

PETITIONER:
GOVERNMENT OF ANDHRA PRADESH AND ANR.

Vs.

RESPONDENT:
A. SURYANARAYANARAO AND ORS. ETC.

DATE OF JUDGMENT 12/09/1991

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PANDIAN, S.R. (J)

CITATION:
1991 AIR 2113 1991 SCR Supl. (1) 27
1991 SCC Supl. (2) 367 JT 1991 (4) 206
1991 SCALE (2) 548

ACT:

Constitution of India, 1950: Article 371D--Object and scope of---Issuance of Presidential Order 1975--Effect on A.P. Panchayati Raj Engineering Service Rules, 1963--Rule 2A--Assistant Engineers (Deputy Executive Engineers)--Whether applicable for direct recruitment only or for promotion also.

Civil Services: .A.P. Panchayati Raj Engineering Service Rules, 1963: Rule 2A--Promotion-Junior Engineer to Assistant Engineer--Whether to be made on the basis of zonal seniority or statewide seniority.

HEADNOTE:

Article 371D of the Constitution of India, which is peculiar to the State of Andhra Pradesh only, empowers the President to provide by order for equitable opportunities and facilities for the people belonging to different parts of the State in the matters of public employment and education. As provided therein the President of India made the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Orders, 1975, by virtue of which the State was divided into six zones, and local cadres of posts in respect of the local areas were created. In respect of Andhra Pradesh Panchayati Raj Engineering Service the two such zonal posts were Junior Engineer and Assistant Engineer. Before the Administrative Tribunal, some promotions made from Junior Engineer to Assistant Engineer were questioned, and the Tribunal held that promotions should be made on the basis of the Statewide list and directed the State Government to redetermine the position of the petitioners before it, in the seniority list.

Aggrieved by the Tribunal's order, the State Government and the affected officials have approached this Court by way of the present appeals and special leave petitions.

On behalf of the State Government, it was contended that both the posts of Junior Engineer and Assistant Engineer were zonal posts under the Presidential Order and the zonal seniority list had to be followed in the

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matter of promotions from Junior Engineer to Assistant

Engineer and not the Statewide seniority list of Junior Engineers.

On behalf of the Respondents it was contended that Article 371D (2) of the Constitution refers only to direct recruitment and the Presidential Order made under the said Article cannot make a departure and cannot be made applicable for promotions also. It was further contended that it is the Statewide list that should be the basis for promotion. Disposing of these matters, this Court,

HELD: 1. Notwithstanding anything contained in the A.P. Panchayati Raj Engineering Service Rules, 1963 the promotions have to be based on zonal list; otherwise the very object sought to be achieved as per Article 371D of the Constitution of India and the Presidential Order issued thereunder would be defeated. The word 'employment' should be interpreted in a broad and general manner. The expression 'in the matter of public employment' in clause (1) of Article 371D is of wider import. The public employment can be by way of direct recruitment or by promotion. The Presidential Order would apply both for direct recruitment and for promotion in respect of categories specified in the Third Schedule. Article 371D (2) does not make any departure from this principle. The words 'in particular, therein only lay emphasis on the aspect of creating local cadres for different parts of the State for the purpose/of direct recruitment and treat such parts as local areas. This does not in any manner restrict the scope of Article 371D wherein it is clearly declared that in the matter of public employment, the President is empowered to make an order in the manner stated therein and the public employment cannot but be interpreted to include promotion also. It, therefore, emerges that Article 371D is in general terms and applies to the public employment as whole and Article 371D(2) in particular applies to direct recruitment. It is only complementary to clause (1) and particularises the matters which an order made under clause (1) provides for. Any other interpretation would defeat the object underlying these two provisions. [42 D-H, 43 A]

The General Manager, Southern Railway v. Rangachari, [1962] 2 SCR 586, relied on.

