REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PEITTION (C) NOS. 1565-66 OF 2021]

THE STATE OF TELANGANA & ANR. .....PETITIONERS

VERSUS

B. SUBBA RAYUDU AND OTHERS ....RESPONDENTS

J U D G M E N T

INDIRA BANERJEE J.

These Special Leave Petitions are against a final judgment and order dated 8th December 2020 whereby the High Court for the State of Telangana and for the State of Andhra Pradesh at Hyderabad, allowed the Writ Petitions filed by the Respondent No.1 being Writ Petition (TR.) No. 5482 of 2017 and Writ Petition No. 24820 of 2017, set aside an order being F. No. 29/01/2016-SR(S) dated 14th January 2016 of the Ministry of Personnel, PG and Pensions and directed the Ministry of Personnel, PG and Pensions to allocate the Respondent to the State of Telangana with effect from 14th January 2016. The State of Telangana was directed to give a

posting to the Respondent in the cadre of Joint Director-Class A in the Animal Husbandry Department of the State of Telangana and also pay salary to the Respondent as Joint Director-Class A in the Animal Husbandry Department within four weeks from the date of the judgment and order.

2. The Respondent No.1, a member of a Scheduled Tribe, held the State Cadre post of Joint Director-Class A in the Animal Husbandry Department of the undivided State of Andhra Pradesh. Smt. B. Shanthabai, wife of the Respondent No.1, was also a State Government employee working as Assistant Registrar in the same State.

3. By a Notification No.S.O.655B dated 4th March 2014, the Central Government notified the Andhra Pradesh Reorganisation Act, 2014 bifurcating the State of Andhra Pradesh into two States- the new State of Telangana and the residue state of Andhra Pradesh with effect from 2nd June 2014.

4. In terms of Section 80 of the Andhra Pradesh Reorganisation Act, 2014, the Central Government issued a Circular being F. No. 27/13/213/SRS dated 29th October 2014 laying down guidelines for allocation of employees to the States of Telangana and Andhra Pradesh, respectively.

5. As per the said Guidelines and in particular Paragraph No. 12 Clause (vii) thereof, no allocable posts were to be omitted while distributing the cadre strength between the States of Telangana and Andhra Pradesh.

6. By a Circular being G.O. Ms.312 dated 30th October 2014, the Government of Andhra Pradesh circulated the approved Guidelines for final allocation of State Government Employees to All India Services under the Andhra Pradesh Reorganisation Act, 2014. Some of the relevant provisions of the Guidelines are set out hereinbelow for convenience:

> *"**18**. The following principles and procedure shall guide the final allocation of personnel:*
>
> *a) Persons who immediately before the appointed day are serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh shall be considered for allocation, Employees holding posts on purely ad hoc basis immediately before the 'appointed day' shall be considered against substantive posts (or regular) held by them on the 'appointed day' if any.*
>
> *b) Allocation of employees would be based on final distribution of posts including vacant posts proposed by the Advisory Committee in consultation with the successor States and after approval of the Central Government.*
>
> *c) Allocable employees shall be considered for allotment between the successor States on the basis of seniority list as available on June 01, 2014.*
>
> *d) ….There shall not be any case of an employee not being allocated to either of the successor States.*
>
> *e) State service employees who hold allocable posts shall be allocated after seeking option from the employees indicating their preference to serve in either of the successor States after taking their option into consideration.*
>
> ***f) The allocation shall be done in order of seniority as available on June 01, 2014. Those who have opted, who are 'local candidate's' relatable to the State to which they have opted, shall, in order of their seniority, be considered for allocation first. If allocable posts in that category remain, then others who have opted to the state may be allocated in order of seniority. If still posts remain allocation will be made in reverse order of seniority.***
>
> *…*
>
> *h) Employees who are not local in relating to both States will be allocated on the basis of place of birth or home district, as the case may be, after due verification and certification. Those originally*

from other States will be allocated on a case by case basis after considering their option.

i) Employees who are members of the Scheduled Castes or Scheduled Tribes shall be considered for allocation on the basis of their option if they are local candidates. IN the event an SC or ST employee has not exercised his option or where he has not been so allocated he/she shall be allocated to the State where his caste or tribe, as the case may be, is included in the concerned schedule of the State.

…

k) Spouse of an All India Service (AIS) officer who belongs to a State Cadre or is an employee of a State Government institution shall be allocated, where so desired by the spouse, to the State to which the AIS officer is allocated.

l) Spouses in State Cadre in Government or in the State Government institutions, local bodies and those who are deemed allocated as per the Act, shall as far as practicable, be allotted to the same State, after considering options made by them and their local candidature. Spouses who are local candidates of a State Shall be allocated to that State. Spouses who belong to different States may be allocated after considering their options.

…

n) Local candidature shall be as defined under the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 as certified by the competent authority, with strict reference to the school records. While the committee may take into consideration entry made in the service register as prima facie proof of local candidature, it shall be open to either government or the committee to subject the genuineness of the employee's local candidature status to strict verification. False claim of local candidature or production of false certificate with the intent to mislead shall be punishable as a criminal offence and also be subject to major disciplinary proceedings.

…

s) Employees belonging to allocable categories of one department working in another department or organisation on deputation/tenure basis will be allotted by the parent department of the officer.

x) The actual allocation of personnel to States shall be guided by the public interest and the administrative needs of the posts in the States.

