

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION NOs.36093 and 35011 of 2022

W.P.No.36093 of 2022:

Between:

Jangati Yellaiah, s/o Bichaiah,
Aged about 38 years, working as Post Graduate
Teacher Economics, Telangana State Model School,
Vallala Village, Shaligouraram Mandal,
Nalgonda District and others.

.... Petitioners

and

The Government of Andhra Pradesh,
Rep.by its Principal Secretary,
Education Department, Secretariat,
Velagapudi, Amaravathi, Guntur District,
A.P., and others.

..... Respondents

DATE OF JUDGMENT PRONOUNCED : 17.11.2022

HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE J.SREENIVAS RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

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*** HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE J.SREENIVAS RAO**

+WRIT PETITION No.36093 of 2022:

%17.11.2022

Jangati Yellaiah, s/o Bichaiah,
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Rep.by its Principal Secretary,
Education Department, Secretariat,
Velagapudi, Amaravathi, Guntur District,
A.P., and others.

..... Respondents

!Counsel for the petitioners : Sri A.Phani Bhushan

Counsel for the Respondents: Sri P.Govind Reddy for respondents
1, 3, and 5;
Spl.Govt.Pleader rep. learned
Advocate General for respondents
2, 4 and 6;
Govt.Pleader for School Education and
Sri Pratap Narayan Sanghi for
Respondents 9 to 18.

<Gist :

>Head Note:

? Cases referred:
2014 (3) ALD 430 (DB)
(2003) 5 SCC 604
2019 (6) ALD 630 (TS) DB
MANU/SC/0759/2021
2021 SCC OnLine SC 846

HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT PETITION NOs.36093 AND 35011 OF 2022

COMMON ORDER: *(Per Hon'ble Sri Justice P Naveen Rao)*

Heard learned counsel Sri A.Phani Bhushan for the petitioners, learned special counsel Sri P.Govind Reddy appearing for respondent Nos.1, 3 and 5, learned Special Government Pleader representing learned Advocate General appearing for respondent Nos.2, 4 and 6, learned Government Pleader for School Education and learned senior counsel Sri Pratap Narayan Sanghi for respondent Nos.9 to 18.

2. Briefly stated the facts of the case are as under:

2.1. The second respondent issued recruitment Notification No.01/RMSA/Model Schools/2012, dated 6.2.2012 to fill up 2130 Trained Graduate Teachers by indicating the method of selection, prescribing qualifications to hold the above posts and procedure. Subsequent to the above notification, Government issued G.O.Ms.No.25 Education (SE-PROG.I) Department, dated 04.04.2013 framing guidelines for selection of Principals, Post Graduate Teachers and Trained Graduate Teachers in State Model Schools.

2.2. For recruitment to the post of Post Graduate Teachers, qualification prescribed was post graduation with B.Ed., in concerned methodology and studied in English medium at least at two levels i.e., School/Intermediate/Graduation/Post graduation levels. Aggrieved with the said conditions, W.P.No.6833 of 2012 and batch were filed before this Court. This Court directed the respondents to allow the petitioners to write the examination but not to announce the results. As per the directions of the Court, results of petitioners were withheld but respondents proceeded to recruit other selected candidates.

2.3. Petitioners filed writ petitions praying to announce their results and allow them to participate in further selection process and to appoint them as Post Graduate Teachers. By order dated 9.5.2012, W.P.No.6833 of 2012 and batch were dismissed. Aggrieved thereby, W.A.No.611 of 2012 was filed but the same was dismissed by order dated 4.1.2013. Aggrieved thereby, matter was carried to Supreme Court by preferring SLP No.14955 of 2013. The Hon'ble Supreme Court passed the following orders:

- a. The operation of the judgment under challenge shall remain stayed.
- b. It will be open to the State Government to prepare a common list of the candidates who have studied either through Telugu Medium or English Medium depending upon the marks they secured, and proceed to effect appointments.

- c. The appointments will be subject to the final outcome of the appeal. This order will be applicable for the posts of Principals and the Post Graduate Teachers.”

