

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
And
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**WRIT PETITION Nos.13973, 13977, 14178,
14179, 14182, 14193, 14216, 14268, 14437,
14448, 14575, 14576, 14577, 14578, 14579,
14580, 14581, 14582, 14583, 14584, 14585,
14586, 14587, 14588, 14589, 14590, 14591,
14592, 14593, 14594, 14595, 14596, 14597,
14598, 14599, 14600, 14602, 14603, 14604,
14605, 14830, 14831, 14832, 14833, 14835,
14837, 14841, 14844, 14847, 14849, 14850,
14886, 14894, 14895, 14896, 14902, 14904,
14905, 14906, 14907, 14927, 14932, 14934,
14937, 15443, 15513, 20915, 21727, 21890,
21891, 21907, 21910, 21950, 22150 and
22700 of 2012**

COMMON ORDER : (Per Justice R.Subhash Reddy)

As common question of law arise for consideration in this batch of cases on similar set of facts, all the writ petitions are heard together and are being disposed of by this common order.

The petitioners in this batch of writ petitions are applicants in various original applications filed before the Andhra Pradesh Administrative Tribunal, Hyderabad. Before the Tribunal, in some of the original applications, the applicants have questioned the proceedings dated 27.08.2010, issued by the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, in Cr.No.17657/2004/CPE/A1, requesting all the nodal Prohibition and Excise Superintendents to take options

from such of the APSP Constables, who have not given option for the native districts.

In some applications, the applicants have questioned the proceedings dated 30.08.2010, issued by the Prohibition and Excise Superintendent, Hyderabad in Cr.No.A2/660/2010/P&ESH, requesting the Assistant Secretary, Office of the Director of Enforcement, Prohibition and Excise, A.P., Hyderabad, to send the option forms of APSP Constables by 04.09.2010.

In some of the applications, the applicants have questioned the proceedings dated 30.09.2010, issued by the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, in Cr.No.17657/2004/CPE/A1, allotting the applicants to different Districts. The applicants in some other applications, have questioned the proceedings dated 02.09.2010, issued by the Prohibition and Excise Superintendent, Visakhapatnam in Rc.No.103/2009/A1, directing the applicants to submit their options by 06.09.2010.

In some other original applications, the applicants, apart from questioning the aforesaid proceedings dated 27.08.2010, have also questioned the consequential proceedings of even number, dated 06.10.2010, issued by the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, allotting them to different Districts.

The Tribunal, by common order dated 27.04.2012, dismissed all the original applications. Aggrieved of the

same, the applicants before the Tribunal have filed these writ petitions.

Precisely, the question which is to be decided in this batch of cases is, whether the Constables appointed in A.P. Special Police (APSP), which was a non-organised category as per the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as ‘the Presidential Order’) and who were absorbed into various District Units in violation of the Presidential Order, can be transferred to other District Units or not.

All the petitioners herein were initially appointed as Constables in APSP. They were sent on deputation to State Excise Department in the year 1996 and continued as such for some years. Subsequently, it was felt that the A.P.S.P. Constables who have put-in more than three years of service shall be repatriated to their parent department, but the Director General and Inspector General of Police has opined that the Constables working on deputation in Excise Department were not fit for re-deployment and suggested for absorption of APSP Constables into Excise Department. To work out the modalities for absorption of such Constables who were found surplus in APSP, the Government has issued orders in G.O.Rt.No.894, dated 29.04.2006, constituting a Committee headed by the Principal Secretary, Revenue Department, to work out the modalities for implementation

of the scheme for absorption of APSP Constables into Excise Department. Based on the recommendations made by such committee, orders were issued by the Government in G.O.Ms.No.1103, Revenue (Excise.I) Department, dated 17.08.2007, for absorption of 2151 Constables of APSP who were working in Prohibition and Excise Department on deputation and declared as surplus in APSP. Paragraph 4 of the said G.O. reads as under :

“Government after careful examination of the entire issue, hereby order that the 2151 A.P.S.P. Constables who are working in Prohibition & Excise Department on deputation and declared as surplus in Police Department, be absorbed as Prohibition & Excise Constables in the existing vacancies in Prohibition & Excise department duly following the instructions issued in the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 and other relevant rules which are in vogue scrupulously after obtaining unequivocal/irrevocable option from the A.P.S.P. Constables to the effect that they are willing to accept the scale of pay of Prohibition and Excise Constables.”

