

CASE NO.:
Appeal (civil) 4799-4844 1997

PETITIONER:
GOVERNMENT OF ANDHRA PRADESH & ORS.

Vs.

RESPONDENT:
A.P.JAISWAL & ORS.

DATE OF JUDGMENT: 06/12/2000

BENCH:
U.C.Banerjee, S N Hegde, G.B.Pattanaik

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T.....T..J
J U D G M E N T

SANTOSH HEGDE, J.

The State of Andhra Pradesh was formed w.e.f. 1.11.1956 by the integration of erstwhile State of Andhra and the erstwhile State of Hyderabad. The constitution of the new State of Andhra Pradesh with the merger of civil service belonging to the two erstwhile States paved way for disputes between the civil servants of the two merging States and the present appeals are a group of one such continuing dispute which has not yet found a solution. These appeals involve the claim of the Engineers belonging to the Departments of Public Works of the two States. The dispute in particular pertains to the retrospective regularisation of service of the Engineers belonging to the former State of Andhra in the cadre of Assistant Engineers/Supervisors etc. as also the equation of posts then existing in the said Engineering services of the two States. Dozens of petitions filed before the High Court and the Service Tribunal, and over half a dozen visits to this Court did not finally conclude the pending dispute between the parties. Consequently, the seniority/gradation list of these officers could not be finalised and the respective seniority of the officers remained nebulous. Ad hoc promotions given on the basis of various interim arrangements added to the heartburn of the officers. Thus, even after a lapse of over four decades, the officers concerned are in the portals of this Court. Though in their judgments the tribunals and the courts have repeatedly blamed the State and the Central Government for the delay in finalising the seniority/gradation list, fact still remains that every attempt to finalise such list, though belatedly, could not succeed because of the intervening judicial orders. The blame for this protracted litigation should be shared by everyone concerned equally. It will be our

endeavour in these appeals to finalise all the pending disputes between this group of litigants once and for all.

For the purpose of disposal of these appeals, it may not be necessary for us to trace the history of this litigation in its entirety. Suffice it to say that on the formation of the new State of Andhra Pradesh, a number of Engineers who were then holding the post of Assistant Engineers/Supervisors temporarily stood transferred to the new State. It is the contention of the Engineers from the erstwhile State of Andhra that though they were regularly appointed to clear vacancies, orders as to their regular appointment were delayed by the Administration due to administrative exigencies and for no fault of theirs, hence ultimately when their services were regularised, they were entitled to count their seniority in the initial grade from the date of their original appointment and consequently in the promoted cadres also. While the Engineers of the erstwhile Hyderabad State (to be called Telangana Engineers) contend that these Engineers of Andhra were never appointed regularly, their appointments were temporary and fortuitous, hence they were not entitled to count their seniority on the basis of their initial service i.e. on the basis of their date of initial appointment and their seniority could be counted only from the date from which their services were regularised by the successor State, and also it was the contention of the Telangana Engineers that the post of Sub-Engineer in the erstwhile State of Hyderabad is equivalent to the post of Assistant Engineer of Andhra.

The State of Andhra Pradesh and the Union of India took different decisions at different stages and ultimately in the course of the litigation, the matter came up before this Court when the aggrieved party challenged the order of the tribunal dated 27.6.1980, and this Court as per its decision dated 5.2.1981 gave the following directions :

(1) The Central Government will consider the rival contention of Andhra Officers and Telangana Officers to whether the services of the Andhra Officers were on stop-gap and fortuitous arrangements.

(2) The Central Government will have to decide whether the regularisation of promotions of Andhra Engineers and relaxation of Rules had retrospective regularisation was permissible.

(3) Whether the retrospective regularisation and relaxation of rules will amount to any change in the conditions of service or will result in denial of fair and equitable treatment to any of the officers affected thereby. The Central Government will reach a decision afresh after affording an opportunity to the officers concerned and submit its findings with reasons thereof to this Court within two months.

