did not require any reconsideration. The three man committee did not make any proper enquiry in the matter and simply prepared a report, without any inputs or any material, to disturb the recommendations of the earlier committee.
- f) The mistake committed by the three man committee was compounded by the total non-application of mind by the A.P. State Council for Higher Education, which simply forwarded the report to the Government on the same day that it received the report. The Government in turn, did not improve matters and blindly accepted the said report without any application of mind or discussion.
- g) The question of rationalisation cannot be raised by the petitioners as the said issue is yet to be considered by the Universities which would have to take a final decision and the decision of the State on this issue may not be relevant
- h) After the notification has been issued, a rationalization process cannot be taken up to affect the ongoing recruitment process.

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19. The State Government has now filed a common affidavit wherein it accepts the judgement of the Hon'ble High Court of Allahabad. It has also taken the stand that it would also pass legislation similar to the Central Educational Institutions (Reservation in Teachers cadre) Act, 2019, fixing the university as the unit for reservation of posts. It has also taken the stand that a fresh rationalisation process has to be done before identifying the posts available for recruitment. CONSIDERATION OF THE COURT:

20. Before going into the merits of the contentions raised by either side, the preliminary objection raised by Sri Vedula Venkata Ramana to the maintainability of the writ petitions would have to be considered. It is contended that the persons, who have participated in the recruitment process, cannot turn around and challenge the said process, as it would amount to a case of approbate and reprobate. He relied upon a judgment of the Hon'ble Supreme Court reported in Bar Council of India & Ors., v. Surjeet Singh & Ors.,<sup>5</sup>. A perusal of this judgment would show that the Hon'ble Supreme Court had held that such petitions are permissible:

The contesting respondents could not be defeated in their writ petitions on the ground of estoppel or the principle that one cannot approbate and reprobate or that they were guilty of laches. In the first instance some of the contesting respondents

were merely voters. Even Shri Surjeet Singh in his writ petition claimed to be both a candidate and a voter. As a voter he could challenge the election even assuming that as a candidate after being unsuccessful he was estopped from doing so. But to be precise, we are of the opinion that merely because he took AIR 1980 SC 1612 19 RRR, J W.P.No.23770 of 2017 & batch part in the election by standing as a candidate or by exercise of his right of franchise he cannot be estopped from challenging the whole election when the election was glaringly illegal and void on the basis of the obnoxious proviso. There is no question of approbation and reprobation at the same time in such a case. A voter could come to the High Court even earlier before the election was held. But merely because he came to challenge the election after it was held it cannot be said that he was guilty of any laches and must be non-suited only on that account.

21. In the circumstances the present batch of cases, which challenge the method of reservation for teaching posts in the Universities in the State of Andhra Pradesh and which is not in line with the law, would be maintainable.

22. Another development which needs to be noticed in the present case is the fact that Andhra University has set aside the entire process of recruitment. In view of some adverse news items, the Government issued G.O.Rt.No.234, Higher Education (UE) Department dated 22.10.2018 constituting an enquiry committee to go into allegations levelled against the University Authorities in the recruitment process of teaching faculty in Andhra University. After conducting an enquiry, this Committee filed its report before the Government, which forwarded the same to the Andhra University. The executive committee of the Andhra University considered this report in its meeting held on 10.7.2020 and resolved to cancel the total selection process. This decision of the executive committee has been forwarded, by the Registrar, to the Government by letter dated 19.08.2020

23. Writ Petitions, including W.P.Nos.13723/2018, 33051/2018, 33349/2018 and 36716/2018, filed against the recruitment process 20 RRR, J W.P.No.23770 of 2017 & batch initiated by Andhra University only, would not require further consideration. However, as they raise issues, which are common to the other writ petitions and would carry over to the fresh recruitment process, the same are being considered.

24. The issues that now come up for consideration are: I. Whether, the system of grouping, introduced by G.O.Ms.No.995, dated 16.12.1982 and modified by G.O.Ms.No.420 dated 18.11.1995, is permissible in view of the Judgement of the Hon'ble High court of Allahabad in Vivekanand Tiwari case, as affirmed by the Hon'ble Supreme Court?

II. Whether the reservations, provided for deprived sections of the society and women, are applicable to the posts of Professors also?

