

**THE HIGH COURT OF JUDICATURE FOR THE STATE OF
TELANGANA : HYDERABAD**

WRIT PETITION NO.16188 OF 20219

K.Balarama Raju and others ... Petitioners

Vs.

Union of India rep. by its
Joint Secretary/Under Secretary,
Ministry of Personnel Public Grievances & Pensions,
Department of Personnel and Training
North Block, New Delhi-110001 and others .. Respondents

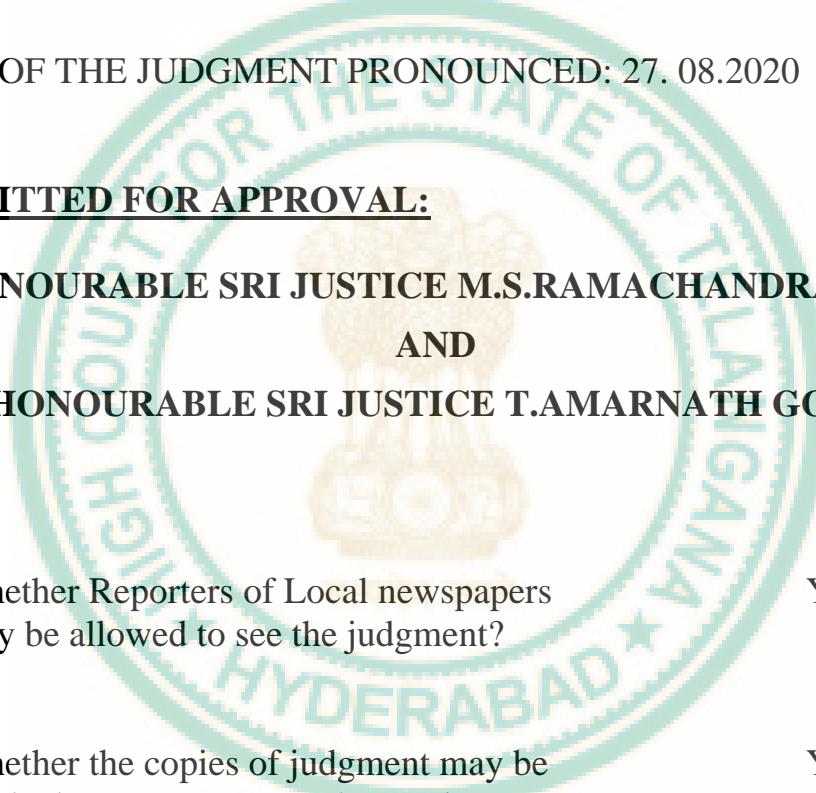
DATE OF THE JUDGMENT PRONOUNCED: 27. 08.2020

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD



1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

*** HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD

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% DATED 27th AUGUST, 2020

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<gist:

>Head Note:

! Counsel for the Petitioner

: Sri K.S.Murthy

^Counsel for 1st Respondent

: Sri Namavarapu Rajeswar
 Rao, (learned Assistant
 Solicitor General)

^Counsel for 2nd Respondent

: Sri Swaroop Oorilla,
 Counsel for the High
 Court of Telangana

^Counsel for Respondent No.3 & 4

: The Government Pleader
 For General Administration

^Counsel for 5th Respondent

: Smt. K.Sesharajyam,

Sr. Counsel for
 Sri K.Chaitanya, Counsel
 for the High Court of
 Andhra Pradesh

^Counsel for Respondent No.6 & 7

: Sri S.Sri Ram
 Learned Advocate General
 for the State of A.P.

? CASES REFERRED:

1. 2019 (2) ALD 151 (TS) (FB)
2. 2019 (1) ALD 7 (SC) = AIR 2018 SC 5510
3. AIR 1983 SC 130
4. AIR 1956 SC 285 at page 293
5. (2013) 2 SCC 772

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition No.16188 of 2019

(per Hon'ble Sri Justice M.S.Ramachandra Rao)

ORDER :

The petitioners in this Writ Petition have sought a Writ of Mandamus declaring that the Guidelines issued by the then High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh in ROC No.615/SO/RO/2014 dt.01.11.2018 to the extent of extending option only to the officers and staff *working in the said High Court as on the said date* i.e 1.11.2018, for consideration to be continued in the service of the High Court at Hyderabad (which would be the High Court for the State of Telangana) and for being duly considered for induction and absorption to the service of the High Court for the State of Andhra Pradesh upon its constitution *and for denying exercise of such option to the petitioners who retired from service prior to 01.11.2018.*

They seek a direction to: (A) the High Court for the State of Telangana to extend the option to the petitioners also though they have retired prior to 01.11.2018 for the purpose of continuing in the service of the High Court for the State of Telangana or for being considered for induction and absorption to the service of the High Court for the State of Andhra Pradesh with all consequential benefits.

2. All the petitioners had joined the service of the erstwhile High Court of Andhra Pradesh in various capacities, when a composite State of Andhra Pradesh was in existence prior to 02.06.2014.

Events after 02.06.2014, the date of bifurcation of the composite State of A.P

3. There was a bifurcation of the composite State of Andhra Pradesh with effect from 02.06.2014 pursuant to the A.P. Reorganisation Act, 2014 (for short “the Act”) and then the new State of Telangana and the residuary State of Andhra Pradesh have come into existence.

4. Section 30 (1) of the Act has two sub-clauses. Clause (a) of Sub-Section (1) of Section 30 of the Act stated that the High Court at Hyderabad *shall be* the ‘common’ High Court for both the successor States *till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with Section 31 of the Act*; and under Clause (b) of Sub-Section (1) of Section 30, it was stated that the Judges of the High Court at Hyderabad for the composite State of Andhra Pradesh holding office immediately before the ‘appointed day’, *shall become* on that day the Judges of the common High Court.

The ‘appointed day’ as stated in the Act for bifurcation of the State

5. The term ‘appointed day’ is defined in Clause (a) of Section 2 of the Act as “*the day which the Central Government may, by notification in the Official Gazette, appoint*”. It is not in dispute that such notification was issued *vide* SO 655(E) Ministry of Home Affairs on 04.03.2014 fixing the appointed day as “02.06.2014.”

6. From 02.06.2014, thus, the erstwhile High Court for the composite State of Andhra Pradesh at Hyderabad, became the High Court of Judicature at Hyderabad for both the new State of Telangana and the residuary State of Andhra Pradesh.

The constitution of separate High court for the State of Andhra Pradesh w.e.f 1.1.2019

7. His Excellency the President of India issued Notification dt.26.12.2018, in exercise of powers conferred by Article 214 of the Constitution of India and Section 30(1)(a) and Section 31(1) and (2) of the Act constituting a separate High Court for the residuary State of Andhra Pradesh from 01.01.2019 with its principal seat at Amaravathi in the said State. Thereupon, w.e.f 1.1.2019 the common High Court of Judicature at Hyderabad for both the State of Telangana and the State of Andhra Pradesh *became* the High Court *only* for the State of Telangana.

The Guidelines framed on 1.11.2018 by the High Court at Hyderabad for both the new State of Telangana and the residuary State of Andhra Pradesh for bifurcation/allocation of employees

8. On 1.11.2018, well before 01.01.2019, when the division of the Common High Court took place, Guidelines were issued by the common High Court of Judicature at Hyderabad for both the new State of Telangana and the residuary State of Andhra Pradesh *vide* ROC No.615/SO/RO/2014 dt.01.11.2018 for officers and staff of the said High Court to express their options for consideration to be continued in the service of the High Court at Hyderabad which would be the High Court for the State of Telangana, or for being duly

considered for induction and absorption to the service of the High Court for the State of Andhra Pradesh upon its constitution.

9. Para 3 of the said Guidelines defined the word “employees” for the purpose of the said Guidelines as “*those who are working in the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh as on the date of these Guidelines and those who may be appointed thereafter into such service.*” (emphasis supplied)

10. Thus, only such of those employees of the High Court of Judicature at Hyderabad for both the State of Telangana and the State of Andhra Pradesh *who were working as on 01.11.2018 in the said High Court* were declared to be covered by the Guidelines dt.01.11.2018 framed by the High Court of the Judicature at Hyderabad.

11. Persons like the petitioners who had retired after 2.6.2014 (the ‘appointed day’ for the bifurcation of the composite State of Andhra Pradesh) but prior to 01.11.2018, were thus excluded from giving options under the Guidelines.

The “age of superannuation” and the applicable law

12. It is an admitted fact that the composite State of Andhra Pradesh had prescribed the age of superannuation to be 58 years in the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984.

13. After the bifurcation of the composite State of Andhra Pradesh on 2.6.2014 but before the constitution of a separate High Court for the State of Andhra Pradesh on 1.1.2019, the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh had framed “*Service Rules of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh*” under Art.229 (1) and (2) of the Constitution of India which were notified by way of publication in the Telangana Gazette on 14.6.2017.

14. There was no specific rule which dealt with the “age of superannuation” of employees in the above Rules, and Rule 21 thereof stated:

“*Rule 21: Other Conditions of service :*

- (1) *The Fundamental Rules, the Subsidiary Rules thereunder, Civil Services Regulations and other rules applicable to the employees of the Governments of Telangana and Andhra Pradesh shall govern the member of the service in so far as they are not inconsistent with these rules.*
- (2) ...
- (3) ...”

15. Thus the age of superannuation of 58 years specified in the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 would apply automatically to the employees of the High court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh governed by the Service rules dt.14.6.2017 as there

were no other rules dealing with the issue of “age of superannuation” of the employees.

A.P. Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014 passed by the State of Andhra Pradesh after 2.6.2014 raising the age of superannuation to 60 years

16. But after 2.6.2014, the date of the bifurcation of the composite State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh, the residuary State of Andhra Pradesh amended the above statute by enacting the A.P. Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014 extending the age of superannuation of employees of the State of Andhra Pradesh from 58 years to 60 years.