***19**. The Committee shall follow the procedure hereinafter mentioned for allocation of employees:*

i. All employees would be asked to exercise their options in the prescribed proforma annexed to these Guidelines, and forward their duly filled option form to the Member Secretary, Advisory Committee, G A State Reorganisation Department. A P Secretariat electronically and through the proper channel indicating their preference for either of the States within two weeks from the date of public notification calling for options.

ii. Letter calling for options shall be given wide publicity through print and electronic media. A copy of the letter shall also be placed in the public domain for wide publicity.

iii. The employees, who are eligible for allocation to either of the successor States as specified above, will submit their option form addressed to the Member Secretary, Advisory Committee through the respective Administrative Departments of the Government in which they are working, to the Andhra Pradesh State General Administration State Reorganisation Department.

iv. Scrutiny of statements made in the option forms shall be done and factual accuracy of the statement made therein certified by the head of the department under whom the employee is working. The forms so certified shall be delivered to the GA (SR) Department of the A P Government.

v. If no option is received within the prescribed time, or where an employee is willing to be allotted to either of the two states such person shall be allotted based on the other criteria.

vi. Option once exercised cannot be changed under any circumstance.

vii. After the distribution of posts is finalised, the Advisory Committee will draw up, with the help of the departments concerned and the G A State Reorganisation Department of A P Government, a Tentative Allocation List for all employees whether they have exercised option or not. The Member Secretary of the Advisory Committee will circulate the Tentative Allocation List to the respective successor State Government for information of their employees and for submission of representations, if any, by such employees, within a period of two weeks from the date of such communication. The GA State Reorganisation Department of AP is required to issue the Tentative Allocation List on behalf of the Advisory Committee. The list shall be widely published and circulated inviting representations of employees against their tentative allocation.

***20**. Representations against tentative allocation may be received and disposed off in the following manner:*

i. An employees who feels aggrieved by his tentative allocation, as prepared by the Advisory Committee would be at liberty to submit his representations to the Chief Secretary to the successor State in which he is serving, with a copy to the State Reorganisation Department constituted in the State of Andhra Pradesh.

ii. Representation of an employee should be self-contained, clearly indicating the specific points of grievance and should be addressed to the Advisory Committee. The concerned administrative department will offer its views on the representation and forward it to the G A State Reorganisation Department of the Government of AP.

iii. The successor State of Andhra Pradesh shall furnish its official comments in the light of the remarks of the administrative department on the representations received keeping in view of law, rules, and orders, and would forward the same for further consideration of the Advisory Committee.

iv. The Advisory Committee will consider the representation of the employees after taking the views of Administrative Department concerned at a meeting attended by the representatives of the two States and the Central Government. The recommendations will thereafter be forwarded to the Central Government with the recommendations of the Advisory committee for taking a final view in the matter.

v. Based on the recommendations of the Advisory Committee, the Central Government shall issue final allocation orders under Section 77 of the Act allocating the employees to either of the State.

vi. The Central Government shall have the power to review any of its orders issued under the Act.

vii. The Member Secretary of the Committee would be responsible for guiding the Advisory Committee in this regard."

7. The sanctioned strength of posts in the cadre of Joint Director-Class A in the Animal Husbandry Department were 23, out of which, 13 posts were allotted to Andhra Pradesh and 10 posts were allotted to Telangana. At the time of bifurcation, two out of the 23 posts were vacant.

8. On 7th March 2015, the Respondent opted for allocation to the State of Telangana. At the material point of time, the Respondent was working as Project Director, ATMA, Ranga Reddy District, Hyderabad on deputation. However, by a Notification No. 21105-B/SRI/AI/2014-4 dated 12th June 2015, the Respondent was allotted to the State of Andhra Pradesh tentatively. The Respondent submitted his objection against his tentative allocation to the State of Andhra Pradesh on 26th June 2015, pursuant to the proceedings being GAD(SR), Department, Notification No. 21105/B/SRI/2014-4.

9. On 26th June 2015, the Respondent made a representation that he be considered a local candidate of the State of Telangana. The representation was not considered. By an order No. 5(2)/2016 dated 14th January 2016 in the proceedings being F. No. 29/01/2016, the Ministry of Personnel, PG and Pensions of the Department of Personnel and Training, Government of India, allotted the Respondent to the State of Andhra Pradesh.

10. The Respondent filed an application being O.A No.209/2016 before the Central Administrative Tribunal at Andhra Pradesh, challenging the aforesaid allocation order dated 14th January 2016 issued by the Government of India. On 29th January 2016, the Administrative Tribunal issued notice in the application and passed an interim order to the effect that the final allocation of the Respondent to the State of Andhra Pradesh would be subject to the final result of the Original Application.

11. By an order 4th February 2016, the Animal Husbandry, Dairy Development and Fisheries Department of the Government of Telangana

relieved the Respondent. By an order dated 5th February 2016, the Government of Telangana, Department of Animal Husbandry, directed the Respondent No.1 to report to the Head of the Department, Andhra Pradesh for further posting.

12. The Respondent filed a Writ Petition being Writ Petition No. 4391 of 2016 in the High Court challenging the interim order dated 29th January 2016 passed by the Administrative Tribunal. By an order dated 16th February 2016, the High Court allowed the Writ Petition No. 4391 of 2016 and remanded the matter back to the Tribunal for fresh consideration and directed the Tribunal to pass a speaking order, after hearing both the parties, within two weeks. It was also directed that the Respondent No.1 should not be relieved from his present place of posting till disposal of the Interlocutory Application.

