

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P. NO. 22618 OF 2013**

Between:

K.Manohar Rao and another

... Petitioners

And

TSRTC and others

... Respondents

JUDGMENT PRONOUNCED ON: 11.04.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes  
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes  
see the fair copy of the Judgment?

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**SUREPALLI NANDA, J**

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> Head Note:

! Counsel for the Petitioners : Mr. A.G.Satyanarayana Rao

^ Standing Counsel for TSRTC: Mr H.Venugopal

? Cases Referred:

1. 2022 LIC 1475 : 2021 (15) Scale 150
2. (1999)7 SCC 209
3. (1991) 2 SCC 295
4. (2014) 3 SCC 670

**HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P. NO. 22618 OF 2013****ORDER:**

**Heard the learned counsel for the petitioners and the learned Standing counsel for TSRTC.**

2. The Writ Petition is filed to issue a Writ of Mandamus to declare the office order No.E3/255(25)/2011-KRZ dated 17.06.2011 of the 3<sup>rd</sup> respondent to the extent of not regularizing the services off the petitioners in the feeder post of Dy. Superintendent (Audit) from the date of their initial promotion under Reg.30 of APSRTC Employees (Retirement) Regulation, 1966 from 2009 as unjust, illegal and contrary to APSRTC Employees (Retirement) Regulation, 1966 and contrary to Circular No.PD-47/2010 dated 09.09.2010 and consequently direct the respondents to treat the date of regular promotion of the petitioners to the post of Dy. Superintendent (Audit) with effect from June 2010 when the petitioners have become eligible for such promotion.

**3. The case of the petitioners, in brief, is as follows:**

a) The Petitioners were initially appointed as Conductors and were later regularized in the post of Conductor. The 1<sup>st</sup>

respondent office issued a directive vide Lr.No.SA1/255(21)/09-PO.III dated 03.03.2009 directing the 3<sup>rd</sup> respondent to regularize the services of the petitioner from 28.01.2004 and to consider for the promotion as Dy. Superintendent (Audit) against the sanctioned vacancies of Dy. Superintendent (Audit).

b) Even though the said directive issued by the 1<sup>st</sup> respondent is binding on 2<sup>nd</sup> and 3<sup>rd</sup> respondent, the petitioners to the post of Dy. Superintendent (Audit) under Reg.30 of APSRTC Employees (Retirement) Regulation, 1966 instead of regular promotion. The petitioners were working as Dy. Superintendent (Audit) from 04.06.2009 and are entitled to be regularized as Dy. Superintendent (Audit) from 04.06.2009.

c) The petitioners are seniors to the Respondents No. 4 and 5 in Finance Department due to delay in regularizing the services of the petitioners in the post of Dy. Superintendent (Audit) and have become juniors in the feeder post of Superintendent (Audit).

d) The petitioners have submitted representation to 3<sup>rd</sup> respondent requesting to promote them to the post of Dy.Superintendent (Audit) as several juniors to the petitioners are promoted subsequent to the post of Dy.Superintendent (Audit).

e) Though representation were given to the 3<sup>rd</sup> respondent, no action had been taken to promote the petitioner on regular basis as to the post of Dy.Superintendent (Audit) and further the petitioners have request to promote the post of Superintendent (Audit).

f) The respondents have purposefully delayed the regularization of the petitioners in the posts Dy.Superintendent and Superintendents (Finance) Wing and in other departments.

g) The 3<sup>rd</sup> had further delayed the regularization of petitioners as Dy. Superintendent even from the date of their promotion under regulation 30 of APSRTC Employees (Retirement) Regulation, 1966. The 3<sup>rd</sup> respondent issued an office order vide office order No.E3/255(25)/2011-KRZ dated

17.06.2011 regularizing the services of the petitioners with effect from 17.06.2011.

h) The 1<sup>st</sup> petitioner has submitted a representation dated 15.03.2012 to 1<sup>st</sup> respondent to consider regularization in the post of Dy.Superintendent from the date of promotion under Regulation 30 of APSRTC Employees (Retirement) Regulation, 1966 i.e., 05.06.2209 but the representation of the 1<sup>st</sup> petitioner had not been considered.