As directed by this Court in the abovesaid decision, the Central Government after hearing the officers concerned submitted a report to this Court dated 10.7.1981 and after considering the said report, this Court took the view that the pending civil appeals could not be decided by it unless the parties concerned were given an opportunity of placing the respective contentions before the Administrative Tribunal and also came to the conclusion that since the

tribunal while passing the impugned order, did not have the benefit of the finding of the Central Government, it felt that it could be eminently just and proper to set aside the judgment of the Administrative Tribunal dated 27.6.1986 and remand the matter to the said tribunal for fresh decision and while doing so this Court specifically stated that it was not expressing any opinion as to the correctness or otherwise of the finding reached by the Central Government or on the merits of the case or even on the judgment of the tribunal which was under appeal. It thus left to the tribunal to re-examine the correctness or otherwise of all issues including the finding given by the Central Government dated 10.7.1981. It further directed the tribunal to afford all opportunities to the parties concerned to place their respective claims and contentions on merits in the form of additional pleadings with respect to the latest decision of the Central Government. Thus, the ball was transferred once again to the tribunal. On remand, the tribunal took up for consideration the matter all over again in R.P. No.910/77 and other connected matters. In this bout of litigation, the tribunal framed the following questions for its consideration :

The main points on which there is controversy between Andhra and Telangana Region Officers are as follows:

(A) Whether appointments of the Andhra Engineers under Rule 10(a)(i)(1) of Madras/Andhra State and Subordinate Service Rules prior to 1.11.1956 were a stop-gap and fortuitous arrangement;

(B) Whether the retrospective regularisation of the services of the Andhra Engineers referred to in item (A) ordered by the Andhra Government after 1.11.1956 was valid;

(C) Whether those of the Andhra Engineers whose services were so regularised could be allowed to count temporary service as Junior Engineers, Draughtsmen for the purpose of eligibility to be promoted as Assistant Engineers as required in Rule 5 of the Special Rules for the Madras Engineering Service and where the claim that Rule 6 of the Special Rules which authorised the State Government to promote officers who had not completed 5 years service as Junior Engineers could be availed of in the case of the concerned Andhra Engineers;

(D) The Telangana Officers have also questioned the final decision of the Central Government on the question of equation of posts.

The question of regularisation of temporary Andhra Engineers transferred to the new State of Andhra Pradesh was discussed by the tribunal in this round of litigation with regard to all its facets as it was argued before it and in regard to the points which arose for its consideration, the tribunal considered the arguments elaborately and came to the following conclusion and issued appropriate directions :-

To sum up, our findings on the various issues discussed earlier in this part are as follows: (1) As regard the question whether the appointments of the Andhra Officers who were appointed temporarily under Rule 10

(a)(i)(1) of the Madras/Andhra State and Subordinate Service Rules were a stop-gap and fortuitous arrangements, it is our opinion that the temporary appointments made before 1.11.1956 of only those officers who were not fully qualified for appointment by 1.11.1956 and in whose case, therefore, it would not have been possible for the State Government without relaxation of the rules relating to probation and length of service to make a reference to the Public Service Commission before 1.11.1956 for approval of their temporary appointments, should be treated as having been made as a stop-gap or fortuitous arrangement. We consider that the findings of the Central Government in this respect should be implemented with the modification that the services of those Andhra Officers who had satisfactorily completed their probation and also had the required length of service in lower rank before 1.11.1956 should not be treated as having been made as a stop-gap or fortuitous appointment even if the approval for the Public Service Commission had not been obtained in their case before 1.11.1956. The common gradation lists of Assistant Engineers, Executive Engineers and Superintending Engineers should be finalised on the basis of the Central Government's finding with the modification mentioned above. If there are any gaps in the period of temporary service before 1.11.1956 and if on examination of such gaps it is discovered that they were due to reasons which could show that the earlier period of appointment was purely stop-gap or fortuitous then such earlier periods should be excluded from the period which could be counted for seniority. (2) We consider that the retrospective regularisation by the State Government of the services put in by the Andhra Engineers who had been appointed temporarily under Rule 10(a)(i)(1) before 1.11.1956 should be treated as provisional and should be reviewed after the finalisation of the common gradation lists in the manner stated above and if it is discovered that any particular Telangana Officers are entitled, on the basis of their seniority in the common gradation lists, to be considered for appointment to any vacancies which had occurred before 1.11.1956, the State Government should revise the retrospective regularisation orders of the concerned Andhra Officers so as to make room for the Telangana Officers who might have any claim to be appointed in such vacancies. (3) We are of the opinion that the Central Government's finding that for the purpose of counting the minimum necessary service in the lower rank required for acquiring eligibility to be promoted to the next higher rank, only regular service in the lower rank should be taken into consideration is quite equitable and fair. We also consider that the provisions of Rule 6 of the Special Rules, which permits the State Government to make appointments to the posts of Asst. Engineers of those persons who had not satisfied the requirements of Rule 5 of the Special Rules is only enabling provision and does not make the provisions of Rule 5 redundant. Hence, it would not be correct to state that all those appointed as Assistant Engineers without satisfying the requirement of Rule 5 could be treated as having been appointed under Rule 6. (4) We consider that in regard to the equation of posts the decision of the Central Government does not need any re-examination.