13. By an Order being Memo No. 8356/Agri(1)/2016 dated 16th January 2017, the Government of Telangana Agriculture and Cooperation Department, repatriated the Respondent No.1 with instructions to report to his parent Department with immediate effect.

14. On 7th March 2017, the Respondent informed the Commissioner and Director of Agriculture Department and handed over complete charge of the post of Project Director, ATMA, Ranga Reddy District to Shri Y. Sudhakar Reddy.

15. On the same date i.e. 7th March 2017, the Respondent was relieved from the post of Project Director, ATMA, Ranga Reddy District and a certificate of transfer of charge was issued to him.

16. In 2017, the Administrative Tribunal for the State of Telangana was abolished and the case being O.A. No. 209/2016 filed by the Respondent was transferred to the High Court for the State of Telangana and for the State of Andhra Pradesh at Hyderabad and was renumbered as Writ Petition (TR) No. 5482 of 2017.

17. By the impugned judgment and order dated 18th February 2017, the High Court allowed both the Writ Petitions, setting aside the proceedings being F. No. 29/01/2016-SR(S) dated 14th January 2016 (Final Allocation Order) of the Ministry of Personnel, PG and Pensions, insofar as it concerned the Respondent No.1.

18. The Ministry was directed to allocate the Respondent No.1 to the State of Telangana with effect from 14th January 2016 and the State of Telangana was directed to forthwith give posting to the Respondent in the cadre of Joint Director, Class-A in the Animal Husbandry Department of the State of Telangana and also to release his salary within four weeks.

19. Mr. Aman Lekhi, learned Additional Solicitor General, appearing on behalf of the petitioner, submitted that allocation had been made by the Respondent No.5, i.e., the Government of India in the manner laid down by law, i.e., as per Sections 77(2) and 80 of the Andhra Pradesh

Reorganization Act, 2014, hereinafter referred to as the "Act of 2014", read with the Final Allocation Guidelines issued on 29/30th December 2014.

20. Mr. Lekhi submitted that Section 77(2) of the 2014 Act provides that as soon as may be, after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Section 77(1) shall be finally allotted for service, after consideration of option received from the employees, and the date with effect from which such allotment shall take effect or be deemed to have taken effect. The second and third proviso to the said Section provides that "*as far as local, district, zonal and multi-zonal cadres are concerned, the employees shall continue to serve, on or after the appointed day, in that cadre: provided also that the employees of local, district, zonal and multi zonal cadres which fall entirely in one of the successor States, shall be deemed to be allotted to that successor State*".

21. Mr. Lekhi further submitted that Section 80 of the 2014 Act provides for the constitution of Advisory Committee (AC) and for the issue of allocation guidelines by the Central Government. The Government of Andhra Pradesh vide GOMs No. 312 dated 29/30th December, 2014 notified the final allocation guidelines prepared under Section 80 of the 2014 Act. The allocation of personnel was to be made in the manner provided under Guideline 14-17 and the allocation was to be made in terms of the principles guiding allocation laid down in Guideline 18 of the final allocation guidelines.

22. It is not in dispute that by virtue of Guideline 18(c) of the Allocation Guidelines, the allocation from amongst allocable employees was to be made between the States of Andhra Pradesh and Telangana in order of seniority as available on 1st June, 2014.

23. Mr. Lekhi, however, submitted that the allocation was not to be made solely on the basis of seniority. Local candidates of the State for which they opt are to be considered in order of their seniority first. If the allocable posts in that category still remain, then others who have opted might be allocated in order of seniority.

24. Mr. Lekhi, argued that allocation was to be made first amongst those local candidates of the State, who had opted for the State in order of their seniority and thereafter, if allocable posts still remained, those posts were to be filled up in the order of seniority from amongst non-local candidates who had opted for the State.

25. Mr. Lekhi argued that the respondent No.1 had submitted his option on the ground that he was a State Cadre employee and his wife a State Government employee in the State of Telangana. Mr. Lekhi submitted that a tentative allocation list of the State Cadre employees between the States of Andhra Pradesh and Telangana was prepared and notified on 12th June, 2015 whereunder the Respondent No.1 was tentatively allocated to the State of Andhra Pradesh.

26. The employees were given 14 days for filing representations/objections against the tentative allocation and the Respondent No.1 had made a

representation to be considered as local candidate of the State of Telangana.

27. The representation was considered by the Allocation Committee in consultation with the heads of the department at meeting held on 16th November 2015, but the request of the Respondent No.1 for allocation to Telangana was not accepted for the following reasons :-

> *"(i) He is a 'local candidate' of Andhra Pradesh.*
>
> *(ii) His request for allocation to Telangana on spouse ground could not be accepted as his spouse was appointed to a Zonal Cadre, i.e., Zone-II of erstwhile Andhra Pradesh which entirely fell under the Successor State of Andhra Pradesh and she was deemed allocated to Andhra Pradesh as per provisions of Section 77(2) of the 2014 Act.*
>
> *(iii) There was no vacancy in the State of Telangana to accommodate him."*

28. Mr. Lekhi further submitted that the High Court erred in describing the Respondent No.1 as a local candidate in the judgment and order impugned ignoring the deemed appointment of his wife under Section 77(2) of 2014 Act and disregarding the absence of vacancies.