III. Whether the roster point table set out under Rule 22, as applicable to the Universities, is vacancy based or post based and if it is vacancy based, whether it has to be set aside?

IV. Whether the impugned notifications provide for vacancy based reservation or post based reservation and if they are vacancy based, whether they can be permitted?

V. Whether the roster point table being applied for reservation to Women and persons with disabilities is valid and permissible?

VI. Whether, the roster point table, under Rule 22 of the A.P. State and Subordinate Service Rules, as applicable to the Universities is breaching the 50% limit for Reservations?

VII. Whether, the process of rationalisation undertaken, on the basis of the Raghavulu Committee recommendations, should be continued or set aside?

21 RRR,J W.P.No.23770 of 2017 & batch VIII. Whether, the Petitioners in W.P.Nos.1942/2018, 2975/2018, 3474/2018, 3489/2018 and 36716/2018 are entitled for regularisation of their services?

ISSUE No.I:

25. The Banaras Hindu University, which is a central University, had issued an advertisement calling for applications from persons interested in being recruited to various teaching positions in the University. This notification sought to treat the entire university as a "unit" for all teaching vacancies of Assistant Professor/Associate professor/ Professor and apply the 100 point roster system on that basis. This notification was challenged along with Guideline 6(c) and 8 (a) (v) of the 2006 UGC guidelines, before the Hon'ble High Court of Allahabad. The Hon'ble High Court, in its judgement reported as Vivekanand Tiwari, after reviewing the law laid down, in similar cases, by the Hon'ble Supreme Court as well as the Hon'ble High Court of Allahabad, where it has been consistently held that reservation cannot be implemented by taking the university as a unit and the appropriate way would be to treat the department/subject as one unit, had held that the Unit for applying the roster points should be the department/subject. The following passage of the judgement of the Hon'ble High Court would set out the ratio of the judgement:

58. It is clear from the above judgments that the proposition of law laid down consistently with regard to the application of reservation in teaching posts of the University is that reservation is to be applied department- wise or subject-wise treating it as a 'Unit' and not the University as a 'Unit'.

59. As already recorded above the reservation has been applied by way of Executive Instructions and not by 22 RRR,J W.P.No.23770 of 2017 & batch way of any Legislation. The Executive Instructions and guidelines framed by the UGC are in direct conflict and in violation of the law laid down by the Apex Court and different High Courts consistently from 1990 till date. ....

60. xxxxxxxxxxxxxxxx

61. xxxxxxxxxxxxxxxx

62. The qualification of the candidate must be possessing Master's Degree, Ph.D, Research Work and NET (being suitability test) for the subject for which the post is advertised. Thus for Assistant Professor of different subjects the qualification would be in different subjects. Similarly the qualification as per the UGC Guidelines for appointment as Reader/Associate Professor, Professor is also in addition to the educational qualifications the minimum prescribed period of teaching in the lower level be it Assistant Professor, Associate Professor in the relevant subject for which the post is available. An Assistant Professor in subject 'A' cannot be an applicant for direct appointment as Associate Professor or Professor in subject 'B', 'C' or 'D'. He can only apply for the post in the subject 'A'. The seniority for becoming Head of the Department would be of the teachers in the same subject. There is no inter se competition between the teachers in the same level of different subjects as all posts of higher level from entry level are by way of selection. There is no such provision in the teaching cadre in the Universities of promotion being granted on the basis of seniority irrespective of the department or the subject. Their competition is with candidates of their subject/department and not of different subjects. Merely because Assistant Professor, Reader, Associate Professor and Professor of each subject or the department are placed in the same pay-scale but their services are neither transferable nor they are in competition with each other. It is for this reason also that clubbing of the posts for the same level treating the University as a 'Unit' would be completely unworkable and impractical. It would be violative of Article 14 and 16 of the Constitution.

63. If the University is taken as a 'Unit' for every level of teaching and applying the roster it could result into 23 RRR,J W.P.No.23770 of 2017 & batch some departments/subjects having all reserved candidates and some having only unreserved candidates. Such proposition again would be discriminatory and unreasonable. This again would be violative of Article 14 and 16 of the Constitution.