17. Thereafter, G.O.Ms.No.104, Finance (HR.IV-FR) Department, dt.28.08.2015 was issued by the residuary State of Andhra Pradesh stating that all Government employees belonging to the State Cadre and Multi-zonal Cadre falling in the territories of both the new State of Telangana and the State of Andhra Pradesh as on 01.06.2014, i.e one day prior to bifurcation of the composite State of Andhra Pradesh, and who by a general or special order of the Government of India under Sub-Section (1) of Section 77 of the Act, were ordered to serve provisionally in connection with the affairs of the State of Telangana and who had retired on attaining the age of 58 years while serving in the State of Telangana and who are *tentatively allotted* to the State of Andhra Pradesh, may be *re-inducted into service* with effect from the date of reporting before the Secretary or Head of the Department,

Government of Andhra Pradesh; and that these orders would be subject to final allocation of employees to be issued by the Government of India under Sub-Section (2) of Section 77 of the Act.

**G.O.Ms.No.24, Law (L,LA and J-Home,Courts-A) Department,
dt.29.01.2019**

18. The State of Andhra Pradesh later issued G.O.Ms.No.24, Law (L,LA and J-Home.Courts-A) Department, dt.29.01.2019 *extending the benefit of the enhancement of age of superannuation of the employees of the State Government from 58 years to 60 years to the employees of the High Court of Andhra Pradesh at Amaravathi.* Thus, the age of superannuation of the employees of the High Court with effect from 01.01.2019 became 60 years.

19. But, the petitioners were working in the composite High Court at Hyderabad after 2.6.2014, but retired prior to 01.11.2018, the date when the Guidelines were issued by the Common High Court at Hyderabad. On that count, they were not allowed to exercise options and opt to work in the State of Andhra Pradesh. So they had to retire at the age of 58 years, and could not get the benefit of serving, if allotted to the State of Andhra Pradesh, till they attain the age of superannuation of 60 years.

Rejection of petitioners' representation by the High Court of Telangana on 25.1.2019

20. Petitioners had made a representation to the High Court for the State of Telangana on 23.01.2019 requesting for calling of options for the purpose of allotment to the High Court of A.P. at Amaravathi as

they were working on 2.6.2014 in the Common High Court though they retired prior to 1.11.2018, but the same was rejected on 25.01.2019 by a Committee consisting of the Chief Justice of the High Court for the State of Telangana and two Judges of the said High Court. The said decision was communicated to the petitioners on 01.03.2019.

21. The view taken by the said Committee was that it is not possible to consider petitioners' representation because the combined High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh had been bifurcated; that the 'appointed day' for coming into being of the High Court of Andhra Pradesh and the High Court of Telangana was 01.01.2019, (and not 2.6.2014 as defined in the Act) , and therefore there was no question of considering allocation of employee by taking options of those who had retired before 1.1.2019, the date the separate High court for the State of A.P was constituted. It was also observed that the financial commitment in relation to the pension and other benefits of those employees who had retired before 01.01.2019 was a matter between the State of Telangana and the State of Andhra Pradesh in terms of the Act.

Rejection of petitioners' representation by the High Court of Andhra Pradesh on 29.4.2019

22. Similar representation was made to the High Court of Andhra Pradesh at Amaravathi on 20.03.2019, but was rejected and the said rejection was communicated to the petitioners *vide* ROC No.81 and 82/SO/2019, dt.29.04.2019 of the Registrar General of the said High

Court. But the reasons for such rejection were not communicated to the petitioners.

23. It is these decisions which are the cause of action for filing the instant Writ Petition.

The parties to the Writ Petition

24. The Union of India represented by its Joint Secretary/Under Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi was impleaded as **1st respondent** in the Writ Petition. It has not chosen to file any counter affidavit though the Writ Petition had been pending since June, 2019 and more than one year has elapsed since its filing.

25. The High Court for the State of Telangana is impleaded as the **2nd respondent** and it has filed a counter affidavit.

26. The High Court for the State of Andhra Pradesh is impleaded as **5th respondent** and it has filed a counter affidavit.

27. The Law Department and the GAD Department of the State of Telangana and the State of Andhra Pradesh were impleaded as **respondents 3, 4, 5 and 6**, but they have not filed any counter affidavits.

Contentions of the petitioners

28. It is the contention of the counsel for the petitioners that :

- (a) under Sub-Section (2) of Section 77 of the Act, *as soon as may be after the 'appointed day'*, the Central Government has to determine the successor State to which every person, who immediately before the said date, is serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh, shall be finally allotted for service, after consideration of option received by seeking option from the employees, and the date with effect from which such allotment shall take effect or be deemed to have taken effect;
- (b) the 'appointed day' after which the final allotment is to be made, has been notified for the purposes of the Act as 02.06.2014 by the Central Government under a Gazette Notification dt.04.03.2014;
- (c) that the 'appointed day' is only one, namely 2.6.2014, and there is no question of a second 'appointed day' for the employees of the common High Court as stated by the Committee of the High Court of Telangana in it's orders dt.25.1.2019;
- (d) employees of the common High Court of Hyderabad after 02.06.2014 including the petitioners have to be treated as employees serving in connection with the affairs of the State of Andhra Pradesh as well, since it was the 'common' High Court for

both the State of Telangana and the residuary State of Andhra Pradesh;

(e) irrespective of the date of establishment of High Court for the State of Andhra Pradesh, after the ‘appointed day’ i.e., 02.06.2014,

as soon as may be, it was incumbent on the part of the High Court of Hyderabad to call for options of all employees working therein

as on 02.06.2014 including the petitioners;

(f) guidelines for allocation framed by the High Court of Hyderabad should ensure fair and equal treatment to all persons

affected and equality clause enshrined in Article 14 of the Constitution cannot be violated by it while framing Guidelines;

(g) calling for options and making allotment to the High Courts

which were going to be established, ought to have been done by the High Court at Hyderabad keeping in view the provisions of Section 77 of the Act with reference to 02.06.2014 which is the ‘appointed day’, and all employees including the petitioners who were serving

the said High Court, should have been allowed to give options and not merely those who were in service of the said High Court on

01.11.2018;

(h) this action of the High Court at Hyderabad in framing the Guidelines for seeking options from *only* employees of the said

High Court who were in service on 01.11.2018 is arbitrary, unreasonable, unconstitutional and contrary to Article 14 and 16 of the Constitution as well as Section 77 of the Act;

(i) there is no rationale behind the confining of right to exercise option only to those persons who are in service as on 01.11.2018 and ignoring persons who retired between 02.06.2014 and 01.11.2018;

(j) though the provisions of Article 229 of the Constitution would apply to the petitioners, they are governed by the same law as to “age of superannuation” as would apply to State Government employees i.e., the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 ; and since the State of Andhra Pradesh had amended the said law in 2014 and extended the age of superannuation from 58 years to 60 years, if the options had been taken immediately after 02.06.2014, petitioners would have opted for the said State; and after the separate High Court was constituted for the State of Andhra Pradesh on 01.01.2019, they would have got the benefit of extended age of superannuation and continued in service till they attained the age of 60 years.

29. It is contended that the High Court for the State of Telangana is competent to entertain and decide the issue raised in the Writ Petition as to the correctness of the order dt.25.1.2019 of the Committee of the High Court of Telangana, since it was the successor of the common High Court at Hyderabad; and it alone would have jurisdiction to entertain the disputes relating to the interpretation and implementation of the provisions of the Act. According to them, the order dt.29.4.2019 of the High court of Andhra Pradesh is a mere consequence of the above decision of the High Court of Telangana

and hence under Art. 226(2) of the Constitution of India, the cause of action accrued in relation to options before 1.1.2019 *at Hyderabad* and sub-section (3) of sec.40 of the Act also confers jurisdiction of this Court.

30. Counsel for the petitioners relied upon the decisions in **Letter dated 6.1.2019 sent by the Andhra Pradesh High Court Advocates' Association rep. by its President, Amaravathi, Guntur District Vs. Union of India and others¹, Telangana Judges Association and another Vs. Union of India and others² and D.S.Nakara Vs. Union of India³.**

The stand of the High Court of Telangana (2nd respondent)

31. It is contended by the High Court for the State of Telangana (2nd respondent) that :

(a) in view of the proposal for establishment of High Court for the State of Andhra Pradesh, the Committee constituted by the Chief Justice to prepare guidelines and undertake the exercise of bifurcation of High Court employees between the State of Andhra Pradesh and the State of Telangana, framed Guidelines for Officers and staff of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh to express their options for consideration to be continued in the service of the High Court which would be the High Court for the State of Telangana and for being duly considered for induction and absorption to the

¹ 2019 (2) ALD 151 (TS) (FB)

² 2019 (1) ALD 7 (SC) = AIR 2018 SC 5510

³ AIR 1983 SC 130

service of the High Court for the State of Andhra Pradesh upon its constitution;

(b) the said Guidelines were approved by the Full Court of Judges with certain modifications and accordingly, Registry on 01.11.2018 in Roc.No.615/SO/RO/2014 has directed the officers and the staff of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh to exercise their options in the prescribed option form and submit duly filled in option form in a sealed cover directly to the Secretariat of the then Chief Justice, High Court of Judicature at Hyderabad on or before 15.11.2018;

(c) *the allocation shall be with reference to the 'appointed day' to be treated as the date of establishment of the High Court of Andhra Pradesh* and the consequential events like the transformation of the common High Court for both the States into the High Court for the State of Telangana;

(d) the representation submitted by petitioners on 23.01.2019 to the Chief Justice, High Court for the State of Telangana has been considered by the Committee of Judges and it was resolved that it may not be possible for the Committee to consider the representation primarily because the combined High Court of Judicature at Hyderabad is for the State of Telangana and the State of Andhra Pradesh and *the 'appointed day' for coming into being of the High Court of Andhra Pradesh and the High Court of Telangana*

is 01.01.2019 and the same was communicated to the petitioners on 01.03.2019.