29. Mr. Lekhi argued that the cadre strength in the category of Joint director-Class A in Animal Husbandry Department was 23, of which 14 posts were allocated to Andhra Pradesh and 9 posts were allocated to Telangana. However the number of allocable employees in the category of Joint Director – Class A was 27 and out of 27 employees, 12 employees, who were local to the State of Telangana and had also opted for the State of

Telangana, were finally allocated to the State of Telangana against the 9 posts as per provisions contained in Guideline 18(f).

30. Mr. Lekhi argued that the Respondent No.1 who was 'local candidate' of the State of Andhra Pradesh was finally allocated to the State of Andhra Pradesh on 14th January, 2016 by the Ministry of Personnel, PG and Pensions, Department of Personnel and Training vide proceeding F No. 29/01/2016-SR(S).

31 Ms. Mohana appearing on behalf of the Respondent No.1 submitted that the impugned judgment and order of the High Court is well reasoned and does not call for interference under Article 136 of the Constitution of India.

32. Ms. Mohana argued that Article 136 of the Constitution of India does not create a regular forum of Appeal. It is only a residual provision which enables this Court to interfere with the judgment and order of any Court or Tribunal in India, in its discretion, as observed by this Court in ***Suriyakala v. A. Mohandoss and Ors.***[1].

33. Citing ***M/s Bengal Chemical and Pharmaceutical Works Ltd. v. Their Employees***[2], Ms. Mohana argued that since power under Article 136 of the Constitution of India was discretionary, this Court was not bound to set aside an order under Article 136, even if it was not in conformity with law.

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1 (2007) 9 SCC 196
2 AIR 1959 SC 633 (at 635)

34. Ms. Mohana also cited ***Kunhayammed & Ors. v. State of Kerala and Another***[3], ***State of Bombay v. Rusy Mistry***[4], ***Municipal Board, Pratabgarh and Another v. Mahendra Singh Chawla and Others***[5] and ***Chandra Singh v. State of Rajasthan***[6]***.***

35. Ms. Mohana argued that the Respondent No.1 was a local candidate of the State of Telangana. In any case, his spouse was a native of Telangana and posted in Telangana. As such, the Respondent No.1 was also eligible under paragraph 18(1) of the said Guidelines dated 30th October 2014 for allocation to the State of Telangana.

36. Ms. Mohana referred to the definition of 'Local Candidate'. In the definition of local candidate in paragraph 7 of the Andhra Pradesh Public Employment Order, 1975 which reads:

> "***1****. A candidate for direct recruitment to any post shall be regarded as a local candidate in relation to a local area.*
>
> *(a) in cases where a minimum educational qualification has been prescribed for recruitment to the post.*
>
> *(i) if he has studied in an educational institution or educational institutions in such local area for a period of not less then four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination; or*
>
> *(ii) where during the whole or any part of the four consecutive academic years ending with the academic year in which he appeared or as the case may be, first appeared for the relevant qualifying examination he has not studied in any educational institution, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the qualifying examination in which he appeared or as the case may be, first appeared.*

3 (2000) 6 SCC 359
4 AIR 1960 SC 391 (at 395)
5 (1982) 3 SCC 331
6 AIR 2003 SC 2889

(b) In cases where no minimum educational qualification has been prescribed for recruitment to the post, if he has resided in that local area for a period of not less than resided in that local area for a period of not less than four years immediately proceeding the date on which the post in notified for recruitment."

37. Ms. Mohana pointed out that the Respondent No.1 had studied at Khammam in the State of Telangana from Class VIII to X. Thereafter he did his Bachelor of Veterinary Science and Animal Husbandry and Master of Veterinary Science at the college of Veterinary Science, AP, Agricultural University, Rajendernagar, Hyderabad (Telangana) from 1985 to 1992. Ms. Mohana argued that having studied in the State of Telangana for 7 consecutive years ending with the academic year in which he appeared for qualifying examination, the Respondent No.1 was a local candidate within the meaning of Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as "Andhra Pradesh Public Employment Order, 1975").

38. Ms. Mohana emphasised that the Respondent No.1 had initially been appointed as Assistant Director in Chevella Ranga Reddy District, Hyderabad in 1993 through an examination conducted in the unified State of Andhra Pradesh vide Recruitment Notification issued in 1992 by the Andhra Pradesh Public Service Commission.

39. The Petitioner had studied at educational institutions in the State for a period of not less than 7 consecutive academic years ending with the academic year in which he first appeared for the relevant qualifying examination and was selected and appointed by direct recruitment. The

Respondent No.1 is therefore, to be regarded as a local candidate to the zone in which the city of Hyderabad falls.

40. Referring to Clause 18(f) of the Andhra Pradesh State Guidelines issued on 30th October 2014, the final allocation of the State Cadre Employees to the two states of Telangana and Andhra Pradesh shall be done on the basis of seniority as available on 1st June 2014.

41. Ms. Mohana also referred to paragraph 18(i) of the State Allocation Guidelines under which employees who are members of the Scheduled Castes or the Scheduled Tribes are to be considered for allocation on the basis of their option if they are local candidates. If an SC or ST candidate has not exercised his option or where he has not been so allocated, he/she shall be allocated to the State where his caste or tribe, as the case may be, is included in the concerned schedule of the State.