i) The Director (Vigilance & Security) upon the representation of the 2<sup>nd</sup> petitioner had directed the 2<sup>nd</sup> respondent to redress the grievance of the petitioner and to report compliance vide letter No.Dir(V&S)/114(22)/11-KZ dated 18.06.2011 but no action had been taken by 2<sup>nd</sup> and 3<sup>rd</sup> respondent.

j) In view of the delayed regularization of the petitioners to the post of Dy. Superintendents, the petitioner could be promoted to the next higher post of Superintendent (Audit) with effect from 30.06.2012. The 3<sup>rd</sup> respondent without considering the representation of the petitioner to pre-pone the regularization in the post of Dy.Superintendent had issued

office order No.E3/255(31)/2013-KRZ dated 30.06.2012 promoting the petitioners to the post of Superintendent (Audit) thereby making the petitioners junior to the Superintendent (Finance) which directly affects the further promotion of petitioners to the post of Assistant Manager (Finance).

k) The action of the respondents in not proponing the regularization of the petitioners in the post of Dy. Superintendent is arbitrary and hence, the present writ petition.

**4. The counter affidavit filed by respondents, in particular, paras 6, 7, 8 and 9, read as under:**

6. It is to submit that separate seniority lists are maintained each to Finance, Cash and Audit Wings. As per service regulations, if an employee is willing to relinquish the right of his seniority in the post held by him in the seniority unit in which he is working and is willing to join on transfer in another seniority unit at his request, it shall be treated as a first appointment for transferred employee for the purpose of seniority and he will become junior most in the seniority unit to which transferred on request. His seniority shall bereckoned from the date of his joining on transfer in the later seniority unit. The petitioners, on their willingness, transferred from finance to audit unit of seniority.

7. The directive given in the letter No.SA1/255(21)/2009-PO-III, dated 03.03.2009, is to regularize the existing 7 Senior Assistants (Audit) from

the date of their promotion under regulation 30, since they were all selected by the Selection Committee and consider them for promotion as Dy.Superintendent (Audit)/Superintendent (Audit) as a one time measure to overcome the shortage of Audit Supervisors. From among the said 7, the petitioners were promoted as Dy.Superintendent (Audit) under regulation 30 purely on emergency basis without approval of the Selection Committee.

8. The promotion under regulation 30 is temporary in nature and the person promoted shall not be regarded as probationer in the higher category or be entitled by reason only of such promotion to any preferential claim to future promotion to such higher category.

**9. The representation of the petitioners is to prepone the regularization of their services in the existing 6 vacancies. Due to preoccupation of Dy Chief Personnel Manager, Karimnagar Zone, (who is one of the Selection Committee members and responsible for organization of the entire selection process), with the selection of shramiks, mechanics and artisans through direct recruitment, the Selection Committee, as sought for by petitioners, could not be conducted. However, the services of the petitioners were regularized vide office order No. E3/255(4)/2009-KRZ, dated 20.04.2009 from 28.01.2004 and 27.01.2005 respectively and their seniority will be reckoned for promotion from the dates of their regularization and no injustice was done to the petitioners. However, their request to prepone their regularization could not be fulfilled due to administrative reasons."**

5. The reply affidavit filed by the petitioners, in particular, paras 5 and 6, read as under:

5. In reply to Para 7 and 8 of the counter affidavit it is submitted that the petitioners are entitled to regular



promotion to the post of Dy. Superintendent (Audit) with effect from 28.01.2007 and 27.01.2008 respectively as stated in para 6 and 7 of the Writ Affidavit. But the Respondents instead of regularizing the services of the petitioners in the post of Dy. Superintendent (Audit) with effect from the date of their temporary promotion of 04.06.2009 have regularized the services of the petitioner with effect from 17.06.2011 arbitrarily. Thus the petitioners are deprived of their further promotion to the post of Superintendent (Audit) and to the next higher post of Assistant Manager (Finance) on par with the similarly placed employees of the Finance Wing including Respondents 4 and 5.