The Stand of the High Court of Andhra Pradesh (5th respondent)

32. It is contended by the High Court of Andhra Pradesh (5th respondent) that :

(a) there was no proposal for bifurcation of the High Court immediately after 'appointed day' for formation of two States and in fact from that date, the existing High Court had become the High Court for two States;

(b) as on the date of calling for options from the employees the petitioners are not on the rolls of common High Court;

(c) *the allocation shall be with reference to the 'appointed day' to be treated as the date of establishment of the High Court of Andhra Pradesh* and the consequential events like the transformation of the common High Court for both the States into the High Court for the State of Telangana;

(d) since age of superannuation of the employees of the High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh was 58 years, the petitioners retired from service before the options were called for;

(e) after establishment of the High Court of Andhra Pradesh on 01.01.2019, on the representation of the employees of the High Court of Andhra Pradesh requesting for enhancement of age of

superannuation from 58 years to 60 years and on the basis of the resolution of the Full Court to apply the age of superannuation of employees of the State Government of Andhra Pradesh to the employees of the High Court of Andhra Pradesh, Government of Andhra Pradesh has issued Orders in G.O.Ms.No.24, Law (L,LA&J-Home Courts-A) Department, dated 29.01.2019 extending the benefit of enhancement of the age of superannuation of employees of the State Government from 58 years to 60 years, to the existing employees of the High Court of Andhra Pradesh with effect from 01.01.2019;

(f) since the petitioners were not on rolls either of the High Court of Andhra Pradesh or of the High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh, the question of their allotment to High Court of Andhra Pradesh before attaining the superannuation of 58 years or continuing in service up to 60 years, does not arise at all;

(g) the contention of the petitioners that if the options were called for before their retirement, and their services were allotted to the High Court of Andhra Pradesh, they would have continued up to the age of 60 years and got promotion, better pensionary benefits etc., is only imaginary, as High Court of Andhra Pradesh was not constituted before their retirement and even by the time of calling for options they were not in service;

(h) as the age of superannuation is enhanced from 58 to 60 years on 29.01.2019 and by that time the petitioners were not on rolls of any High Court, they would not have got the benefit of 60 years;

(i) there were no proposals for bifurcation of the Common High Court, either on the date of ‘appointed day’ or on the date of retirement of the petitioners and therefore the ‘appointed day’ i.e., 02.06.2014, was not taken as basis for bifurcation of the employees of the common High Court;

(j) establishment of High Court of Andhra Pradesh was not notified by the Government of India on 26.12.2018 and the same was established on 01.01.2019; and as *the ‘appointed day’ for the bifurcation of the State and the bifurcation of the High Court being different*, no options were called for from the retired employees based on the ‘appointed day’ of the State;

(k) if provisions of Sections 30, 31 and 77 of the Act, 2014 are read together, it would establish that the *‘appointed day’ for the High Court of Andhra Pradesh is only 01.01.2019*; and by that date the petitioners were not on the rolls of any High Court; and when the *‘appointed day’ is taken as 01.01.2019 for the High Court of Andhra Pradesh*, the question of granting any benefits to the petitioners by taking ‘appointed day’ as 02.06.2014 does not arise;

(l) the contention of the petitioners that the High Court has jurisdiction to entertain this Writ Petition is untenable as there are no disputes relating to the interpretation, implementation of the

provisions of Andhra Pradesh Reorganisation Act; and since 01.01.2019 the two High Courts have come into existence and are functioning as such, this High Court has no jurisdiction to the issue directions relating to High Court of Andhra Pradesh with reference to the services of the petitioners who are not on rolls of any High Court as on 01.01.2019 or on 31.12.2018.

33. No counter affidavit is filed by Union of India (1st respondent), the State of Andhra Pradesh (6th and 7th respondents) and the State of Telangana (3rd and 4th respondents) though the Writ Petition had been filed in July, 2019.

34. After arguments of the counsel for the petitioners and Smt. K.Sesharajyam, Senior Counsel for the High Court of Andhra Pradesh and Sri Swaroop Oorilla, counsel for the High Court of Telangana were heard on 04.03.2020, we decided to hear submissions of the learned Advocate General for the State of Andhra Pradesh as well, since the interests of that State are also involved in the matter. Accordingly, submissions of the learned Advocate General Sri S.Sriram were heard on 30.07.2020 and orders were reserved.

The submissions of the learned Advocate General for the State of Andhra Pradesh (respondents 6 and 7)

35. The learned Advocate General for the State of Andhra Pradesh contended that since the issue raised in the Writ Petition relates to the validity of the Guidelines for options and allocation framed by the High Court of Judicature at *Hyderabad* for both the State of Telangana and the State of Andhra Pradesh on 01.11.2018, before the

separate High court for Andhra Pradesh was formed, this Court alone would have the jurisdiction to entertain this Writ Petition in view of Sub-Section (3) of Section 40 of the Act read with Clause (2) of Article 226 of the Constitution of India as the cause of action refusing to give the petitioners options had arisen in relation to an ‘order’ passed by the High Court at **Hyderabad** for both the States of Telangana and the State of Andhra Pradesh before 01.01.2019, the date when the new High Court for the State of Andhra Pradesh at Amaravathi was established; and since this High Court of Telangana is the successor of the said high Court after 1.1.2019 .

36. He pointed out that the petitioners were employees of the erstwhile High Court for the composite State of Andhra Pradesh, and also of the High Court for both the States of Telangana and the State of Andhra Pradesh at Hyderabad on and after 01.06.2014, and would fall under Article 229 of the Constitution of India which deals with “Officers and Servants and the Expenses of High Courts”.

37. He stated that as per the Act, there is only one ‘appointed day’ i.e., 02.06.2014 which was notified by the Ministry of Home Affairs, Union of India *vide* SO 655(E) dt.04.03.2014; and the contention of both the High Courts of Telangana and Andhra Pradesh that the ‘appointed day’ is different when it comes to these two High Courts is concerned and that it is 01.01.2019, is not correct. He stated that the definition of the term ‘appointed day’ in Section 2 (a) is clear and unambiguous and it is not permissible to construe it as a date other than 02.06.2014.

38. The learned Advocate General stated that the State of Andhra Pradesh has no comments to offer on the Guidelines framed by the High Court at Hyderabad on 01.11.2018.

39. Lastly the learned Advocate General he stated that the Registrar General of the High Court of Andhra Pradesh had written the letter dt.05.01.2019 and RCO No.14/2019-Estt, dt.22.01.2019 to the Government of Andhra Pradesh that the Full Court of the High Court of Andhra Pradesh had resolved to apply the age of superannuation of the employees of the State Government of Andhra Pradesh to the employees of the High Court of Andhra Pradesh with effect from 01.01.2019, and on its behalf, he is requesting the State Government of Andhra Pradesh to issue necessary orders in that regard apart from permitting the employees to continue in service up to 60 years of age in anticipation of orders from the Government, in case of delay of issue of orders; and the State of Andhra Pradesh acceded to the said request and *extended the benefit of the enhancement of age of superannuation of the employees of the State Government from 58 years to 60 years to the employees of the High Court of Andhra Pradesh at Amaravathi by issuing G.O.Ms.No.24, Law (L,LA&J-Home.Courts-A) Department, dt.29.01.2019.*

40. He stated that on and after 01.01.2019, till date, recruitment of employees of the High Court of Andhra Pradesh had not happened though some notifications had been issued by the High Court to fill up some Class IV posts.

41. He also stated that not many employees of the erstwhile common High Court at Hyderabad had opted to work in the High Court of Andhra Pradesh at Amaravathi and the said High Court had borrowed on deputation some of the employees of the High Court of Telangana and is also utilizing the services of employees of the District Judiciary of Krishna District, as an interim arrangement.

42. The Smt.K.Sesharajyam, Senior Counsel for the High Court of Andhra Pradesh also stated likewise.

The points for consideration:

43. In the light of the above pleadings and contentions, the following questions arise for consideration in this Writ Petition:

(a) Whether this Court has jurisdiction to entertain and adjudicate this Writ Petition ?

*(b) Whether the 'appointed day' used in Sub-Section (2) of Section 77 of the Act is the one notified by the Ministry of Home Affairs, Union of India vide S.O.No.655(E), dt.04.03.2014 as 02.06.2014 as regards the **High Court for the State of Andhra Pradesh** and for purposes of considering allocation of employees of the erstwhile High Court of the composite State of Andhra Pradesh / common High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh ?*

or

*Whether the term 'appointed day' used in Sub-Section (2) of Section 77 of the Act as regards the **High Court for the State of Andhra Pradesh** and for purposes of considering allocation of employees of the erstwhile High Court of the composite State of Andhra Pradesh / common High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, has to be taken as 01.01.2019, the date when the High Court for the State*

of Andhra Pradesh at Amaravathi was constituted by the President of India and started functioning ?

*(c) Whether the High Court of Hyderabad was justified in **confining** the operation of the Guidelines framed by it vide ROC No.615/SO/RO/2014 dt.01.11.2018 only to those employees **who were working** in the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh as **on the date of issuance of the said Guidelines** for the purpose of giving options for consideration to be continued in the service of the High Court at Hyderabad which would be the High Court for the State of Telangana and for being duly considered for induction and absorption to the service of the High Court for the State of Andhra Pradesh upon its constitution ?*

(d) To what relief, if any, are the petitioners entitled to ?

44. Before we deal with the above points, the following admitted facts have to be taken note of.

THE ADMITTED FACTS

45. The composite State of Andhra Pradesh which existed from 01.11.1956 to 01.06.2014 comprised of 23 districts. For this composite State of Andhra Pradesh, there was a High Court at Hyderabad called the High Court of Judicature of Andhra Pradesh established under Article 214 of the Constitution of India.

46. The Parliament enacted the A.P. Reorganisation Act, 2014 bifurcating the composite State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh with effect from the ‘appointed day’. The ‘appointed day’ was notified as 2.6.2014.

47. Under Section 3, the State of Telangana was created consisting of ten (10) Districts of the composite State of Andhra Pradesh and the balance thirteen (13) Districts of the Composite State of Andhra Pradesh were comprised in the residuary “State of Andhra Pradesh” under Section 4 of the Act, with effect from the ‘appointed day’ i.e., 2.6.2014.

48. Section 5 of the Act made Hyderabad City the “common capital” for both the States of Telangana and the State of Andhra Pradesh for a period not exceeding 10 years from the ‘appointed day’ of 2.6.2014.

Provisions relating to employees in the Act

49. Allocation of employees was dealt with by Part VIII of the Act.

50. Section 76 dealt with provisions relating to All India Services; Section 77 dealt with provisions relating to “other services”; Section 82 dealt with provision for employees of State Public Sector Undertakings, Corporations and other Autonomous Bodies.

51. For our purposes, Section 77 is required to be considered as employees of the High Court would fall in this category. Sub-Sections (1) and (2) of Section 77 which are relevant for our purpose state:

*“77. **Provisions relating to other services :** (1) Every person who immediately before the appointed day is serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Andhra Pradesh unless he is required, by general or special order*

of the Central Government to serve provisionally in connection with the affairs of the State of Telangana.