2.4. Pursuant to the above directions of Hon’ble Supreme Court, results of petitioners were announced and they were appointed to the post of Post Graduate Teachers in their concerned subjects.

2.5. C.A.No.913 of 2013 and C.A.No.9104 of 2014 were disposed of on 16.3.2018 with directions.

2.6. Petitioners claim to have made representations to respondent nos. 2, 4 and 6 requesting to prepare a merit list in accordance with the merit secured by them at the time of selection and prepare the seniority in the category of Post Graduate Teachers in accordance with that merit list. The request of the petitioners to prepare a common merit list was rejected vide proceedings in RC No.1494/A2/TSMS/2017 dated 23.1.2019.

2.7. Aggrieved thereby, some of petitioners have filed W.P.No.22803 of 2019 seeking a direction to authorities of State Governments of both Telangana and A.P. to prepare a common merit list irrespective of the medium of instructions as per the directions of Hon’ble Supreme Court. On 21.12.2019, sixth respondent issued a provisional seniority list basing on the merit. However, on 6.2.2020 sixth respondent sent emails to all the Principals appending subject-wise and zone-wise seniority lists of

post graduate teachers basing on the date of joining and directed to submit objections by 8.2.2020. Aggrieved thereby, some of the petitioners have filed I.A.No.1 of 2020 in W.P.No.22803 of 2019 praying to direct respondents to finalize the seniority list basing on the provisional seniority list dated 21.12.2019 but not the list dated 6.2.2020 and the same is pending.

2.8. While so, 4th respondent communicated provisional seniority list in respect of Principals, Post Graduate Teachers and Trained Graduate Teachers working in the model schools in the State vide RC No.1643/A2/TSMS/2019 dated 29.8.2022 calling for the objections on or before 4.9.2022. Petitioners have submitted their objections stating that as per the direction of Hon'ble Supreme Court, a common merit list is yet to be prepared by the Government of A.P and without there being a common merit list for all the direct recruitees, the question of drawing seniority does not arise.

3.1. Learned counsel for the petitioners contended that the respondent – employer has been following the Telangana State and Subordinate Service Rules, 1996 (for brevity referred to as General Rules) to regulate all service conditions, including seniority. Petitioners were appointed under Rule 10 of the General Rules. This is also admitted by the respondent – Authority in the counter affidavit. According to learned counsel the rules notified in

G.O.Ms.No.25 School Education (Services-III) Department, dated 13.12.2019 were not in force when petitioners were appointed. However, even if these Rules are applicable Rule 5 deals with method of appointment to various categories of posts. The next higher cadre post to that of Post Graduate Teacher is Principal. From reading of note appended to Rule 5, it is clear that consideration for promotion to the post of Principal should be based on merit secured by the Post Graduate Teachers at the time of recruitment. It is thus clear that merit secured in the recruitment alone is the criteria to draw seniority for promotion as Principal.

3.2. He further contended that on 30.09.2013 the Hon'ble Supreme Court passed orders in SLP.No.14955 of 2013 directing to draw common merit list irrespective of the concerned language of the post and to make appointment as Post Graduate Teacher as per the common merit. Therefore, the respondent – employer is duty-bound to make appointments based on the common merit. As a corollary, seniority has to be determined based on the merit drawn in the selections for recruitment.

3.3. He would further submit that it is settled principle of law that seniority of direct recruits has to be determined based on the merit secured in the recruitment and not based on the date of

appointment and the said principle is consistently followed by this Court. He has relied upon the judgment of the division Bench of this Court in W.P.Nos.36093 of 2022, 4465 of 2019 and 11890 of 2008, and also on the judgment of the Hon'ble Supreme Court in the Contempt Petition (CIVIL) No.638 of 2017 in Civil Appeal No.4954 of 2016 in support of his contention that the seniority of the direct recruitees has to be determined based on the merit secured by the candidates. He further submits that but for the lapses of the employer, petitioners would have been included in the merit list at the initial stage and would have been appointed much earlier and therefore, on account of the illegalities committed by the authorities concerned, petitioners cannot be subjected to further hardship and suffering.