Pursuant to the aforesaid orders issued by the Government, all the petitioners herein were absorbed as Prohibition and Excise Constables in the vacancies in District Units of the Excise Department.

When orders were issued by the Government in G.O.Ms.No.1103, dated 17.08.2007, whereunder,

decision was taken for absorption of surplus APSP Constables into various District Units of A.P. State Prohibition and Excise Department, batch of original applications were filed before the A.P. Administrative Tribunal, by the employees of A.P. Prohibition and Excise Department, Tree Markers Association and others, in O.A.No.3335 of 2004 and batch. In the said batch of cases, they have questioned the decision of the Government for absorption of Constables of APSP into District Units of A.P. State Excise Department, on various grounds and those batch of cases were dismissed by the Tribunal by order, dated 10.04.2008. The Administrative Tribunal, while dismissing the above said batch of cases, has specifically observed that absorption of the APSP Constables who were found surplus, into Prohibition and Excise Department, should be in accordance with the Presidential Order, as there is reservation for locals in direct recruitment. It is specifically observed that while absorbing the Constables, the principle of reservation for locals should be observed. The judgment of the A.P. Administrative Tribunal in O.A.No.3335 of 2004 and batch, is also confirmed by a Division Bench of this Court in W.P.No.8573 of 2008 and batch.

In terms of the conditions imposed in the orders of the Government in G.O.Ms.No.1103, dated 17.08.2007, before their absorption, the petitioners have given their willingness for such absorption in A.P. Prohibition and

Excise Department, subject to provisions of the Presidential Order. In view of their undertaking and willingness given by way of option, their services were absorbed in various District Units of the A.P. State Excise Department.

In the State of Andhra Pradesh, for the purpose of public employment, local cadres were organized and recruitment to such cadres is regulated by the Presidential Order, issued by the Hon'ble President of India in exercise of powers conferred under Clauses (1) and (2) of Article 371-D of the Constitution of India. As per para 3 of the said order, State Government is empowered to organize classes of posts in the civil services into different local cadres for different parts of the State to the extent and in the manner provided thereunder. As per para 3(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 organized into a separate cadre. At this stage, it is to be noticed that the post of Constable in the State Prohibition and Excise Department is organized into a separate cadre as per the said provision and the same is not in dispute. As per para 3(8) of the Presidential order, Central Government is empowered to notify any category to be excluded from organization of local cadre. In exercise of powers under para 3(8) of the Presidential Order, Government of India has issued notification on

18.10.1975 in G.S.R.No.529/E, excluding all categories of posts in the Special Police Battalions from the purview of the Presidential Order, and in view of such notification, the post of Police Constable in APSP is not a local cadre post, whereas, the post of Prohibition and Excise Constable in the A.P. State Excise service is in organized cadre, governed by the Presidential Order. As per paragraph 8(1)(a) of the Presidential Order, 80% of the posts are to be filled by direct recruitment from the local area of the Unit and only 20% can be recruited from outside the Unit i.e. District.

As the absorption of 2151 APSP Constables into Prohibition and Excise Department was to be made, it was specifically mentioned in the orders of the Government in G.O.Ms.No.1103, dated 17.08.2007, that such absorption shall be in accordance with the provisions of the Presidential Order. After absorption, when it was noticed that in several Districts, absorption of candidates allotted to such District Unit was in violation of the Presidential Order, and when steps were taken to transfer such excess personnel from the Unit of their working, either to their local Unit or to any other adjoining Unit, the batch of O.As. were filed before the Tribunal. Some of the cases were filed when letter was issued by the Commissioner of Prohibition and Excise whereby directions were issued to the Superintendent of Excise, to obtain options for such transfers and some cases were filed questioning the

orders of transfer. All the cases were clubbed and a common order is passed by the Tribunal by recording a finding that the absorption of applicants was in accordance with the orders of Government in G.O.Ms.No.1103, dated 17.08.2007 and such orders were already upheld by the Tribunal earlier and confirmed by this Court, as such, the Presidential Order was rightly applied to effect their transfer from the Unit of absorption to their local Units or to the Units as opted by them. The Administrative Tribunal, while dismissing the petitions, arrived at the following conclusions :

