

SUPREME COURT OF INDIA

K.Balarama Raju

Vs.

Ch.V.Subramanya Sharma & Ors.

C.A.No.8200/2011

(J.M.Panchal and H.L.Gokhale,JJ.,)

26.09.2011

JUDGMENT

H.L.Gokhale,J.,

1. Leave granted.

2. These three appeals arise from the judgment and Order dated 19.12.2008 passed by a Division Bench of the Andhra Pradesh High Court allowing Writ Petition No. 11920/2008 filed by Ch. V. Subramanya Sarma who is joined as respondent No. 1 in all these three matters. The appellant in the first Appeal arising out of SLP No. 598/2009 and the two appellants in Appeals arising out of SLP No. 5318/2009 were respondents to the aforesaid Writ Petition. All the three appellants and the first respondent are employees of the Andhra Pradesh High Court, and the aforesaid Writ Petition No. 11920/2008 was concerning their seniority and promotion. The said Writ Petition challenged the decision of the Andhra Pradesh High Court on its administrative side granting seniority to these three appellants over the first respondent. The Writ Petition having been allowed, these three appellants have filed SLP Nos. 598/2009 and 5318/2009. The third SLP is filed by the Andhra Pradesh High Court.

3. All the aforesaid three appellants and the first respondent at the relevant time were working on the administrative side of the High Court at Hyderabad in categories (4) and (5) alongwith other employees of Division-II i.e. Assistants/Examiner & Typist/Copyists. They were interested in their promotion to the immediately higher post of Computer Operators which is in Category 3 (b) of Division-II.

4. The service conditions of all these three appellants as well as the first respondent are governed under the Andhra Pradesh High Court Service Rules, 1975 framed by the Chief Justice of the High Court of Andhra Pradesh in exercise of his powers conferred under Article 229 (1) and (2), of the Constitution of India. The High Court administration issued a circular dated 24.10.2000 calling for particulars from the members of the High Court establishment for filling up these posts of Computer operators in accordance with the above

referred rules. As far as this promotion is concerned, it was to be effected on the basis of a written and an oral test which were to be conducted by the officials of the National Informatics Centre (NIC).

5. It was the case of the first respondent that under Rules 7 (7) and 8 (4) of the aforesaid rules the requisite qualification for the post of a Computer Operator was to possess a degree in Typewriting, capability in English in higher grade, and post-graduate diploma in computer programming or post graduate diploma in computer applications. He had this qualification and therefore he applied for that post, and when the test was conducted on 1.11.2000, he cleared that examination. Nine other candidates also cleared the said test including the three appellants in SLP Nos. 598/2009 and 5318/2009. However, they did not possess the aforesaid requisite qualification of post graduate diploma in computer programming or post graduate diploma in computer application. The High Court Administration however issued an order dated 7.11.2000 permitting them alongwith two others to acquire the requisite prescribed qualification within one year failing which they were to be reverted. In this order dated 7.11.2000 the three appellants in SLP Nos. 598 and 5318/2009 were shown at Serial Nos. 1, 2 and 3, whereas the first respondent was shown at Serial No. 4. The order issued by the Registrar (Administration) dated 7.11.2000 reads as follows:-

"PROCEEDINGS OF THE HIGH COURT OF ANDHRA PRADESH ::

HYDERABAD SUB-ESTABLISHMENT - HIGH COURT OF A.P. HYDERABAD
- Promotion to Category 3 (b) of Division II i.e. Computer Operators- Orders - Issued.

READ:- 1. G.O.MS.NO. 156 Law (LA & J Courts.C) Department, Dated 18.10.2000

2. High Court's Circular ROC NO. 6017/2000/Estt., dated 24.10.2000 ...

ORDER ROC NO. 6939/200/Estt. 2 dated 7.11.2000 The Hon'ble the Chief Justice is pleased to pass the following order:-

The following members working in Category 4 and 5 of Division II i.e Assistants/ Examiners and Typists/Copyists who have appeared for the Written and Oral Test conducted by the N.I.C. officials on 1.11.2000 and who have qualified in the tests, are promoted and appointed as Computer Operators on temporary basis.