64. Thus for all the reasons recorded above we are of the firm view that Clause 6(c) and 8(a)(v) of the UGC Guidelines 2006 and the letter of the UGC dated 19.02.2008 cannot be sustained and are liable to be quashed and consequently the impugned advertisement applying the reservation in tune with the guidelines and the letter dated 19.02.2008 also deserves to be quashed."

26. The above passage would make it clear that the Hon'ble High Court of Allahabad had held that as a general principle, the roster point table would have to be applied by taking the department or the subject as the unit for reservation. This principle was arrived at by looking at the working of Universities in general and cannot be restricted to Central Universities. The ratio laid down by the Hon'ble high Court of Allahabad would be applicable to all the Universities having different departments.

27. This Judgement was challenged before the Hon'ble Supreme Court, which upheld the said judgement. The various challenges to this judgement were S.L.P.No.16515 of 2017 filed by Dr. Lal Chand Prasad, which was dismissed on 21.07.2017, with the direction that candidates who were in general category and already appointed will not be disturbed and the remaining vacancies as well as the reserved vacancies may be filled up in accordance with the impugned judgement; the appeal of the Union of India, in S.L.P.(Civil).Diary.No.14318 of 2018, which was dismissed by the Hon'ble Supreme Court on 22.01.2019 reported in 24 RRR,J W.P.No.23770 of 2017 & batch Vijay Prakash

Bharati v. Union of India & Ors.,<sup>6</sup> with the following observations:

" In view of the fact that this Court has affirmed the view [Vivekanand Tiwari v. Union of India, 2017 SCC OnLine All 2729 : (2017) 6 All LJ 722] , taken by the High Court in the relied upon judgment dated 20-4-2009 in Vishwajeet Singh v. State of U.P. [Vishwajeet Singh v. State of U.P., 2009 SCC OnLine All 420 : (2009) 3 AWC 2929] , vide order dated 19-1-2017 in Sanjeev Kumar v. State of U.P. [Sanjeev Kumar v. State of U.P., (2019) 12 SCC 385] , we do not find any ground to interfere with the impugned order [Vivekanand Tiwari v. Union of India, 2017 SCC Online All 2729 : (2017) 6 All LJ 722] "

28. In view of the dismissal of the appeals filed against the judgement of the Hon'ble High Court of Allahabad, with observations, it would have to be held that the said judgement of the Hon'ble High Court of Allahabad has merged into the orders of the Hon'ble Supreme Court and would be binding on this Court. The principle laid down in these judgements is that the Roster point system has to be followed subject/department wise only. Consequently, the system of treating the groups set up under G.O.Ms.No.995, dated 16.12.1982 and G.O.Ms.No.420 dated 18.11.1995 as the units for applying the roster point table is violative of the judgement of the Hon'ble High Court of Allahabad as affirmed by the Hon'ble Supreme Court and will have to be set aside.

29. The candidates who are seeking a continuation of the recruitment process would contend that, the judgement of the Hon'ble High Court of Allahabad was delivered on 07.04.2017 and the same was affirmed by the Hon'ble Supreme Court after the process of recruitment (2019) 12 SCC 410 25 RRR,J W.P.No.23770 of 2017 & batch had started by way of the issue of G.O.Ms.Nos.28 to 41 dated 30.06.2017 and as such the judgement can only affect the proceedings initiated after the delivery of the Judgement. This contention cannot be accepted for two reasons, viz., the judgement of the Hon'ble High Court of Allahabad was delivered on 07.04.2017, which is before the issue of G.O.Ms.Nos.28 to 41. The appeal against this Judgement was dismissed on 21.7.2017 before any of the employment notifications were issued. The contention cannot be accepted for another reason, a judgement is only a declaration of existing law, and the declaration that the process adopted under G.O.Ms.995 and G.O.Ms.No.420 is wrong, would apply from the time, the said G.Os., were issued.

30. For the aforesaid reasons, G.O.Ms.No.995, Education (c) Department, dated 16.12.1982 and G.O.Ms.No.420, dated 18.11.1995 are set aside.

## ISSUE No.II

31. The State of Andhra Pradesh, by way of G.O. Ms. 927, dated 20.11.1982, had provided for reservations for deprived sections of society, only to the posts of Assistant and Associate Professors. Thereafter, no proceeding, Government Order or Legislation extending such reservations to the post of Professor has been shown or placed before this Court. Accordingly, it would have to be held that no reservation for the deprived sections of society has been made, by way of State enactment or executive decision, for the post of professor.