4.1. Learned senior counsel Sri Pratap Narayan Sanghi appearing for party respondents, submitted that petitioners are employees of Rashtriya Madhyamika Shiksha Abhiyan, and they are not Government servants. Therefore, General Rules are not applicable to them. He contended that the writ petitions are not maintainable as the Rashtriya Madhyamika Shiksha Abhiyan was not made a party to the litigation.

4.2. Learned senior counsel further contended that as can be seen from Rule-11 (4) (a), the rule making authority clearly

restricted application of Rule 33(a) and Rule 34 of General Rules only and therefore, the entire gamut of Rule 33 of the General Rules has no application. As per Rule 33(a) the seniority has to be determined based on the date of appointment and as petitioners were appointed much later to unofficial respondents, they cannot claim seniority over unofficial respondents and position in the merit list has no relevance in view of the specific provision in Rule 4(a).

4.3. He would further submit that as per the recruitment notification, candidates having Telugu medium were not eligible to compete and therefore, petitioners cannot claim seniority based on the merit secured by them in Telugu medium. He submitted that petitioners were appointed in pursuant to the interim orders passed by the Hon'ble Supreme Court and therefore, petitioners have to take the seniority from the date of such appointment.

4.4. He further submitted that the Hon'ble Supreme Court was only dealing with the issues of appointment of the petitioners and similarly situated persons but has not considered the issue of seniority and in the absence of direction by the Hon'ble Supreme Court regarding determination of seniority based on the merit, the seniority of the petitioners was determined based on the date of

their appointment and not based on the merit secured by them. There is no illegality in the said exercise.

5.1. Learned Special Government Pleader appearing for learned Advocate General, for the respondent – Authority submitted that as contended by them in paragraph No.13 of the counter affidavit filed in W.P.No.36093 of 2022, the date of appointment alone is the criteria to determine the seniority.

5.2. Learned Special Government Pleader stated that prior to 2019 Rules, there were no separate Service Rules governing the employees working in the respondent establishment and the Rules governing the Government Servants were adopted to regulate the service conditions of its employees.

6. The issue for consideration is whether seniority of Post Graduate Teachers recruited by Direct Recruitment in pursuant to Notification No.01/RMSA/Model Schools/2012 dated 6.2.2012 in respondent establishment ought to be determined based on merit secured in the recruitment process?

7. Before dealing with the issue, it is necessary to clear the objection on arraying official respondents.

8. Though learned senior counsel appearing for respondents raised objection on maintainability of the writ petitions on the

ground that the Rashtriya Madhyamika Shiksha Abhiyan is not made a party from the array of respondents it is noticed that the Commissioner and Director of School Education who is ex-officio Director of the Rashtriya Madhyamika Shiksha Abhiyan in both the States, who has drawn the seniority list impugned herein and corresponding officer of the State of AP have been arrayed as respondent Nos.3 and 4. Therefore, we see no merit in the said objection.

9. The General Rules regulate service conditions of Government servants, such as date of appointment, probation, confirmation, seniority etc. Unless Special Rules governing a particular service envisages a different mechanism, Rules 33¹ and 36² regulate

¹ **Rule 33. SENIORITY:-**

(a) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade.

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason, the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it:

Provided that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed inter-se with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.

² **Rule 36. INTER-SE-SENIORITY WHERE THE DATES OF COMMENCEMENT OF PROBATION ARE SAME:-**

The seniority of the persons in the service shall be determined—

(i) in respect of the candidates selected by the Telangana State Public Service Commission or other selecting authorities by direct recruitment, as per the ranking assigned to them, irrespective of the dates of commencement of their probation in that category.

(ii) in respect of the persons promoted or appointed by transfer involving promotion, as per the dates from which they were placed on probation;

(iii) in respect of persons covered under item (ii) above and whose dates of commencement of probation are same, as per their age i.e., whoever is aged shall be the senior;

determination of seniority *inter se* employees recruited by the method of direct recruitment, the *inter se* employees promoted and employees directly recruited and promoted, in a cadre. According to Rule 33 (b) seniority of direct recruits has to be determined based on merit secured in the recruitment examination irrespective of date of joining service. As stated by Special Government Pleader prior to 2019 there were no special Rules governing the Service in the respondent-establishment. Even the 2019 Rules do not make a provision on determination of *inter se* seniority of direct recruits. Therefore, General Rules apply pre-2019 and post-2019 on the issue of determination of *inter se* seniority of direct recruits. The claim of petitioners is covered by Rules 33 (b) and 36 of the General Rules. In terms thereof, seniority among the direct recruits of same recruitment has to be determined based on the merit secured in the recruitment examination irrespective of date of joining.