S.No. Name Designation Sarvasri

1. K. Balarama Raju Assistant

2. Mohd. Sanaullah Ansari Assistant

3. T. Tirumala Devi Typist

4. Ch. V. Subrahmanya Sarma Typist

5. M.V.S. Navinchandra Copyist

6. N. Chandrasekhar Rao Copyist

7. V. Satyanarayana Typist

8. L. Lakshmi Babu Typist

9. P. Nagarjuna Rao Assistant

10. L. Ramachandra Rao Assistant The members shown at S.Nos. 1, 2, 3, 9 and 10 shall acquire the requisite prescribed qualifications within one year failing which they shall be reverted. The above said appointments are made purely on temporary and on an adhoc basis without any preferential claim to future re-promotion or seniority and are liable to be reverted at any time without any notice and without assigning any reason."

Sd/-

Registrar (Administration)

6. It so transpired that this period for passing of the examination was further extended by the High Court for all the five candidates at Sr. Nos. 1, 2, 3, 9 & 10 above by one more year by a further notification of Registrar (Administration) dated 23.11.2001, during which period they acquired the necessary qualification. The respondent No. 1 objected to the fact that the candidates who did not possess the requisite qualifications at the outset were shown senior to him. He submitted his representation for getting his correct seniority in the category of computer operators. He made a representation on 2.11.2001, but that was rejected by the order passed by the High Court on 15.11.2003. He then sought the review of that order by his application dated 19.2.2004 but he did not receive any response.

7. Thereafter, the Registrar (Administration) prepared the gradation/seniority list of computer operators as on 1.7.2005 and invited the objections/representations on or before 10.11.2005 vide his notification dated 23.9.2005. The respondent No. 1 once again submitted his objection on 10.10.2005. In the meanwhile, the Registrar (Administration) proceeded to finalise the seniority of the computer operators for consideration for promotion to the next higher post namely that of Deputy Section Officer. In the gradation list of 19 employees that was finalized, the two appellants of SLP No. 5318/2009 were shown senior to respondent No. 1 herein. Since we are concerned with these three persons, we reproduce the entries with respect to them.

"HIGH COURT OF ANDHRA PRADESH, HYDERABAD GRADATION (SENIORITY) LIST IN THE CATEGORY 3(B) OF DIV. II i.e. COMPUTER OPERATORS AS ON 01-07-2005 Sl. No. Name Date of Birth Date of Educational Sarvasri: entrance into Qualifications Govt. service/Date of Apptt. To the Category

1. Mohd. Sanaullah Ansari 14-07-1963 21-02-1990 B.SC, LL.B, *07-11-2000 Type (E) (H) PGDCA Department Pay Rs. Status of Whether Punishments Remarks al Tests the qualified for and detents Employee the next promotion Accounts Rs. 5640

Approved Qualified Nil Nil Translation Probationer Sl. No. Name Date of Birth Date of Educational Sarvasri: entrance into Qualifications Govt.

service/Date

of Apptt. To

the Category

2. T. Tirumala Devi 13-06-1966 12-07-1994 M.Com,
BAL,

*07-11-2000 PGDCP, Type

(E) (H)

Department Pay Rs. Status of Whether Punishments
Remarks

al Tests the qualified for and detents

Employee the next

promotion

CPC, Rs. 5150 Approved Qualified Nil Nil

Accounts Probationer

Translation

Sl. No. Name Date of Birth Date of
Educational

Sarvasri: entrance into Qualifications

Govt.

service/Date

of Apptt. To

3. Ch. V.Subrahmanya Sarma 24-04-1961 20-12-1985 B.Com,
 LLB.
 *07-11-2000 Type (E) (H),
 Type (T) (H)
 PGDCA, PGD
 in Cyber Laws
 & Legal
 Information
 System

Department Remarks	Pay Rs.	Status	of Whether	Punishments
al Tests	the	qualified	for and detents	
	Employee	the	next	
		promotion		
CPC, Accounts Translation	Rs. 6950	Approved	Qualified	Nil
		Probationer		Nil

As far as the appellant of Appeal No. 598/2009 K. Balarama Raju is concerned he was at Sl. No. 1 in the earlier order dated 7.11.2000. He was already promoted to the higher post in Category 1 of Division-II i.e. Translators & Deputy Section Officers by High Court order dated 11.3.2005 and therefore, his name did not figure in this seniority list of Computer Operators.

8. The further representation of the respondent No. 1 dated 10.10.2005 was rejected by the High Court by its proceedings dated 16.11.2007.