**6. In reply to Para 9 of the counter affidavit it is submitted that the Respondents have clearly admitted that due to pre occupation of Respondent No: 3 the Selection Committee could not be convened. It is submitted that though the Respondents have convened Selection Committees for the promotion to the posts of Dy. Superintendent (Finance) in the year 2009 itself and in case of petitioners the Selection Committee was convened only on 16.06.2011 and petitioners were regularized with effect from 17.06.2011. Thus injustice is caused to the petitioners as the petitioners were eligible for the regular promotion to the post of Dy. Superintendent (Audit) with effect from 04.06.2009 and the Selection Committee could have considered regularization to the petitioners in the post of Dy. Superintendent (Audit) from 04.06.2009.**

6. The letter No.SA1/255/(21)/2009-PO-III, dated 03.03.2009 issued by the Office of Managing Director, Mushirabad, Hyderabad to the 3<sup>rd</sup> respondent herein, is extracted here under:

*"On examine the proposal made vide case cited, the Competent Authority has accorded permission, for the following:-*

***a) to regularize the existing 7 SA(Audis) from the date of their promotion under Reg 30, since they were all selected by the Selection Committee and consider them for promotion & By Supur (dit) again the vacancies of Dy.Supdt(Audit) and Supdt (Audit) as a one time measure to overcome the shortage of Audit Supervisors.***

*b) To fill the remaining vacancies of Supdt. (Audit) at Supdt (Fin)/Dy.Supdt.(Fin), Action may therefore be taken accordingly, Zonal level by transfer of Supdt.(Fin)/Dy.Supdt.(Fin)"*

**7. The report No.J1/114(22)/2011- V&SO:KR, dated 03.04.2012 issued by the office of the Vigilance & Security Officer, Karimnagar Zone, in particular, last paras, are extracted here under:**

"The contention of the petitioner is that his juniors were promoted as Dy Supdt.(F) before him was not correct since no junior to him in SA(A) got promotion as Dy. Supdt.(A). Further the seniority list of SA(F) and SA(A) are separately maintained and promotions are issued as per the vacancies in the corresponding department.

It is not correct that, he was already promoted as Dy. Supdt.(A) U/Reg.30 in the month of June-2009. But his juniors in the category of SA(F) were promoted as Dy. Supdt.(F) in the month of November-2010. In this case he got financial benefits of Dy. Supdt.(A) from June-2009 itself and the regular selections for Dy. Supdt. (F) were conducted in Nov.-2010. The next selections for Dy. Supdt. (A) and Dy. Supdt.(F) were held on 16-06-2011 and 20-07-2011 and Sri K. Ravinder Rao, Sr.

Asst.(A) who is working as Dy. Supdt (A) U/Reg.30 was selected and his services in the post of Dy. Supdt. (A) were regularized w.e.f.16-06-2011.

**On going through the report of Dy. CPM/KRMR, it is revealed that injustice is done to Sri K. Ravinder Rao, E-303126, Dy. Supdt.(Audit) of Warangal Region, since there were clear vacancies in audit wing from June-2010.** The Dy, CPM/KRZ has conducted number of interviews for promotional posts to all the categories except the post of Dy. Supdt.(A). The selections for the post of Dy. Supdt.(Audit) were held on 16-06-2011. The contention of the petitioner is that if he was regularized to the post of Dy. Supdt. (A) he could have become Supdt. (A).

8. **The letter No.Dir.(V&S)/114(22)/11-KZ, dated 18.06.2012 issued by the Executive Director, APSRTC, KRMR Zone, Karimnagar, is extracted here under:**

"During the Vigilance enquiry, it has come to light that:

3. The Dy.CPM: KEMR Zone has stated that during the year 2005, Karimnagar Zone is having shortage of Supdt (Audt)/Dy Supdt (Audit) and there are no eligible candidates for promotion to the post of Supdt (Audit). Hence, Head Office authorities have permitted to fill-up the vacancies of Supdt (Audit)/Dy. Supdt (Audit) with SA (Audit) U/Reg.30 by promotion from the rank of SA (F) according to seniority and their willingness. Sri K.Ravinder Rao, E.303126,SA (F) had given willingness for promotion to the post of Sr.Asst (Audit)). Accordingly the was selected as SA(A) U/Reg.30 against the vacancies of Supdt/Dy.Supdt (Audit) in the year 2005.

4. **It was proposed to conduct the selections for Dy.Supdt (A) and to regularize their services in the month of December, 2010. Due to Administrative reasons the selections were not**

**conducted. Later the then Dy. CPM:KZ was busy in recruitment of Shramiks, Mechanics and Artizans in KRMR Zone, since he is a committee members to all recruitments.**

5. It is revealed that injustice is done to Sri K.Ravinder Rao, E.303126, Dy. Supdt(Audit) of WL Region, since there were clear vacancies in Audit wing from June, 2010. The Dy. CPM:KRMR has conducted number of interviews for promotional posts to all the categories except the post of Dy.Supdt (A). The selections for the post of Dy.Supdt (Audit) were held on 16.06.01. The contention of the petitioner is that if he was regularized to the post of Dy.Supdt (A) he could have become Supdt.(A).