While coming to this conclusion, it observed that all services under Rule 10(a)(i)(1) are not necessarily of a stop gap and fortuitous nature although initially the appointments in some cases may have been intended to be

temporary in nature and the concerned authorities have subsequently examined the nature of service during the period in which a person held the appointment under the abovesaid Rule and have regularised such portions of their services as is considered by them to be neither stop-gap nor fortuitous. It also held that it is quite clear that the temporary appointment of Andhra officers before 1.11.1956 could not have been a part of stop gap or fortuitous arrangement because the arrangement was in most case, of a long term nature and that it is clear that the length of service put in by the Andhra officers in any category in consequence of the temporary appointments before 1.11.1956 cannot be summarily excluded for the purpose of counting the length of continuous service put in by them in that category as being made in a purely stop gap or fortuitous arrangement. It further held that in its opinion the temporary appointments of all Andhra officers who by 1.11.1956 had satisfied all the requirements of the Rules regarding compulsory completion of probation and completion of length of service in the lower rank have to be treated as not having been made as a stop gap or fortuitous arrangement. In regard to the equation of posts, it came to the conclusion that the said exercise is purely an administrative function and in the ordinary course, it is not open to the court to consider whether the equation of posts made by the Central Government is right or wrong. The area available for judicial interference in such executive action, according to the tribunal, was to find out whether the four principles agreed upon at the Chief Secretaries Conference have been properly taken into account or not. Apart from this narrow area, it held that the courts have no jurisdiction to re-assess the decision arrived at by the Central Government, thus upheld the equation undertaken by the Central Government.

It also rejected the argument of the Telangana Engineers that by retrospective regularisation of the Andhra officers, there has been any violation of Articles 14 and 16 of the Constitution, and further held that the State Government concerned was competent to issue the said regularisation order as per the prevailing Rules. It also rejected the contention of the Telangana Engineers that the act of regularisation of Andhra officers was opposed to the States Reorganisation Act. It, however, held that as decided by the Central Government, these Andhra Engineers were not entitled to count the temporary service for the purpose of Rule 5 of the special Rules and such temporary period cannot be counted for seniority in the gradation list of the Andhra and Telangana officers. But for this limited exclusion the Andhra Engineers were held to be entitled to count their seniority from the date of their initial entry into service in the erstwhile State of Andhra. Against the said decision of the tribunal delivered in RP No.910/77, the aggrieved parties preferred Special Leave Petitions before this Court. In the said petitions, this Court vide its order dated 26.10.1987 held thus :-

Andhra Pradesh Administrative Tribunal rendered a decision in 1982 (R.P.No.910/77 and 1051/78) by a three member Bench in regard to employees of the State Government in the category of Junior Engineers and Assistant Engineers. In the absence of any challenge to the Judgment of the Administrative Tribunal, it became final and the State became obliged to give effect to it in due course.

In 1984 a coordinate bench of the Tribunal adopted a differential view in regard to the same matter. A challenge has been raised against that decisions and the matter is pending in this Court. The question that arises for consideration now is whether the decision of 1982, which became final, should or should not be implemented. In the absence of any impediment in the matter of implementation of the 1982 decision, we see no reason why implementation should be delayed. After all the decision has become final and is binding on parties including the State Government. No contrary direction has been given by this Court in the other matter, which is still pending.

In the circumstances, we do not want to entertain the special leave petitions and would like to reiterate that the decision of the Tribunal rendered in 1982 be enforced only subject to any other direction that may be given by this court while disposing of the pending matter. The State Government is directed to fully implement the order of 1982 as indicated above within a period of six months from today. We hope and trust that this order will be allowed to be implemented and no order may be made by any other court to restrain the implementation of this order.