He was however, subsequently promoted to the post of Deputy Section Officer under High Court order dated 10.12.2007, but was placed much junior to these appellants. He therefore, challenged the proceeding of the High Court dated 16.11.2007, communicating rejection of his representation in response to the gradation list of computer operators as on 1.7.2005 by filing Writ Petition No. 119/2008.

9. The first respondent contended before the High Court that he had the necessary qualification when the examination for the posts of computer operators was conducted, whereas the appellants of SLP Nos. 598 and 5318/2009, did not have those qualifications at the outset, but acquired the same within the subsequent period of two years which was permitted by the High Court. He submitted that therefore, the High Court was wrong in giving the ranks in the gradation list, and he should have been shown senior to these three appellants. As against that, the submission of the three appellants was that they had passed the preliminary examination conducted by the High Court alongwith the first respondent, and had obtained more marks than him. It is therefore, that they were shown at S.Nos. 1, 2 and 3 above the first respondent in the order dated 7.11.2000, although they had acquired the requisite diplomas subsequent to the preliminary examination. They had been granted the relaxation to obtain the qualification which was permissible. The subsequent seniority list of the computer operation as on 1.7.2005 was based on this order dated 7.11.2000, and the decision of the High Court administration was correct.

10. The Division Bench has taken the view that since the first respondent had those qualifications right at the outset, the first respondent ought to have been shown senior over the three appellants in SLP Nos. 538/2009 and 5318/2009. The High Court therefore allowed the Writ Petition filed by the first respondent, and set-aside the gradation list published under notification dated 23.9.2005. It directed the Registrar (Administration) to refix the seniority of the computer operators, taking the date of their acquiring requisite qualifications as per rules 7 (7) and 8 (4) of the relevant rules, and accord consequential benefits arising therefrom.

11. The three appellants are aggrieved by this judgment and order, and have therefore, filed SLP Nos. 598/2009 and 5318/2009. The High Court administration has also filed SLP No. 13379/2009. SLP No. 598/2009 came up for consideration on 23.1.2009 when a notice was directed to be issued therein, and the impugned order was stayed until further orders. The other two petitions have been directed to be tagged along with SLP No. 598/2009. The respondents have filed their counter affidavits and the appellants have filed their rejoinder affidavits.

12. Mr. V. Sridhar Reddy and Mr. V.N. Raghupathy, learned Advocates have appeared in support of SLP NO. 598/2009, Mr. L.N. Rao, Senior Advocate appeared for the appellant in SLP No. 5318/2009 and Ms. C.K. Sucharita, Advocate appeared in support of SLP No. 13379/2009. Mr. Narasimha, Senior Advocate has appeared for the first respondent in all the 3 appeals to defend the judgment and order passed by the High Court.

13. The principle submission of the appellants is that the High Court had granted the time to acquire the necessary additional qualifications. The qualifications were not considered sacrosanct by the High Court at the outset. The Chief Justice had the necessary power to grant the relaxation. The appellants as well as the first respondent had appeared for the common written and the oral test which included the aspect of capability of computer operation. The appellants have obtained higher marks than the first respondent, and therefore, the High Court administration was right in placing them at a higher position in the gradation list. The appellants and High Court administration are relying on Rule 23 of the above Service Rules. This rule reads as follows:-

"Rule 23- Relaxation of Rules by the Chief Justice:- Nothing in these rules shall be construed to limit or abridge the power of the Chief Justice to deal with the case of any member of the service or any other person to be appointed to the service in such manner as may appear to him to be just or equitable; Provided that where any such rule is applicable to the case of any person, the case shall not be dealt with in any manner, less favourable to him than that provided by that rule."

14. As against that, the submission of the first respondent is that on the basis of the aforesaid rules 7 (7) and 8 (4) the candidates had to have the necessary qualifications and special qualifications at the outset. The first respondent had the necessary qualification, and therefore, he ought to have been shown at a higher seniority position than that of these three appellants, which is what the High Court has done on the judicial side. These rules read as follows:-

"Rule 7 - Qualifications (7) FOR THE POSTS OF COMPUTER OPERATORS:
Must have passed Degree in Arts or Science or Commerce of a University in India Established or incorporated by or under a Central Act, Provincial act or a State Act or from any Institution recognized by the University Grants Commission.