10. The principle to determine seniority of Direct Recruits based on merit secured in the recruitment examination, but not based on roster points meant for complying reservation to various social groups and date of joining, is well settled.

(iv) in respect of the persons appointed on transfer on administrative grounds, as per the date on which the individual was placed on probation in the original department; and
(v) in respect of the persons appointed on transfer on his own request, as per the date of his joining in the new department or unit.

11. W.P.No.11890 of 2008 concerns determination of *inter se* seniority among the direct recruit Physical Education Teachers in the State Government service. The Division Bench where one of us (Justice P.Naveen Rao) is a member rendered judgment on 7.2.2022 upholding the claim to determine seniority based on merit. On review of law on the subject, the Division Bench held as under:

“12. The scope of Rule 33 (b) was considered by the Division Bench of this Court in **S.S.L. Narayana Vs Ch.Madhu Mohan Rao and Others**³. In the said case also, seniority was determined by following the roster points as indicated in Rule 22 of the Rules, instead of determining the seniority based on the merit secured in the selections.

13. On considering the scope of Rule 33 (b) and the law laid down by the Hon'ble Supreme Court in **Bimlesh Tanwar Vs State of Haryana and others**⁴, the Division Bench of this Court held as under :

“13. Rule 33 (b) directs tat if the appointing authority has fixed any order of preference among the various candidates, appointed simultaneously, at the time of issuing orders of appointment, the seniority shall be determined in accordance with that. The proviso takes care of the situation, where the appointment is made by the appointing authority on the basis of any selection undertaken by a different agency. That agency can be a Selection Committee within the department, a committee of the officials of the same department, or an independent agency, like the APPSC.

14. It is fairly well settled that whenever an appointment or for that matter, promotion, is effected on the basis of selection, the ranking assigned by the Selection Committee shall govern the order or priority among the selected candidates. In a given case, the appointing authority may not accept the recommendation of the Selection Committee, in its entirety, or in part. However, the appointing authority is precluded from meddling with the ranking assigned by the selecting agency. For example, if the Selection Committee has prepared a list of 10 candidates, in the order of merit, and has forwarded it to the appointing authority, the latter has every right to refuse to accept the list in its entirety or to disapprove the selection of some of the candidates. If the appointing authority is of the view that it is not desirable, for reasons which are recognized in law; to appoint candidates at Sl.Nos.4 and 7, it can refuse to appoint them, even while appointing the remaining 8 candidates. However, it

³ 2014 (3) ALD430 (DB)

⁴ (2003) 5 SCC 604

cannot place candidate at Sl.No.5 at Sl.No.1, or undertake such exercise vis-à-vis the other candidates. The principle underlying this is that when the very basis for selection is merit, which, in turn, is manifested in the ranking and thereby the seniority must also depend on the relative merit among the selected candidates.”

14. Following the said decision and the decision of the Hon’ble Supreme Court in **Bimlesh Tanwar**, same view was expressed by another Division Bench of this Court in **L.Rani Vs State of Telangana and others**⁵.

15. In **V.Senthur and Others Vs M.Vijayakumar and others**⁶, the Hon’ble Supreme Court reiterated the principle and held that seniority in a cadre has to be determined based on the merit secured in the selections and cannot be drawn up based on a list prepared in accordance with the roster points. The Hon’ble Supreme Court held as under :

“23. This Court, while dismissing the SLPs against the first judgment, has clearly held that after the emergence of the judgment in Bimlesh Tanwar (supra), the fundamental principle governing the determination of seniority was that, it should be based on merit list of selection and that the list made on the basis of roster point, would not be permissible in law. It could thus be seen that while dismissing the SLPs this Court has reiterated the legal position as laid down in the case of Bimlesh Tanwar (supra) to the effect that while determining seniority, what is relevant is the inter se merit in the selection list and not the roster point.

