***THE HON'BLE SRI JUSTICE SUJOY PAUL**
AND
***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+WRIT PETITION Nos.10744, 11643, 13223 and 14300 of 2023 and WRIT PETITION (TR) No.5972 of 2017

% 19-11-2024

V. Praveen Kumar and Others. ...Petitioners

vs.

$ The State of Telangana, rep. by its Chief Secretary, General Administration Department, Hyderabad and Others

... Respondents

!Counsel for the Petitioners : Sri A. Phani Bhushan in W.P.No.10744 of 2023

Ms.B. Rajeshwari, representing Ms.K.V.Rajasree in W.P.No.11643 of 2023

Sri P.Rama Sharana Sharma in W.P.No.14300 of 2023

Sri M. Surender Rao, learned Senior Counsel representing Sri Srinivasa Rao Madiraju in W.P.(TR).No.5972 of 2017

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Ms. Vladimeer Khatoon in W.P.No.14300 of 2023

<Gist :

>Head Note :

? Cases referred

1. 2022 SCC OnLine TS 3384
2. 2006 (4) SCC 1
3. (2009) 4 SCC 342
4. (1974) 4 SCC 335

5. (2007) 11 SCC 528
6. 1989 Supp (1) SCC 430
7. (1992) 1 SCC 335
8. (1987) 1 SCC 424
9. Civil Appeal No.2643 of 2022, dated 31.03.2022
10. AIR 1988 SC 740
11. (2011) 5 SCC 305
12. AIR 1959 SC 93
13. (2002) 1 SCC 633
14. AIR 1992 SC 1981
15. AIR 1998 SC 554
16. AIR 2001 SC 2856
17. AIR 2002 SC 1357
18. AIR 1998 SC 1388
19. (2013) 3 SCC 489
20. 2010 (9) SCC 247
21. (2021) 16 SCC 71
22. (2001) 9 SCC 261
23. (2009) 1 SCC 768
24. (2005) 6 SCC 138
25. (1971) 3 SCC 201
26. (1984) 4 SCC 371

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD
*** * * ***

WRIT PETITION Nos.10744, 11643, 13223 and 14300 of 2023
and WRIT PETITION (TR) No.5972 of 2017

Between:

V. Praveen Kumar and Others

...Petitioners

vs.

The State of Telangana, rep. by its Chief Secretary,
General Administration Department, Hyderabad and Others

... Respondents

JUDGMENT PRONOUNCED ON: 19.11.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to see the fair copy of the Judgment? :

_____
SUJOY PAUL, J

_____
NAMAVARAPU RAJESHWAR RAO, J

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION Nos.10744, 11643, 13223 and 14300 of 2023 and WRIT PETITION (TR) No.5972 of 2017

COMMON ORDER: *(Per Hon'ble Justice Sujoy Paul)*

In this batch of petitions filed under Article 226 of the Constitution (except W.P.(TR) No.5972 of 2017, which is transferred from Andhra Pradesh Administrative Tribunal upon its abolishment), the petitioners have challenged the constitutional validity of Section 10-A of the **Telangana (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pat Structure) Act, 1994** ('Act of 1994'), whereby respondents sought to regularize the alleged illegal appointments made on contract basis.

Factual Background:

2. The facts are taken from W.P.No.10744 of 2023. The petitioners are unemployed youth. The petitioners in paragraph No.3 of the Writ Affidavit in tabular form mentioned their names, qualifications and additional qualifications, which highlighted that the petitioners are postgraduates, one of them has done his Ph.D, two have qualified SET and two have qualified NET.

3. The grievance of the petitioners is that the petitioners being unemployed youth have a legitimate expectation and fundamental right of consideration against the statutory posts in the Government departments.

Contention of the petitioners:-

4. It is highlighted that the posts of Junior Lecturers, Polytechnic Lecturers and Degree Lecturers were governed by service rules, which were introduced through G.O.Ms.No.302, dated 30.12.1993 (Annexure P-6). The Rules framed under proviso to Article 309 of the Constitution are called as the **Andhra Pradesh Intermediate Education Service Rules** ('Education Service Rules'). Rule 3 of the above rules prescribes method of appointment to the post of Junior Lecturers and said posts can be filled up as per the percentage prescribed for direct recruitment and through promotion from the feeder posts. Similarly, for the post of Degree Lecturers G.O.Ms.No.6, dated 06.02.2023 was brought into force. The posts of Assistant/Associate Professor of degree colleges and Degree Lecturers can be filled up by way of direct recruitment or recruitment of transfer from Junior Lecturers in the related subject in the Department of Intermediate

Education. In both the aforesaid rules, the eligibility and qualification is specifically mentioned.

5. The contention of the petitioners is that they are having requisite qualifications for selection and appointment to the posts of Junior Lecturers, Assistant/Associate Professors and Degree Lecturers. In accordance with the aforesaid Education Service Rules, the said posts ought to have been filled up as per the procedure prescribed. An advertisement should have been issued inviting candidature of eligible candidates and in that event, the petitioners and similarly situated unemployed youth could have submitted their candidature to occupy the aforesaid posts.