- “1. The applicants and other similarly placed persons are governed by the Presidential Order and the consequential orders including G.O.Ms.No.610, General Administration (SPF-A) Department, dated 30.12.1985.
2. The applicants cannot claim that they were absorbed as non-local candidates in a particular district, therefore, they cannot be treated as excess non local candidates and they cannot claim any indefeasible right in a particular district till the process of allotment is completed.
3. The persons who gave option of three places and who gave an irrevocable option at the time of absorption, cannot have any grievance, if they are accommodated in any one of the places opted by them.
4. The applicants who did not give options for repatriation as excess non local candidates

cannot challenge the impugned proceedings in the respective O.As. as the respondents identified them on the basis of date of joining and the age as the criteria for identifying them as excess non local candidates beyond 20% permissible under the Presidential Order.

5. The applicants who gave the options and joined in the respective places are not entitled to turn around and say that there is a grievance for the action taken by the respondents through the impugned proceedings.”

Heard learned senior counsel Sri M.Surender Rao, Sri J.Sudheer and Sri M.Bharat Shah and other Advocates appearing for petitioners, and the learned Government Pleader for Services-II and Sri P.V.Krishnaiah, learned counsel, appearing for respondents.

In this batch of cases, it is contended by the learned counsel appearing for petitioners that the absorption of petitioners, who were APSP Constables into the District Units of A.P. State Prohibition and Excise Department, cannot be treated as direct recruitment within the meaning of A.P. Prohibition and Excise Subordinate Service Rules, so as to apply the provisions of the Presidential Order. It is further submitted that having regard to the decision of the Government, which is a policy decision, it is not open for transfer of petitioners outside their absorbed Units, at

this stage. For absorption of surplus personnel, orders were issued by the Government in G.O.Ms.No.267, dated 17.07.1998, by framing adhoc rules and based on the same, absorptions were made, as such, it cannot be said as direct recruitment at all. Finally, it is submitted that in any event, the reservation of 80% of vacancies should be considered with reference to each recruitment notification, and in that view of the matter, it is not open for the respondents to club all the vacancies and to apply the Presidential Order so as to transfer the petitioners outside their absorbed Unit. The learned counsel appearing for petitioners have referred to certain judgments and we will refer to the same, a little later.

On the other hand, it is submitted by the learned Government Pleader for Services-II that the appointment to the post of Excise Constables in the Prohibition and Excise Department is governed by the rules framed under the proviso to Article 309 of the Constitution of India, titled as "The Andhra Pradesh Prohibition and Excise Subordinate Service Rules", and that as per Rule 3 of the said Rules, the method of appointment to the post of Excise Constable would be only by direct recruitment or by appointment by transfer of Attenders in the A.P. Last Grade Service working in the Excise Department. It is submitted that as the petitioners were not working earlier in the Excise Department, their absorption is to be treated only as direct recruitment, and in the absence of any other

method of appointment, it is not open for the petitioners to plead that their absorption cannot be treated as direct recruitment. It is further submitted that the petitioners were found surplus in APSP, and prior to their absorption, they were not holding any post in the Excise Department and only pursuant to the decision of the Government they were absorbed in terms of the options exercised by them. It is submitted that in the option exercised by them, they have categorically mentioned that their absorption is subject to applying the provisions of the Presidential Order, and as such, to maintain the local and non-local ratio of 80:20, such absorbed personnel were transferred to other District Units, and even that too, after obtaining options from them, and in that view of the matter, no prejudice is caused to them. It is submitted that even as a Constable in APSP, which was not organized into local cadre as per the Presidential Order, their posts were transferable to any place in Andhra Pradesh, as such, they have no right to seek continuance in a particular District.