OR Must have passed Degree in B.C.A. (Bachelor of Computer Application) of a University in India Established in incorporated by or under a Central Act, Provisional Act or a State Act or from any Institution recognized by the University Grants Commission.

NOTE: If the Candidate passed the Degree in B.C.A, he need not pass the Special Qualifications as prescribed in Schedule-I (Under Rule-8) of the A.P. High Court Service Rules, 1975.

[AMENDMENT-III: Above words shall be added as sub-rule 7 after sub-rule 6 in Rule 7 for the posts of Computer Operators as per A.P. Gazette 412 Part I extraordinary dated 08.10.1999.] Rule 8 - Special Qualifications *(4) FOR COMPUTER OPERATORS: In addition to the Graduation, a Computer Operator must have passed Typewriting English Higher Grade and Post Graduate Diploma in

Computer Programming or Post Graduate Diploma in Computer Application (One Year Course) which is recognized by the Central or State Government.

*[AMENDMENT-V: Above words shall be added as sub-rule 4 after sub-rule 3 for the posts of Computer Operators vide A.P. Gazettee No. 412 Par I Extraordinary dated 08.10.1999]."

15. The principle submission of the first respondent before the High Court was that the three appellants did not have the requisite qualifications when the Registrar, Administration issued the circular dated 24.10.2000 calling for the names with particulars for the posts of Computer Operators with qualifications as per the above rules 7 (7) and 8 (4). This circular clearly stated that:- (i) The applicants had to be graduates; (ii) They had to have passed the typewriting (English) exam by the higher grade; and (iii) they ought to possess Post Graduate Diploma in Computer Programming or Post Graduate Diploma in Computer Application which is recognised by Central Government or State Government. This circular dated 24.10.2000 stated as follows:-

"HIGH COURT OF ANDHRA PRADESH :: HYDERABAD
R.O.C.NO.6017/2000/Estt. Dated:24.10.2000 CIRCULAR The members of the High Court Establishment, who are graduates and who have passed Type Writing (English) by the Higher Grade and Post Graduate Diploma in Computer Programming OR Post Graduate Diploma in Computer Application (ONE YEAR COURSE), which is recognized by the Central Government or State Government are requested to furnish the said information to the Registrar (Administration) by 25.10.2000 along with true copies of the said certificates.

Sd/-

REGISTRAR (ADMINISTRATION)"

16. Pursuant to this circular, the applicants were called for a written test by another circular dated 31.10.2000. This circular stated that the oral interview will also be conducted at the same venue after the written test was over. The circular contained the list of candidates who were called to give that test, and it included the names of the three appellants as well as the first respondent. The circular further informed the candidates as follows:-

"They are further informed that they have to produce their certificates regarding 'Computer Course' and proof regarding the duration of the course attended by them, in original, and in proof of passing of Typewriting English by the Higher Grade, before Sri M.S.K. Prabhu, Deputy Registrar, by 11.00 A.M., without fail. If any candidate fails to produce the concerned certificates and proof, it will be deemed that he/she has no requisite qualification to hold the post. The staff members are permitted to appear for the Written Examination and interview subject to their holding the requisite qualification, as per rules."

Thus, it was very clear that the staff members were permitted to appear for the written examination and interview subject to their holding the requisite qualifications, as per the rules.

17. The first respondent and three appellants did pass that examination, but the three appellants did not have the requisite diploma. That was also the deficiency with two other employees who otherwise got good marks. It appears that the High Court was in need of ten Computer Operators and, therefore, the Hon'ble Chief Justice was pleased to pass the order dated 7.11.2000 which has been referred to earlier. This order also clearly stated that the three appellants and the two other candidates listed in that order dated 7.11.2000 had to acquire the necessary qualification within one year failing which they were to be reverted. The last part of this order dated 7.11.2000 is relevant and reads as follows:-

"The above said appointments are made purely on temporary and on an adhoc basis without any preferential claim to future re- promotion or seniority and are liable to be reverted at any time without any notice and without assignment any reason."