42. Ms. Mohana emphasized on Clause 18(f) of the Guidelines dated 30th October 2014, which clearly states that allocable employees shall be considered for allotment between the Successor States on the basis of seniority list as on 1st June 2014. As per the seniority list, the position of the Respondent No.1 was at Sr. NO.4. All the three employees senior to the Respondent No.1 were allocated State of Andhra Pradesh as per their preference. The Respondent No.1 was thus the senior most in his cadre to opt for the State of Telangana. Ms. Mohana argued that the Union of India gave no weight to seniority of the Respondent No.1 and filled up vacancies by persons who are native of Telangana, which is patently contrary to clause 18 (f) of the Guidelines. Ms. Mohana argued that the High Court

had correctly held that denial of posting to the Respondent No.1 from 8th March 2017 onwards and denying him salary from that date onwards was illegal. The Respondent No.1 was entitled to be paid salary from 8th March 2017 till date of posting by State of Telangana with interest at the rate of 7% per annum.

43. Ms. Mohana argued that the wife of the Respondent No.1 admittedly being a local candidate of Telangana allocated to Telangana, the Respondent No.1 needs to be allocated to Telangana. Ms. Mohana argued that in any case the Respondent No.1 ought not have been relieved from service in the State of Telangana while order of stay was operating in his favour.

44. Ms. Mohana argued that after the Respondent No.1 was released from ATMA, Rangareddy District on 7th March 2017, he reported to Animal Husbandry Department Telangana and requested that he be given up the posting but to no avail.

45. The contentions of the Petitioners and the Respondent No.1 have carefully and meticulously been dealt with by the High Court in its impugned judgment and order. The High Court noted:-

> *"**7.** Aggrieved thereby, petitioner gave a representation dt.26.06.2015 stating that though he was born in Kadapa District of Andhra Pradesh, he had studied Classes VIII, IX and X at Khammam in the State of Telangana and subsequent education including Post Graduation was also in the Telangana State and so he is to be considered as a local candidate of State of Telangana; he was initially appointed as Assistant Director in Chevella, Ranga Reddy District in Telangana State through an examination conducted by the A.P. Public Service Commission in 1993 and he had only worked in Telangana State; his wife was working in the Office of the Commissioner*

of Co-operation and Registrar of Co-operative Societies, Telangana State, Hyderabad as Assistant Registrar; that she was initially appointed as Junior Assistant in Krishna District of the present residuary State of Andhra Pradesh against 'non-local' category as per the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 issued by the President of India under Clauses (1) and (2) of Article 371-D of the Constitution of India notified vide G.O.Ms.No.674, General Administration (SPF- A) Department dt.29.10.1975 (also called 'Presidential Order of 1975'); during bifurcation process of the employees between the two States, she was allotted to Telangana State by way of an 'Order to Serve' proceeding dt.31.05.2014 of the Director, Ministry of Public Grievances and Pensions, Government of India; she was re-allocated to the residuary State of Andhra Pradesh subsequently; that she gave objection to the same stating that she was born, brought up and educated in Telangana State and she had rendered service for 16 years in the area covered by the said State and her reallocation to Andhra Pradesh was absurd, illegal; that the same was pending for consideration; that unless his wife's request is considered or finalized his allotment ought not to be considered.

He also stated that he had two children born and brought up in Hyderabad, aged 15 years and 12 years respectively, who were in Classes 10 and 8 respectively, and if he is allotted to the State of A.P., their studies would be adversely affected.

He also stated that as per the Seniority List in the Cadre of Joint Director, his position was at Serial No.4 and there are existing vacancies in the Telangana State since three Joint Directors from Telangana State were allotted to Andhra Pradesh.

At the time of these events, petitioner was working as Project Director, ATMA, Ranga Reddy District, Hyderabad in the Agriculture Department of the State of Telangana on deputation."

46. The High Court found that notwithstanding the factors noted above and notwithstanding the fact that the Respondent No.1 was actually working as Project Director, ATMA, Ranga Reddy District, Hyderabad in the Agriculture Department of the State of Telangana, at the time when the State of Andhra Pradesh was bifurcated, the Respondent No.1 was allocated to the State of Andhra Pradesh.

47. The High Court found that the Respondent No.1 had continued to work as Project Director, ATMA, Ranga Reddy District in the Agriculture Department on deputation, pursuant to the order dated 16th February 2016 of the High Court referred to hereinabove. The Respondent No.1 was apparently repatriated from the post of Project Director, ATMA, Ranga Reddy District on 7th March, 2017, after which he made several representations to the Special Chief Secretary, Animal Husbandry Department, Government of Telangana that he be given posting. No posting orders were, however, issued for over four and a half years and no salary was paid to the Respondent No.1

48. On or about 19th October, 2016, Smt. B. Shantabai, wife of the Respondent No.1, who had earlier been working in Telangana but later allocated to Andhra Pradesh in 2017, made a representation for transfer to Telangana on mutual basis with one B. Geethavani, who was not interested in continuing in Telengana in view of her husband's condition of health. In the said representation, she stated that she was willing to forego her seniority and willing to take the last rank below the last regular Assistant Registrar working in Zone-VI in the State of Telangana. It appears that the State of Andhra Pradesh issued GOMs No. 51 Agriculture and Co-operation (COOP.I) Department dated 12th June, 2017 according permission to transfer Smt. B. Shantabai, wife of the Respondent No.1 to the State of Telangana.