Thus, we notice that the order made by the tribunal in RP No.910/77 came to be approved by this Court as having become final. After the orders of this Court in the above Special Leave Petitions and taking into consideration the directions of the Tribunal in R.P.No.910/77 the Government of Andhra Pradesh prepared a fresh provisional common gradation list dated 3.10.1985 of the Assistant Engineers and called for objections. It is stated that after considering the objections and receiving the approval of the State Government, it finalised a common gradation list in the category of Assistant Engineers and the same was issued on 22.5.1989. Subsequently, as it was found that there was some mistake in regard to 11 Assistant Engineers in the abovementioned list, a supplementary list dated 22.8.1992 was issued. Similarly, a final common gradation list in respect of juniors/supervisors was also issued on 21.9.1992. Having not been satisfied with the said gradation list prepared consequent to the directions issued by the tribunal in R.P. No.910/77, as approved by this Court, the Telangana officers came back to the tribunal once again by way of a batch of petitions numbered as R.P. No.2089/89 and connected matters seeking quashing of the impugned gradation list and praying for consequential benefits. It is to be noted that by the time these petitions were preferred before the tribunal, nearly 33 years had already gone by and naturally most of the Engineers who were in service on 1.11.1956 had retired by then and the object of litigation had boiled down to the entitlement of consequential benefits only. In this batch of petitions before the tribunal, almost similar contentions as those raised before the tribunal in RP No.910/77 were again raised. Primarily, it was contended that the retrospective regularisation of the services of Andhra Engineers was bad in law, hence, seniority assigned to them in the impugned gradation list based on such regularisation is unsustainable in law. They also questioned the non-equation of Telangana sub-Engineers with the Assistant Engineers of Andha. It was also contended that there was phenomenal delay in preparation of these gradation lists. Consequently, many of their promotions were denied to them. It was also the argument on

behalf of Telangana Engineers that as per the existing Rules of Madras Engineering Service, the appointments of the Andhra Engineers who stood transferred to the new State of Andhra Pradesh, not having been regularised at the time of merger, the said appointments were only temporary and fortuitous, hence they could not have been treated as permanent Engineers for which reliance was placed on Rules 10 and 39 of the abovesaid Rules.

In the impugned judgment before us now, the tribunal came to the conclusion that the finding given by the earlier Bench in RP No.910/77 was only provisional, hence it proceeded to reconsider all those questions once again independently and came to the conclusion that the power conferred under Rules 10 and 39 of the Madras Rules is a power coupled with a duty to act reasonably and fairly on relevant material. It held that the said power cannot be exercised to alter the list of approved candidates prepared by the Public Service Commission for direct recruitment or even recruitment by transfer by giving any earlier date of commencement of probation to those lower in the ranking list. It also held that the said power cannot be exercised for affecting the rights of persons already on probation in the service. It reiterated that the power conferred on the Government cannot be exercised to give a date of commencement of probation without the existence of a vacancy in the cadre to be filled up from that particular source of appointment, namely, the various categories mentioned in Rule 2 in the ratio prescribed. It also came to the conclusion that without these essential ingredients existing, the theory of power of retrospective regularisation of the services will sabotage the scheme of Rules and also the concept of seniority and also violates Articles 14 and 16 of the Constitution. With the above finding, the tribunal by the impugned judgment held that in view of the prevailing circumstances, the occasion to the Government to exercise the jurisdiction under Article 23A did not arise, and inspite of the same the Government did exercise the power under Rule 23 giving retrospective regularisation of services of Andhra Engineers which is not contemplated by any statutory provision. It held that by retrospective regularisation, all Junior Engineers and Supervisors in the feeder category coming only from Andhra State stood to benefit by which process the Government had ignored the rights of Telangana Engineers and this, according to the tribunal, was contrary to the earlier judgment in R.P. No.910/77. It levelled a serious charge on the State Government for delaying the preparation of the common gradation list. On the above basis, it came to the specific conclusion that the Andhra Engineers who were transferred to the new State of Andhra Pradesh on its merger on 1.11.1956 who came in as temporary Engineers could not have had the benefit of regularisation of their services by the successor State since they were persons holding temporary, ad hoc and fortuitous posts. It held that under the existing Rules, the Governments concerned did not have the power to make such retrospective regularisation and those regularisations, when effected, would affect the rights of other allottees to that State and also will be in violation of Articles 14 and 16 of the Constitution. It also specifically held that the Sub-Engineers of Telangana ought to have been equated with the Assistant Engineers of Andhra.

Having found that the quashing of the lists based on

the above finding would be futile, the tribunal by the impugned order directed to promote the applicant/petitioner-Engineers before it from a date on which the Andhra Engineers whose regularisations were challenged before it, were so promoted to different posts in the hierarchy of PWD. It also directed that they should be paid all consequential monetary benefits with 10% interest on such amount payable. It also issued different directions in the connected matters based on its findings in the main matter.