2.1. Article 371D is of exceptional nature and the objective is to provide equal opportunities in the backward areas in respect of the specified posts mentioned in the Third Schedule which are included in the local cadres which thus became zonal posts. As mentioned in para 5 of the 29

Presidential Order and Rule 2-A of the A.P. Panchayati Raj Engineering Service Rules, such zones should be treated as separate units for the purpose of promotions also. Therefore, there is valid nexus to the object that is sought to be achieved and even if there is some anomaly it cannot on that basis be said that such promotions for zonal posts on the basis of the zonal seniority list amounts to discrimination. [44 D-E]

2.2. Rule 2-A makes it abundantly clear that for the purpose of recruitment, appointment, promotion, transfer etc. each zone shall be a separate unit. Para 5 of the Presidential Order is also to the same effect. When once each zone is treated as separate unit for the purpose of promotion also in respect of zonal posts then by virtue of Article 371D and the Presidential Order, the promotion from the post of junior Engineer to the post of Assistant Engineer which are both zonal posts, should be on the basis of the zonal seniority list inasmuch as the post of Junior Engineer and the next promotion post namely Assistant/Engi-

neer are included in the local cadres and the zonal list in the Third Schedule. With regard to the higher post which included in the local cadre and which are Statewide posts, it becomes obvious that the Statewide seniority list of the Assistant Engineer of all zones should be prepared and that should be the basis of promotion to the post of Executive Engineer which is not a zonal post. Therefore, the directions given by the Tribunal to ensure that no Junior Engineer is promoted earlier than their seniors in the Statewide seniority list to the post of Executive Engineer, should be quashed. [43 F-H, 44 A-B]

S. Prakasha Rao and Anr. v. Commissioner of Commercial Taxes and Ors., [1990] 2 SCC 259, relied on.

High Court of Andhra Pradesh and Ors. v. V.V.S. Krishnamurthy and Ors., [1979] 1 SCR 26, referred to.

3.1. All promotions of Junior Engineers (redesignated as Assistant Executive Engineers) to the next higher post of Assistant Engineers (redesignated as Deputy Executive Engineers) have to be made on the basis of the zonal seniority list and not on the basis of the Statewide seniority list of Junior Engineers. [44 F]

3.2. Having regard to the historical background and the object underlying Article 371D and the Presidential Order and in particular para 13 of the Presidential Order, the promotions, if any made should be

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treated only as provisional. If Rule 2-A is viewed from this angle particularly in the light of paras 5 and 13 of the Presidential Order it becomes clear that the said Rule has to be given retrospective effect so that the promotions to the junior posts can be brought in conformity with Articles 371D and the Presidential Order. The promotions made after the Presidential Order dated 18.11.1975 should be treated as provisional and the Government is permitted to review these promotions on the basis of zonal seniority lists and re-adjust the same all the future promotions. From the post of Junior Engineer to the post of Assistant Engineer should necessarily be made on the basis of the zonal seniority lists. For the purpose of promotion to the post of Executive Engineer, which is not a zonal post, a Statewide seniority list of the Assistant Engineers of all zones should be prepared and such statewide seniority list should form the basis of promotion to the post of Executive Engineer. The State Government is accordingly directed to prepare such lists i.e. zonal seniority lists of various zones for the purpose of promotions from Junior Engineers to Assistant Engineers within the zones and also the statewide seniority list of the Assistant Engineers of all zones for the purpose of promotions to the post of Executive Engineer. Such of the directions given by the Tribunal in the matters, which are contrary to and different from the conclusions now reached, shall remain quashed. [44 D-E; 44 D-H; 45-A-B]

3.3. The inter-se seniority and the consequent promotions of Respondent Nos. 1 to 5 in Civil Appeal No. 3935/88 as well as the petitioners in Special Leave Petition (Civil) No. 2150/87 shall be determined subject to the directions, now given. [45 B-C]

Y..N. Rangiah and Ors. etc. v. J. Sreenivasa Rao and Ors. etc., [1983] 3 SCC 284; N.T. Devin Katti and Ors. v. Karnataka Public Service Commission and Ors., [1990] 3 SCC 15, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No.3985 of 1988.

From the Judgment and Order dated 31.12.1987 of the Andhra Pradesh Administrative Tribunal, Hyderabad in R.P.No. 967 of 1987.

WITH

S.L.P. (C) No. 9290 of 1988 with S.L.P (C) No. 2150/87 CMP No. 25521/88 and C.A.1342/86

K.Madhava Reddy, C. Sitaramiah, P.P.Rao, G. Prabhakar, K.R.

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Nagaraja, P.K. Rao, Ms. C.K. Sucharita, B. Kanta Rao, K. Ram Kumar, B. Krishna Prasad and T.V.S.N. chari (N.P.) for the appearing parties.