49. On and from 14th June 2017, Smt. B. Shantabai was posted as Assistant Registrar in the office of the Commissioner for Cooperation and

Registrar of Cooperative Societies. The Respondent No.1 was however, allocated to the State of Andhra Pradesh, ignoring his option for the State of Telangana and in violation of the Guidelines issued vide G.O.Ms No. 312 dated 30th October 2014 and, in particular, Clause (1) of Para 18 set out hereinbelow for convenience :-

> *"Spouses in State cadre in Government or in State Government institutions, local bodies and those who are deemed allocated as per the Act, shall as far as practicable, be allotted to the same State, after considering options made by them and their local candidature. Spouses who are local candidates of a State shall be allocated to that State. Spouses who belong to different States may be allocated after considering their options. "*

50. The allocation was also in contravention of the requirement of Clause (f) of Paragraph 18 directing that allocation shall be done in order of seniority as available. On behalf of the Respondent No.1, it was rightly contended that the spouse of the Respondent No.1 who had been born and educated in the State of Telangana had to be treated as a local candidate of the State of Telangana. As a spouse, the Respondent No.1 ought to have been allocated to the State of Telangana.

51. The High Court considered the Counter Affidavit filed by the State of Telangana at length and found :

> *"**28**. The State of Telangana and its Director of Animal Husbandry who were impleaded as respondent nos.4 and 5 in O.A.No.209 of 2016 / W.P. (TR) No.5482 of 2017 filed counter-affidavit / V.M.A.No.205 of 2016 in O.A.No.209 of 2016 (re-numbered as WVMP(TR).No.703 of 2017) to vacate the order dt.29.01.2016 granted by it and dismiss the O.A. / W.P.*
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> ***29**. In the said counter-affidavit, it is stated that petitioner's wife had been appointed in Krishna District and promoted as Assistant Registrar in Zone-II (Zonal Cadre Post), that her seniority was also declared in the said Zone which falls in the State of Andhra Pradesh and as per Section 77(2) of the A.P.*

Reorganization Act, 2014 she has to work in the said State only.

***30**. Therefore, it is stated that petitioner cannot claim that his wife is working in the State of Telangana and claim allotment to the Telangana State on 'spouse' grounds.*

***31**. It is stated that petitioner belongs to the State of Andhra Pradesh as per his local candidature and so he has been allocated to the home State of Andhra Pradesh based on availability of posts in the said State.*

***32**. It is however stated that petitioner's representation regarding his provisional allocation to the State of Andhra Pradesh and the local status of his wife were referred to the Commissioner of Co-operatives and Registrar of Co-operative Societies, Hyderabad and the latter vide Lr.Roc.No.778/MINC/2014 dt.22.04.2015 informed that as on that date petitioner's wife is working as Assistant Registrar in the Office of Commissioner & Registrar of Cooperative Societies, Andhra Pradesh at Hyderabad.*

***33**. It is admitted that petitioner while working as Joint Director (Animal Husbandry) at District Project Office, Rajiv Vidya Mission had submitted option form to the Animal Husbandry Department exercising his option for the State of Telangana as per preferential claim in terms of para 18(i) of the option form and also enclosed details of his spouse, but his request cannot be accepted, and the decision was taken in accordance with the guidelines for final allocation.*

***34**. In W.P.No.24820 of 2017, the State of Telangana and the Director of Animal Husbandry Department filed a counter stating that as per para no. 18(i) of G.O.Ms.No.312 dt.30.10.2014,* 'employees who are members of the Scheduled Castes or the Scheduled Tribes shall be considered for allocation on the basis of their option if they are local candidates'*; that petitioner is a local candidate of Cuddapah District of Andhra Pradesh State; and so, petitioner cannot contend that his allocation to the State of A.P. is incorrect.*

***35**. It is admitted that petitioner's wife had joined in the State of Telangana in 2017, but it is contended that petitioner falsely pleaded that his wife was working in Telangana State at the time of filing of O.A.No.209 of 2016 and the said plea is not correct.*

***36**. It is stated that though petitioner obtained order on 16.02.2016 in W.P.No.4391 of 2016 that he should not be relieved from his present place of work in the post of Project Director, ATMA, Ranga Reddy District in the Agriculture Department of the Telangana State, he was relieved because at the time of re-organization of Districts in the State of Telangana, the ATMA Scheme was merged with Farmer Training Centers, etc. pursuant to a policy decision."*

52. The State of Andhra Pradesh did not file any counter affidavit in the High Court. A counter affidavit has been filed on behalf of the Union of India admitting that 14 posts of Joint Directors were allotted to the State of Andhra Pradesh and 09 posts were allotted to the State of Telangana. The number of allocable employees in the cadre of Joint Director were 27 more than the sanctioned cadre strength. The excess allocable employees were allocated between successor States on population ratio as per Guidelines. The Respondent No.1 though local to the State of Andhra Pradesh had opted for Telangana but he was allotted to the State of Andhra Pradesh as per Paragraph 18(f) of the Guidelines, since there was no vacancy within the filled posts in Telangana.

53. The Union of India contended that the request of the Respondent No.1 for allocation to Telangana on the ground of his spouse being a local of Telangana could also not be accepted as his spouse belonged to the zonal cadre of Andhra Pradesh.