32. Guideline 6 of the UGC Guidelines of 2006 reads as follows:

6. Coverage and Applicability:

(a) Reservation is applicable to all teaching posts such as the posts of Lecturers, Readers, Professors, or by 26 RRR, J.W.P.No.23770 of 2017 & batch whatever other nomenclature the posts are known, and to all posts of non-teaching staff of all the Universities, Deemed to be Universities, Colleges, and other grant-in-aid or research Institutions and Centres;

33. On the basis of this Guideline, the petitioners would contend that these guidelines are applicable to all Universities and as such reservation would have to be provided for the post of Professor also.

34. Before, considering the said contention, the circumstances in which these guidelines have been issued would have to be seen. The central Government had been issuing various instructions from time to time for implementation of the reservation policy of the Central Government. In continuation of such instructions, the Ministry of Human Resources Development, vide their Order No.F.No.6-30/2005 U-5 dated 06.12.2005, as recorded in the guidelines itself, had directed the University Grants Commission to formulate guidelines for implementation of the reservation policy of the Central Government in the following terms:

"AND WHEREAS, the policy of the Central Government is that in the Central Universities and institutions which are Deemed to be Universities receiving grants-in-aid from the public exchequer, the percentage of reservation in admissions and recruitments in teaching and non-teaching posts is to be 15% for Scheduled Castes and 7.5% for Scheduled Tribes.

AND WHEREAS, the University Grants Commission, New Delhi hereinafter referred to as UGC, is a statutory autonomous organization responsible for implementation of policy of the Central Government in the matter of admissions as well as recruitment to the teaching and non-teaching posts in the Central Universities and institutions which are Deemed to be Universities;

AND WHEREAS, the UGC has failed to ensure effective implementation of the reservation policy in the Central 27 RRR, J.W.P.No.23770 of 2017 & batch Universities and grantee institutions, which are deemed to be Universities.

NOW, THEREFORE, in exercise of the powers vested under Section 20(1) of the University Grants Commission Act, 1958 the Government hereby directs the UGC to ensure effective implementation of the reservation policy in the Central Universities and those of institutions Deemed to be Universities receiving aid from the public funds except in minority institutions under Article 30(1) of the Constitution."

35. The Guidelines 2006 were issued by the University Grants Commission in pursuance of the above instruction and obviously apply only to Central Universities and institutions, which are deemed to be Universities receiving grant-in-aid.

36. Apart from this, the State of Andhra Pradesh has been following a different regime. The 2006 Guidelines of UGC, under Guideline No.7 (a), provide reservation only to the members of the Scheduled Tribe and Scheduled Caste communities. There is no reservation provided for the members of the other Backward Class communities. Such a provision is made in the State reservation policy. G.O.Ms.No.995, dated 16.12.1982 implemented by the State of A.P., provides for a grouping system for application of the roster table. The University Grants Commission guidelines provide for treating the entire cadre as one unit. Similarly, the State of U.P., had also made an alternative arrangement in the form of the Uttar Pradesh Public Services (Reservation for Scheduled castes, Scheduled Tribes and Other Backward Classes) Act, 1994, which is also at variance with the Guidelines of 2006. This would demonstrate that the UGC guidelines were never understood to be applicable to State Universities by either UGC or the concerned states. Accordingly, the 2006 Guidelines would not be applicable to State Universities. The guidelines 28 RRR,J W.P.No.23770 of 2017 & batch are clearly applicable only to the Central Universities and institutions Deemed to be Universities getting assistance from the Central Government and not to the State Universities.

37. The State of A.P., by way of G.O.Ms.No.456 had provided for extension of reservation to women to the extent of 30% in teaching and non-teaching courses in Universities and the same was extended by G.O.Ms.No.237, dated 28.05.1996 to 33.33%. The relevant provision of G.O.Ms.No.456 is -

(i) If for any reason, suitable women candidates are not available against their points, such posts shall be filled by male candidates subject to their availability. Sliding of vacancy points shall not be allowed under any circumstances. These orders are applicable to all cadres of teaching posts in the Universities where there is direct recruitment i.e., Lecturers, Readers and Professors.