You are advised to redress the grievance of Sri K.Ravinder Rao, E.303126, Dy. Supdt (Audit) of Warangal Region and report compliance, immediately."

9. The Apex Court in the judgment in **Ajay Kumar Shukla and others v Arvind Rai and others's case reported in 2022 LIC 1475 : 2021 (15) Scale 150**, in particular, paras 37, 38 and 39 observed as under:

37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in the case of Director, Lift Irrigation Corporation Ltd. and Others vs. Pravat Kiran Mohanty and Others<sup>6</sup> in paragraph 4 of the report which is reproduced below:

**“4... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent/writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified.”**

38. A Constitution Bench in case of *Ajit Singh vs. State of Punjab*<sup>7</sup>, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. *Jagannadha Rao, J.* speaking for himself and (1991) 2 SCC 295 (1999) 7 SCC 209 *Anand, C.J.*, *Venkataswami, Pattanaik, Kurdukar, J.J.*, observed the same as follows in paragraphs 21 and 22 and 27:

“21: Articles 14 and 16(1): is right to be considered for promotion a fundamental right 22: [Article 14](#) and [Article 16\(1\)](#) are closely connected. They deal with individual rights of the person. [Article 14](#) demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". [Article 16\(1\)](#) issues a positive command that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".

It has been held repeatedly by this Court that clause (1) of [Article 16](#) is a facet of [Article 14](#) and that it takes its roots from Article

14. The said clause particularises the generality in [Article 14](#) and identifies, in a constitutional sense "equality of opportunity in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no

dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. [Article 16\(1\)](#) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion based on equal opportunity and seniority attached to such promotion are facets of fundamental right under [Article 16\(1\)](#)

27. In our opinion, the above view expressed in Ashok Kumar Gupta and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guarantee to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under [Article 16\(1\)](#) and this has never been doubted in any other case before Ashok Kumar Gupta right from 1950."

**39. This Court in Major General H.M. Singh, VSM vs. UOI and Another 8 , again reiterated the legal position, i.e. right to be considered for promotion as a fundamental right enshrined under Article 14 and Article 16 of the Constitution of India. The relevant extract from paragraph 28 is reproduced below:**

"28. The question that arises for consideration is, whether the non-consideration of the claim of the

appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). **The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under (2014) 3 SCC**

670 [Article 14](#) of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.”

10. The Apex Court in Ajit Singh and others (II) v State of Punjab and others’ case reported in (1999) 7 SCC 209, in particular, paras 21, 22, and 27 observed as under:

21. We shall first deal with the fundamental rights under Articles 14 and 16(1) and then with the nature of the rights of the reserved candidates under Articles 16(4) and 16(4A).

22. Articles 14 and 16(1): Is right to be considered for promotion a fundamental right?

Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that "there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State". It has been held repeatedly by this Court that sub-clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said sub- clause particularizes the generality in Article 14 and identifies, in a constitutional sense "equality opportunity" in matters of employment and appointment to any office under the State. The word 'employment' being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right



to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. "Promotion" based on equal opportunity and 'seniority' attached to such promotion are facets of fundamental right under Article 16(1).

**27. In our opinion, the above view expressed in Ashok Kumar Gupta, and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion(i.e. whether on basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta, right from 1950. Articles 16(4) and 16(4A) do not confer any fundamental right to reservation**

### **DISCUSSION AND CONCLUSION :**

11. A bare perusal of the content of letter No.SA1/255(21)/09-PO.III, dated 03.03.2009 of the Personal Officer-III addressed to the Deputy Chief Personnel Manager, APSRTC, Karimnagar Zone clearly indicates that the competent authority has accorded permission to regularize the existing 7 SA (Audit) from the date of their promotion under Regulation 30 since they were all selected by the