The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. The questions that arise for consideration in all these connected cases are confined only to some of the posts of civil services of Andhra Pradesh in view of certain special provisions applicable to these services. Article 371D of the Constitution of India is peculiar to the State of Andhra Pradesh due to historical background. It was enacted by the Constitution (Thirty-Second) Amendment Act which applied only to the State of Andhra Pradesh, with a view to give effect to certain safeguards in the matter of employment opportunities for residents of Telangana region. This Article empowers President to provide by order for equitable opportunities and facilities for the people belonging to different parts of the State of Andhra Pradesh in the matter of public employment and in the matter of education. This Article also provides for constitution of an Administrative Tribunal to receive representations for the redressal of the grievances and for passing necessary orders. Accordingly the President of India made Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 ('Presidential Order' for short) by virtue of which the State of Andhra Pradesh has been divided into six zones and local cadres of posts in respect of the local areas were created. In respect of Andhra Pradesh Panchayati Raj Engineering Service the two such zonal posts are junior Engineer and Assistant Engineer. The main question that arises for consideration in these cases is whether the promotion from Junior Engineer to Assistant Engineer should be on the basis of Statewide list or the zonal list. Some of the promotions made were questioned by the affected persons before the Administrative Tribunal which disposed them of indicating that such promotions should be made on the basis of the Statewide list. The State of Andhra Pradesh has questioned the same in C.A.No. 1342/86, C.A.No. 3985/88 and S.L.P. (Civil) No. 9290/88 mainly on the ground that promotions should be confined to only within local cadres and zonal posts. S.L.P. (Civil) No. 2150/87 is filed by two such Engineers whose representation was disposed of by the Tribunal directing the Government to redetermine their positions in the Seniority list instead of giving a definite declaration as prayed for by them.

Shri K.Madhava Reddy, learned counsel appearing for the State of Andhra Pradesh, submitted that both the posts of Junior Engineer and Assistant Engineer are zonal posts under the Presidential Order and the zonal seniority list has to be followed in the matter of promotions from

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Junior Engineer to Assistant Engineer and not the Statewide seniority list of Junior Engineers. He also submitted that all promotions made so far pursuant to certain orders should be treated as provisional and that the State Government

should be permitted to review these promotions on the basis of the zonal seniority list and that all further promotions shall be made on the basis of the zonal seniority list. According to the learned counsel, for the purpose of promotion to the higher post of Executive Engineer which is not a zonal post, a Statewide seniority list of Assistant Engineers of all zones should be prepared on the basis of which promotion to the post of Executive Engineer will be made. Shri Sitaramiah, learned counsel appearing for respondents, submitted that Article 371D(2) refers only to direct recruitment and the Presidential Order made under the said Article cannot make a departure and cannot be made applicable for promotions also. On the other hand, it is the Statewide list that should be the basis for promotions. In support of his submissions he invited our attention to the provisions of Article 371D and the Presidential Order and emphasised the word 'employment' as occurring in the Article should be confined only to direct recruitment. Shri P.P. Rao, learned counsel appearing for other set of respondents in the appeals filed by the State of Andhra Pradesh, submitted that even if either of the lists is to form the basis for promotions his clients are not affected and their promotions are being unnecessarily delayed. Some of the Engineers of the Andhra Pradesh Panchayati Raj Engineering Service got themselves impleaded in the appeal filed by the State of Andhra Pradesh and Shri B. Kanta Rao appearing on their behalf supported the stand taken by the Government of Andhra Pradesh.

To appreciate these rival contentions it becomes necessary to refer to some of the relevant provisions of Article 371D as well as the Presidential Order and some of the notifications made thereunder and the relevant provisions of the A.P. Panchayati Raj Engineering Service Rules. On November 1, 1956 as a result of reorganisation of the States the erstwhile State of Hyderabad was trifurcated and Telangana region became a part of the newly formed State of Andhra Pradesh. Certain safeguards were envisaged for the Telangana area in the matter of development and also in the matter of employment opportunities and education facilities for the residents of that area. In the year 1957 the Public Employment (Requirement as to Residence) Act was enacted inter alia to provide for employment opportunities for residents of Telangana area. Some of the relevant provisions were held to be unconstitutional by the Supreme Court due to a variety of causes. The working of the safeguards gave rise to dissatisfaction sometimes in the Telangana area and sometimes in the other areas of the State and even led to violent agitations. A consensus was arrived

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among several leaders of Andhra Pradesh to make a concerted effort to analyse the factors which have been giving rise to the dissatisfaction and they suggested certain measures known as "Six-Point Formula" and the same has been endorsed by the State Government. A bill was brought forward to provide for necessary constitutional authority for giving effect to this formula and the same became the Constitution (Thirty-Second) amendment Act under which Article 371D was introduced. The relevant provisions of this Article for our purpose are as under:

"371-D. Special provisions with respect to the State of Andhra Pradesh-(1) The President may by order made with respect to the State of Andhra Pradesh provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the

people belonging to different parts of the State, in the matter of public employment and in the matter of education and different provisions may be made for various parts of the State.