Similarly, Sri P.V.Krishnaiah, learned counsel appearing for some of the respondents, submits that all the vacancies were to be filled up only by way of direct recruitment and instead of notifying the vacancies, as the petitioners were found surplus in APSP, by framing adhoc rules vide G.O.Ms.No.267, dated 17.07.1998, petitioners were absorbed. Having given options/undertakings, it is

not open for them to question their transfer at this stage. It is further submitted that when G.O.Ms.No.1103, dated 17.08.2007, was questioned, the same was already upheld by the Tribunal, which was also confirmed by a Division Bench of this Court, and in the judgment of the Tribunal, it was specifically observed that their absorption was as per the Presidential order and as the said judgment was confirmed by the High Court, there are no grounds to interfere with the same.

Before dealing with the arguments advanced by the learned counsel for the parties, it is to be noticed that the petitioners were initially appointed as Police Constables in A.P. Special Police. After they were appointed in the A.P. Special Police, which is not an organized cadre within the meaning of the Presidential Order, they were deputed to the A.P. Prohibition and Excise Department on deputation basis and when they were sought to be repatriated, a decision was taken to absorb such personnel as Constables in Prohibition and Excise Department. The method of appointment to the post of Excise Constable in the Prohibition and Excise Department is governed by the Andhra Pradesh Prohibition and Excise Subordinate Service Rules. As per Rule 3(iv) of the Rules, the appointment to the post of Excise Constable can be made in two ways, namely, by direct recruitment or by appointment by transfer of Attenders in the A.P. Last Grade Service working in the Excise Department. It is

also not in dispute that the services of A.P. Excise Constables are also governed by the A.P. State and Subordinate Service Rules, 1996, which are also framed in exercise of powers conferred under Article 309 of the Constitution of India. Under Rule 2(15) of the said Rules, the term “Direct recruitment” is defined, which reads as under :

“2 (15) Direct recruitment :- A candidate is said to be recruited direct to a post, class or category in a service, in case his first appointment thereto is made otherwise than by the following methods:

- (i) by promotion from a lower post, category or class in that service or from a lower grade or any such post, category or class, or
- (ii) by transfer from any other class of that service, or
- (iii) by appointment by transfer from any other service, or
- (iv) by re-employment of a person in case he had retired from service of Government prior to such appointment, or
- (v) by appointment by agreement or contract.”

A close scrutiny of the Rules referred above shows that the petitioners are not appointed under any of the methods mentioned under Sub-Clauses (i) to (v) of Rule 2(15), therefore, they are to be treated to have been appointed through direct recruitment. It is also to be

noticed that while making direct recruitment to the post of Excise Constable, which is organized into local cadre as per the Presidential Order, 80% of vacancies are to be filled up by the local candidates and only 20% are open for others.

While taking decision for absorption itself, initially, in the orders issued in G.O.Ms.No.1103, dated 17.08.2007, it is made clear that such absorption shall be in accordance with the Presidential Order. It is also to be noticed that as they were found surplus in APSP and when a decision was taken for their absorption in A.P.Prohibition and Excise Department, the petitioners have voluntarily opted the post in the Excise Department, the scale of which was lower than that of the Constable in APSP service and further subject to condition of applying the provisions of Presidential Order. The option which is already extracted in the judgment referred above, also makes it clear that the petitioners have, in clear and unequivocal terms, opted for the service in A.P. Prohibition and Excise Department, subject to the provisions of the Presidential Order. The Presidential Order issued by the Hon'ble President of India under Article 371-D of the Constitution of India, is also given over-riding effect over all the other Statutes, Ordinances, Rules, Regulations etc. Para 11 of the Presidential Order reads as under :

“Para 11. Order to have over-riding effect :-

The provisions of this Order shall have effect notwithstanding anything contained in any Statute, Ordinance, Rule, Regulation or other Order made before or after the commencement of this Order in respect of direct recruitment to posts under the State Government or any local authority.”