Selection Committee and consider them for promotion as Dy. Superintendent (Audit) against the vacancies of Dy. Superintendent (Audit) and Superintendent (Audit) as a one time measure to overcome the shortage of Audit Supervisors and accordingly, as per the said letter the petitioners are promoted under Regulation 30 of APSRTC Employees (Recruitment) Regulations, 1966 as against the sanctions of Superintendent (Audit) and Deputy Superintendent (Audit) in Karimnagar Zone and accordingly vide proceedings dated 20.04.2009 the petitioners herein had been promoted under Regulation 30 of APSRTC Employees (Recruitment) Regulations, 1966. The 1<sup>st</sup> petitioner probation has been declared w.e.f. 29.01.2005 in the post of Senior Assistant (Audit) as having completed probation period satisfactorily and further vide proceedings dated 04.06.2009 of the Deputy Chief Personnel Manager, Karimnagar Zone, the petitioners herein are promoted as Deputy Superintendent (Audit) under Regulation No.30 of APSRTC Employees (Recruitment) Regulations, 1966 on emergency basis in the scale of Rs.6110-190-8390-210-10070-225-12770-240-15170 and further vide proceedings dated 17.06.2011 on the recommendations of Departmental Selection Committee,

dated 16.06.2011, the petitioners are promoted as Deputy Superintendent (Audit) as per APSRTC Employees (Recruitment) Regulations, 1966.

12. It is borne on record that the individual representations, dated 24.02.2012 and 15.03.2012 had been addressed by the petitioners to the Vice Chairman and Managing Director, APSRTC Bus Bhavan, Hyderabad explaining grievance with regard to the delay in regularization despite availability of clear vacancies for the post of Deputy Superintendent (Audit), and the petitioners had pointed out in their representation that there was clear vacancies in the Karimnagar Zone, but however, the petitioners were not considered in the vacant post despite the petitioners' representations and therefore, the regularization or probation of the petitioners had been delayed without any lawful or justifiable reason or cause. Keeping in view of the large number of vacancies that fell vacant in the post, the petitioners vide their respective representations had sought promotion of Superintendent (A) with retrospective effect.

**13. A bare perusal of the contents of the letter dated 03.04.2012 of the Vigilance and Security Officer,**

Karimnagar Zone addressed to the Director (V&S) APSRTC;, Bus Bhavan, Hyderabad clearly reveals the admission that injustice has been done to the 2<sup>nd</sup> petitioner herein and that there were clear vacancies in audit Wing from June, 2010 and further the Deputy CPN/KRZ has conducted number of interviews for promotional posts to all the categories except the post of Dy Supedt (A) and the selections for the post of Dy Supdt. (Audit) were held on 16.06.2011 and further the said letter clearly indicate the request made to the Director (V&S), Hyderabad to advise the ED.KRMR zone to redress the grievance of the 2<sup>nd</sup> petitioner herein of Warangal Region.

14. A bare perusal of the contents of the letter dated 18.06.2012 of the Director (V&S) also clearly indicates a clear observation that injustice had been done to the 2<sup>nd</sup> petitioner since there were clear vacancies in Audit Wing from June, 2010. A bare perusal of the order impugned dated 17.06.2011 clearly indicate that the petitioners have been promoted from the post of Senior Assistant, Audit to the Deputy Superintendent, Audit in

Karimnagar Zone as per the selection committee dated 16.06.2011 vide proceedings dated 17.06.2011 and a reference is made to the circular dated 09.09.2010, which is promotion under Regulation 30 of APSRTC Employees (Recruitment) Regulations, 1966.

**15. A bare perusal of the contents of the letter No.Dir(V and S)/114(22)/11-KZ, dated 18.06.2011 of the Director (Vigilance and Security) filed as material document clearly indicates that the 2<sup>nd</sup> respondent being directed to redress the grievance of the petitioner and to report compliance.**

**16. The Apex Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in the case of Director, Lift Irrigation Corporation Ltd. and Others v. Pravat Kiran Mohanty and Others, (1991) 2 SCC 295 in paragraph 4 of the report which is reproduced below:**

**4... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in**

accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent/writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified."

17. The Constitution Bench in case of *Ajit Singh v. State of Punjab*, (1999) 7 SCC 209, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, CJI., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paragraphs 21 and 22 and 27 :

21. Articles 14 and 16(1) is right to be considered for promotion a fundamental right.

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the persons. Article 14 demands that the "State shall not deny to person equality before the law or the equal

protection of the laws" Article 16(1) issues a positive command that "there shall be equality of opportunity for all the citizens in matters relating to employment or appointment to any office under the State".