The first respondent pointed out that the three appellants did not acquire the necessary qualifications within one year, and they sought extension of one more year during which period they obtained the necessary qualifications. It was submitted that the seniority of the respondent no.1 will have to be counted from the date when he joined as Computer Operator pursuant to the order dated 7.11.2000. The relaxation in the order dated 7.11.2000, clearly stated that as far as the three appellants are concerned, their appointments were purely temporary and without any preferential claim to the future re-promotion or seniority and they were liable to be reverted. They could claim their seniority only from the date when they obtained the qualification and could not have a seniority position higher than that of the respondent no.1.

18. The High Court Administration had justified the grant of seniority to the three appellants on the footing that the Chief Justice had the power under the above referred rule 23 to deal with the case of any member of the Court Service or any other person to be appointed to the service in such manner as may appear to him to be just or equitable. The High Court needed ten Computer Operators, and the three appellants had otherwise passed the examination and therefore, although they obtained the diploma certificates later than the first respondent, they were shown at higher position on the basis of the marks they had obtained in the test. The three appellants were to be reverted since they did not obtain the necessary qualification within the initial period of one year. It was a matter of grace and because of the requirement of the High Court that the Chief Justice gave them further extension of one year as sought by them. Such persons were liable to be reverted from the particular post and could not claim seniority over a person who is duly appointed with all necessary qualifications.

19. The three appellants had relied upon the judgments of the Andhra Pradesh High Court in two other connected matters wherein the selections based on the merit list submitted by the NIC reflected in the order dated 7.11.2000 had come to be challenged. The first one was W.P. No. 22501/2000 wherein the challenge was to the policy decision to fix the cut off

marks to 45% to consider the case of the qualified candidates for the post of Computer Operators. In the second petition bearing W.P. No.2217/2001 it was contended that sufficient time had not been given for preparation, and that the ratio of 2:1 between the Assistants/Examiners and Typists/Copyists had not been maintained. The Division Bench which heard those two petitions did not find any substance in those arguments and it was held that there was nothing wrong in keeping appropriate minimum marks, and that the aforesaid ratio would not apply to direct recruitment.

Consideration of the Rival Submissions -

20. To appreciate the rival submission, we may refer to the relevant rules. The Andhra Pradesh High Court Service Rules, 1975 contain in all 29 Rules, three Schedules and one Annexure. Rule 1 gives the short title, commencement and extent of the rules. Rule 2 gives the definitions. Rule 3 is on the constitution of the service. It states that the service shall consist of the divisions, categories and sub-categories of officers, as mentioned therein.

Division I consists of the Gazetted Posts, Division II the Non-Gazetted Posts and Division III the Miscellaneous Posts. Division II consists of 5 categories.

Category-1 is of Translators and Deputy Section Officers, Category-2 consists of Overseer, Category-3 consists of (a) Assistant Section Officer and (b) Computer Operators, Category-4 consists of (a) Assistants (b) Readers and Examiners (c) Telex Operator (d) Telephone Operator and Category-5 consists of (a) Typists and (b) Copyists.

21. As noted earlier, the three appellants and the first respondent were concerned with their promotion from Categories-4 and 5 to Category-3 (b), viz. that of Computer Operators. Subsequently, they all have been promoted to the posts of Deputy Section Officers which is in Category-1 of Division II. We are, however, concerned with their seniority when they were selected for the posts of Computer Operators. Their seniority as Computer Operators will be a relevant factor for deciding their subsequent seniority as Deputy Section Officers.

22. Rule 4 defines the appointing authority. Rule 5 gives the method of appointment to the service and states that the appointment to the post and category mentioned in Column (1) of the table below the rule shall be made in the manner specified against them in Column (2) thereof. As far as the Category-3 (a) Assistant Section Officer and (b) Computer Operators are concerned, it will be filled by either of the two methods:-

(i) By direct recruitment; or

(ii) By promotion from categories 4 and 5 in the ratio of 2:1 in every cycle of three vacancies, the second vacancy shall be filled from Category 5 by a person qualified under rule 8. If there is no qualified and suitable member, the turn will lapse and the vacancy shall be filled by next turn in the order or rotation. No account shall be taken of any such lapsed turns in filling future vacancies.”