In view of the above said provision, it is clear that the Presidential Order is given over-riding effect over any other Statutes, Ordinances etc.

The learned Senior Counsel Sri M.Surender Rao, appearing for petitioners, in support of his argument that the absorption of petitioners herein cannot be treated as direct recruitment, so as to apply the provisions of the Presidential order, has placed reliance on the following judgments:

S.I.Rooplal & another Vs. Lt.Governor through

Chief Secretary, Delhi & others [1], is a case where there was a dispute with regard to seniority of absorbed deputationist. In the said case, the Sub-Inspector in BSF was absorbed into Delhi Police as contemplated in the Rules. Mainly, the question addressed was with regard to computation of seniority of service rendered in parent Department only. On the said issue, the Hon'ble Supreme Court has held that the service rendered in the parent Department is to be counted. In the case of **K. Madhavan**

& another Vs. Union of India & others [2] also, there was

a dispute in counting of seniority of a deputationist and the Hon'ble Supreme Court has held that it is just and wholesome principle commonly applied where persons from different sources are drafted to service in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. In the case of **Government of Andhra Pradesh, rep. by Secretary, School Education Department & others Vs. P.Vema Reddy, Head Master,**

Government MBHS, Mahaboobnagar & others^[3], a Division Bench of this Court has considered the vires of the Rules framed under A.P.School Education Teachers and Other Employees (Abolition of Existing Service Cadres and Regulation of Recruitment and Conditions of Service) Act, 2005, and held that the State has no power to abolish local cadres without President requiring it to do so under proviso to para 3(1) of the Presidential Order, and accordingly struck down the Rules. Even in the judgment in the case of **Ravi Kumar Vs. Food**

Corporation of India & others^[4], again, the issue relates to the dispute of seniority of the petitioners therein who were permanently absorbed in the Accounts department of the Food Corporation of India. In the case of

K.Velayudhan Vs. Chief Conservator of Forests & others^[5], a Division Bench of Kerala High Court has held

that the appointee therein cannot be treated as direct recruit as per the Kerala State and Subordinate Service Rules.

We are of the view that the above said authorities relied on by the learned Senior Counsel Sri M.Surender Rao, are not applicable to the present batch of cases, having regard to the issue involved in the present batch of cases.

Sri J.Sudheer, learned counsel for petitioners in some of the writ petitions, in support of his argument that there cannot be estoppel against a Statute, has relied on the judgments in **A.C.Jose Vs. Sivan Pillai & others**^[6], in **Dr.Ashok Kumar Maheshwari Vs. State of U.P. & another**^[7], in **Sneh Gupta Vs. Devi Sarup & others**^[8], in **Maharshi Dayanand University Vs. Surjeet Kaur**^[9] and in the case of **M.Ramachandran Vs. Govind Ballabh & others**^[10].

There cannot be any second opinion on the aspect that there cannot be any estoppel against law and Statute, as has been dealt with, in the aforesaid judgments.

Coming to the facts of the case on hand, the absorption of petitioners in Prohibition and Excise Department is not only based on the options exercised by them for their absorption subject to the provisions of the Presidential Order, but even otherwise, it is to be examined whether any of the appointments made by way

of absorption or otherwise, are in accordance with the provisions of the Presidential Order or not. It is not in dispute that the post of Excise Constable governed by the A.P. Prohibition and Excise Subordinate Service Rules, is an organized service cadre as per the Presidential Order, and hence, whenever vacancies are being filled up, 80% are to be filled up with only the locals of the District concerned and only 20% vacancies are open for all. In that context, even as per the provisions of the A.P. Prohibition and Excise Subordinate Service Rules, all vacancies are to be filled up by direct recruitment or by recruitment by transfer of the employees working in lower cadre in the same category of service. It is a case where all the petitioners were appointed in APSP, which is not an organized cadre, as such, their posts are transferable to anywhere in the State of Andhra Pradesh. When the petitioners were found surplus in APSP and when they were sought to be repatriated, a decision was taken for their absorption as Constables in A.P. Prohibition and Excise Department, by applying the provisions of the Presidential Order. It is true that options were taken from the petitioners expressing their willingness for such absorption subject to applying the provisions of the Presidential Order, even without such options also, any appointment for filling up vacancies of non-local cadre more than 20%, is in violation of the Presidential Order. In that view of the matter, after absorption, when the