Provided that every direction under this sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) 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 sub-section (1) shall be finally allotted for service**, after consideration of **option** received by seeking option from **the employees**, and the date with effect from which such allotment shall take effect or be deemed to have taken effect :

Provided that even after the allocation has been made, the Central Government may, in order to meet any deficiency in the service, depute officers of other State services from one successor State to the other.

Provided further 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:

Provided also that if a particular zone or multi-zone falls in both the successor States, then the employees of such zonal or multi-zonal cadre shall be finally allotted to one or the other successor States in terms of the provisions of this sub-section.”

52. Section 80 of the Act is also important for our purposes and it states:

“80. **Advisory committees.**—

(1) The Central Government may, by order, establish one or more Advisory Committees, within a period of thirty days from the date

of enactment of the Andhra Pradesh Reorganisation Act, 2014, for the purpose of assisting it in regard to—

- (a) the discharge of any of its functions under this Part; and
- (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

(2) The allocation guidelines shall be issued by the Central Government on or after the date of enactment of the Andhra Pradesh Reorganisation Act, 2014 and the actual allocation of individual employees shall be made by the Central Government on the recommendations of the Advisory Committee:

Provided that in case of disagreement or conflict of opinion, the decision of the Central Government shall be final:

Provided further that necessary guidelines as and when required shall be framed by the Central Government or as the case may be, by the State Advisory Committee which shall be approved by the Central Government before such guidelines are issued."

Provisions relating to the High Court in the Act

53. The provisions of the Act which deal with the High Court are contained in Part IV. In particular Sections 30 to 33 and Section 40 are relevant for our purposes and they are as under:

"30. High Court of Judicature at Hyderabad to be common High Court till establishment of High Court of Andhra Pradesh :

(1) On and from the appointed day :

(a) the High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with section 31 of this Act;

(b) the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before the appointed day shall become on that day the Judges of the common High Court.

(2) The expenditure in respect of salaries and allowances of the Judges of the common High Court shall be allocated amongst the States of Andhra Pradesh and Telangana on the basis of population ratio.

31. High Court of Andhra Pradesh : (1) Subject to the provision of Section 30, there shall be a separate High Court for the State of Andhra Pradesh (hereinafter referred to as the High Court of Andhra Pradesh) and the High Court of Judicature at Hyderabad shall become the High Court for the State of Telangana (hereinafter referred to as the High Court of Hyderabad).

(2) The principal seat of the High Court of Andhra Pradesh shall be at such place as the President may, by notified order, appoint.

(3) Notwithstanding anything contained in sub-section (2), the Judges and division courts of the High Court of Andhra Pradesh may sit at such other place or places in the State of Andhra Pradesh other than its principal seat as the Chief Justice may, with the approval of the Governor of Andhra Pradesh, appoint.

32. Judges of Andhra Pradesh High Court : (1) Such of the Judges of the High Court at Hyderabad holding office immediately before the date of establishment of the High Court of Andhra Pradesh as may be determined by the President, shall, from that date cease to be Judges of the High Court at Hyderabad and become, Judges of the High Court of Andhra Pradesh.

(2) The persons who by virtue of sub-section (1) become Judges of the High Court of Andhra Pradesh shall, except in the case where any such person is appointed to be the Chief Justice of that High Court, rank in that Court according to the priority of their respective appointments as Judges of the High Court at Hyderabad.

33. Jurisdiction of Andhra Pradesh High Court : The High Court of Andhra Pradesh shall have, in respect of any part of the territories included in the State of Andhra Pradesh, all such jurisdiction, powers and authority as, under the law in force immediately before the date referred to in sub-section (1) of Section 30, are exercisable in respect of that part of the said territories by the High Court at Hyderabad.

...

40. Transfer of proceedings from Hyderabad High Court to Andhra Pradesh High Court. Right to appear or to act in proceedings transferred to Andhra Pradesh High Court :

(1) Except as hereinafter provided, the High Court at Hyderabad shall, as from the date referred to in sub-section (1) of section 31, have no jurisdiction in respect of the State of Andhra Pradesh.

(2) Such proceedings pending in the High Court at Hyderabad immediately before the date referred to in sub-section (1) of section 31 as are certified, whether before or after that day, by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Andhra Pradesh shall, as soon as may be after such certification, be transferred to the High Court of Andhra Pradesh.

(3) Notwithstanding anything contained in sub-sections (1) and (2) of this section or in section 34, but save as hereinafter provided, the High Court at Hyderabad shall have, and the High Court of Andhra Pradesh shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court at Hyderabad before the date referred to in sub-section (1) of section 30:

Provided that if after any such proceedings have been entertained by the High Court at Hyderabad, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Andhra Pradesh, he shall order that they shall

be so transferred, and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court at Hyderabad—

(a) before the date referred to in sub-section (1) of section 31, in any proceedings transferred to the High Court of Andhra Pradesh by virtue of sub-section (2), or

(b) in any proceedings with respect to which the High Court at Hyderabad retains jurisdiction by virtue of sub-section (3), shall for all purposes have effect, not only as an order of the High Court at Hyderabad, but also as an order made by the High Court of Andhra Pradesh.”

Point (a):

54. We shall first consider the question:

“whether this Writ Petition, can be entertained and decided by the High Court for the State of Telangana?”

55. It is the contention of the Senior Counsel for the High Court of Andhra Pradesh that this Court, which is the High Court for the State of Telangana, has no jurisdiction to entertain this Writ Petition. According to her, in this Writ Petition there are no disputes relating to interpretation, implementation of the provisions of the A.P. Re-organisation Act. She contends that the issues raised by the petitioners pertain to the High Court of Andhra Pradesh, which had come into existence on 01.01.2019 and if at all, only the High Court of Andhra Pradesh would have jurisdiction to entertain the Writ Petition.

56. The counsel for the petitioners as well as the Advocate General for the State of Andhra Pradesh refuted this contention. They pointed

out that the challenge in the Writ Petition is to the Guidelines framed by the common High Court at **Hyderabad** for both the State of Telangana and the State of Andhra Pradesh; the cause of action thus arose at **Hyderabad on the date the Guidelines dt.1.11.2018 which refused options to the petitioners were issued**, which is now within the State of Telangana, and so the High Court of Judicature for the State of Telangana can entertain and adjudicate this Writ Petition; and under Sub-Clause (2) of Article 226 of the Constitution of India also, the High Court of Telangana alone would have jurisdiction.

57. So far as the order passed by the High Court of Andhra Pradesh on 29.4.2019 is concerned, it is an offshoot of the guidelines dt.1.11.2018 and the refusal to call for options took place at Hyderabad and hence under Art.226(2) of the Constitution of India, a Writ could be issued to any state or authority outside the jurisdiction of the High Court of Telangana.

58. They also rely upon Sub-Section (3) of Section 40 and in particular the words:

“notwithstanding anything contained in Sub-Sections (1) and (2) of this Section or in Section 33,, the High Court at Hyderabad shall have, and the High Court of Andhra Pradesh shall not have jurisdiction to entertain, hear or dispose of proceedings where any such proceedings seek any relief in respect of any order passed by the High Court at Hyderabad before the date referred to in Sub-Section (1) of Section 30.”
(emphasis supplied)

59. According to them, the date referred to in Sub-Section (1) of Section 30 i.e., the date when separate High Court for the State of

Andhra Pradesh was constituted is 01.01.2019, and any order passed before that date by the High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh, would have to be considered only by the High Court of Telangana, its successor High Court.

Consideration by the Court

60. We agree with the above said submissions in relation to our jurisdiction, particularly in view of Art.226 (2) .

61. The Guidelines were admittedly framed by the High Court at **Hyderabad** for the State of Telangana and the State of Andhra Pradesh on 01.11.2018 before 01.01.2019, the date when the separate High Court for the State of Andhra Pradesh was constituted. The cause of action arose at Hyderabad on 1.11.2018 when options were not granted to the employees like petitioners.

62. As on 1.11.2018, the date of framing of the said guidelines, there was no *separate* High Court for the State of Andhra Pradesh.

63. Therefore any challenge to the order/guidelines passed/framed by the said High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh, relating to a cause of action of giving of options/ refusal to give options/allocation of employees, has got to be entertained only by the **High Court of Judicature for the State of Telangana at Hyderabad, its successor**; and the High Court of Andhra Pradesh has no jurisdiction to consider the same.

64. The same result could be arrived at if one considers Sub-Clause (2) of Article 226 of the Constitution of India as well. It states:

"Article 226 : (1)

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

65. The above provision enables the High Court of Judicature for the State of Telangana to exercise jurisdiction in relation to cause of action of refusal to give options to petitioners pursuant to guidelines framed on 01.11.2018 **at Hyderabad** by the erstwhile High Court at Hyderabad for both the State of Telangana and the State of Andhra Pradesh since it is the said High Court which currently has territorial jurisdiction over Hyderabad, and it is also the successor High Court after 01.01.2019 to the erstwhile High Court at Hyderabad for both the State of Telangana and the State of Andhra Pradesh; though the Government, authority (High Court of Andhra Pradesh) or person, is not within its territory.

66. Similar view has been taken by the Full Bench of this Court in **Letter dated 6.1.2019 sent by the Andhra Pradesh High Court Advocates' Association rep. by its President, Amaravathi, Guntur District Vs. Union of India and others** (1 supra). The Full Bench held:

“16. Article 226(2) provided that the power to issue directions, orders or writs under Article 226(1) may be exercised by any High Court having jurisdiction over the territories within which the cause of action, wholly or in part, arises. The argument of the learned Senior Counsel loses sight of the fact that Section 40(3) of the Act of 2014 deals with cases which arise out of or pertain to cases which were instituted before the common High Court at Hyderabad at a point of time when it did have territorial jurisdiction over both the States and the strength of the cause of action which arose within its territories. As the cause of action for institution of such cases arose within the territorial jurisdiction of the common High Court at Hyderabad, the jurisdiction to deal with those cases stood crystallised at that point of time itself. Section 40(3) of the Act of 2014 merely retains and saves such jurisdiction in the Hyderabad High Court to continue to deal with the limited matters arising out of such cases which were dealt with by the common High Court at Hyderabad at a point of time when it had jurisdiction to deal with them, notwithstanding the constitution of a separate High Court for the present State of Andhra Pradesh. There is therefore no conflict between Section 40(3) of the Act of 2014 and Article 226(2) of the Constitution.” (emphasis supplied)

67. As the cause of action for institution of this Writ Petition arose within the territorial jurisdiction of the common High Court at Hyderabad for both the States, the jurisdiction to deal with those cases stood crystallized at that point of time itself on 01.11.2018, and so the High Court for the State of Telangana at Hyderabad, which is the successor to the said High Court, and having territorial jurisdiction over Hyderabad, has jurisdiction to entertain and decide it.