(ii) Those orders extending 30% reservation to women shall also be applicable to the direct recruitment of non-teaching staff in the Universities.

38. It is not clear whether the inclusion of the post of professors in this G.O., was by inadvertence or a deliberate policy of the Government. However, the provision is unambiguous and would have to be given effect. Accordingly, horizontal reservation of 33.33% in the posts of professors would have to be extended to women candidates.

39. Accordingly, it is held that the University Grants Commission Guidelines of 2006, as amended in 2018, would not be applicable to State Universities and no reservation for deprived sections of society has been provided for the post of Professor. Women candidates would be entitled for 33.33% horizontal reservation in the recruitment of professors.

29 RRR,J W.P.No.23770 of 2017 & batch

40. Before answering Issue Nos.III to VI, the method of application of the roster points during recruitment and the system of Vertical reservation and Horizontal reservation need to be understood.

41. As part of the implementation of reservations, the authorities had been utilising the roster system method. The contours of this system have been set out by the Hon'ble Supreme Court in R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481 at page 750:

5. We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation.

"16% of the posts ..." are reserved for members of the Scheduled Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When the total number of posts, in a cadre, are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the 30 RRR, J W.P.No.23770 of 2017 & batch Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8

to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation.

6. The expressions 'posts' and 'vacancies', often used in the executive instructions providing for reservations, are rather problematical. The word 'post' means an appointment, job, office or employment. A position to which a person is appointed. 'Vacancy' means an unoccupied post or office. The plain meaning of the two expressions makes it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for 31 RRR, J W.P.No.23770 of 2017 & batch appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation.

7. When all the roster points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong.

42. The above principles set out by the Hon'ble Supreme Court have been consistently followed and is now settled law on this aspect. The principles set out above would show that in case of reservations provided for deprived sections of society, the Roster point system can only be a post based roster point system and not vacancy based.

43. In the Course of extending the benefits of reservation to persons with disabilities and women, an issue whether such reservations would result in breaching the 50% limit set by the courts in matters of reservation came up for consideration. While dealing with this issue, Hon'ble Sri Justice Jeevan Reddy, speaking for the majority, in *Indra Sawhney v. Union of India*<sup>7</sup> at paragraph No.812 had held as follows:

"We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical [1992 Supp (3) SCC 217 32 RRR, J W.P.No.23770 of 2017 & batch reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations -- what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be

placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains -- and should remain -- the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure."

44. The method of providing for vertical and horizontal reservation was explained by the Hon'ble Supreme Court in *Anil Kumar Gupta v. State of U.P.*<sup>8</sup> at paragraph No.18. This was followed and further clarified by the Hon'ble Supreme Court in *Rajesh Kumar Daria v. Rajasthan Public Service Commission*.

7. A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in *Anil Kumar Gupta v. State of U.P.* [(1995) 5 SCC 173] thus: (SCC p. 185, para 18) "The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied--in case it is an overall horizontal reservation--no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and (1995) 5 SCC 173 33 RRR, J W.P.No.23770 of 2017 & batch adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.)"

(emphasis supplied)

8. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be: "For SC: 30 posts, of which 9 posts are for women." We find that many a time this is wrongly described thus: "For SC: 21 posts for men and 9 posts for women, in all 30 posts." Obviously, there is, and there can be, no reservation category of "male" or "men".

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their

number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] , Union of India v. Virpal Singh Chauhan [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and Ritesh R. Sah v. Dr. Y.L. Yamul [(1996) 3 SCC 253] .) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal 34 RRR,J W.P.No.23770 of 2017 & batch (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

(If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)

45. The Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995, by way of Section 33 provided for 3% reservation. In compliance with said provision, the Government of Andhra Pradesh had issued G.O.Ms.No.99, dated 04.03.2013 providing reservation of 3% to persons with disabilities. This was done by reserving 6th, 31st and 56th (General category) points in the 100 point roster with the 6th point being reserved for women with blindness or low vision, the 31st point being reserved for persons with hearing impairment and the 56th point being reserved for persons with loco motor disability or cerebral palsy.