authorities have noticed that in certain District Units, candidates were absorbed in excess of the ratio as prescribed in the Presidential Order, steps were taken for transfer of such personnel by giving further options. From the record, it is clear that options were given by the petitioners, either to go to native District or to other District where there is shortfall of 20% as per the Presidential Order. In that view of the matter, only on the ground that there is no estoppel against Statute, petitioners are not entitled for any relief. Dehors the options/undertakings given by them, when such absorption which is to be construed only as a direct recruitment in the service, the Presidential Order is to be compulsorily applied. In normal course, such vacancies were to be notified for outsiders, in which event, 80% were to be filled up only from local cadre of the District, but as per the decision of the Government, orders for absorption were made and such appointments were to be made only by direct recruitment, but not otherwise. In that view of the matter, we are of the view that the action taken by the respondents is in accordance with the Presidential Order. It is also to be noted that when it was noticed that certain discrepancies took place while making regular appointments to the posts in Government service which were organized into local cadre, Government has issued orders in G.O.Ms.No.610, dated 30.12.1985, for rectification of irregularities in implementation of Presidential Order. Therefore, we are

of the view that the steps taken by the respondents to transfer the petitioners to other Units, is in conformity with the provisions of the Presidential Order, which is having over-riding effect as per para 11 of the said Order.

For the aforesaid reasons, we reject the contention of the petitioners that their absorption in Prohibition and Excise Department cannot be treated as direct recruitment and is to be treated as appointment by transfer. Although it is contended by the learned counsel for petitioners that even while applying the provisions of the Presidential Order, 80:20 ratio is to be applied for locals and non-locals, having regard to the vacancy position whenever notification is issued. In this case, it is to be noticed that though selection process is initiated to fill up the vacancies pursuant to the notification issued by the Excise Department, the same was cancelled and subsequently orders were passed in G.O.Ms.No.1103, dated 17.08.2007, for absorption of petitioners into Excise Department. In that view of the matter, it is open for the respondents to identify 80% of the vacancies which were filled up by way of absorption, to be reserved to local cadre so as to identify the persons on and above 20%, who did not belong to the local cadre Unit for the purpose of transferring to other Units. We are also of the view that even as per the original appointment, petitioners were appointed as Constables in APSP, which is not an organized cadre as per the Presidential Order, in which

event, they can be transferred to any place in the State of Andhra Pradesh, as such, they have not suffered any prejudice. In fact, the Government has extended the benefit of absorption when the petitioners were found surplus and they were accommodated in the Excise department and are continuing in service. In any given case, if allotment and transfer is not in accordance with the Presidential Order, there is a safeguard provided in the said Order itself by way of making a representation to the competent authority, in which event, the same can be looked into by such authority. Therefore, we are of the view that the findings recorded by the Tribunal are in conformity with law.

For the aforesaid reasons, we do not find any merit in this batch of writ petitions and the same are accordingly dismissed. No order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

29th April 2014

ajr

[1] AIR 2000 SC 594

[2] (1987) 2 Scale 727

[\[3\]](#) 2007 (3) ALT 287 (D.B)

[\[4\]](#) 2003 (6) SLR 139

[\[5\]](#) 1978 (1) SLR 710

[\[6\]](#) (1984) 2 SCC 656

[\[7\]](#) (1998) 2 SCC 502

[\[8\]](#) (2009) 6 SCC 194

[\[9\]](#) (2010) 11 SCC 159

[\[10\]](#) (1999) 8 SCC 592