68. No doubt, in **Letter dated 6.1.2019 sent by the Andhra Pradesh High Court Advocates’ Association rep. by its President, Amaravathi, Guntur District Vs. Union of India and others** (1 supra) it was held that it was open to the Chief Justice of the High

Court of Judicature for the State of Telangana to exercise administrative power under proviso to Sub-Section (3) of Section 40 to transfer Writ Petitions to the High Court for the State of Andhra Pradesh at Amaravathi *where relief is sought in respect of any order passed by the High Court at Hyderabad before 01.11.2019*, but since that has not been done in this case, it is permissible for this Court to entertain and decide this Writ Petition.

69. Therefore, we reject the contention of the learned senior counsel for the High Court of Judicature of Andhra Pradesh at Amaravathi (respondent no.5) that this Court had no jurisdiction to entertain this Writ Petition.

Point (b) :

70. We shall now consider the question :

“Whether the ‘appointed day’ used in Sub-Section (2) of Section 77 of the Act is the one notified by the Ministry of Home Affairs, Union of India vide S.O.No.655(E), dt.04.03.2014 as 02.06.2014 as regards the High Court for the State of Andhra Pradesh and for purposes of considering allocation of employees of the erstwhile High Court of the composite State of Andhra Pradesh / common High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh ?

or

Whether the ‘appointed day’ used in Sub-Section (2) of Section 77 of the Act, as regards the High Court for the State of Andhra Pradesh and for purposes of considering allocation of employees of the erstwhile High Court of the composite State of Andhra Pradesh / common High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh has to be taken as 01.01.2019, the date when the High Court for the State of

Andhra Pradesh at Amaravathi was constituted by the President of India and started functioning ?

71. It is the stand of both the High Court for the State of Andhra Pradesh at Amaravathi and the High Court for the State of Telangana that the ‘appointed day’ is not 02.06.2014, but it is 01.01.2019 since that was the date when the High Court for the State of Andhra Pradesh and the High Court for the State of Telangana came to be constituted.

72. They contend that the allocation shall be with reference to the ‘appointed day’ *to be treated as the date of establishment of the High Court of Andhra Pradesh* and consequential events like the transformation of the common High Court for both the States at Hyderabad into the High Court for the State of Telangana.

73. According to the Counsel for both the High courts, there was no proposal for bifurcation of the common High Court at Hyderabad, either on the ‘appointed day’, i.e., 02.06.2014 or on the date of retirement of the petitioners; therefore, the appointed day of 02.06.2014 was not taken as basis for bifurcation of the employees of the common High Court at Hyderabad; and since the establishment of the High Court for the State of Andhra Pradesh *exclusively* was notified by the Union of India on 26.12.2018 and the same was established on 01.01.2019, it has to be held that ‘*appointed day*’ for the bifurcation of the composite State of Andhra Pradesh and bifurcation of the High Court, are different. They contend that a conjoint reading of provisions of Sections 30, 31 and 77 of the Act

establish that the ‘appointed day’ for the High Court of Andhra Pradesh was 01.01.2019.

74. They contend that since petitioners were not in service of the High Court at Hyderabad for both the States of Telangana and Andhra Pradesh as on 01.01.2019, they are not entitled to grant of any benefits. According to them, without establishment of High Court for the residuary State of Andhra Pradesh as per Article 214 of the Constitution of India, *the ‘appointed day’ cannot be taken as 02.06.2014 for the High Court of Andhra Pradesh*, as on that date there was no such High Court established.

A. Taking 1.1.2019 as ‘appointed day’ would lead to serious anomalies.

75. In order to appreciate this contention we will have to consider Section 30 of the Act and see **how the situation would look like if the ‘appointed day’ is taken as 02.06.2014 and as 01.01.2019 in that Section?**

76. We shall draw up a table, one showing Sub-Section (1) Section 30 taking the ‘appointed day’ as 02.06.2014 and the other taking the ‘appointed day’ as 01.01.2019.

If ‘appointed day’ taken as 02.06.2014	If ‘appointed day’ taken as 01.01.2019
<p>“30. <i>High Court of Judicature at Hyderabad to be common High Court till establishment of High Court of Andhra</i></p>	<p>“30. <i>High Court of Judicature at Hyderabad to be common High Court till establishment of High Court of Andhra</i></p>

<i>Pradesh :</i>	<i>Pradesh :</i>
<p>(1) On and from 02.06.2014 :</p> <p>(a) the High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with section 31 of this Act;</p>	<p>(1) On and from 01.01.2019 :</p> <p>(a) the High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with section 31 of this Act;</p>
<p>(b) the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before 02.06.2014 shall become on that day the Judges of the common High Court.</p>	<p>(b) the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before 01.01.2019 shall become on that day the Judges of the common High Court.</p>

77. It is important now to take note of the actual events which transpired *after* 02.06.2014 *till* 01.01.2019 with regard to the High Court/s for both the States of Telangana and Andhra Pradesh.

(a) From 02.06.2014, the erstwhile High Court of Andhra Pradesh for the composite State of Andhra Pradesh started functioning as a common High Court for both the new State of Telangana and the residuary State of Andhra Pradesh, and continued to do so till 01.01.2019, when the High Court for the State of Andhra Pradesh at

Amaravathi was constituted; and the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before 02.06.2014 became on that day the Judges of the common High Court and continued to do so till 01.11.2019;

(b) from 01.01.2019, the common High Court at Hyderabad for both the States became the High Court of Judicature only for the State of Telangana; **prior to 01.11.2019**, some Judges were allocated to the High Court of Andhra Pradesh; **on 31.12.2018** they went to Amaravathi from Hyderabad; and **from 01.01.2019** such Judges started functioning as the Judges of High Court of Andhra Pradesh at Amaravathi, while the rest allocated to the High Court of Telangana, continued as Judges of the High Court of Telangana. Oath of Office was also administered on 01.01.2019 i.e., the same day to the Judges of both High Courts by His Excellency the Governor for both States.

78. The above events are consistent with the view that the ‘appointed day’ was understood by the Union of India, the State of Telangana and the residuary State of Andhra Pradesh as well as the Chief Justice of the High Court at Hyderabad, as ‘02.06.2014’ only.

79. If the interpretation now sought to be placed by both the High Courts of Telangana and Andhra Pradesh at Amaravathi i.e., that the ‘appointed day’ as regards the High Court of Andhra Pradesh for purpose of allocation of employees of the combined High Court for both States from 02.06.2014 ought to be taken as 01.01.2019 were to be accepted, all the above events which have occurred taking the

‘appointed day’ as 02.06.2014, would have to be treated as null and void.

80. In other words, if 01.01.2019 were to be the ‘appointed day’, then from that day alone the High Court at Hyderabad would become the common High Court for both the State of Telangana and State of Andhra Pradesh i.e., it would continue to be the common High Court after 01.01.2019 as well.

If so, what would happen to the separate High Court for the State of Andhra Pradesh which was constituted on 01.01.2019? It would be a nullity and cannot function as such.

81. Paradoxically, if the constitution of separate High Court for the State of Andhra Pradesh at Amaravathi from 01.01.2019 is taken as an accepted fact, then, on 01.01.2019, there cannot be a common High Court for both States (as per para 78 above) because both events cannot co-exist and could not have happened.

82. A common high Court at Hyderabad and a separate High court for the state of Andhra Pradesh at Amaravathi at the same time from 1.1.2019 would be an absurdity.

B. There cannot be ‘different’ appointed days for members of District Judiciary and employees of the common High Court at Hyderabad as it would be ‘discriminatory’

83. It is further important to note that when guidelines dt.08.07.2017 were framed by the common High Court at Hyderabad for both States for allocation of members of the District Judiciary of the composite State of Andhra Pradesh, the same were admittedly

framed taking 02.06.2014 as the ‘appointed day’. This was noted in the decision of the Supreme Court in **Telangana Judges Association (2 supra)** at para 31 as under:

“5 (i). The allocation shall be done in the order of seniority as available on June 1, 2014 for each category of posts...”

84. If for members of the District Judiciary under the control of the High Court under Art.235, the ‘appointed day’ was taken as 02.06.2014, why the ‘appointed day’ ought to be taken as ‘01.01.2019’ for employees of the High Court (also under it’s control under Art.229 of the Constitution of India)? Why should both sets of employees under the control of the same High Court be treated differently? This is not explained by the High Court for the State of Andhra Pradesh and the High Court for the State of Telangana.

85. If the appointed day is taken as 01.01.2019 for the employees of the common High Court at Hyderabad *and* as 02.06.2014 for the members of the District Judiciary, it would be patently discriminatory.

C. There cannot be different appointed day , one for the employees of the High Court, and another for employees of the State Government, because under Sec.77 the former are also part of the latter.

86. There is yet another way of looking at this issue.

87. Sub-Section (2) of Section 77 which deals with allocation of “employees serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh” covers certainly employees of the State Government.

The said words have been interpreted by the Supreme Court in **Telangana Judges' Association and another** (2 supra) at para no.39 as having wide coverage and as including 'every person who is serving in connection with *the affairs of the existing State*'. The Supreme Court held in that case that even Judicial Officers working in the subordinate judiciary under the control of the High Court by virtue of Article 235 of the Constitution of India are 'persons serving in connection with the affairs of the existing State' and that '*there cannot be any denial that Section 77 also clearly covers the subordinate judiciary of the State ...*'. It accepted the submission of the counsel appearing for the A.P.Judicial Officers Association that the expression "Affairs of the State" featuring in Sec.77 of the Act necessarily have to be construed to mean all the three organs of the State including the judiciary.