6. The Government of Andhra Pradesh enacted the **Andhra Pradesh College Service Commission Act, 1985** ('Act of 1985') and as per the said Act, the posts of Junior Lecturers and Degree Lecturers were required to be filled up by College Service Commission under the Act of 1985. However, the said Act was repealed in the year 2001. Thereafter, the respondents have resorted to illegal methods for making the appointments to the posts of Junior Lecturers and Degree Lecturers on contractual basis by College Development Committee, which was constituted through an executive order issued under Article 162 of the

Constitution of India *vide* G.O.Ms.Nos.142 and 143, dated 09.10.2000 and G.O.Ms.No.94, dated 28.03.2003. Since a specific method of recruitment is prescribed by the statutory rules/Education Service Rules framed under proviso to Article 309 of the Constitution, the said contractual appointments were in fact made through back door.

7. Sri A. Phani Bhushan, learned counsel for petitioners in W.P.No.10744 of 2023, Ms. B. Rajeshwari, learned counsel representing Ms. K.V. Rajasree, learned counsel for the petitioners in W.P.No.11643 of 2023, Sri P. Rama Sharana Sharma, learned counsel for the petitioners in W.P.No.14300 of 2023 and Sri M. Surender Rao, learned Senior Counsel representing Sri Srinivasa Rao Madiraju, learned counsel for the petitioners in W.P.(TR).No.5972 of 2017, took a common ground that after 2002 for the posts in question no direct recruitment had taken place. The official respondents appointed some persons on contractual basis without following any transparent procedure. No advertisement was issued inviting applications of eligible candidates. The selection committee, eligibility and qualifications prescribed for said contractual appointment were in utter violation of Education Service Rules.

8. In the Act of 1994, Section 10-A was inserted by G.O.Ms.No.16, dated 26.02.2016. Criticizing this, the learned counsel for the petitioners urged that this order is passed in purported exercise of power under Section 101 of the **Andhra Pradesh Reorganisation Act, 2014** ('Reorganisation Act'). It is submitted that the existing recruitment rules namely Education Service Rules, dated 30.12.1993, were neither amended nor repealed. Withstanding the said Rules, it was no more open for the respondents to insert Section 10-A under the Act of 1994 under the garb of Section 101 of the Reorganisation Act. Furthermore, it is submitted that the Division Bench of this Court in **Healthcare Reforms Doctors Association** v. **State of Telangana**[1] decided on 06.12.2022 had an occasion to examine the ambit and scope of Section 101 of the Reorganisation Act. It was held that no modification or amendment is permissible if it substantially changes the provision of existing Act/Rules. The modification/ amendment can be made only in the 'form' and not in 'substance'.

9. It is strenuously contended that by inserting impugned Section 10-A in the Act of 1994, the Government got itself

[1] 2022 SCC OnLine TS 3384

equipped with the power to regularize the services of persons appointed on contractual basis against the sanctioned posts. The conditions are appended to the G.O., upon fulfillment of which the regularization became permissible. The said conditions are (1) Availability of a post in the relevant category in the respective departments shall be the pre-requisite condition for considering regularization. (2) Regularization may be considered only in respect of persons appointed on full time contract basis on a monthly remuneration. (3) Regularization may be considered only in respect of eligible personnel working as on 2nd June, 2014, immediately before formation of Telangana State, and continuing till the date of proposed regularization. (4) For the purpose of continuity the annual breaks in certain vacation departments like Education and Welfare Departments may be ignored. This condonation shall not, however, apply in respect of breaks on account of unauthorized absence and disciplinary cases. (5) The regularization shall be with prospective effect, i.e., from the date of issue or orders of regularization and appointment to the category and (6) The backlog in reservations if any arising out of regularization as above shall be carried forward and treated as backlog vacancies for that particular category.

10. The bone of contention of the petitioners is that by applying Section 10-A aforesaid, the respondents regularized the services of contractual employees, who did not enter into services as per transparent selection procedure. Such contractual employees were backdoor entrants and were not having requisite eligibility and qualifications as per Education Service Rules. In this regard, reference is made to Constitution Bench judgment of Supreme Court in the case of the **Secretary, State of Karnataka** v. **Umadevi**[2], to bolster the submission that theory of legitimate expectation has no role to play in favour of such contractual employees. Such theory cannot be invoked to grant a positive relief of becoming permanent in the post. It is further highlighted that a public employment can only be made through fair and equitable procedure by considering all those who are qualified.

11. Sri Rama Sharan Sharma, learned counsel for the petitioners in W.P.No.14300 of 2023 added that in the Constitution Bench judgment in the case of **Umadevi** (supra) it was in clear terms held that there should not be any further bypassing of constitutional requirement and regularization of those not duly appointed as per constitutional scheme. The

[2] 2006 (4) SCC 1

judgment in the case of **Umadevi** (supra) was pronounced on 10.04.2006 and in the instant case, the contractual appointments were made after the judgment of **Umadevi** (supra). The impugned Section 10-A was also inserted after the judgment of the Supreme Court in the said case. Thus, the impugned provision is violative of Articles 14, 16 and 21 of the Constitution which also runs contrary to the binding principles laid down by the Constitution Bench in the case of **Umadevi** (supra).