24. It is pertinent to note that though, the then learned Attorney General had raised an issue with regard to a contrary view taken by the Madurai Bench of the same High Court, this Court clearly held that since the issue was now covered by the decision of this Court in Bimlesh Tanwar (supra), the pendency of the SLPs challenging the judgment of Madurai Bench, would be of no consequence inasmuch as the said SLPs would be governed by the judgment of this Court in Bimlesh Tanwar (supra).”

12. The two Division Benches in the judgments rendered in W.P.No.13052 of 2010 and batch dated 24.1.2014 and in W.P.No.4465 of 2019 dated 9.9.2019 echoed same principle.

13. In the Public Works Department of State of Tamilnadu, there was *inter se* seniority dispute among the direct recruits. The seniority was determined based on roster points, ignoring the merit

⁵ 2019 (6) ALD 630 (TS) DB

⁶ MANU/SC/0759/2021

secured in the recruitment examination. Following the decision of the Hon'ble Supreme Court in **Bimlesh Tanwar** (supra) the High Court held that seniority of direct recruits has to be determined based on merit. Hon'ble Supreme Court dismissed the SLPs filed against the decision of the Madras High Court. In further round of litigation concerning determination of seniority, Contempt Petition (Civil) No. 638 of 2017 was filed in the Hon'ble Supreme Court (**V.Senthur and another Vs M.VijayKumar IAS**⁷). The Hon'ble Supreme Court found fault with the Government of Tamilnadu not complying the directions to determine seniority based on merit. In the judgment dated 1.10.2021, the Hon'ble Supreme Court held as under:

“**21.** The basis for allowing the writ petitions by the High Court was the judgment of this Court in the case of *Bimlesh Tanwar* (supra), which held that the seniority has to be determined, not on the basis of roster point but on the basis of the seniority assigned at the time of selection of the selectees. This Court, while dismissing the SLPs vide order dated 22nd January 2016, observed thus:—

“The fundamental principle which has been applied by the Division Bench in the cases on hand relates to the question as to what should be the basis for drawing a seniority list. In that context, the Division Bench has noted that at the time when the Service Commission drew the list in 2000 the same was in tune with the judgment of this Court in *P.S. Ghalaut v. State of Haryana*, reported in (1995) 5 SCC 625. The Court also found that the said list which was approved by the State Government did not achieve the finality and that ultimately when the seniority list came to be issued on 29.2.2004, by which time the judgment of this Court in *Bimlesh Tanwar v. State of Haryana*, reported in (2003) 5 SCC 604 had come into effect which reversed the judgment in *Ghalaut* (supra). The Division Bench, therefore, held that there was no delay in the challenge made to the seniority list. After the emergence of the

⁷ 2021 SCC OnLine SC 846

judgment in *Bimlesh Tanwar* (supra), the fundamental principle relating to drawl of seniority list was that it should be based on merit list of selection and that the list drawn based on roster point can have no application for the purpose of seniority list.

As the said fundamental principle was applied by the High Court in passing the impugned judgment, we do not find any merit in these special leave petitions. The special leave petitions are dismissed.

The learned Attorney General for India, appearing for the Tamil Nadu Public Service Commission, raised an issue that with reference to a contra view taken by another Judgment of Madurai Bench of the Madras High Court, at the instance of one of the employees an SLP is pending in this Court. Since the issue is now covered by the decision of this Court in *Bimlesh Tanwar* (supra), the pendency of the said SLP will be of no consequence as the said SLP should also be covered by the said judgment of this Court, namely, *Bimlesh Tanwar* (supra)."

24. This Court, while dismissing the SLPs against the first judgment, has clearly held that after the emergence of the judgment in *Bimlesh Tanwar* (supra), the fundamental principle governing the determination of seniority was that, it should be based on merit list of selection and that the list made on the basis of roster point, would not be permissible in law. It could thus be seen that while dismissing the SLPs, this Court has reiterated the legal position as laid down in the case of *Bimlesh Tanwar* (supra) to the effect that while determining seniority, what is relevant is the inter se merit in the selection list and not the roster point.