Being aggrieved by the said judgment of the tribunal dated 14.7.1985 made in R.P. No.2089/89 and other connected matters, the State of Andhra Pradesh has preferred the abovenoted civil appeals by leave of this Court. We have heard Shri P.P.Rao, learned Senior Advocate for the appellant, Shri Subodh Markandeya, learned senior Advocate for some of the contesting respondents, Shri K.Anant Reddy and some other respondents-in-person. We had permitted the parties to submit written submissions which have been filed. In the written submissions filed on behalf of the respondents appearing in person, a statement is made that they were not heard sufficiently by us. We must record that this statement is factually incorrect. After we heard the learned counsel for the appellant, we did hear the individual respondents-in-person to the extent we thought it necessary. It is only when we found that the arguments addressed were not to the point and there was digression, we restricted the arguments of the parties in person but gave them opportunity to file their written submissions which we have perused. Mr. P.P. Rao, learned senior counsel appearing for the State of Andhra Pradesh contended that the tribunal by the impugned order has practically sat in review against the judgment delivered by an earlier coordinate Bench of the same tribunal which he contends is without jurisdiction inasmuch as the points which have been finally decided by the tribunal in R.P. No.910/77 having attained finality, same could not have been reopened by the successor Bench. He also contended that the tribunal by the impugned order erred in issuing a mandamus to the State Government to straightaway grant pro forma promotions to the applicants before the tribunal and further direct payment of retrospective monetary benefits with interest. He contended that courts normally do not have such power of directing promotions. He also contended that the various directions issued in other connected matters are based on the question of retrospective regularisation granted to Andhra Engineers and based on the erroneous equation of Sub-Engineers of Telangana. Hence, if his argument in regard to these points is correct, none of these applicants/petitioners will be entitled to any such direction. On the contrary on behalf of the respondents, it was contended that the tribunal in the impugned order was justified in holding that the retrospective regularisation of the Andhra Engineers was illegal, without authority of law and opposed to Articles 14 and 16 of the Constitution. It was further argued that various directions issued by this Court in the earlier cases were ignored by the Government in preparing the gradation list and by the ranking assigned to the Telangana Engineers in the gradation list, great injustice is caused to them and all their promotional prospects were destroyed and they were put to great humiliation of having to work under their juniors. They contended that it was because of the enormous delay caused in preparing the gradation list that many of them could not get timely promotions, hence had to retire

without the legitimately due promotions, so the tribunal was justified in directing the pro forma promotions and also the issuance of direction to pay the consequential monetary benefits. In deciding the question whether the tribunal in the impugned order was justified in reopening the question earlier decided by the tribunal in R.P.No.910/77, we will have to first decide the question whether the finding of the tribunal in R.P.910/77 was final or not, and if so, to what extent. In this process even at the cost of repetition, we will have to consider what exactly the tribunal in R.P.No.910/77 decided and what is the finding of the tribunal in the impugned order. The tribunal as per its earlier order in R.P.910/77 came to the specific conclusion that the temporary appointments of the Andhra Officers made before 1.11.1956 could not have been a part of stop-gap or fortuitous arrangement. It also held to so treat these appointments would be discriminatory merely because the State Government did not obtain the approval of the Public Service Commission for these appointments prior to 1.11.1956. Therefore, the tribunal in that case was of the final opinion that those temporary Andhra Officers who by 1.11.1956 satisfied all the requirements of the rules regarding completion of probation should be treated not as a stop-gap and fortuitous arrangement. The tribunal also held that it was satisfied that it would be perfectly in accordance with the principles laid down at the Chief Secretaries Conference to count for seniority the temporary services rendered by such officers. It was also the opinion that such regularisation was in no way contrary to the States Reorganisation Act and that such regularisation was necessary in the interest of equity and justice. In regard to the question of equation of posts involved, it held that the decision of the Central Government did not require any interference, but to a limited extent, the said tribunal held that as and when the gradation list was finalised, if it was discovered that the Telangana Officers were entitled to be considered for appointment to any vacancy which had occurred before 1.11.1956, the State Government should revise the retrospective regularisation orders of such Andhra Officers so as to make room for the Telangana officers who may have a claim to be appointed to such vacancies on the basis of their seniority in the common gradation list. In our opinion, by this finding the earlier Bench of the tribunal specifically held that the regularisation of the temporary services of qualified Andhra Officers with retrospective effect was legally valid. It, however, left open the question of fixing the seniority of Andhra Engineers vis-a-vis Telangana Engineers taking into consideration the fact whether Telangana Engineers had any claim to be appointed to any vacancy prior to 1.11.1956 based on the ranking obtained by them in the common gradation list. The tribunal by the impugned order took a totally divergent view as to the validity of such retrospective regularisation. It held that the power under Rules 10, 23(a) and 30 of the Madras Rules which governed the situation at the relevant point of time did not provide for retrospective regularisation. It held that these rules which confer power are coupled with duty to act reasonably. Based on the above conclusion, this Bench of the tribunal held: Without these essential ingredients existing, the theory of power of retrospective regularisation of services will sabotage the scheme of the rules and also concept of seniority and also violating the articles 14 and 16 of the Constitution. It also held the Government guilty of delay in preparation of gradation list. These findings of the