12. It is forcefully argued that Section 101 of Reorganisation Act cannot be the source for making a parallel provision prescribing different eligibility and qualification when statutory rules/Education Service Rules are still in vogue.

13. He placed heavy reliance on Rule 9 of the **Telangana State Subordinate Service Rules, 1996** (Subordinate Service Rules) to bolster the submission that although the Government had power to make appointment to any post in a service other than in accordance with the Rules or Special Rules through agreement or contract, such appointees cannot be treated to be members of service. Thus, a combined reading of Education Service Rules and Subordinate Service Rules with Articles 14 and 16 makes it crystal clear that in exercise of power under Section 101 of the

Reorganisation Act, Section 10-A of the Act of 1994 could not have been introduced. Section 10-A is not only introduced without authority of law because it is not inconsonance with Section 101 of the Reorganisation Act, but also violates Articles 14 and 16 of the Constitution as well as provisions of statutory recruitment rules i.e., Education Service Rules. Thus, it is common prayer that impugned Section 10-A may be set aside.

14. Sri M. Surender Rao, learned Senior Counsel for the petitioners in W.P.(TR) No.5972 of 2017, placed reliance on a judgment of the Supreme Court in the case of **State of Karnataka v. G.V. Chandrashekar**[3]. He submits that the order issued pursuant to Section 101 of the Reorganisation Act will at best can be treated to be an executive order akin to an order passed in exercise of power under Article 162 of the Constitution. Such executive order cannot be enforced when statutory rules like Education Service Rules are in force and holding the field.

15. Anticipating the objection of other side, it is common stand of the learned Senior Counsel for the petitioners that in a case of this nature where constitutionality of enabling statutory provision is subject matter of challenge, there was no need to implead all

[3] (2009) 4 SCC 342

regularised contractual employees as party respondents. Reference is made to the judgments of the Supreme Court in **General Manager, S.C. Railway v. Siddhantti**[4] and **Govt. of A.P. v. G.Jaya Prasad Rao**[5]. Even otherwise, few of such regularised employees have filed implead petitions which have been allowed and they are representing such regularised contractual employees. Since few of them have already become party to these matters and contesting the same the objection even otherwise does not hold water.

16. The petitioner in his written submissions, made an effort to counter the stand taken in the counter affidavit by placing reliance on the judgment of the Supreme Court in the case of **Ramesh Birch v. Union of India**[6]. It is submitted that in view of the said judgment, by exercising power under Section 101 of the Reorganisation Act, substantial changes contrary to existing statutory rules could not have been made. Such power is limited and could have exercised within the aforesaid boundaries only.

[4] (1974) 4 SCC 335
[5] (2007) 11 SCC 528
[6] 1989 Supp (1) SCC 430

Stand of the State of Telangana:

17. The counter-affidavit is filed by respondent No.2 by stating that Section 101 of the Reorganisation Act is an enabling provision pursuant to which existing law within stipulated period can be subjected to adoption/modification/alteration/amendment or can be repealed. Considering the unique demand and challenges faced by nascent State, power under Section 101 of the Reorganisation Act was rightly exercised by introducing Section 10-A of the Act of 1994 vide G.O.Ms.No.16, dated 26.02.2016. Six conditions mentioned below Section 10-A for the purpose of deciding eligibility for regularisation which are already reproduced hereinabove were highlighted.

18. In the counter, it is further submitted that a proposal duly submitted was examined in terms of G.O.Ms.No.16, dated 26.02.2016 and orders were issued for regularisation of services of 5544 contractual persons vide G.O.Ms.No.38, dated 30.04.2023. The proposal of the Government for future recruitment is also highlighted. Since further posts will be filled up in future and said process is an ongoing process, the petitioners' apprehension that impugned provision will foreclose the opportunities of unemployed youth is incorrect. The impugned provision and action is in

accordance with law and does not infringe the petitioners' rights flowing from Articles 14 and 16 of the Constitution.

19. It is further averred in the counter that impugned Section 10-A of the Act of 1994 and guidelines were issued inconsonance with the law laid down by the Supreme Court in **Umadevi** (supra). Emphasis is laid in para No.7 of the counter on the law laid down by the Supreme Court wherein it is held that regularisation as a one-time measure is permissible. In exercise of said power in the peculiar circumstances by taking into account the age of the persons and other factors regularisation was considered. The contention of the petitioners that the official respondents are considering all contractual lecturers on rolls without verification of certificates possessed by them is incorrect. The regularisation had taken place in accordance with the conditions appended to impugned Section 10-A.

20. Lastly, in the counter, it is stated that G.O.Ms.No.38, dated 30.04.2023, permitted the administrative Departments to appoint contractual persons on regular basis against sanctioned posts as per G.O.Ms.No.16, dated 26.02.2016. Accordingly, respondent No.2 vide different GOs had permitted respondent Nos.4 and 6 to regularise the contractual lecturers working in Government

colleges against sanctioned posts in terms of G.O.Ms.No.16, dated 26.02.2016.