46. In the case of Union of India v. The National Federation of Blind and Ors.,<sup>9</sup> the Hon'ble Supreme Court while considering the nature of reservation for persons with disabilities, had held that section 33 of the Persons with Disabilities (Equal Opportunities, (2013) 10 SCC 772 35 RRR,J

W.P.No.23770 of 2017 & batch protection of Rights and Full Participation) Act, 1995 provided for vacancy based reservation and the reservation provided for this category of persons would not violate the 50 % rule as it would have to be treated as horizontal reservation as per the ratio of the judgement in Indra Sawhney's case.

47. After this judgement, the Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995 was repealed and replaced by The Rights of Persons with Disabilities Act, 2016. In the new Act, Section 34, which is in pari materia with Section 33 of the Act, 1995 increased the reservation provided for persons with disabilities, from 3% to 4%.

ISSUE Nos.III and IV:

48. The petitioners had taken the stand that the roster point table under Rule 22 of the A.P. State and Subordinate Service Rules is a vacancy based roster point system and not a post based roster point system. The relevant para of Rule 22 (e) reads as follows:

2(e): Appointments under this rule shall be made in the order of rotation specified below in a unit of hundred vacancies -

49. The word "vacancies" used in this rule is interpreted by the petitioners to mean that this roster point table is a vacancy based table. The Hon'ble Supreme Court in R.K. Sabarwal (supra) had held that for the purpose of initiating the roster point system, the first 100 vacancies would be filled up in accordance with the roster point table, and thereafter, the vertical reservation would be implemented by filling up the posts falling vacant by the persons belonging to the categories to which that post is to be applied in the roster table. In the circumstances, the word "vacancies"

36 RRR,J W.P.No.23770 of 2017 & batch used in Rule 22 (e) should be understood to mean that the initial vacancies are to be filled up as per the roster points and after the entire roster table is filled, the posts would be filled up by the persons falling in the category to whom that post falls. The roster point table set out in Rule 22 (d) is speaking of the initial vacancies for filling up the roster table and not as a permanent system of using the roster table on the basis of vacancies. The roster table set out under Rule 22 of the A.P. State and Subordinate Service Rules is not a vacancy based roster point system and is a post based roster point system.

50. The impugned notifications contained details of the posts that were being allotted to the reserved candidates. This has been understood by the petitioners to mean that the notification is vacancy based and not post based. The notifications are not uniform. In the notifications issued by the Acharya Nagarjuna University, Andhra University, Dr. B.R. Ambedkar University-Srikakulam, and Sri Venkateswara University, Rayalseema University and Yogi Vemana University, the roster points were disclosed. In the notifications issued by Adikavi Nannayya University, Dravidian University, JNTU University Kakinada, JNTU University Anantapur, Krishna University, Sri Krishnadevaraya University Ananthapuramu, Sri Padmavathi Mahila Visvavidyalayam Tirupati and Vikrama Simhapuri University, only the number of posts reserved were given. A perusal of the notifications where roster points were given, for example, the notification issued by the Acharya

Nagarjuna University dated 04.01.2018 shows that the roster point system has been applied to the posts starting at roster point 61 in the case of Assistant Professors (Arts group), roster point 60 in the case of Assistant Professors (Science group), roster point 11 in the case of 37 RRR,J W.P.No.23770 of 2017 & batch Assistant Professors (Engineering group). This does not appear to be a roster point table being applied on a vacancy based method and appears to be an application of roster point against the posts. A comparison of the roster point set out in the table in the notification against the roster point table set out under Rule 22 of the A.P. State and Subordinate Service Rules would show that it is identical to the roster point table under Rule 22. The Universities, which did not give the roster points in their notifications, also appear to have indicated only the number of posts, which are reserved, and not on the basis of vacancies. In the circumstances, it has to be held that the impugned notifications provided for post based reservation and not vacancy based reservation. ISSUE Nos.V and VI:

51. In the present case, the roster point table under Rule 22 of the A.P. State and Subordinate Service Rules, which is replicated in the table given in G.O.Ms.No.456 dated 21.12.1995, reserved 67 posts out of the 100 posts table, which is beyond the 50% limit consistently set by the Hon'ble Supreme Court. It is contended by the State that 17 of these posts are reserved for women (open category) as horizontal reservation and cannot be taken into account. The Government of Andhra Pradesh had also issued G.O.Ms.No.40, dated 25.07.2016, declaring reservation for women as Horizontal reservation.

