

**SUPREME COURT OF INDIA**

Government of Andhra Pradesh

Vs.

B. Satyanarayana Rao (Dead) By Lrs.

(V Khare and Y Sabharwal JJ.)

05.04.2000

**ORDER**

1. Permission to file S.L.P. granted. Impleadment application allowed.
2. Delay condoned.
3. Leave granted.
4. The short question that arises in these appeals is whether the 2 posts of Regional Transport Officer in the Department of Transport can be filled in by transfer of Section Offices of the Secretariat and Superintendents of the Office of the State Transport Authority. The recruitment to the posts of Regional Transport Officers are governed by the rules known as Andhra Pradesh Transport Services Rules framed under Article 309 of the Constitution (hereinafter referred to as the Rules). Rule 3(a) provides the method of recruitment to the post of Regional Transport Officer. Rule 3(a) reads as under:  
  
Category IV : Regional Transport Officer –
  1. By direct recruitment
  2. By promotion from among Motor Vehicles Inspectors
  3. By recruitment by transfer from among:
    - (i) Superintendents of the Office of the State Transport Authority.
    - (ii) Superintendents of the Sub-ordinate Offices; and
    - (iii) Section Officers of the Secretariat except Law, Finance and Legislature Departments.
5. Rule 3(a) further provides that the first vacancy in the post of Regional Transport Office is to go to the Motor Vehicle Inspector. The second vacancy is meant for Superintendents of the Office of

the State Transport Authority. The third vacancy is to go to Motor Vehicles Inspectors. The fourth vacancy is earmarked for Section Officers of the Secretariat. Fifth vacancy is for Superintendents of Subordinate Offices of the Multizone. Sixth vacancy is for Motor Vehicles Inspectors. Seventh vacancy is meant for Superintendents of Sub-ordinate Offices of the Multizone. It is against second and fourth vacancies, the employees working as Superintendents in the Office of the State Transport Authority and as Section Officers in the Secretariat were appointed as Regional Transport Officers by transfer. The said appointments were challenged by the employees working in the office of the Regional Transport Offices.

6. The Andhra Pradesh Administrative Tribunal found that the appointments of Superintendent in the office of State Transport Authority and Section Officers working in the Secretariat to the posts of Regional Transport Officers are contrary to the Presidential Order of 1975. Consequentially, their appointments were set aside. It is against the said order and judgment the appointees whose appointments were set aside and State of Andhra Pradesh are in appeal before us.

7. Learned Counsel for the appellant urged that this matter stands concluded by a decision of this Court in the case of State of A.P. v. V. Sadanandam JT 1989 (Supp.) SC 232 : 1989 supp. (1) SCC 576 wherein it was held that overriding power has been given to the State Government under paragraph 5(2) of the Presidential Order in express terms in recognition of the principle that public interest and administrative exigencies has precedence over the promotional interest of the members of the local cadres and zones and therefore, the State Government by order of transfer can fill the vacancies on the posts in different zones, as contemplated under the Rules.

8. Learned Counsel for the respondent attempted to convince us that the decision in the case of State of A.P. v. V. Sadanandam (supra) has to be ignored on the principle of per incuriam as certain relevant provisions of the Rules were not considered in the said case, and in any case this case requires to be referred to a larger bench of three Judges. Rule of per incuriam can be applied where a Court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. This is not the case here. In State of A.P. v. V. Sadanandam (supra) the controversy was exactly the same as it is here and this Court after considering paragraph 5 of the Presidential Order of 1975 held that the Government has power to fill a vacancy in a zone by transfer. We, therefore, find that rule of per incuriam cannot be invoked in the present case. Moreover, a case cannot be referred to a larger Bench on mere asking of a party. A division by two Judges has a binding effect on another co-ordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to lay down a correct law. We, therefore, reject the arguments of learned Counsel for the respondents.

9. Learned Counsel for the respondents then urged that in any case para 5(2) of the Presidential Order does not permit the recruitment by transfer and the only power of the State Government under para 5(2) of the Presidential Order is to pass simpliciter order of transfer on an equivalent post. This very argument was also advanced in the case of State of A.P. v. Sadanandam (supra). The relevant para 15 is extracted below:

In the first place, we must point out that the Tribunal has failed to construe para 5(2) of the Presidential Order in its proper perspective and give full effect to the powers conferred thereunder on the State Government to make provisions contrary to the scheme of local cadres prescribed under para 5(1). The words of sub-para (2) of para 5 viz., 'nothing in this order shall prevent the State

Government from making provision for' sets out the overriding powers given to the State Government under sub-para. Such overriding powers have been given to the State Government in express terms in recognition of the principle that public interest and administrative exigencies have precedence over the promotional interests of the members belonging to local carders and zones. Since para 5(2) also forms a part of the Presidential Order, it forms part of the scheme envisaged for creating local cadres and zones. The Tribunal was, therefore, in error in taking the view that if the State Government was to exercise its powers under para 5(2) and make provision for promotion of U.D. Assistants in the Directorate and Assistant Section Officers in the Secretariat to be transferred to posts in zones I to IV, it will be the very negation of the creation of cadres and zones under para 5(1) and it will be destructive of the scheme underlying the Presidential Order. In fact the Tribunal has realised the operative force of para 5(2) to some extent but is has failed to give full effect to its realisation of the scope of Section 5(2). In para 12 of its judgment in R.P.No. 1595/1983 the Tribunal has stated that since the amended rule refers to para 5(2) of the Presidential Order 'it will no longer be open to the petitioners to attack the amendment as was done in respect of the earlier amendment in the previous R.P.'. The Tribunal has thus noticed that the amended rule has been brought about by the government in exercise of its powers under para 5(2) but it has failed to draw the logical inference following therefrom.

10. Following the decision in the case of State of A.P. v. Sadanandam (supra), we reject the arguments of counsel for the respondents.

11. For the aforesaid reasons these appeals deserve to be allowed. We accordingly set aside the judgments and orders under appeal. The appeals are allowed. There shall be no order as to costs.