21. The State also filed written submissions and reiterated that impugned Section 10-A of the Act of 1994 has a statutory foundation in Section 101 of the Reorganisation Act. As per para 53 of Constitution Bench Judgment of the Supreme Court in **Umadevi** (supra), the one-time exercise of regularising the contractual employees was permissible. Such contractual employees who have worked for long time had legitimate expectation of being regularised. The judgment of Supreme Court in **R.S. Raghunath v. State of Karnataka**[7] is referred to submit that when the words 'notwithstanding anything...' are added to a provision, the provision must be interpreted harmoniously and cannot be held void on the ground that it infringes any constitutional provision. The judgment of the Supreme Court in **RBI v. Peerless General Finance & Investment Co. Ltd.**[8] was referred to point out that non-obstante clauses have been placed to ensure that provisions are not in conflict with each other and such clauses must be interpreted in the manner that both the context and textual interpretation match. The decision to

[7] (1992) 1 SCC 335
[8] (1987) 1 SCC 424

regularise the contractual employees is based on directive principles of State policy enshrined in the Constitution particularly Articles 38, 39(a), 41 and 43 of the Constitution. G.O.Ms.No.16, dated 26.02.2016, contains proper guidelines for regularisation.

22. The statute must be read as a whole and then section by section. This contention is based on the judgment of the Supreme Court in **Kalyan Dombivali Municipal Corporation v. Sanjay Gajanan Gharat**[9]. Since Section 10-A of the Act of 1994 is inserted carefully with calibrated approach consistent with principles of equity, efficiency and administrative necessity, there is no scope of interference by this Court

Stand of Unofficial Respondents:

23. Ms. Vladimeer Khatoon, learned counsel for unofficial respondents/regularised contractual employees in W.P.No.14300 of 2023, at the threshold urged that the present Writ Petitions are barred by principle of *res judicata*. However, she fairly submitted that her argument is based on order of previous round of litigation in W.P.(PIL) No.122 of 2017 filed by certain unemployed youth which was not entertained. She fairly admitted that present

[9] Civil Appeal No.2643 of 2022, dated 31.03.2022

petitioners were not parties to the earlier litigation. She raised objection for not impleading 5544 regularised employees as party respondents and urged that in absence of impleading them as necessary parties, the Writ Petitions are liable to be dismissed.

24. She further submitted that on 21.08.2023, this Court directed the Writ Petitioners to implead all the regularised employees. The unofficial respondents are working since 2009. If they are terminated at this juncture, it will cause serious hardship to them.

25. Respondent Nos.3, 4 and 7 and respondent Nos.7 to 24 also filed written submissions. It is common ground that since W.P. (PIL) No.122 of 2017 was dismissed, the present Writ Petitions are hit by principle of *res judicata* and the petitioners have no *locus* to file the present Writ Petitions.

26. Respondent Nos.7 to 24, in their written submissions, borrowed similar argument and in addition, urged that order passed in the aforesaid W.P. (PIL) No.122 of 2017 was *in rem* and hence, the doctrine of *res judicata* is attracted. The unofficial respondents have been appointed on satisfying the recruitment rules then existing at the time of their recruitment on the

assurance that either regular appointment will be made or their services will be regularised. The judgment of the Supreme Court in the case of **Bhagat Ram Sharma v. Union of India**[10] is highlighted to submit that amendment is a wider term and it includes abrogation or deletion of a provision in an existing statute. If amendment of the existing law is small, the Act professes to amend, if it is extensive, it repeals the law and re-enacts it. Another judgment of the Supreme Court in the case of **State of Uttar Pradesh v. Hirendra Pal Singh**[11] is referred to show the distinction between repeal and amendment.

Rejoinder:-

27. Sri A. Phani Bhushan, learned counsel for the petitioners in W.P.No.10744 of 2023, submitted that no doubt earlier certain unemployed youth filed Writ Petitions before this Court but the matter travelled up to the Supreme Court. The order dated 19.09.2022 of the Supreme Court in SLP (C) Diary No.15637 of 2022 shows that liberty was given to file fresh Writ Petitions. Thus, present Writ Petitions are filed which does not attract principle of *res judicata*.

[10] AIR 1988 SC 740
[11] (2011) 5 SCC 305

FINDINGS:

Barred by *res judicata*?

28. The respondents took a common ground that the present petitions are hit by principles of *res judicata.* This argument is advanced in view of the order passed in W.P.(PIL) No.122 of 2017. Admittedly, the said order passed by this Court became subject matter of challenge in S.L.P.(Civil) Diary No.15637 of 2022, wherein, the Supreme Court opined as under:

> "Both the orders show that the matters were not considered on merits and the matters were disposed of on technical issues such as whether the public interest litigation would be maintainable and whether the petitioners could have raised the second challenge."
>
> (Emphasis Supplied)

29. A plain reading of the finding of the Supreme Court shows that the adjudication and order passed in W.P.(PIL) No.122 of 2017 was not on merits. It was not in dispute between the parties that all the petitioners herein were not parties to the said PIL and hence, principles of *res judicata*, cannot be pressed into service. Apart from this, the Supreme Court in the said order dated 10.09.2022 (Annexure P-16) gave liberty to the petitioners to file fresh proceedings or implead themselves in pending proceedings. For these cumulative reasons, the aforesaid objection deserves to

be rejected. For the same reason, objection about '*locus*' of petitioners must fail.