If members of the District Judiciary of the erstwhile composite State of Andhra Pradesh are "*persons serving in connection with the affairs of the existing State*", *a fortiori*, the employees of the erstwhile High Court for the composite State of Andhra Pradesh, such as the petitioners, would also be such persons.

We are also fortified in this conclusion by the decision of the Supreme Court in **Pradyat Kumar v. Chief Justice of Calcutta**⁴ that officers and members of the staff attached to a High court clearly fall within the scope of the phrase "persons appointed to public services and posts in connection with the affairs of the State" and also of the

⁴ AIR 1956 SC 285 at page 293

phrase “a person who is a member of a Civil Service of a State” as used in Articles 310 and 311 of the Constitution.

Therefore, the appointed day has got to be the same one for employees of State Government and also the employees of the High Court for the composite State of Andhra Pradesh as on 02.06.2014. There cannot be one ‘appointed day’ of 02.06.2014 for the employees of the State Government and another ‘appointed day’ of 01.01.2019 for employees of the High Court for the composite State of Andhra Pradesh.

The Guidelines for allocation of State Government Employees

88. Let us now see what the Guidelines framed by the Union of India with regard to the ‘State Government employees’ say?

89. The Union of India had communicated the Guidelines for final allocation of State Cadre employees (other than All India Services Officers) under the Act **on 29.10.2014** to the State of Andhra Pradesh as well as the State of Telangana.

In the said guidelines it is stated in **para 1** that the ‘appointed day’ for the purpose of the Act when the new State of Telangana and the residuary State of Andhra Pradesh come into existence is **02.06.2014** as per the notification dt.04.03.2014 issued by it.

Para 7 stated that all sanctioned Civil Services and Civil Posts that existed immediately prior to the ‘appointed day’ i.e. as on 01.06.2014, shall be allotted to the successor states in terms of

Sections 77 to 82 of the Act which have to be read as an integral part of the guidelines.

Para 18 of the said guidelines states:

"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) The employees to be allocated would include persons who are absconding, long absentees, those on leave preparatory to retirement or other kinds of leave, those under suspension, persons undergoing training and employees on deputation, including foreign service deputation. 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 candidates' 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.

g).....”

90. The above Guidelines framed by the Union of India for the employees of the State Governments also adopt 02.06.2014 as the ‘appointed day’ for purposes of their allocation.

91. In our opinion, it is not permissible to interpret the term ‘appointed day’ used in Section 77 while dealing with employees of the High Court at Hyderabad for both the States of Telangana and Andhra Pradesh and their allocation, as a date such as 01.01.2019, and not as 02.06.2014, because as pointed out above, employees of the High Court are also like employees of State Government, persons “employed in connection with the affairs of the existing State of Andhra Pradesh”.

92. The ‘appointed day’ therefore has to be one and the same for both of them.

93. For this reasons also, it makes sense only to construe the said date as only 02.06.2014 even with regard to bifurcation of employees of the erstwhile High Court for the composite State of Andhra Pradesh and not as 01.01.2019.

D. If the appointed day is taken as ‘01.01.2019’ for allocation of employees of the common High Court, then it would fall foul of sub-section (1) of Sec.77 which states that allocation shall be done after appointed day as admittedly allocation was done on 31.12.2018.

94. Yet another way of looking at this issue is that under Sub-Section (2) of Section 77 “*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 Sub-Section (1) shall be finally allotted for service.....”.

Therefore, the allocation of employees of the High Court can only be “*after*” the appointed day.

But, it is an admitted fact that not only were the Guidelines for allocation framed on 01.11.2018 *prior to* 01.01.2019, but even the allocation of the employees of the High Court occurred *before* 01.01.2019 on **31.12.2018**.

The High Court of Telangana had filed along with its counter affidavit proceedings Roc.No.12706/Estd./2018 dt.31.12.2018 giving the list of employees allocated to the High Court of Andhra Pradesh at Amaravathi/High Court for the State of Telangana at Hyderabad with effect from 01.01.2019, which establishes the above fact.

This proceeding dt.31.12.2018 would have no validity if the ‘appointed day’ were to be taken as 01.01.2019 as is being contended by the High Court for the State of Andhra Pradesh and the High Court for the State of Telangana, because allocation was done on 31.12.2018, ‘before’ 1.1.2019 and not “*after*” 01.01.2019.

95. For all these reasons, we reject the plea of the learned Senior Counsel for High Court of Andhra Pradesh at Amaravathi and the High Court of Telangana at Hyderabad that the ‘appointed day’ mentioned in Sub-Section (2) of Section 77 ought to be taken as 01.01.2019 and not as 02.06.2014, the date notified by the Union of India under Section 2(a) of the Act.

96. We hold that 01.01.2019 is only a date on which the combined High Court at Hyderabad became the High Court for the State of Telangana, and a date when the new High Court for the State of Andhra Pradesh at Amaravathi was constituted, but it cannot be the ‘appointed day’ as defined in Sec.2(a) of the Act.

97. In view of the aforesaid reasoning, with great respect, we are unable to agree with the view of the Committee of Judges of the High Court for the State of Telangana contained in its Resolution dt.25.01.2019 that the ‘appointed day’ for coming into being of the High Court of Andhra Pradesh and the High Court of Telangana is 01.01.2019. In our opinion, there can only be one ‘appointed day’ i.e., 02.06.2014 as defined in Section 2(a) of the Act; and 01.01.2019 cannot be treated as an ‘appointed day’ as far as Section 77 or Section 30 is concerned in relation to allocation of employees of the common High Court at Hyderabad to the High Court of Andhra Pradesh and the High Court of Telangana. We also hold that the said decision ignored the language of Section 77 as well as Section 30 and is not correct in law.

98. Point (b) is answered accordingly, i.e., there cannot be a different appointed day for the High Court employees and that 02.06.2014 has to be taken as the ‘appointed day’ for allocation of the employees of the common High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh as well.

Point (c)

99. We shall now consider the question:

“Whether the High Court of Hyderabad was justified in confining the operation of the Guidelines framed by it vide ROC No.615/SO/RO/2014 dt.01.11.2018 only to those employees who were working in the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh as on the date of issuance of the said Guidelines for the purpose of giving options for consideration to be continued in the service of the High Court at Hyderabad which would be the High Court for the State of Telangana and for being duly considered for induction and absorption to the service of the High Court for the State of Andhra Pradesh upon its constitution ?”

In other words is it constitutionally and legally valid?

Contentions of counsel for petitioners

100. Petitioners contend that allocation of employees has to be with reference to the ‘appointed day’ irrespective of the date of establishment of the High Court of Andhra Pradesh at Amaravathi and the consequential events like the transformation of the common High Court for both the States at Hyderabad into the High Court for the State of Telangana. They contend that after the ‘appointed day’ of 02.06.2014, options of the employees working in the High Court at Hyderabad were not called for and no Guidelines were laid down for that purpose. According to them, under Sub-Section (2) of Section 77, *“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 Sub-Section (1) shall be finally allotted for service.....”*; that there could not have been any delay for

framing Guidelines for allocation but still the Guidelines were framed by the High Court only on 01.11.2018, 4 years 5 months after 02.06.2014; as per the decision of the Supreme Court in **Telangana Judges Association** (2 supra), the High Court ought to have framed Guidelines for allotting its employees so as to ensure fair and equal treatment to all persons affected in conformity with Article 14 of the Constitution of India.

101. They contend that the Guidelines framed on 01.11.2018 by the High Court at Hyderabad permitted only those employees who were in service of the said High Court as on that date to give options; and if they had also been allowed to exercise option, they would have exercised such option to opt for the High Court of Andhra Pradesh and continue in service up to 60 years; but they were deprived of this opportunity by confining the giving of options only to persons who were in service as on 01.11.2018. According to them, the High Court at Hyderabad ought to have called for options of all the employees working in the High Court as on 02.06.2014 for purpose of allotment to either of the High Courts, so that they would have the opportunity of exercising of their option and enforcing the same even on notional basis at the place of their option.

102. They contend that the action of the High Court is discriminatory and violates the above decision of the Supreme Court. They contend that there is no rationale behind confining the right to exercise option only to those persons who are in service as on 01.11.2018 and ignoring the persons who retired between 02.06.2014 and 01.11.2018;

and the fixation of the cut off date for the purpose of allotment of employees basing on their options as 01.11.2018 is unreasonable and arbitrary and violates Article 14 of the Constitution of India.

103. Section 3A of the A.P. Public Employment (Regulation of Age of Superannuation) Act, 2014 notified on 27.06.2014 states that a Government employee belonging to the State cadre and who by general or specific order of the Government of India under sub-section (1) of Section 77 of the Act 6 of 2014, and serving provisionally in connection with the affairs of the State of Telangana, and if he is finally allotted to the State of Andhra Pradesh by the Government of India under sub-section (2) of Section 77 of the Act, he shall be deemed to be continuously serving in the State of Andhra Pradesh. The Proviso to the said Section also gives the benefit of notional service for the purpose of calculation of his pensionary benefits in respect of those employees who attained the age of 60 years before the final allotment to the State of Andhra Pradesh, by taking into account the service rendered in the State of Telangana till the date of his retirement. By virtue of these provisions, the employees working in the High Court at Hyderabad, on their allotment to the High Court of Andhra Pradesh, before attaining the age of 60 years will be entitled to continue up to the age of 60 years or even otherwise they will be entitled for better pensionary benefits. It is stated that the incidental benefits like promotions, increments, etc., also will be available to such employees basing on their seniority in the High Court of Andhra Pradesh, on being allotted to it.

The contentions of the counsel for the High Court of Andhra Pradesh at Amaravathi

104. The only response of the Senior Counsel for the High Court of Andhra Pradesh to this submission of the petitioners is that it would open a pandora's box; and every employee who had been on the rolls of the High Court at Hyderabad as on 02.06.2014 would now come forward and make a claim to be given options, so that he can opt for the High Court of Andhra Pradesh at Amaravathi and get to serve the said High Court till he attains the age of superannuation of 60 years.

Our consideration of the point

105. Firstly we find it strange that both the High Courts of Andhra Pradesh at Amaravathi and the High Court of Telangana did not plead that the 'appointed day' ought to be 01.11.2018 for the High Court of Andhra Pradesh at Amaravathi or for consideration of claims of employees for allocation. On the contrary, their case is that the 'appointed day' ought to be 01.01.2019.