(2) An order made under clause (1) may, in particular:-

(a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order the persons holding such posts to the local cadres so organised;

(b) specify any part or parts of the State which shall be regarded as the local area-

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government;

(ii) for direct recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purpose of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

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(10)

The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force."

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It may be noted that clause (3) provides for constitution of an Administrative Tribunal. Now we may note some of the relevant provision in the Presidential Order. In para 2 definitions of the various expression used in the Order are given. They read thus:

"Para 2. Interpretations: - (1) In this Order, unless the co text otherwise requires:-

(a) xx xx xx

(b) 'direct recruitment' includes recruitment made on a temporary basis but does not include recruitment made in pursuance of any scheme approved by the State Government providing for the regularisation of the services of persons holding posts on a temporary basis before the commencement this order;

(c) 'local area' in relation to any local cadre, means the local area specified in paragraph 6 for direct recruitment to posts such local cadre, and includes, in respect of posts belonging the category of Civil Assistant Surgeons, the local area specified in sub-paragraph (5) of paragraph 8 of this Order;

(d) 'local authority' does not include any local authority which is not subject to the control of the State Government;

(e) 'local cadre' means any local cadre of post under the State Government organised in

pursuance of paragraph 3, or constituted otherwise for any part of the State;

(f) 'local candidate' in relation to any local area, means a candidate who qualifies under paragraph 7 as a local candidate relation to such local area;

(g) xx xx xx

(h) 'Schedule' means a Schedule appended to this Order;

(i) xx xx xx

(j) 'specified gazetted category' means any gazetted category specified in the Third Schedule and includes any other gazetted category notifies as such by the Central Government;

(k) xx xx xx

(l) xx xx xx

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(m) 'Zone' means a zone specified in the Second Schedule comprising the territories mentioned therein.

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Para 3. Organisations of Local Cadres:- (1) The State Government shall, within a period of eighteen months from the commencement of this order, organise classes of posts in the civil services of, and classes of civil posts under the state into different local cadres for different parts of the State to the extent, and in the manner, hereinafter provided.

(G.O. Ms. No. 794, G.A.(A) dated 12.11.1976)
"Provided that, notwithstanding the expirations of the said period, the president may by order, require the State Government, whenever he considers it expedient so to do, to organise any classes of posts in the civil services of, and classes of civil posts, under the State into different local cadres for different parts of the State." (Proviso is added as per G.O. Ms. No. 34, G.A.D. (SPFA), dated 24th January, 1981).

(2) The posts belonging to the category of Junior Assistant, and to each of the other categories equivalent to, or lower than that of a Junior Assistant in each department in each district shall be organised into a separate cadre.

Explanation:- For the purposes of this subparagraph, subparagraph (1) of paragraph 6, and sub-paragraph (1) of paragraph 8, a category shall be deemed to be equivalent to or lower than that of a Junior Assistant if the minimum of the scale of pay, of a post belonging to a category or where the post carries a fixed pay, such fixed pay equal to or lower than the minimum of the scale of pay of a Junior Assistant.

(3) The posts belonging to each non-gazetted category, other than those referred to in sub-paragraph (2), in each department in each zone shall be organised into a separate cadre.

(4) The posts belonging to each specified gazetted category in each department in each zone shall be organised into a separate cadre.

(5) Notwithstanding anything contained in

sub-paragraphs (3) and (4), the State Government may, where it considers it expedient to do so and with the approval of the Central Government, organise the posts belonging to any of the categories

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referred to therein, in any department, or any establishment thereof, in two or more continuous zones into a single cadre.

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Para 4. Allotment of persons:- (1) Persons holding posts required to be organised into local cadres shall be allotted to such cadres by the State Government or any officer or authority authorised by it in this behalf in accordance with the principles and procedure hereinafter specified.

(2) In allotting persons to local cadres due regards shall be had to all or any of the following, namely: -

(a) the administrative needs of the posts in the local cadres;

(b) the need for the composition of balanced local cadres with reference to age and seniority, groups;

(c) the length of service of the persons concerned in the part of the State for which the local cadre is organised;

(d) knowledge of the persons concerned of the languages spoken and the law in force in the part of the State in which the local cadre is organised;

(e) preference of the persons concerned for allotment to any local cadre, where feasible.