Necessary parties:-

30. The argument forcefully advanced by the respondents is that the petitioners have not impleaded all the regularized contractual employees and in absence of their impleadment, the petitions must be dismissed.

31. We do not see any merit in this contention for twin reasons. *Firstly,* the petitioners have challenged the constitutionality of the enabling provision namely Section 10-A of Act of 1994. When enabling provision itself is subject matter of challenge, it is not necessary to implead persons who are going to be affected. In, **A.V.R. Siddhantti** (supra) (check) it was held as under:

> "15. As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop Departments. **The respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court.**…"
>
> (Emphasis Supplied)

32. The aforesaid principle was also followed by Supreme Court in **G.Jaya Prasad** (supra), which reads and under:

> "29. It is true that when the validity of the rules is challenged **it is not necessary to implead all persons who are likely to be affected as party**. It is not possible to identify who are likely to be affected and secondly, the question of validity of the rule is a matter which is decided on merit and ultimately, if the rule is held to be valid or invalid, the consequence automatically flows. Therefore, the original application filed before the Andhra Pradesh Administrative Tribunal or for that matter before the High Court does not suffer from the vice of non-joinder of necessary party."
>
> (Emphasis Supplied)

33. Since *vires* of enabling provision is under challenge, it was not necessary to implead all the persons going to be affected. However, in the instant case, sizeable numbers of regularized contract employees have joined the petition upon allowing their applications for impleadment as respondents and vehemently contested the matter. For this reason alone, no such defect remains in the petitions. Hence, the petitions cannot be thrown to wind on such technical ground.

Constitutionality of Impugned Section 10-A:

34. Admittedly, the said provision came into being in exercise of power under Section 101 of the Reorganisation Act. This provision came up for consideration in three matters before different Division Benches of this Court. In W.P.No.4401 of 2019,

decided on 11.07.2019, the petitioner therein prayed for transfer on spousal ground and took assistance of G.O.Rt.No.450, dated 17.04.2014. Speaking for the Division Bench, Hon'ble Sri Justice Sanjay Kumar (as his Lordship then was) of the opinion that Section 2(f) of the Reorganisation Act defines 'law' which includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of existing State of Andhra Pradesh. Thus, the executive order i.e., G.O.Rt.No.450, dated 17.04.2014, was held to be 'law' in terms of definition mentioned in Section 2(f). While considering the scheme of Sections 101 and 102 of the Reorganisation Act, this Court came to hold that under Section 102, the Court is empowered to enforce a law and construe the same in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before such Court, Tribunal or Authority.

35. G.O.Rt.No.450, dated 17.04.2014, was considered on the anvil of Section 2(f) read with Section 101 of the Reorganisation Act and it was held as follows:

> "…Admittedly, the State of Telangana did not choose to issue any further executive instructions canceling or modifying the

> decision embodied in G.O.Rt.No.450 dated 17.04.2014. Therefore, any authority before whom the said executive decision came up for enforcement, necessarily had to construe it in terms of Section 102 of the Act of 2014, without affecting the substance thereof. In consequence, it was not open to the Government of Telangana to baldly ignore the substance of the executive decision embodied in G.O.Rt.No.450 dated 17.04.2014 and dismiss the plea of the petitioner to implement the decision in the aforestated G.O. by claiming that it was not feasible for consideration at this stage. By its very inaction in the context of the statutory scheme of Section 101 of the Act of 2014, the Government of Telangana committed itself to be bound by the executive decision of the Government of the combined State as set out in G.O.Rt.No.450 dated 17.04.2014…"
>
> (Emphasis Supplied)

36. Pausing here for a moment, this judgment shows that if any previous 'law' is not cancelled, repealed or modified, the State is bound by the previous law.

37. The impugned provision i.e., Section 10-A of the Act of 1994 read as under:

> "**Regularisation of Services of persons appointed on contract basis.**
>
> 10-A. Notwithstanding anything contained **in this Act**, the Government may regularise the services of the persons appointed on **contract basis** against the sanctioned posts in the Government, subject to fulfilment of the following conditions:
>
> (Emphasis Supplied)

38. A careful reading of this provision shows that it begins with a non-obstante clause and such overriding provision is only in relation to other provisions of the same Act i.e., Act of 1994. The

non-obstante clause cannot have overriding effect on any other enactment including the Education Service Rules. More-so when service rules are statutory in nature and introduced in exercise of power flowing from *proviso* to Article 309 of the Constitution.

39. The parties are at loggerheads on the interpretation of Section 101 of the Reorganisation Act. For better understanding, the said provision is split up as under:

> "**101. Power to adapt laws.**
>
> **For the purpose of facilitating the application** in relation to the State of Andhra Pradesh or the State of Telangana **of any law made before the appointed day**,
>
> the appropriate Government may, before the expiration of two years from that day,
>
> by order, **make such adaptations and modifications of the law, whether by way of repeal or amendment,**
>
> as may be necessary or expedient,
>
> and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority."