52. The reservations provided for women and persons with disabilities are horizontal reservations. There is a difference between Vertical reservation and Horizontal reservation. In the case of Vertical reservations, roster points are fixed for each category of reservation. This type of reservation does not preclude a reserve candidate from competing 38 RRR,J W.P.No.23770 of 2017 & batch for the posts in the general quota. If he is unsuccessful, he can then contend for posts in the reserve quota. The number of reserve candidates in the open category will not be taken into account for determining the actual percentage of reserve candidates. In the case of Horizontal reservation, the system for implementing such horizontal reservation in terms of the Judgement of the Hon'ble Supreme Court in Anil Kumar Gupta case as affirmed in Rajesh Kumar Daria v. Rajasthan Public Service Commission case, which reads as under:

"The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied--in case it is an overall horizontal reservation--no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom."

53. The purpose of Horizontal reservation is to ensure that a minimum number of persons from that category are able to get posts. Horizontal reservation cannot be implemented by reserving roster



points and again permitting persons of that category to participate in the recruitment process. Such a method is anathema to horizontal reservation. That would effectively place vertical reservation and horizontal reservation on the same footing. In such a case, the protection given to horizontal reservation in Indra Sawhney case would not be available to protect such reservations when the cumulative reservations cross the bar of 50%. Even otherwise, no roster points can be fixed in the 39 RRR, J W.P.No.23770 of 2017 & batch case of Horizontal reservation, as the said system of reservation operates on a different principle. A reading of G.O.Ms.No.456 shows that specific roster points have been reserved for women. The same would be impermissible. To the extent, G.O.Ms.No.456 and G.O.Ms.No.420 reserves roster points for women, the same is not valid. Similarly, G.O.Ms.99, dated 04.03.2013 reserving roster points for persons with disabilities would have to be struck down to the extent it reserves roster points for persons with disabilities. Apart from that, G.O. Ms. 99, dated 04.03.2017 was issued when the earlier Act provided for 3 % reservation. The change in law and the increase of reservation from 3% to 4% by the new Act, which holds the field, has not been taken into account. The mandate of Section 34 of the Rights of Persons with Disabilities Act, 2016 requires the State of Andhra Pradesh to create horizontal reservation of 4% in accordance with the provisions of section 34 of the 2016 Act. This would require the State to enhance the reservation provided for persons with disabilities from 3% to 4%.

#### ISSUE No.VII

54. The Government of Andhra Pradesh had approved the recommendations of the Raghavulu committee for rationalization of the cadres of teaching staff in the universities and issued G.O.Ms.No.201 dated 19.10.2016. This was challenged before the erstwhile High Court for the State of Telangana and the State of Andhra Pradesh and the operation of the said G.O was stayed on the ground that the approval for the rationalization process would have to be given by the universities and not the State. Thereafter, each of the universities, by way of separate proceedings, had approved the recommendations of the Raghavulu committee. It is these decisions of the universities, which changed the 40 RRR, J W.P.No.23770 of 2017 & batch staffing pattern in the universities. The Government of Andhra Pradesh had, subsequently, issued G.O.Ms.Nos.28 to 41, dated 30.06.2017, initiating the process of recruitment on the basis of the decisions taken by each of the universities.

55. Elaborate arguments have been advanced both for continuing the rationalized staff structure and for setting aside the rationalized staff structure. However, the decisions of the universities approving the rationalized staff structure have not been challenged by any of the writ petitioners. Similarly, G.O.Ms.Nos.28 to 41, except G.O.Ms.No.28 in W.P.No.39248 of 2017, G.O.Ms.No.30 in W.P.No.23770 of 2017, and G.O.Ms.No.40 in W.P.No.3809 of 2018 have been challenged by any of the petitioners. In any event, these G.Os., are consequential to the decision of the universities. As the main decision itself has not been challenged, the consequential G.Os., cannot be set aside.

56. As the present recruitment process is being set aside, the process of recruitment would have to be initiated afresh with a fresh notification of the vacancies that require to be filled. For this purpose, it would always be open to the Universities to decide on the reorganisation of the teaching staff structure and numbers. The candidates, who are seeking continuation of the recruitment process, would not have any vested right to insist on continuation of the posts created under the

rationalisation process as the recruitment would be under a fresh process. Viewed from any angle, this issue does not arise for consideration before this court.