It has been held repeatedly by this Court that Clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense equality of opportunity to matters of employment and appointment to any office under the State. The word 'employment being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employer otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered for promotion. Equal opportunity here means the right to be considered for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered for promotion, which is his personal right.

"Promotion based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1)

27. In our opinion, the above view expressed in Ashok Kumar Gupta and followed in Jagdish Lal and

other cases, if it is intended to lay down that the right guarantee to employees for being "considered for promotion according to relevant rules of recruitment by promotion (i.e, whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta right from 1950.

18. The Apex Court in *Major General H.M. Singh, VSM v. UOI and Another, (2014) 3 SCC 670*, again reiterated the legal position, i.e. right to be considered for promotion as a fundamental right enshrined under Article 14 and Article 16 of the Constitution of India. The relevant extract from paragraph 28 is reproduced below:

"28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of



Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action

of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary".

**19. Taking into consideration the specific averment made in particular at para 9 of the counter affidavit filed by the Respondents that due to pre-occupation of Deputy Chief Personnel Manager, Karimnagar Zone, the selection committee could not be convened, this Court opines that the regularisation of the services of the Petitioners had been delayed and in view of the fact that the Selection Committee had been convened only on 16.06.2011 and the Petitioners were regularized w.e.f. 17.06.2011, the Petitioners were denied regular promotion to the post of Deputy Superintendent (Audit) w.e.f. 04.06.2009. A bare perusal of the contents of the letter No.SA1/255/(21)/2009-PO-III, dt. 03.03.2009 issued by the Office of the Managing Director, Musheerabad, Hyderabad to the 3<sup>rd</sup> Respondent herein clearly indicates that the competent authority had**

accorded permission to undertake the exercise of promotion and to regularize the existing 7SA (Audis) from the date of their promotion under Regulation 30 since they were all selected by the selection committee and to further consider them for promotion as Deputy Superintendent (Audit) and Superintendent (Audit) and accordingly vide Office Order issued vide No.E3/255 (25)/2011-KRZ, dt. 17.06.2011 issued by the Office of Dy. CPM/KRMR Zone, Karimnagar i.e., the 3<sup>rd</sup> Respondent herein, the services of the Petitioners herein were regularized w.e.f. 17.06.2011.

20. Taking into consideration of the contents of the letter dated 03.04.2012 (extracted above) and 18.06.2012 (extracted above) it is every clear that an observation has been brought on record by the Officers concerned holding very clearly that injustice has been done to the 2<sup>nd</sup> Petitioner since there were clear vacancies in Audit Wing from June 2010, but however, the same had been delayed and the only reason as per the counter affidavit para 9 is the preoccupation of Respondent No.3 due to which the selection committee

could not be convened. This Court opines that the Petitioners services had been regularized w.e.f. 17.06.2011 and had been delayed since 2009 and the same though resulted in violation of Petitioners Fundamental Rights of being considered for promotion at the right time thereby the Petitioners had been deprived of their Fundamental Right of Equality before Law and equal protection of the Laws extended by Article 14 of the Constitution of India and the said action of the Respondents is manifestly arbitrary.

21. Taking into consideration of the above said facts and circumstances and the contents of the letter dt. 03.03.2009, 03.04.2012 an 18.06.2012 referred to and extracted above and also the law laid down by the judgments of the Apex Court referred to and discussed above, the Writ Petition is disposed of directing the Respondents to consider the 1<sup>st</sup> Petitioner's representation dt. 15.03.2012 addressed to the 1<sup>st</sup> Respondent and the representations of the 2<sup>nd</sup> Petitioner dt. 09.07.2009, 28.12.2009 and 13.05.2011 in accordance to law as per the letter No. Dir(V and

**S)/114(22)11-KZ, dated 18.06.2012 of the Director (Vigilance and Security) and pass appropriate orders within a period of 3 weeks from the date of receipt of the copy of the order duly considering the law laid down by the Apex Court referred to and discussed above and communicate the said decisions to the Petitioners herein. However, there shall be no order as to costs.**

Miscellaneous petitions if any, pending shall stand closed.

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**MRS JUSTICE SUREPALLI NANDA**

Dated : 11.04.2023

Note : L.R. copy to be marked

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