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Para 5. Local cadres and transfer of persons:-

(1) Each part of the State for which a local cadre has been organised in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters, as may be specified by the State Government, in respect of that category of posts.

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Para 13. Certain appointments and promotions to be provisional:- Any certain appointments and promotions made after the commencement of this order or any order made in pursuance of the proviso to paragraph 3, as the case may be, and before any local cadre has been organised under the provisions of this Order made in pursuance of the Proviso to

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paragraph 3, to any post which is required to be included in such cadre shall be provisional and shall, within a period of twelve months after such organisation, be reviewed and readjusted in accordance with the provisions of this order.

Explanation:- For the purposes of this paragraph, any local cadre shall be deemed to be organised, with the allotment of persons to it under paragraph 4. (Substituted as per G.O. Ms. No. 234, GAD (SPF-A) Dept., dated 24th

Jan., 1981).

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THE SECOND SCHEDULE

(See paragraphs 2 (1) (m) and 8 (4)

Zones

Zone I	Shrikakulam and Visakhapatnam districts.
Zone II	East Godavari, West Godavari and Krishna districts.
Zone III	Gunrur, Prakasam and Nellore districts.
Zone VI	Chittoor, Cuddapah, Anantapur and Kurnool districts.
Zone V	Adilabad, Karimnagar, Warangal and Khammam districts.
Zone VI	Hyderabad, Nizamabad, Mahabubnagar, Medak and Nalgonda districts.

THE THIRD SCHEDULE

[See paragraphs 2(1) (j) and (4)

Specified Gazetted Categories

Sr. No. (1)	Category (2)	Name of the Department (3)
xx	xx	xx
30.	Assistant Engineers	Panchyati Raj Engineering Department
30 A.	Junior Engineers	do
xx	xx	xx
40.	Junior Engineers	Public Works Department (Irrigation)
41.	Assistant Engineers	Public Works Department (Irrigation)
42.	Junior Engineers	Public Works Department (R&B)
43.	Assistant Engineers	- do-" (emphasis supplied)

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It is clear from these provisos that the primary purpose of Article 371D was to promote speedy development of the backward areas of the State of Andhra Pradesh with a view to secure balance in the development of the State as a whole and to provide equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service. Accordingly the Presidential Order was made.

From the above extracted provisions of the Order it can be seen that State of Andhra Pradesh was divided into six zones and the 4th zone, with which we are concerned, comprises of Chittoor, Cuddapah, Anantpur and Kurnool Districts. As noted above Schedule III enumerates various specified gazetted categories and Junior Engineers and Assistant Engineers in the Panchayati Raj Engineering Department as well as in the Public Works Department (Irrigation) and (Roads and Buildings) are among those various categories mentioned therein. Paragraph 3 provided for organisation of local cadres in respect of classes of posts in the civil services in the State of Andhra Pradesh. Under para 3(4) the posts belonging to each specified category in each department in each zone shall be organised into a separate cadre. Para 4 provides for the allotment of persons holding posts into such local cadres to be organised. Para 5 which is important, lays down that each part of the State for which a local cadre has been organised in respect of any category of posts, shall be a separate unit for purposes of not only recruitment etc. but also in respect of promotion. Para 13 lays down that in certain appointments or promotions after the commencement of the Presidential Order or any order made in pursuance of the proviso to paragraph 3 and

before any local cadre has been organised, shall be provisional and shall within a period of twelve months after such organisation of local cadre, be reviewed and readjusted in accordance with the provisions of the Presidential Order.

A.P. Panchayati Raj Engineering Service Rules were framed in the year 1963. These Rules provide for the appointments of different categories of engineers. After the Presidential Order was issued a new Rule 2-A was introduced on 26.11.79 to bring the State Rules in conformity with the provisions of the Presidential Order.

Rule 2-A reads thus:

"Rule 2-A Unit of Appointment: For purposes of recruitment, appointment, discharge for want of vacancy, re-appointment, seniority, transfer, promotion and appointment as full member in respect of category 4, Deputy Executive Engineers, each

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zone comprising the districts specified against each shall be a separate unit:

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Zone IV: Chittoor, Cuddapah, Anantpur and Kurnool districts.