40. A microscopic reading of Section 101 of the Reorganisation Act shows that it deals with 'Power to adapt laws'. The question of adaptation arises only in relation to pre-existing laws. This is also clear that Section 10-A of the Act of 1994 deals with any law (existing law) made before the appointed day. In this case, the parties have not raised

ground regarding limitation within which power could have been exercised. Thus, it is unnecessary for us to deal with the said aspect of Section 101 which deals with limitation within which power under Section 101 can be exercised.

41. The next portion of the said section provides that by 'order' adaptations or modifications of law can be made, which can be done by way of amendment or repeal. The discretion for this purpose is left on the wisdom of the State of Andhra Pradesh or Telangana, as the case may be. When such order is passed in exercise of power under Section 101 of the Reorganisation Act and any existing law is amended, modified or repealed, such law shall have effect subject to adaptations and modifications so made. This modified law will continue to govern the field unless it is altered, repealed or amended by competent Legislature/Authority.

42. The matter may be viewed from another angle. Section 102 of the Reorganisation Act reads as under:

> "**102. Power to construe laws.**
>
> "Notwithstanding that no provision or insufficient provision has been made under section 102 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Andhra Pradesh or the State of Telangana, **construe**

> **the law** in such manner, **without affecting the substance**, as may be necessary or proper in regard to the matter before the court, tribunal or authority."
>
> (Emphasis Supplied)

43. There is a statutory obligation on the Authority, Court or Tribunal for construing the law in a manner which does not affect the substance. Section 101, as discussed above, deals with adaptation of laws. As the word 'adapt' suggests, *adaptation* can be of a law which is already in existence. In 'The Law Lexicon' (Fifth Edition) by P.Ramanatha Aiyar, the meaning of 'Adaptation Order' is assigned thus:

> "An order issued for the purposes of adaptation, particularly an order *modifying the existing laws* so as to bring them in conformity with the new constitutional provisions."

44. Thus, the only plausible interpretation of Section 101 by taking assistance of Section 102 will be that adaptation is permissible in the manner prescribed in Section 101. In view of our elaborate analysis, impugned Section 10-A of the Act of 1994 cannot be said to be a valid exercise of insertion in the Act of 1994. Such insertion of Section 10-A, by no stretch of imagination amounts to adaptation by way of 'amendment', 'repeal' or 'modification' of existing 'law'. Thus, Section 10-A is not inserted as permissible under the enabling provision i.e., Section 101 of the Reorganisation Act.

Non-obstante clause in Section 10-A:

45. A bare reading of impugned Section 10-A of the Act of 1994 makes it clear like noon day that no 'existing law' is referred in the said provision. Thus, there is no intent behind it which seeks to alter, modify, amend or repeal the Education Service Rules or any other existing provision of 'law'. This is trite that if a law prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden (see **Baru Ram v. Prasanni**[12] and **Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala**[13]). It is equally well settled that if language of statute is plain and unambiguous, it has to be given effect to irrespective of its consequences (see **Nelson Motis v. Union of India**[14]).

46. The judgment cited by respondents in the cases of **R.S. Raghunath**, **Kalyan Dombivalli Municipal Corporation**, **Bhagat Ram Sharma** and **Hirendra Pal Singh** (supra) are not applicable in the facts and circumstances of this case. The combined reading of Section 101 of the Reorganisation Act and Section 10-A of the Act of 1994 does not lead to an interpretation that despite not impliedly or expressly repealing, modifying or amending the

[12] AIR 1959 SC 93
[13] (2002) 1 SCC 633
[14] AIR 1992 SC 1981

Education Service Rules, the same will become inoperative/superseded or vanish in thin air.

47. The expression 'notwithstanding anything in any other law' occurring in a section of an Act cannot be construed to take away the effect of any provision of the Act in which that section appears (see **P.Virudhachalam v. Management of Lotus Mills**[15]). In other words 'any other law' will refer to any law other than the Act in which that section occurs {see **P.Virudhachalam** (supra)}. In contrast the expression 'notwithstanding anything contained in this Act' may be construed to take away the effect of any provision of the Act in which the section occurs *but it cannot take away the effect of any other law* (see **Satyanarayan Sharma v. State of Rajasthan**[16]). Above highlighted portion is in conformity with our view mentioned in para 38 above. The expression 'notwithstanding anything to the contrary in any enactment' cannot take away the effect of any provision in a law which is not an enactment (see **Sharada Devi v. State of Bihar**[17]). Even if the notwithstanding clause is very widely worded, its scope may be restricted by construction having regard to the intention of the Legislature gathered from the enacting clause or other related

[15] AIR 1998 SC 554
[16] AIR 2001 SC 2856
[17] AIR 2002 SC 1357

provisions in the Act. This may be particularly so when the notwithstanding clause 'does not refer to any particular provision which it intends to override but refers to the provisions of the statute generally (see **A.G. Varadarajulu v. State of Tamil Nadu**[18]).