23. It is not disputed that the present selections were by direct recruitment and that is why the test for selection was taken by NIC. Sub-rule 2 of Rule 5 states that the Chief Justice may determine the proportion of vacancies to be filled by each method where appointment to any category or post is provided by more than one method and also specify the manner in which such appointment shall be made in case of direct recruitment. Sub-rule 3 is on seniority and it reads as follows:-

"(3) Seniority:- (a) The seniority of a member of the service in a Category or post shall unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to the service, category or post, where any difficulty or doubt arises in determining the seniority, is shall be determined by the appointing authority. If any portion of the service of such person does not count towards probation under Rule 16, his seniority shall be determined by the date of commencement of the service, which counts towards probation.

(b) The appointing authority may at the time of passing an order appointing two or more persons simultaneously to a Category of the service fix the order of preference among them and where such order has been fixed, the seniority shall be determined in accordance therewith.

(c) Where a member of any division or Category is reduced to a lower division or Category, he shall be placed at the top of the later, unless the authority ordering such reduction otherwise directs."

24. Rule 6 is on reservation of appointments, and Rule 7 gives the qualification. Rule 7 (7) gives the qualifications for the posts of Computer Operators which rule we have already referred. Rule 8 gives the special qualifications and that Rule 8 (4) gives the qualifications for the Computer Operators which also we have already mentioned.

25. We are concerned with the promotions and they are dealt with in Rule 15 and the temporary appointments and promotions are dealt with in Rule 16. These two Rules read as follows:-

"Rule-15. Promotions:- (1) All promotions shall be made by the appointing authority in accordance with Rule-5.

(2) All categories in Division-I and Categories 1 to 3 of Division-II shall be selection categories and promotion there to shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal.

Provided that "the claims of any member of the Scheduled Castes or the Scheduled Tribes shall be considered for such promotion on the basis of seniority, subject to fitness".

Rule-16. Temporary Appointments and Promotions:-

(1) Where it is necessary to fill a vacancy in any division, category, sub-category, or post in the service and there would be undue delay or administrative inconvenience in appointing a person who is qualified for or entitled to such appointment or a duly qualified person is not available, the appointing authority may appoint any other suitable person temporarily until an appointment is made in accordance with these rules.

(2) (a) A person appointed under sub-rule (1) shall be replaced as soon as possible by a member of the service, who is entitled to promotion, under these rules or the case may be, by a candidate qualified to hold the post under the rules.

(b) A person appointed under sub-rule (1) shall not be regarded as a probationer in such division, category or post or be entitled by reason only of such appointment to any preferential claim to future appointment, to such division, category or post. If such a person is subsequently appointed to the division, category or post in accordance with these rules, he shall commence his probation in such division, category or post from the date of such subsequent appointment or from such earlier date as the appointing authority may determine."

26. From the narration of facts and reference to the rules above, it is clear that as far as the first respondent is concerned he had the necessary qualifications when he appeared for the examination of Computer Operators. His appointment is pursuant to the order dated 7.11.2000 with immediate effect and his probation will start immediately thereafter under Rule 10 (1) on probation which reads as follows:

"Rule 10. Probation-(1) Every person appointed to the Service otherwise than by promotion, or by transfer shall be on probation for a total period of two years on duty within a continuous period of three years."

27. As far as the three appellants are concerned, their appointments were purely temporary and on adhoc basis, and they were liable to be reverted if they were not to acquire the necessary qualification within one year. The order dated 7.11.2000 further stated that their appointments are without any preferential claim to future re-promotion or seniority. These three appellants did not obtain the necessary qualification within the period of one year. On their request they were given a further extension of time of one year by subsequent order dated 22.11.2001 issued by the Chief Justice. This order reads as follows:-

"PROCEEDINGS OF THE HIGH COURT OF A.P. :: HYDERABAD.

Sub:- ESTABLISHMENT - HIGH COURT OF A.P., HYDERABAD

- S/Sri K. Balarama Raju, Mohd. Sanaullah Ansari, T. Tirumala Devi, P. Nagarjuna Rao and L. Ramachandra Rao, Computer Operators, High Court A.P., Hyderabad - Extension of time for passing of the requisite qualifications - Granted - Orders - Issued.

Ref.: Applications submitted by S/Sri.

1. K. Balarama Raju, dt. 27.10.2001

2. Modh. Sanaullah Ansari, dt. 27.10.2001
 3. T. Tirumala Devi, dt. 5.11.2001
 4. P. Nagarjuna Rao, dt. 27.10.2001
 5. L. Ramachandra Rao, dt. 5.11.2001.
- ORDER R.O.C. No.7595/2001 - Estt.2. dt. 22-11-2001.