27. In that view of the matter, the respondents were bound to follow the law laid down by this Court and determine the inter se seniority on the basis of selection by TNPSC and not on the basis of roster point."

[emphasis supplied]

14. At this stage, it is appropriate to note the orders passed by Hon'ble Supreme Court concerning this recruitment. On 18.4.2013 when SLP No.14955 of 2013 came up for consideration, on behalf of petitioners therein, request was made to declare their results. While issuing notice, Hon'ble Supreme Court, observed that results would be declared. On 15.7.2013, when SLP (C) No.19220 of 2013 came for consideration, on behalf of respondents, the Hon'ble

Supreme Court was informed that the results of the candidates which were not declared would be declared within a week.

15. Matters came up for further consideration on 30.9.2013. Hon'ble Supreme Court granted leave in SLP (C) No.14955 of 2013. While staying the operation of impugned judgment, the Hon'ble Supreme Court granted liberty to State Government to prepare common list of candidates who have studied either through Telugu medium or English medium depending upon the marks secured and proceed to effect appointments.

16. The Civil Appeal Nos.9103 and 9104 of 2013 were finally disposed of by orders dated 16.03.2018. Hon'ble Supreme Court passed following orders:

"I.A No. 136168 of 2017 is filed with the following prayers:-

a) Direct the respondents Government to fill up the notified Principal posts in compliance with order dated 30.9.2013 in the above appeals which are lying vacant for a long and/or

b) Direct the respondent Government treat the applicants/appellants who are meritorious with those of first phase of appointed candidates in non compliance with this Hon'ble Court order, and without discriminating them that they belong to telugu medium candidates.

c) to dispose of the appeal with the above directions:

2. This Court has permitted the State Government to prepare a common list of the candidates who have studied either through Telugu medium or English medium on the basis of merit and proceed to make the appointments. The said order is made absolute.

3. It is for the applicant(s) /aggrieved persons in case of any surviving grievance, to approach the government, in which case the Government will pass appropriate orders, within four weeks, in view of our order dated 30.9.2013.

(4) xxx

5. In view of the order dated 30.9.2013, which is made absolute, Civil Appeal No. 8104 of 2013 is also disposed of making it clear that as far as appointment to the post of Principal and Post Graduate Teachers are concerned, it will be open to the State Government to make the appointment on the basis of merit, irrespective of the medium of instruction.”

17. From the orders of Hon’ble Supreme Court it is apparent that a common merit list should be drawn and then to make appointments to the posts of Principal and Post Graduate teacher. Though appointments were made, but common merit list was not drawn. In spite of repeated representations, so far common merit list is not drawn. The seniority list impugned herein is drawn by taking the date of appointment into consideration, without regard to merit.

18. The petitioners have shown examples of marks secured by petitioners compared to respondents and higher marks shown to respondents in the seniority list compared to lower rank assigned to petitioners to demonstrate that merit was not observed to determine seniority but date of joining alone was taken into consideration.

19. What is under challenge is a provisional seniority list of Post Graduate teachers. Ordinarily, writ Court does not entertain a writ against a provisional seniority list. The aggrieved person has to raise objections and on due consideration of objections or

otherwise if a final seniority list is published, the employee has to work out his legal remedy. Herein though petitioners raised objections, they were not considered and no decision was made. But this case presents a different scenario as noted hereunder:

20.1. Firstly, on 21.12.2019 a provisional seniority list was notified where seniority was determined based on merit secured in the recruitment examination. This list was drawn by the appointing authority. According to respondent authorities, the seniority list of 2019 was not finalised and they assert that after lapse of panel year, the validity of seniority list also lapses. To say the least, the said assertion is clearly erroneous and shows lack of understanding on difference between determination of seniority and determination of panels for promotion. Seniority list is a permanent document. Whenever there is an addition to the cadre they will be added to the list. From out of the seniority list, eligible employees are picked up for consideration for promotion and on finding them suitable, to include them in the panel for promotion. A panel prepared to effect promotions has a limited life but not to seniority list. On 06.02.2020 another list was drawn and communicated to respective schools. This list was also drawn by appointing authority by taking date of appointment.