48. The State has rightly placed reliance on the judgment in **Peerless General Finance & Investment Co. Ltd.** (supra), wherein it was poignantly held that while interpreting a statutory provision, the text and context both should be considered. It is further held that the the judicial key to construction is the composite perception of the *deha* and the *dehi* of the provision. The said *ratio decidendi* was followed by the Supreme Court in **Ajay Maken v. Adesh Kumar Gupta**[19].

49. In view of language employed in Section 10-A of the Act of 1994 and Section 101 of the Reorganisation Act mentioned above, we are unable to persuade ourselves with the line of argument that Section 10-A will override repeal, amend or modify the pre-existing law. At the cost of repetition, it is clear that it is nowhere mentioned in Section 10-A that it seeks to repeal, amend or

[18] AIR 1998 SC 1388
[19] (2013) 3 SCC 489

modify any existing law and the only intent is to override the other provisions of the Act of 1994.

50. Another Division Bench of this Court in W.P.No.1111 of 2019, dated 11.07.2019, opined that in exercise of power under Section 101 of the Reorganisation Act, the modification or amendment can only be in the 'form' and not in 'substance'. In that case, what was sought to be amended by way of para 4 (3)(i) was held to be substantial amendment to Section 3(2)(b) of Parent Act affecting the substance of the Legislation. The Division Bench opined that by way of adaptation order, the aforesaid exercise is impermissible. For a Legislative Act, a legislation is necessary by way of amendment by the Legislature. The same could not have been carried out by way of an executive order or in the form of an adaptation order. The attempt was being made to nullify the statutory rules and change the entire substance which was held to be impermissible.

51. The parties, during the course of hearing, informed that a Special Leave Petition is pending consideration against the Division Bench order passed in W.P.No.1114 of 2019. Thus, we are not inclined to give any finding on this piece of argument.

52. A recent judgment on interpretation of Section 101 of the Reorganisation Act was delivered by another Division Bench of this Court in W.P.No.22362 of 2016 and batch decided on 29.08.2024. In the said case, in exercise of power under Section 101 of the Reorganisation Act, A.P. Land Grabbing (Prohibition) Act, 1982 was repealed. Since repeal is empowered under Section 101 and enabling provision i.e., Section 101 was not questioned before this Court, interference was declined. In the instant case, as noticed above, there is no amendment, modification or repeal of existing law at all.

53. In view of forgoing discussion, it is clear like noon day that the Education Service Rules being statutory in nature were not repealed, modified or amended. Since statutory rules of pre-existence period were in force, Section 10-A of Act of 1994 cannot prevail over the statutory rules. Any other interpretation will lead to a situation, where two parallel provisions namely Education Service Rules and Section 10-A will co-exist. Both the aforesaid provisions are pregnant with different eligibility conditions, qualifications and methodology for selecting the persons in Government service.

54. The power under Section 101 of the Reorganisation Act deals with power to adapt laws. In exercise of the said power, the Government can make adaptations to modify, amend or repeal any existing law. There exists no power to introduce an independent provision like Section 10-A of Act of 1994, which runs contrary to an existing provision i.e., Education Service Rules without amending, modifying or repealing it. Thus, insertion of Section 10-A is contrary to the intent and scope of Section 101 of the Reorganisation Act. Since Section 10-A runs contrary to Section 101 of the Reorganisation Act and statutory Education Service Rules, it cannot sustain judicial scrutiny. Thus, we have no hesitation in holding that Section 10-A is *ultra vires* in nature and accordingly liable to be set aside.

55. Pertinently, in W.P.No.4401 of 2019, this Court poignantly held that executive instruction i.e., G.O.Rt.No.405, dated 17.04.2014 (existing law), is binding. Present case is on a better footing because existing law i.e., 'Education Service Rules' are of statutory nature and on a higher footing than any executive order like G.O.Rt.No.450 (supra).

Rules of 1996 and other provisions:-

56. Rule 9(a) of Rules of 1996 permits the State to appoint the persons in administrative exigencies on contract basis. However, Clause (b) of the said Rule makes it clear that such person appointed on contractual basis cannot become member of the service. The said clause reads as under:

> "**Rule 9: Appointment by agreement or contract:**
>
> (a)…
>
> (b) A person appointed under sub-rule (a) shall not be regarded as member of the service, in which the post to which he is appointed, is included and shall not be entitled by reason only of such appointment, to any preferential right to any other appointment in that or in any other service."
>
> (Emphasis Supplied)

57. Sri M.Surender Rao, learned Senior Counsel for the petitioners appearing in W.P.(TR) No.5972 of 2017, placed reliance on Section 7 of the Act of 1994 to press the point that the daily wages/temporary employees shall not have any right of regularization. This argument is not of much help in view of non-obstante clause mentioned in impugned Section 10-A. Putting it differently, Section 10-A although, does not have any implied or express impact of modifying, nullifying, amending or repealing any other existing law, it certainly has overriding effect on other

provision of same Act. Section 7 on which reliance is placed is part of the same Act. Thus, this argument will not cut any ice.