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Provided that the post of Deputy Executive Engineers in the office of the Chief Engineer (Panchayati Raj) shall be filled on a tenure basis by drafting persons equitably from different units and the period of tenure shall not ordinarily exceed three years; Provided further that the posts of Deputy Executive Engineers in the Rigs Divisions notified as Special Officers under the Andhra Pradesh Public Employment (Organisations of Local Cadres and Regulation of Direct Recruitment) Order, 1975 shall be filled by drafting persons from the units over which the respective Rigs Division is having jurisdiction.

(G.O. Ms. No. 1024 PR, dated 26.11.1979)."

Regarding the scope of this rule it is the submission of the learned counsel for the State of Andhra Pradesh that a combined reading of Rule 2-A read with para 13 of the Presidential Order would show that the said Rule has retrospective effect, therefore the Government is at liberty to revise the promotions made otherwise then on the basis of the zonal seniority list. But Shri Sitaramiah, learned counsel, submitted that the said Rule cannot be given retrospective effect and the same applies to vacancies arising thereafter and therefore the promotions already made should not be disturbed.

It is an admitted fact that there was a Statewide list of Junior Engineers before 28.10.75 namely before the Presidential Order was made. Questioning some of the promotions made by the Government, representation petitions were filed before the A.P. Administrative Tribunal. In such matters the Tribunal observed that as a precautionary measure the juniors to the petitioners therein in the Statewide list cannot be promoted before the petitioners' cases are considered for the appointment to the post of Executive Engineer which is a higher post. In all the orders passed by the Tribunal there is an indication that the Statewide list should be the basis for promotion. Though they appear to be in the nature of interim

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directions but the ratio relied upon is that the promotion

should be on the basis of the Statewide list. Therefore the question that has been canvassed by the State Government in all these matters is that the observation and the directions given by the Administrative Tribunal are opposed to the very object underlying the Presidential Order and is contrary to various provisions therein.

At this juncture it is essential to note the principle and object underlying the zonal system as provided for in the Presidential Order. We have already noted that the object underlying Article 371D is to promote speedy development of the backward areas and to provide equal opportunities to different areas of the State in the matter of employment etc. This Article is a special provision which makes departure from the general scheme of the Constitution.

In High Court of Andhra Pradesh and Ors. v. V.V.S. Krishnamurthy and Ors., [1979] 1 SCR 26 after referring to the Statement of Objects and Reasons of the Constitution (Thirty-Second) Amendment Act, it was observed as under:

"It will be seen from the above extract, that the primary purpose of enacting Article 371D was two-fold; (i) To promote "accelerated development of the backward areas of the State of Andhra Pradesh so as to secure the balanced development of the State as a whole". and (ii) to provide "equitable opportunities" to different areas of the State in the matter of education, employment and career prospects in public service.

(1) To achieve this primary object, Clause (1) of Article 371D empowers the President to provide by order, "for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education." Clause (2) of the Article is complementary to Clause (1). It particularises the matters which an order made under Clause (1) may provide. For instance, its sub-clause (c) (i) enables the President to specify in his Order, "the extent to which, the manner in which and the conditions subject to which, preference or reservations shall be given or made in the matter of direct recruitment to posts in any local cadre under the State Government or under any local authority. Sub clause (c) further makes it clear that residence for a specified period in the local area, can be made a condition for recruitment to any such local cadre. Thus, Clause (4) also, directly is designed to achieve the primary object of the legislation."

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The Presidential Order was made keeping in view this Object and suitable provisions are inserted. With a view to achieve this Object and in conformity with the provisions of the Order, the State is divided into six zones and certain specified gazetted services are included in the local cadres. The A.P. Panchayati Raj Engineering Services is one such and two categories of posts namely Junior Engineers and Assistant Engineers are such zonal posts. It may be mentioned here that the validity of the Presidential Order is not being questioned. Therefore we have to proceed on the basis that all the provisions of the Presidential Order are valid.

The further and rather the main submission of the re-

spondents is that the Presidential Order only lays down the criteria for claiming eligibility as a local candidate on the basis of the period of residence or of stay in that local area and reservations are meant to be made to the local cadre only in respect of direct recruitment to the said posts mentioned therein and therefore the power conferred under the Article should be confined only to direct recruitment. In this context the learned counsel also relied very much on the expressions used in Article 371D (1) and (2). The learned counsel also submitted that initially the Junior Engineers are selected by the Public Service Commission and are given a ranking and they are allotted to the local cadre and to that extent that may become a zonal post. But when it is a question of promotion to the higher post of Assistant Engineer though shown as a zonal post by virtue of being included in the local cadre, it should be only on the basis of the seniority in the Statewide list originally prepared by the public Service Commission. The learned counsel very much relied on the expression 'in the matter of public employment' and the other expressions used in Article 371D (1) and (2).