The Hon'ble Chief Justice is pleased to pass the following order:

In the circumstances stated by Sarvasri K. Balarama Raju, Mohd. Sanaullah Ansari, T. Tirumala Devi, P. Nagarjuna Rao and L. Ramachandra Rao, Computer Operators, High Court of A.P., Hyderabad, in their applications read above, they are granted extension of time for a further period of one year from 7-11-2001 to enable them to acquire the requisite qualifications.

REGISTRAR (ADMINISTRATION)"

28. The three appellants did not have the diploma certificates when they appeared for the examination, yet in view of their marks in the examination they were appointed as computer operators since the High Court did not get adequate number of qualified persons. They were therefore appointed under Rule 16 (1) on purely temporary basis and were liable to be reverted, if they did not get the qualification in the time provided. Rule 16 (2) (b) states that such a person who is appointed under Rule 16 (1) shall not be regarded as a probationer by reason of any such appointment to any preferential claim to future appointment to such division, category or post. Second part of Rule 16 (2) (b) states if such a person is subsequently appointed to the division, category or post in accordance with these rules, he shall commence his probation from the date of his subsequent appointment or from such earlier date as the appointing authority may determine. The power of the Chief Justice under Rule 23 states that if relaxation under the rule is made applicable to the case of any person, the case shall not be dealt with in any manner, less favourable to the candidate than that provided by that rule. However, this rule cannot be read to mean that while granting the benefit under this rule, the beneficiary can be placed at an advantage as against the one who is otherwise qualified and does not need the relaxation. The first respondent had the necessary qualification when he appeared for the examination, and on his appointment by direct recruitment under the order dated 7.11.2000, his probation will start immediately thereafter under Rule 10 (1). The probation of the three appellants will start only after they obtain their qualification. The power of relaxation exercised by the Chief Justice in their case can only get them into the service since adequate number of computers operators were not available and their appointments will get regularized when they get their qualification. The selection was done after a test and on the basis of merit. Possessing the necessary diploma certificate was a part of the qualification and merit. The passing of the examination required minimum 45 marks. Obviously those who had the qualification and who obtained 45 marks and above will have to be placed at the top of the list in seniority. Those who did not have the qualification at that time but obtained it later on, even if they had obtained higher marks in the test will have to be placed at a position lower than these candidates having qualification, and necessary marks. As far as the first respondent is concerned, his probation having started earlier he will complete the same earlier to the appellants no.1, 2 and 3 and will have to be reckoned senior to them. The governing rules will have to be read and applied meaningfully in this manner so that no prejudice will be done to a candidate who otherwise

had the qualifications and who is appointed after passing the test. It is settled law that one should have the qualifications on the date when the applications are invited. Any such relaxation to permit unqualified candidates cannot be to the prejudice of the qualified candidates. They can be taken into the service but cannot steal a march over the qualified and the selected candidates.

29. The three appellants had contended that the petition filed by the first respondent suffered on account of laches and delay in moving the High Court. We have already pointed out that when the order dated 7.11.2000 was issued, the first respondent represented on 2.11.2001, but the representation was rejected on 15.11.2003. He moved for a review on 19.2.2004, but the same was not responded. When the seniority of the Computer Operators was published by notification dated 23.9.2005 and objections were invited, the first respondent submitted his objection on 10.10.2005. That representation was rejected by the High Court's Proceeding dated 6.11.2007 and the first respondent was placed junior to the three appellants. He challenged that communication by his W.P. No.11920/2008. Thus, there was no delay or laches on the part of the first respondent in moving the High Court.

30. In the circumstances, we do not find any error in the judgment and order of the High Court which accepted the legitimate seniority of the first respondent above the three appellants. The High Court has allowed the Writ Petition No. 11920/2008 filed by the first respondent, set aside the gradation list of computer operators as on 1.7.2005 and further directed the High Court administration to re-fix their seniority and to grant the consequential benefits. We approve this judgment and order dated 19.12.2008 passed by the Andhra Pradesh High Court, although also for the reasons given in this judgment. These three appeals are, therefore, dismissed. The interim stay granted by this court will stand vacated. The High Court administration will now proceed to take steps as directed in the said judgment and order in accordance with the law laid down herein. In the facts of the case, there will be no order as to costs.