57. It may also be noted that, the Government, during the hearing of the case, had forwarded the recommendations of the three man committee, to all the 14 Universities, which have resolved to adopt 41 RRR,J W.P.No.23770 of 2017 & batch the recommendations made in the three man committee report. In view of this material, the contention that the Government cannot take a decision in this matter and that it should be left open to the Universities, would also have to be rejected.

#### ISSUE No.VIII

58. The contention of the petitioners in W.P.No.1942/2018, 2975/2018, 3474/2018, 3489/2018 and 36716/2018 is that they are entitled to be regularised in view of their long service, though as contractual employees. In State of Karnataka v. Umadevi<sup>10</sup>, the Hon'ble Supreme Court had held persons, who have been serving for a long time, would not be automatically entitled to regularisation as such regularisation militates against the rights of so many other persons who would be deprived of their opportunity to obtain employment with the state.

59. This Court is fully aware of the human dimension to these cases. There has effectively been no recruitment to the teaching staff of any of the Universities for the past 13 years. This has caused havoc to the careers of an entire generation of academicians in the state. A large number of the hopefuls would have crossed the maximum age limit for such posts. This delay has caused damage to the interests of the students in all institutions of higher learning in the State of Andhra Pradesh. This Court is also sensitive to the fact that setting aside the entire recruitment process will affect a large number of candidates. However, this Court cannot ignore the law, however painful the consequences.

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60. In these circumstances, these writ Petitions are being disposed off with the following directions:

1. Point No. (2) of G.O.Ms.No.995 Education (c) Department dated 16.12.1982 and G.O.Ms.No.420 Education (UE-I-1) Department dated 18.11.1995 are struck down.

2. The State of Andhra Pradesh shall take necessary steps to formulate a scheme to fix the Unit for application of the Roster system in the Universities.
3. The Notifications issued by the 14 universities, in pursuance to the G.O.Ms.Nos.28 to 42 dated 30.06.2017, and all consequential proceedings to these notifications are set aside, leaving it open to the State of Andhra Pradesh and the Universities to take up recruitment of teaching staff in accordance with the directions contained in this order.
4. G.O.Ms.No.456 Education (US-I) Department dated 21.12.1995 and G.O.Ms.No.420 Education (UEI-I) Department, dated 18.11.1995 are struck down to the extent of fixing roster points for women.
5. G.O.Ms.No.99, General Administration (Services-D) dated 4.03.2013 is struck down to the extent it fixes roster points for persons with disabilities and the roster point table shall be amended accordingly, as far as Universities are concerned.
6. There shall be a direction to the State of Andhra Pradesh and the Universities to provide reservation for persons with disabilities in terms of Section 34 of the Rights of Persons with Disabilities Act, 2016 before undertaking any new recruitment.
7. The Horizontal reservation provided for women and persons with disabilities will be implemented in terms of the judgement of the Hon'ble Supreme Court in Anil Kumar Gupta v. State of U.P. case as affirmed in Rajesh Kumar Daria v. Rajasthan Public Service Commission case.

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8. There is no vertical reservation, for deprived sections of the society, for the post of Professor. However, horizontal reservation for women would have to be provided in the posts of Professor.
9. The Government and the Universities may consider relaxing the maximum age for the teaching posts, as and when advertised, on account of the delay and gap between the general recruitments.
10. The Universities shall, expeditiously, take necessary steps for completing the process of rationalisation of the teaching staff, before initiating any fresh recruitment process. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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R. RAGHUNANDAN RAO, J.

5th March, 2021 Js.

L.R. Copy to be marked.

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W.P.Nos.23770, 37479, 39248, 42902, 43887 of 2017 W.P.Nos.1942, 2975, 3474, 3489, 3809, 4641,

6533, 7572, 8804, 9841, 9932, 10813, 13723, 15724, 20227, 21520, 22226, 23194, 33051, 33349, 36716, 44932, 47427, 47458 of 2018 W.P.Nos.218, 465, 486, 1752, 10496 of 2019 And W.P.No.12589 of 2020 5th March, 2021 Js.