First we shall consider the submission that the purport of Article 371D and the Presidential Order in respect of direct recruitment does not apply to promotion. The expression 'in the matter of public employment' in clause (1), in our view, is of wider import. The public employment can be by way of direct recruitment or by promotion. In *The General Manager; Southern Railway v. Rangachari*, [1962] 2 SCR 586 this Court considered the scope of Articles 16 (1), (2) and (4) and it was observed that Articles 16 (1) and (2) of the Constitution are intended to give effect to Articles 14 and 15(1) of the Constitution and they are supplemented to each other. Regarding the meaning of the word "employment" it is noted that:

"Article 16 (1) should, therefore, be construed in a broad and general, and not pedantic and technical way, so construed, "matters relating to employment" cannot mean merely matters prior to the act of appointment nor can 'appointment' to any

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office mean merely the initial appointment but must include all matters relating to employment, whether prior or subsequent to the employment, that are either incidental to such employment or form part of its terms and conditions and also include promotion a selection post.

"Although Article 16(4) which in substance is an exception to Arts. 16 (1) and 16(2) and should, therefore, be strictly construed, the court cannot in construing it overlook the extreme solicitude shown by the Constitution for the advancement of socially and educationally backward classes of citizens."

It is thus concluded that Article 16(4) authorises the State to provide for reservation of appointments as well as selection posts. At this juncture it may be noted that Article 371D (10) declares that any order made by the President shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force. Therefore notwithstanding anything contained in the A.P. Panchayati Raj Engineering Service Rules, the promotions have to be based on zonal list otherwise the very object sought to be achieved as per Article

371D and the Presidential Order would be defeated. Shri Sitaramiah, however, laid considerable stress on Article 371D (2) which empowers the President to make an order "in particular" to specify any part or parts of the State which shall be regarded as the local area for direct recruitment in any local cadre. It is submitted that if clauses (1) and (2) of Article 371D are read together the Presidential Order can make provision only in respect of appointments by way of direct recruitment and cannot be applied for promotion also. But as laid down in Rangachari's case the word "employment" should be interpreted in a broad and general manner. The ratio therein should be applied in interpreting the words "in the matter of public employment" occurring in Article 371D also. Consequently it must be held that Article 371D and the Presidential Order apply both for direct recruitment and for promotion in respect of categories specified in the Third Schedule. Article 371D (2) does not make any departure from this principle. The words "in particular" therein only lay emphasis on the aspect of creating local cadres for different parts of the State for the purpose of direct recruitment and treat such parts as local areas. This does not in any manner restrict the scope of Article 371D wherein it is clearly declared that in the matter of public employment, the President is empowered to make an order in the manner stated therein and the public employment cannot but be interpreted to include promotion also. It therefore emerges that Article 371D is in general terms and applies to the public employment as a whole and Article 371D(2) in particular applies to direct recruitment. It is only complementary to clause (1) and particularises

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the matters which an order made under clause (1) provides for. Any other interpretation would defeat the object underlying these two provisions.

The other submission of Shri Sitaramiah, as already noted, is that even assuming that Rule 2 (a) which came into existence in 1979 is valid and applies to promotion also then it can have only prospective effect and all the promotions prior to this Rule should be only on the basis of the Statewide list. In considering this argument we have to bear in mind para 13 of the Presidential Order which specifically lays down that certain appointments and promotions after the commencement of the Order should be treated as provisional and the same should be reviewed and readjusted in accordance with the Presidential Order for the purpose of preparing the local cadres and allotting to the zones. The learned counsel, however, relied on two judgments of this Court in *Y. V. Rangiah and Others etc. v. J. Sreenivasa Rao and Others etc.*, [1983] 3 SCC 284, and *N.T. Devin Katti and Others v. Karnataka Public Service Commission and Others*, [1990] 3 SCC 157, in support of his submission that the said Rule cannot be given retrospective effect and that the promotions should be made only in accordance with the unamended A.P. Panchayati Raj Engineering Service Rules, 1963. But having regard to the historical background and the object underlying Article 371D and the Presidential Order and in particular para 13 of the Order the promotions, if any, made, should be treated only as provisional. If Rule 2(a) is viewed from this angle particularly in the light of paras 5 and 13 of the Presidential Order it becomes clear that the said Rule has to be given retrospective effect so that the promotions to the junior posts can be brought in conformity with Article 371D and the Presidential Order. Accordingly any promotions made should be treated only as provisional and they should be reviewed and readjusted.