20.2. Secondly, a fresh provisional seniority list was drawn on 29.08.2022. The list is silent on two earlier seniority lists. Further, it is issued by the *Ex-officio* Project Director, who is appellate authority. No reasons are assigned why appellate authority stepped in to determine seniority depriving remedy of appeal to aggrieved employees.

20.3. Thirdly, the orders of the Hon'ble Supreme Court are very clear. In terms thereof, respondent authority is required to draw common merit list of Post Graduate teachers in the 2012 recruitment. On 14.08.2014 Government issued Memo No.213/ SE.Prog.II /A2/2014 permitting the Commissioner and Director of School Education who is also *Ex-officio* Project Director, to prepare common merit list of candidates and to proceed to make appointments as per merit list already finalised. So far common merit list is not drawn. Without a common merit list seniority of direct recruits cannot be determined.

21. Therefore, the entire exercise is *ex-facie* illegal. Thus, in the peculiar facts of this case, petitioners need not be made to wait till their objections are considered and final seniority list is published.

22. Further the respondent authorities proceed on the erroneous assumption that petitioners secured less merit and they were appointed in the subsequent vacancies. In the absence of a

common merit list, interspersing Telugu Medium and English Medium candidates, it is not clear how the authorities are assuming the lower merit of petitioners. This assertion glasses over the fact that initial reason not to include petitioners in the merit list was on the ground that they were Telugu medium candidates and not because of lower merit. If only a common merit list was drawn, at the time of initial recruitment these petitioners would have found appropriate place in the merit list.

23. Further, the assertion of the respondent authorities on scope of General Rule 33 shows their poor understanding of the Rules. General Rule 33 mandates determination of *inter se* seniority of direct recruits based on merit secured in the recruitment examination and not based on date of joining. Further, proviso to General Rule 33 (b) requires assigning notional dates of commencement of probation to candidates joined later based on order of merit. Rule 36 (i) is more emphatic on this aspect. Thus, on a combined reading of General Rules 33 (b) and 36 (i), it is very clear that seniority of direct recruits has to be determined based on merit secured in the recruitment examination irrespective of date of joining and wherever necessary to assign notional dates of commencement of probation.

24. Before determining seniority of Post Graduate teachers the elementary requirement is to draw a combined merit list of candidates belonging to Telugu Medium and English Medium streams selected in pursuant to recruitment notification dated 06.02.2012. This exercise is yet to be undertaken, even though long ago Hon'ble Supreme Court directed to determine common merit of all candidates irrespective of their medium of study. There cannot be a seniority list of direct recruits without a merit list.

25. One other aspect need to be noticed is that the selections were made before division of combined State of A.P. Therefore, the authorities ought to have drawn combined merit list of all candidates appointed in both States pursuant to 2012 selections. No such combined list is drawn so far. Alternatively, the employer in Telangana State ought to have drawn the names of candidates appointed in Telangana State by interspersing Telugu Medium and English Medium candidates according to their merit and then proceed to determine *inter se* seniority of Post Graduate Teachers recruited in pursuant to 2012 recruitment.

26. Thus, the provisional seniority list impugned herein is vitiated on several counts, *ex-facie* illegal, contrary to statutory mandate, principles of law and directions of Hon'ble Supreme Court. It amounts to arbitrary exercise of power. It deserves to be

set aside and is accordingly set aside. The respondent-employer is directed to draw combined merit list of direct recruits of 2012 by interspersing Telugu medium and English medium Post Graduate Teachers and then to determine *inter se* seniority of direct recruits based on the merit secured by them, without regard to date of joining and roster points for reservation.

27. The Writ Petitions are accordingly allowed. Pending miscellaneous applications, if any, shall stand dismissed.

P.NAVEEN RAO,J

J.SREENIVAS RAO, J

Date: 17.11.2022
PT/Tvk/kkm

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HON'BLE SRI JUSTICE P.NAVEEN RAO
&
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