106. How fixing the 'appointed day' as 01.01.2019 is consistent with fixing the 'cut off date' for the exclusion of employees as 01.11.2018, is not explained by the High Court of Andhra Pradesh at Amaravathi and the High Court of Telangana at Hyderabad.

107. In **D.S.Nakara**'s case (3 supra), a liberalized pension formula was issued by the Union of India but it was made applicable prospectively to those who retired on or after 31.03.1979 in case of Government servants covered by Central Civil Services(Pension)

Rules, 1972, and in respect of Defence personnel, those who became/become non-effective on or after 01.04.1979. Consequently, those who retired prior to the specified date would not be entitled to the benefits of the liberalized pension formula.

The pensioners contended that the pensioners of the Central Government form a class for the purpose of pensionary benefits and there cannot be a mini-classification within the class designated as pensioners; if pension is paid for past satisfactory service rendered, and to avoid destitution in the old-age as well as a social welfare or socio-economic justice measure, the differential treatment for those retiring prior to a certain date and those retiring subsequently, the choice of the date being wholly arbitrary, would be according differential treatment to pensioners, who form a class, irrespective of the date of retirement and, therefore, would be violative of Article 14 of the Constitution.

It was also contended that classification based on fortuitous circumstance of retirement before or subsequent to a date, fixing of which is not shown to be related to any rational principle, would also violate Article 14.

108. The Supreme Court in **D.S.Nakara** (3 Supra) held that Article 14 no doubt permits reasonable classification for the purpose of legislation, but to pass the test of permissible classification, two conditions must be fulfilled i.e. (i) that the classification must be founded on a intelligible differentia which distinguishes persons or

things that are grouped together from those that are left out of the group; and (ii) that the differentia must have a rational relation to the objects sought to be achieved by the statute in question. It emphasized that **there ought to be a nexus i.e. causal connection between the basis of classification and the object of the statute under consideration.**

It held that **the burden of proof is on the State and it would have to affirmatively satisfy the Court that the twin tests have been satisfied; and that it can only be satisfied if the State establishes not only the rational principle on which the classification is founded but correlates it to the objects sought to be achieved.**

It declared that pension is a right and its payment does not depend upon the discretion of the Government, that it is not a bounty or a gratuitous payment depending upon the sweet will or the grace of the employer; that it is earned by rendering long and efficient service and is in the nature of a deferred portion of the compensation for the service rendered; that persons holding identical posts while in service cannot be treated differently in the matter of their pay merely because they belong to different departments and *a fortiori* even after their retirement. **If pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later.**

It declared that the impugned memoranda issued by the Government did not spell out the *raison d'etre* for liberalizing the pension formula; and that it did not find justification for arbitrarily selecting the criteria for eligibility for the benefits of the scheme dividing the pensioners all of whom would be retirees but falling on one or other side of the specified date. It held:

“.....If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified

date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14"

109. This principle was reiterated in **Kallakkurichi Taluk Retired Officials Assn. v. State of T.N**⁵. in the following terms:

"33.A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied."

110. In the **Telangana Judges' Association** (2 supra) case, which arose under the A.P. Reorganization Act, 2014 and dealt with the guidelines framed by the High Court on 08.07.2017 with regard to the bifurcation of the District Judiciary of the composite State of Andhra Pradesh also this of discrimination prohibited by Art.14 and 16 of the Constitution of India was discussed and it was held :

"42. Section 80 expressly indicates that in carrying exercise by the Central Government as contemplated under Section 77, there has to be fair and equal treatment to all persons affected by the provisions

⁵ (2013) 2 SCC 772

of Part-VIII of the Act. The guidelines for allocation of cadre should ensure fair and equal treatment to all persons affected and they should also conform the equality clause as enshrined in Article 14 of the Indian Constitution. We have thus to scrutinize the guidelines in this context so as to enable us to come to a decision that whether guidelines are to be implemented or not." (emphasis supplied)

111. Therefore, there is no doubt that under Sec.80 (1) (b) and also as per the above decisions, the guidelines for allocation of cadre should ensure fair and equal treatment to all persons affected and they should also conform the equality clause as enshrined in Article 14 of the Indian Constitution.

112. A reading of the guidelines gives no indication as to why the High Court while framing the guidelines on 01.11.2018 confined operation of the said guidelines only to those employees who were working in the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh as on the date of those guidelines and those who may be appointed thereafter into such service. The rationale for the said decision is not revealed in the guidelines.

113. In the counter-affidavits filed by the High Court for the State of Andhra Pradesh and the High Court for the State of Telangana, it is merely stated that there was no proposal for bifurcation of the High Court immediately after 'appointed day' for formation of two States; and therefore the 'appointed day' i.e., 02.06.2014 was not taken as the basis for bifurcation of the employees of the common High Court; and that the 'appointed day' is taken as 01.01.2019 for the High Court of Andhra Pradesh; that age of superannuation of the employees of the

High Court was only 58 years and the petitioners retired from service before the options were called for. It is stated that for the said reason they cannot be allotted to the High Court of Andhra Pradesh.

114. One cannot discern from both these counter-affidavits any reason justifying the options under the guidelines to be confined only to those who were working in the High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh as on 1.11.2018 and excluding those who were in service on the ‘appointed day’ of 02.06.2014, though they might have retired before 01.11.2018.

115. We hold that the burden of proof is on the respondents i.e both the High Court of Andhra Pradesh at Amaravathi and the High Court for Telangana at Hyderabad to affirmatively satisfy the Court that the twin tests have been satisfied as held in **D.S.Nakara** (3 Supra), i.e that there is not only rational principle on which the classification is founded, but they also should correlate it to the object sought to be achieved. In fact what object was sought to be achieved by excluding the petitioners and others who have retired prior to 01.11.2018 is not clear.

116. Sec.77 of the Act, to the extent it is relevant for our purposes, states:

*“77. **Provisions relating to other services :** (1) Every person who immediately before the appointed day is serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Andhra Pradesh unless he is required, by general or special order of the Central*

Government to serve provisionally in connection with the affairs of the State of Telangana.

...

(2) 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 sub-section (1) shall be finally allotted for service, after consideration of option received by seeking option from the employees, and the date with effect from which such allotment shall take effect or be deemed to have taken effect. (emphasis supplied):

... ...”

117. We are of the opinion that the language of Subsection (2) of Sec.77 confers on ‘every employee’ who, *before the appointed day, is serving on substantive basis in connection with the affairs of the existing State of Andhra Pradesh*, a right to seek allocation to one or the other successor State. Thus all employees in the common High court at Hyderabad as on 2.6.2014 form ‘ a single class’ and have entitlement for allocation to either of the High Court of Telangana or the proposed High Court of Andhra Pradesh.

118. Therefore if the object of the composite High Court at Hyderabad, when it framed the guidelines on 01.11.2018, is to ensure that only those who are on the rolls of the common High Court at Hyderabad as on 1.11.2018 should be entitled to exercise options, and not all those who were on it’s rolls as on 2.6.2014, i.e only few of such employees can exercise options and seek allocation, it would clearly violate sub-section (2) of Sec.77 nullifying the right conferred on them by the said provision to seek and obtain allocation.

119. Also when all employees of the composite High Court at Hyderabad as on 02.06.2014 form a ‘single class’, exclusion of persons who retired prior to 01.11.2018 without any valid differentia is violative of Art.14 and the mandate of clause (b) of sub-section (1) of Section 80 to frame guidelines ensuring *that they are fair and equitable treatment is given to all persons affected by the provisions of the Part VIII.*

120. Point (c) is answered accordingly and we hold that the guidelines dt.01.11.2018 framed by the High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh insofar as they excluded persons who retired prior to the said date are arbitrary and violate Article 14 of the Constitution of India.

Point (d):

121. We shall now consider the question as to what relief, if any, the petitioners are to be granted in this Writ Petition.

122. We have held that by virtue of Section 77 of the Act, each employee of the High Court who was in service as on 02.06.2014 is entitled to be allocated to either of the successor States, that the ‘appointed day’ for the said purpose has to be taken as 02.06.2014 only, and the common High Court at Hyderabad for both States had violated Article 14 of the Constitution and Section 80(1)(b) of the Act by discriminating against its employees who had retired prior to 01.11.2018 by confining the applicability of its Guidelines for

allocation dt.1.11.2018 only to those who were in service of the said High Court on 01.11.2018.

123. In their representation dt.23.1.2019 made to the High Court of Telangana, the petitioners had specifically contended that if they had been allowed to exercise options, they would have opted to go to the High Court of Andhra Pradesh; and they would be able to obtain benefit of extension of service upto completion of 60 years of age, on par with similarly situated employees of the A.P.Secretariat and government employees.

124. Similar request was made in the representation made by them on 20.3.2019 to the High Court of Andhra Pradesh. As stated above both requests were rejected on 1.3.2019 and 29.4.2019 respectively.

125. Having regard to the findings recorded by us on points (a), (b) and (c), these two orders of rejection dt.1.3.2019 and dt.29.4.2019 passed by the High Court of Telangana and the High court of Andhra Pradesh are legally unsustainable and are set aside.

126. The petitioners had filed at page 178 of their paper book, details of their ages of retirement. From the said details, it is clear that all petitioners had retired by 30.7.2018 on attaining the age of 58 years. If the age of retirement is taken as 60 years, then they would have retired after 1.1.2019 but by 30.07.2020.

127. They had filed the Writ Petition in this High Court of Telangana on 06.07.2019.

128. After several adjournments, the High Court of Andhra Pradesh at Amaravathi, which is the 5th respondent, filed its counter-affidavit on 27.01.2020 through its counsel Sri K.Chaitanya. The High Court of Telangana filed its counter-affidavit on 30.12.2019. Thereafter arguments of the learned counsel for petitioners, Smt.K.Sesharajyam, learned Senior Counsel for 5th respondent and Sri Swaroop Oorilla, learned counsel for High Court of Telangana were heard on 04.03.2020 and the matter was adjourned to 19.03.2020 for hearing the learned Advocate General for the State of Andhra Pradesh. In the meantime, there was a lockdown imposed by the State and Central Governments on account of the Carona Virus pandemic which ended only in July, 2020. The arguments of the learned Advocate General for the State of Andhra Pradesh were heard on 30.07.2020 and orders were reserved.