Validity of Regularization:

58. The parties have taken a diametrically opposite stand on the aspect of entitlement of regularization of contractual employees. Both the parties, for this purpose, have relied on Constitution Bench judgment in the case of **Umadevi** (supra). A careful reading of the said judgment shows that it does not deal with contractual employees at all. The said judgment is about the regularization of daily rated employees.

59. Undisputedly, in the judgment of **Umadevi** (supra) it was held that the Government and their instrumentalities must take steps to regularize the services of those irregular employees (not illegally appointed), who had served more than 10 years without the benefit of protection of interim order of the Court as *one time measure*. The meaning of *one time measure* was explained by subsequent Bench in **State of Karnataka** v. **M.L.Kesari**[20]. In no uncertain terms, it was made clear that '*one time measure*' exercise is to be done for daily wages, *ad hoc* and casual

[20] 2010 (9) SCC 247

employees, who had put in 10 years of continuous service as on *'10.04.2006'* without availability of any interim order or protection of Courts or Tribunal. Thus, this '*one time measure*' exercise was available to daily wages, *ad hoc* and casual employees only and not to contractual employees. For those employees also the *one time measure* exercise was permissible only if they have completed more than 10 years of service on the cutoff date i.e., *'10.04.2006'.*

60. Apart from this, the Supreme Court after considering the judgment of **Umadevi** (supra), in the case of **University of Delhi v. Delhi University Contract Employees Union**[21], held that in view of paragraph No.53 of the decision in the case of **Umadevi** (supra), the contractual employees cannot have any claim of regularization.

61. Thus, we find substance in the argument of the learned counsel for the petitioners that action of official respondents in regularizing the contractual employees is bad in law. More-so, when their contractual appointments were against public policy. No public advertisement was issued inviting candidatures of eligible candidates. Instead, contractual employees were given contractual employment in an opaque manner and thereafter, by

[21] (2021) 16 SCC 71

prescribing eligibility conditions mentioned under impugned Section 10-A, which were different and contrary to conditions of Education Service Rules, they were regularized. Hence, we are unable to hold that such exercise of power of regularizing is inconsonance with law.

Consequence:-

62. Undisputedly, the contract employees were appointed in the year 2009 and were regularized subsequently. Thus, they are in employment for more than 15 years. The *quagmire* before us is whether such contractual employees should be directed to be terminated/discontinued and whether the State must be directed to advertise the said posts against which the present petitioners may submit their candidatures.

63. In our considered opinion, for three reasons, such directions need not be issued. *Firstly,* in none of the petitions, the petitioners have prayed for any specific directions to discontinue/terminate the existing regular employees and then issue advertisement covering those vacancies for the purpose of filling them up from eligible candidates. *Secondly,* in

M.A.Hameed v. State of A.P.[22], the Supreme Court opined that when appointment is temporary/irregular in any manner, reversion should be carried out within a reasonable period. In that case, the reversion after 10 years was repelled. In **Tridip Kumar Dingal** v. **State of West Bengal**[23], after considering several judgments of the Supreme Court, it was held that it would be inequitable if the appointments of the candidates working for more than 10 years are set aside. Hence, their appointments were saved. For the same reason, we are not inclined to disturb the appointments after several years. However, we are totally disapproving the method adopted by the State in appointing unofficial respondents on contractual basis against the public policy and regularizing them in the teeth of Section 10-A which is held to be unconstitutional. *Thirdly,* in view of the second reason, even if the relief would have been claimed to strike down the illegal regularizing orders, we would not have set aside those orders for the simple reason that it will cause serious hardship to such contractual employees. This is trite that in exercise of power under Article 226 of the Constitution, the Court should always keep the larger public interest in the mind in order to decide

[22] (2001) 9 SCC 261
[23] (2009) 1 SCC 768

whether intervention is called for or not (see **M/S Master Marine Services Pvt. Ltd v. Metcalfe & Hodgkinson Pvt. Ltd.**[24]). Article 226 grants extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the Court, exercising this flexible power, to pass such order as public interest dictates and equity projects. In, **Champalal Binani v. CIT**[25], it was held that the Court *may not strike down the illegal order although it would be lawful to do so.* In a given case, the High Court may refuse to extend the benefit of a discretionary relief to the applicant. Similar view is taken by Supreme Court in **M.P.Mittal** v. **State of Haryana**[26].

Conclusion:-

64. In view of forgoing analysis, Section 10-A of the Telangana (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pat Structure) Act, 1994 is declared as *ultra vires* and consequently set aside. Contractual employees, who were already regularized, need not be terminated. Henceforth, the State Government shall fill up the posts in accordance with law and not by regularizing the contractual employees.

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[24] (2005) 6 SCC 138
[25] (1971) 3 SCC 201
[26] (1984) 4 SCC 371

65. In the result, the Writ Petitions are **partly allowed** to the extent indicated above. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

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JUSTICE SUJOY PAUL

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JUSTICE NAMAVARAPU RAJESHWAR RAO

Date: 19.11.2024.
Note: L.R. copy be marked.
TJMR/GVR