This leads us to the question whether the promotions from the post of Junior Engineer to Assistant Engineer should be based on zonal seniority list or on the Statewide seniority list. Rule 2(a) makes it abundantly clear that for the purpose of recruitment, appointment, promotion, transfer etc. each zone shall be a separate unit. Para 5 of the Presidential Order is also to the same effect. When once each zone is treated as a separate unit for the purpose of promotion also in respect of zonal posts then by virtue of Article 371D and the Presidential Order, as observed above, the promotion from the post of Junior Engineer to the post of Assistant Engineer which are both zonal posts, should be on the basis of the zonal seniority list inasmuch as the post of Junior Engineer and the next promotion post namely "Assistant Engineer are included in the local cadre and the zonal list as we find in the Third Schedule. With regards the higher posts which are not included in the local cadre and which are Statewide posts, it

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becomes obvious that the Statewide seniority list of the Assistant Engineers of all zones should be prepared and that should be the basis of promotion to the post of Executive Engineer which is not a zonal post. Therefore it emerges that the directions given by the Tribunal to ensure that no Junior Engineer is promoted earlier than their seniors in the Statewide seniority list to the post of Executive Engineer, should be quashed.

Shri Sitaramiah, however, pointed out certain anomalies if such a principle is to be followed. According to the learned counsel, if the promotions are to be made only on the basis of the zonal list then there is every possibility of some of the seniors in the Statewide list not getting promotions and the same would result in some of the juniors becoming seniors which would ultimately affect the promotional avenues for the Statewide higher post like Executive Engineer. But it must be noted that Article 371D is of exceptional nature and the object is to provide equal opportunities in the backward areas in respect of the specified posts mentioned in the Third Schedule which are included in the local cadre which thus became zonal posts. As mentioned in para 5 of the Presidential Order and Rule 2 (a) of the Engineering Service Rules such zones should be treated as separate units for the purpose of promotions also. Therefore there is valid nexus to the object that is sought to be achieved and even if there is some anomaly it cannot on that basis be said that such promotions for zonal posts on the basis of the zonal seniority list amounts to discrimination. In *S. Prakasha Rao and another v. Commissioner of Commercial Taxes and Others*, [1990] 2 SCC 259, a Bench of three Judges of this Court affirmed the view taken by the Administrative Tribunal, Andhra Pradesh that the zonal seniority list prepared pursuant to the initial organisation and creation of local cadres is to be maintained and such zonal seniority list is the criteria for promotion.

In the result we hold that all promotions of Junior Engineers (redesignated as Assistant Executive Engineers) to the next higher post of Assistant Engineers (re-designated as Deputy Executive Engineers) have to be made on the basis of the zonal seniority lists as indicated above and not on the basis of the Statewide seniority list of Junior Engineers. The promotions made after the Presidential Order dated 18.11.75 should be treated as provisional and the Government is permitted to review these promotions on the basis of zonal seniority lists and re-adjust the same. All the future promotions from the post of Junior Engineer to

the post of Assistant Engineer should necessarily be made on the basis of the zonal seniority lists. For the purpose of promotion to the post of Executive Engineer, which is not a zonal post, a Statewide seniority list of the Assistant Engineers of all zones should be prepared and such Statewide seniority

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list should form the basis of promotion to the post of Executive Engineer. The State Government is accordingly directed to prepare such lists i.e. zonal seniority lists of various zones for the purpose of promotions from Junior Engineers to Assistant Engineers within the zones and also Statewide seniority list of the Assistant Engineers of all zones for the purpose of promotion to the post of Executive Engineer. Such of the Directions given by the Tribunal in the matters before us which are contrary to or different from the above conclusions, remain quashed. The inter-se seniority and the consequent promotions of respondent Nos. 1 to 5 in Civil Appeal No. 3935/88 as well as the petitioners in Special Leave Petition (Civil) No. 2150/87 shall be determined subject to the above directions. All these matters are disposed of accordingly with the above directions. In the circumstances of the cases, there will be no order as to costs.

G.N.

Appeals disposed of.

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