129. Thus for no fault of the petitioners, this Writ Petition could not be disposed of before 30.07.2020, the day when the last of them attained the age of 60 years.

130. But such delay cannot be to the advantage of respondent Nos.2 and 5 and they cannot be allowed to defeat the will of the Parliament contained in Section 77(2) of the Act which mandates that the petitioners be allocated to one or the other successor State '*as soon as may be*' after the appointed day of 02.06.2014.

131. It may be that there were genuine reasons why the guidelines could not be framed for allocation of employees of the High Court

immediately after 02.06.2014, but that cannot mean that the said delay should defeat the right conferred on the petitioners to get 'fair and equal treatment' like other employees who were in service as on 01.11.2018 and get opportunity to opt for the High Court of Andhra Pradesh as and when it is constituted.

132. Therefore this Court is of the opinion that relief ought to be moulded in the Writ Petition and it cannot simply be dismissed on the ground that all the petitioners had crossed the age of 60 years by the time this order is pronounced.

133. We have already referred to Rule 21 of the Service Rules of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh published in the Gazette of State of Telangana on 14.06.2017.

134. The said Rule makes the Fundamental Rules, the Subsidiary Rules thereunder, Civil Service Regulations and other Rules applicable to the employees of Governments of Telangana and Andhra Pradesh to the employees of the High Court insofar as they are not inconsistent with the Rules contained in it.

135. Consequently, whatever age of superannuation applies to State Government Employees of either State, the High Court employees allocated to such a State also would have the same age of superannuation. (In fact the State of A.P. had issued G.O.Ms.No.24 dt.29.1.2019 extending the age of superannuation of employees of the

High Court of Andhra Pradesh also to 60 years like A.P. State Government employees.)

136. In this regard, we have noted that the State of Andhra Pradesh had amended the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 (for short ‘the 1984 Act’) by enacting the A.P. Public Employment (Regulation of Age of Superannuation) Amendment Act, 2014 (for short ‘Act 4 of 2014’) after 2.6.2014, and enhanced the age of superannuation of the State Government employees from 58 years to 60 years by amending Section 3 of the 1984 Act.

137. Section 3-A was introduced in the 1984 Act by Act 4 of 2014 and it states:

“3-A subject to the provisions of Section 3,-

(1) A Government employee belonging to the State Cadre/Multi-zonal Cadre and who by general or specific order of the Government of India under sub-section (1) of section 77 of the Andhra Pradesh Reorganization Act, 2014, and serving provisionally in connection with the affairs of the State of Telangana, and if he is finally allotted to the State of Andhra Pradesh by the Government of India under sub-section (2) of Section 77 of the said act, 2014 shall be deemed to be continuously serving in the State of Andhra Pradesh.

(2) A Government employee belonging to the State Cadre/Multi-zonal Cadre falling in the territories of both the State of Andhra Pradesh and the State of Telangana, who by a general or a specific order of the Government of India under sub-section (1) of Section 77 of the said Act, 2017, is serving provisionally and retires on attaining the age of fifty eight years and on his final allotment, subsequently to the State of Andhra Pradesh by the Government of India under sub-section (2) of Section 77 of the said Act but before attaining the age of sixty years, shall be re-induced into service/post

with effect from the date of his final allotment to the State of Andhra Pradesh without break in service.

Provided that an employee who attained the age of sixty years before the final allotment to the State of Andhra Pradesh by the Government of India, the services rendered in the State of Telangana till the date of his retirement shall be considered notionally as if, he has rendered service in the State of Andhra Pradesh for the purpose of calculation of his pensionary benefits.”

138. Sub-Section (1) of Section 3-A states that a Government employee even if he is serving provisionally in connection with the affairs of the State of Telangana by virtue of a general or special order of the Government of India under sub-Section (1) of Section 77, *if he is finally allotted to the State of Andhra Pradesh by the Government of India under sub-Section (2) of Section 77, shall be deemed to be continuously serving in the State of Andhra Pradesh.*

139. Sub-Section (2) of Section 3-A states that such employee referred to in sub-Section (1) of Section 3-A, *even if he retires on attaining the age of 58 years, while serving in the State of Telangana provisionally, on his final allotment subsequently to the State of Andhra Pradesh by the Government of India under sub-Section (2) of Section 77 of the Act, but before attaining the age of 60 years, shall be reinducted into service/post w.e.f. the date of his final allotment to the State of Andhra Pradesh without break in service.*

140. The petitioners herein, having not only retired on attaining the age of superannuation of 58 years as on their respective dates of retirement by 30.07.2018, have also by now completed the age of 60 years. Therefore they cannot get the benefits conferred by sub-

Section (1) or sub-Section (2) of Section 3-A and they cannot continue in the service of the State of Andhra Pradesh or get re-induced into the service of the State of Andhra Pradesh.

141. However, in our opinion, they cannot be denied the salary and other benefits they would have earned from 1.1.2019, the date when the High Court of Andhra Pradesh was constituted, till each of them reached the age of superannuation of 60 years, which had been prescribed by the State of Andhra Pradesh by G.O.Ms.No.24 dt.29.1.2019 as well as the Act 4 of 2014.

142. The principle ‘no work, no pay’ cannot be applied to deny them these benefits because, even though the petitioners were willing to work in the High Court of Andhra Pradesh on being finally allotted to the said High Court, still in view of the order passed on 29.4.2019 of the said High Court and order dt.1.3.2019 of the High Court of Telangana, they were deprived of the opportunity to do so. So both the High Courts should pay them in ratio 1:1, the said benefits with interest at 6% from the date on which they fell due till the date of actual payment.

143. In addition thereto, even though they attained the age of 60 years before their final allotment, the proviso to section 3-A confers on them the benefit of “notional service” for the purpose of calculation of their pensionary benefits. This right /benefit also cannot be denied to the petitioners.

144. Accordingly, in the interest of justice, we allow the Writ Petition and mould the relief in the Writ Petition as under:

(a) We hold that the High Court of Telangana has jurisdiction to entertain and decide this Writ Petition;

(b) We declare that the ‘**appointed day**’ used in Sub-Section (2) of Section 77 of the Act, as regards the High Court for the State of Andhra Pradesh and for purposes of considering allocation of employees of the erstwhile High Court of the composite State of Andhra Pradesh / common High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh cannot be taken as **01.01.2019**, the date when the High Court for the State of Andhra Pradesh at Amaravathi was constituted by the President of India and started functioning ;

(c) We declare that there can only be one ‘**appointed day**’ i.e., 02.06.2014 as defined in Section 2(a) of the Act; and 01.01.2019 cannot be treated as an ‘**appointed day**’ as far as Section 77 or Section 30 is concerned in relation to allocation of employees of the common High Court at Hyderabad to the High Court of Andhra Pradesh and the High Court of Telangana;

(d) We declare that all employees of the composite High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh as on 02.06.2014 form a ‘single class’, and exclusion of persons who retired prior to 01.11.2018 without any valid differentia is violative of Art.14 and the mandate of clause (b) of sub-section (1) of Section 80

to frame guidelines ensuring that there is fair and equitable treatment to all persons affected by the provisions of the Part VIII.

(e) We declare that the common High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh erred in law in confining the operation of the Guidelines framed by it vide ROC No.615/SO/RO/2014 dt.01.11.2018 only to those employees who were working in the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh as on the date of issuance of the said Guidelines for the purpose of giving options for consideration to be continued in the service of the High Court at Hyderabad which would be the High Court for the State of Telangana and for being duly considered for induction and absorption to the service of the High Court for the State of Andhra Pradesh upon its constitution;

(f) We declare that order of rejection dt.1.3.2019 passed by the High Court of Telangana and order of rejection dt.29.4.2019 passed by the High Court of Andhra Pradesh denying options to petitioners to opt for the High Court of Andhra Pradesh from the date it is constituted, are legally unsustainable, and set aside the same;

(g) A Writ of Mandamus is issued directing that petitioners shall be deemed to have been allotted by the Union of India (1st respondent) under sub-Section (2) of Section 77 of the Act to the High Court for of Andhra Pradesh (5th respondent) at Amaravathi after 02.06.2014;

(h) A Writ of Mandamus is issued directing both the High Court of Telangana (4th respondent) and the High Court of Andhra Pradesh (5th respondent) to pay in ratio 1:1 to the petitioners within 8 weeks from date of receipt of copy of this order, the salary and other benefits they would have earned from 1.1.2019 (the date when the separate High Court of Andhra Pradesh was constituted) till each of the petitioners reached the age of superannuation of 60 years, with interest at 6% from the date on which the said payments were due till the date of actual payment;

(i) We direct that petitioners shall be notionally deemed to have rendered service in the separate High Court of Andhra Pradesh from 1.1.2019 till they attained the age of 60 years, and the said notional service shall be taken into account for the purpose of calculation of their pensionary benefits by virtue of proviso to Section 3-A of the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984 as amended by Act 4 of 2014; and The State of Andhra Pradesh (respondents 6 and 7) and the High Court of Andhra Pradesh at Amaravathi (5th respondent) shall calculate the said benefits and pay the same to the petitioners within eight (08) weeks from the date of receipt of copy of the order.

(j) We direct the High Court of Telangana (2nd respondent) to forward the service records of the petitioners to the High Court of Andhra Pradesh at Amaravathi (5th respondent) at the earliest;

(k) We direct that the High Court of Telangana(2nd respondent) and the High Court of Andhra Pradesh at Amaravathi (5th respondent) shall each pay to each of the petitioners Rs.3,000/- (Rupees Three Thousand only) towards costs within 4 weeks for the manner in which the petitioners were denied their right to exercise options in the Guidelines dt.1.11.2018 published by the common High Court at Hyderabad for both the state of Telangana and the High Court of Andhra Pradesh and the unfortunate rejection by the High Court of Telangana (2nd respondent) on 25.01.2019 and the High Court of Andhra Pradesh (5th respondent) on 29.04.2019 of the legally valid request of the petitioners for allocation to the separate High Court of Andhra Pradesh.

145. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. AMARNATH GOUD

Date: 27.08.2020

Note: L.R. copies to be marked.
B/o Svv/Ndr/Vsv/gra

Note :- Issue C.C. tomorrow.

B/o.
Vsv