subsequent Bench of the tribunal in the impugned judgment were rendered proceeding on a basis that the earlier finding of the tribunal was only provisional. We have already noticed that there is no room for coming to such conclusion and that the finding of the earlier Bench of the tribunal was a conclusive finding and what was said to be provisional in that judgment was only the question of applying the effects of the said retrospective regularisation while considering the allotment of seniority in the gradation list to be prepared. In other words, with reference to such Telangana Engineers who had not acquired any right to hold any particular post prior to 1.11.1956, they will be placed below the Andhra Engineers who got an earlier date of entry into service because of the retrospective regularisation.

Therefore, in our opinion, the subsequent Bench of the tribunal could not have reopened the main judgment. question of retrospective regularisation by the impugned Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice, which we see in plenty in this case. This Court in the case of S.I. Rooplal and Anr. vs. Lt. Governor through Chief Secretary, Delhi & Ors. (1999 7 Scale 466) held thus :

At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.

Applying the above principle to the facts of the case in hand, in our opinion, the tribunal in the impugned judgment has erred in reopening the question of retrospective regularisation of Andhra Engineers. The tribunal, in this case, after holding that retrospective regularisation of Andhra Engineers to be erroneous committed

another error in proceeding to grant relief to the respondents without quashing the gradation list. In this regard, it held in view of the fact that the respondents had already retired, no purpose will be served by quashing the list, therefore, it directed the Government to treat the Telangana Engineers as seniors to the Andhra Engineers of the same cadre and issued a further direction to give these Telangana Engineers pro forma promotions at various stages which were given to their Andhra counterparts and then to pay all consequential monetary benefits with interest @ 10%. These directions, in our opinion, are without jurisdiction. Under the service conditions applicable to the respondents, there is no absolute right to them for promotion from stage to stage. They only had right to be considered for such promotion as and when a vacancy arose. Assuming for arguments sake that the tribunal in the impugned judgment was justified in holding that the respondents were entitled to seniority over their Andhra counterparts even then it could not have straightaway directed their promotion and granted them all consequential monetary benefits, that too with interest. This Court has held in a number of cases that the courts cannot issue a mandamus to promote. In the case of State of Mysore & Anr. vs. P.N.Nanjundiah & Anr. (1969 3 SCC 633), this Court held as follows: As to the issuance of mandamus by the High Court, the High Court ought not to issue writs directing the State Government to promote the aggrieved officers with retrospective effect. The correct procedure for the High Court was to issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to his seniority and fitness the 1st respondent should have been promoted on the relevant date and so what consequential benefits should be allowed to him. This decision has been consistently followed by this Court in a catena of other cases. We are sorry to note that the tribunal did not apply these principles in the instant case. Therefore, we are of the opinion that the tribunal by the impugned order grossly erred in directing the promotions of the respondents as also the payment of consequential monetary benefits. We having held the retrospective regularisation of the Andhra Engineers as valid, the gradation lists prepared on that basis, therefore, must be held to be valid gradation lists. The impugned order of the tribunal holding otherwise has to be set aside. In view of this finding of ours, the consequential relief granted to the applicants in the main batch of petitions has to be quashed, and it is ordered accordingly. The Tribunal has also issued some specific directions in favour of the applicants in O.A. No. 37144/90 and other connected matters considered by it in the impugned judgment. These directions are also issued consequent to its finding in the main issue, namely, the retrospective regularisation of Andhra Engineers. If the said retrospective regularisation is valid, as held by us, then the applicants in the above connected cases also will not be entitled to any such directions as have been issued in the impugned orders. Therefore, the directions issued in these cases also will have to be set aside so far as they are dependent on the question of retrospective regularisation of the concerned Andhra Engineers. Accordingly, these appeals are allowed, the judgment and orders impugned in these appeals are set aside and the applications/petitions from which these appeals arise are dismissed. No order as to costs.

JUDIS