54. The High Court held :-

> *"**46**. Para 18 of the said G.O. mentioned the guidelines/principles which would be followed for the purpose of allocation of employees.*
>
> ***47**. Clause (e) of Para 18 stated that 'State Service employees who hold allocable posts shall he allocated after seeking option from the employees indicating their preference to serve in either of the successor States after taking their option into consideration.'*
>
> ***48**. Admittedly, petitioner gave his option for allocating him to the State of Telangana on 07.03.2015.*
>
> ***49**. Admittedly, of the total 23 posts in the Animal Husbandry Department of the composite State of Andhra Pradesh, 9 posts were allocated to the State of Telangana and 14 posts were allocated to the residuary State of Andhra Pradesh.*

***50**. Clause 18(c) of the guidelines states that allocable employees shall be considered for allotment between the successor State on the basis of seniority list as available on 01-06-2014.*

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***53**. The petitioner's position in the seniority list of Joint Directors (clause-A) in the composite State of Andhra Pradesh as on 02.06.2014 was Sl.No.4.*

***54**. The three people who were senior to him by name Tanikonda Damodar Naidu, Koneti Venkata Ramana, M.Srinivasa Rao, who were local candidates of Andhra Pradesh, opted for the State of Andhra Pradesh and were allocated temporarily to the State of Andhra Pradesh as can be seen from Notification dt. 12.06.2015 issued by the General Administration (SR) Department of the Government of Andhra Pradesh and also as per annexure-I to the final allocation order No.5(2)/2016 dt. 14.1.2016.*

***55**. Therefore, the petitioner is the senior most among persons in the Cadre of Joint Director Class-A to opt for the State of Telangana.*

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***57**. Thereafter the latter part of sub-Clause (f) of Clause 18 which says 'if allocable posts in that category remain, then, others who have opted to the State may be allocated in order of seniority' will come to the aid of the petitioner; and because he is the senior most available person in the cadre of joint Director- Class A, his claim for allocation permanently to the State of Telangana, would have primacy over the claims of all his juniors in the said cadre.*

***58**. Instead of following the above procedure prescribed by Clause (f) of Para 18, a strange interpretation was given in para-6 of its counter is adopted by the Union of India saying 'due to non-availability of vacancy within the filled posts in Telangana', petitioner, though he had opted for the State of Telangana, had to be allocated to the State of Andhra Pradesh.*

***59**. This suggests that the Union of India gave no weight at all to the seniority of the petitioner or to the fact that he was the senior most person in the cadre of Joint Director Class-A to opt for the State of Telangana, proceeded to fill up the vacancies allocated to the State of Telangana by persons who are 'natives of Telangana', and then took a stand that there are no vacancies in Telangana State, where the petitioner can be accommodated. This procedure is patently contrary to Para 18(f) of the Guidelines.*

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***62**. In the counter-affidavit filed by the State of Andhra Pradesh, in O.A.No.209 of 2016/V.M.A.No,398 of 2016/W.V.M.P.(TR) No.701 of 2017 in W.P. (TR) No.5482 of*

2017 it is stated in para-6(f) that the Commissioner, Registrar of Cooperative Societies, Hyderabad had stated in Lr.No.778/Misc/2014 dt.22.04.2015 that petitioner's spouse was working as Assistant Registrar in his Office at Hyderabad. Admittedly, the petitioner's spouse was initially appointed in 'non-local' category in Zone-II falling in the residuary State of Andhra Pradesh, because she was a 'local candidate' to the State of Telangana. She ultimately was posted on mutual transfer to the State of Telangana in June, 2017.

***63**. Therefore, the Union of India cannot harp on the petitioner's wife's belonging to the Zonal cadre of the State of Andhra Pradesh to deny petitioner's claiming for posting in the State of Telangana on spouse grounds. The State of Telangana cannot also contend that the petitioner incorrectly stated that his spouse was working in the State of Telangana and that she does not 'belong to the State of Telangana'.*

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***65**. Therefore, the petitioner was entitled to be allocated to the State of Telangana even on spouse ground and the Union of India without taking note of the above facts erred in rejecting petitioner's request for allocation to the State of Telangana even on spouse ground.*

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***68**. Also since the petitioner had studied Classes VIII to X in Khammam District in the State of Telangana and he states that upto post-graduation, he studies in the State of Telangana, under Para 7 of the Presidential order, 1975, he is a local candidate' of the State of Telangana only, but ignoring this fact and simply taking note of his place of birth as Cuddapah in Andhra Pradesh State, he was wrongly treated as a 'local candidate' for the State of Andhra Pradesh. So even under Clause (i) of para 18, petitioner is eligible to be allotted to the State of Telangana.*

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***75**. It is the contention of petitioner that the order No.5 (2) of 2016 dt.14.01.2016 permanently allocating the petitioner to the State of Andhra Pradesh itself states in para no.2 thereof that it would not come into effect in respect of any person who has obtained 'stay order' from a Court of Law against his allocation to any of the successor States till the time such stay order is vacated; and since the order passed by the Division Bench on 16.02.2016 in Writ Petition No.4391 of 2016 directing the petitioner not to be disturbed from his current posting is in the nature of such 'stay order', the petitioner cannot be asked to report to the State of Andhra Pradesh.*

***76**. We find force in the petitioner's contention and agree with it.*

> ***77***. *So the petitioner cannot be denied salary by the State of Telangana from 8.3.2017 till date on the basis of the said relieving order or the permanent allocation order F.No.29/01/2016 - SR(S) dt. 14.01.2016 (Order No.5(2)/2016) Ministry of Personnel, PG & Pensions, Department of Personnel and Training, Government of India."*

55. There is no infirmity in the well reasoned order of the High Court which calls for interference of this Court in exercise of power under Article 136 of the Constitution of India. As argued by Ms. Mohana, jurisdiction under Article 136 of the Constitution of India is discretionary. The discretionary jurisdiction under Article 136 of the Constitution of Indian should not ordinarily be exercised to interfere with an otherwise just and reasonable order by recourse to hyper technicality upon a narrow, rigid and pedantic interpretation of the guidelines.

56. Admittedly, at the time of bifurcation of the State of Andhra Pradesh, the Petitioner was posted in an area which falls with Telangana. The Petitioner was required to exercise an option, which he admittedly did. It is not in dispute that 9 posts out of total 23 posts were allocated to the State of Telangana and 14 to the State of Andhra Pradesh. As per guidelines, allocable employees were to be considered on the basis of seniority as on 1st June 2014.

57. As found by the High Court, the Petitioner's position was 4th in seniority in the composite State of Andhra Pradesh as on 1st June 2014. The 3 people, senior to him, were all local candidate of Andhra Pradesh, who had opted for Andhra Pradesh. The Respondent No.1 was senior most of the employees who opted for Telangana. The High Court found that the Respondent No.1 had denied allocation to Telangana on a "strange

interpretation of Clause (f) of paragraph 18 of the Guidelines, giving no weight to seniority. The High Court found on facts that no importance at all had been given to the fact that the spouse of the Respondent No.1 was a local of Telangana.

58. On a possible interpretation of the Guidelines read with the Andhra Pradesh Public Employment Order 1975 and, in particular, paragraph 4 thereof, the High Court found that the Respondent No.1 was local candidate of the State of Telangana. Admittedly, he studied from Class VIII to X at Khammam which is in the State of Telangana. He thereafter did his Bachelor of Veterinary Science and Animal Husbandry and Master of Veterinary Science at the college of Veterinary Science, AP, Agricultural University at Hyderabad. He studied in that institution for 7 years from 1985 to 1992 being the year in which he appeared in the qualifying examination.

59. Under the Constitution, India is a Union of States. Every part of every State is an integral and inseverable part of India. Admittedly, the Respondent was born in India. He has his domicile in the territory of India. As held by this Court in ***Dr. Pradeep Jain v. Union of India***[7], under the Indian Constitution, there is only one domicile i.e. domicile of the country and there is no separate domicile for a State.

60. The power to admit and include States into the Union under Article 2 of the Constitution, and to form new States and/or reorganize State, is in its very nature of the power, wide and its exercise necessarily guided by

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political issues of considerable complexity, many of which may not be judicially manageable.

61. Article 3, empowers Parliament to enact law and form a new State by separation of territory from any State or by granting two or more States or parts of States or by uniting any territory to a part of any State. The principles relating to change of sovereignty in international law are not applicable to re-organisation of the territory of the State under Article 3 of the Constitution of India.

62. When such an adjustment or reorganisation of territory takes place, the existing law as well as administrative orders in a particular territory continue to be in force and continue to be binding upon the successor State so long as they are not governed, changed or repudiated by the successor State.

63. It is not in dispute that the respondent has his domicile in the Territory of India and was born in the territory of India. Admittedly, he is a citizen of this country. As a citizen of India, the respondent has a fundamental right under Article 19(1)(e) to reside and settle in any part of the territory of India.

64. Under Article 13 (2) of the Constitution of India prohibits the State from making any law which takes away or infringes the rights conferred by Part III of the Constitution of India and any law made in contravention of Article 13(2), to the extent of the contravention would be void.

65. All statutes and all rules, regulations and bye-laws framed by the Government, which constitute law have to be construed harmoniously with the fundamental rights guaranteed under Part-III of the Constitution of India.

66. The Andhra Pradesh State Reorganisation Act, 2014 or any other guidelines framed thereunder, including the guidelines circulated on 30.10.2014 cannot take away from citizens, the right to reside and settle in any part of the country.

67. It is true that when a State is divided and the employees and officers of the State Government have to be allotted to the two states, such allocation has to be done on the basis of the Rules and Regulations and by guidelines.

68. However, such rules, regulations and guidelines have to be construed harmoniously with the fundamental rights guaranteed under the Constitution of India. It is true that the respondent may have been born in an area which now forms part of Andhra Pradesh and may have received a substantial part of his education in areas which now form part of the State of Andhra Pradesh. However, admittedly, he cleared all Board and University examinations from areas within the State of Telangana. At the time of bifurcation, he was posted in Hyderabad, which is now part of Telangana.

69. The guidelines circulated on 30.10.2014 for allocation of employees and officers to the States of Telangana and Andhra Pradesh are directory and not inflexible. On a liberal interpretation of the guidelines in the light

of the philosophy of the Indian Constitution read with Andhra Pradesh Public Employment Order, 1975, which was in force at the time of bifurcation, and is applicable to the respondent even under the Guidelines referred to above, the High Court rightly arrived at the conclusion that the respondent was a local candidate of Telangana and was entitled to allocation as per his seniority in terms of Paragraph 18(f) of the guidelines. Furthermore, admittedly, the spouse of the respondent was a local candidate of Telangana.

70. In our considered view, there is no infirmity in the impugned judgment and order of the Division Bench of the High Court affirming the judgment of the Single Bench.

71. The Special Leave Petitions are, accordingly, dismissed.

..... J.
[INDIRA BANERJEE]

..... J.
[V. RAMASUBRAMANIAN]

NEW DELHI;
SEPTEMBER 14, 2022