*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
&
***THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**

+WRIT PETITION Nos.24641 OF 2014 & 1094 OF 2016

% 22.09.2026

The Govt., of A.P., rep. by its Prl. Secretary to Govt. Home Department, Secretariat, Hyderabad and others.

……Petitioners

And:

$1.M.V. Durga Rao and others.

….Respondents.

!Counsel for the appellant : Add. Advocate General

^Counsel for the respondents : CORPUS JURIS LAW PANEL LLP

WRIT PETITION NO: 1094 of 2016

The State Of Andhra Pradesh and Others ...Petitioner(s)
Vs.
B M Chalam Babu S/o Narasimhulu and Others ...Respondent(s)

Advocate for Petitioner: ADDL ADVOCATE GENERAL
Advocate for Respondent: M R TAGORE

<Gist:
>Head Note:
? Cases referred:
[1] 2001 SCC OnLine AP 501
[2] 1987 Supp SCC 345
[3] (1989) 1 SCC 101
[4]Unreported WP.No.17833/2014 APHC, Decided on 05.03.2018
[5] Unreported WP No.12190 of 2021 APHC Decided on 07.05.2025
[6] (2019) 4 SCC 376
[7] (2000) 6 SCC 359
[8] (2019) 6 SCC 270
[9] (2011) 4 SCC 602
10 (2022) 17 SCC 568
11 (2011) 11 SCC 441
12.2025 SCC OnLine SC 304
13. (2007) 11 SCC 10
14.(2011) 2 SCC 429
15.(2006) 4 SCC 1
16.(2007) 15 SCC 129
17.(2019) 19 SCC 626

HIGH COURT OF ANDHRA PRADESH

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WRIT PETITION Nos.24641 OF 2014 & 1094 OF 2016

DATE OF JUDGMENT PRONOUNCED: 22.09.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

1. **Whether Reporters of Local newspapers may be allowed to see the Judgments?** **Yes/No**

2. **Whether the copies of judgment may be marked to Law Reporters/Journals** **Yes/No**

3. **Whether Your Lordships wish to see the fair copy of the Judgment?** **Yes/No**

_____
RAVI NATH TILHARI, J

_____
SUBHENDU SAMANTA,J

Date of reserved for orders : 01.07.2026
Date of pronouncement :22.09.2026
Date of uploading :22.09.2026

APHC010634522014

[3562]

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION NO: 24641 of 2014

The Govt Of Ap., Home Dept., & 2 Others and Others ...Petitioner(s)
Vs.
M V Durga Rao 3 Others and Others ...Respondent(s)

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Present:
Advocate for Petitioner: ADDL ADVOCATE GENERAL
Advocate for Respondent: CORPUS JURIS LAW PANEL LLP

WRIT PETITION NO: 1094 of 2016

The State Of Andhra Pradesh and Others ...Petitioner(s)
Vs.
B M Chalam Babu S/o Narasimhulu and Others ...Respondent(s)

****

Advocate for Petitioner: ADDL ADVOCATE GENERAL
Advocate for Respondent: M R TAGORE

CORAM : SRI JUSTICE RAVI NATH TILHARI

SRI JUSTICE SUBHENDU SAMANTA

DATE : 22.09.2026

COMMON JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri K. Kirthi Teja, learned Government Pleader attached to learned Additional Advocate General appearing for the petitioners and Sri M. V. Raja Ram, learned counsel appearing for respondents in W.P.No.24641 of 2014 and Sri R. V. Mallikarjuna Rao, learned counsel

appearing on behalf of Sri M. R. Tagore, learned counsel for the respondents in W.P.No.1094 of 2016.

I. Facts:

2. Respondents No.1 to 3 **in W.P.No.24641 of 2014 (applicants) filed O.A.No.3350 of 2012 (O.A)** seeking direction to the petitioners (respondents in O.A.) to count their services on the post of Reserve Sub-Inspectors of Police (RSI) to their services on the post of Sub-Inspector of Police (SI) (Civil) of Eluru Range to which post they were subsequently appointed through Direct Recruitment in the year 2004. The O.A.No.3350 of 2012 was disposed of in terms of the Order issued in a previous O.A.No.6168 of 2011 which was disposed of by the Andhra Pradesh Administrative Tribunal, Hyderabad (Tribunal) on 27.03.2014. The O.A.No.6168 of 2011 filed by different applicants had been allowed by the Tribunal. The proceedings impugned therein dated 29.06.2011 were set aside. By those proceedings, those different applicants, who were also the direct recruits to the post of SI (Civil) and previously they had been appointed as RSI in the direct recruitment, their past services as RSI were not counted for seniority and for other service benefits to the post of SI on direct recruitment. The Tribunal after setting aside those proceedings, directed the respondent-State Authorities to accord all seniority and promotions as a result of the Orders of the Andhra Pradesh High Court passed in WP No.22176 of 2004 and batch, dated 01.03.2007

and of the Hon'ble Apex Court dated 16.03.2010 in C.A.No.7372-7374 and batch with SLP No.19858-19862 of 2007.

3. Respondents No.1 to 9 in **W.P.No.1094 of 2016 (applicants) who are working as Head Constables** filed O.A.No.2943 of 2011 (O.A) seeking direction to the petitioners (respondents in O.A.) to count their services on the post of Armed Reserve Police Constable (ARPC) to their services on the post of Civil Police Constables of Anantapur District. The applicants raised the claim of seniority after lapse of 15 years from the date of their appointment as PCs (Civil). The O.A.No.2943 of 2011 was allowed vide Orders dated 26.04.2013 directing the respondents therein to fix their seniority rendered in the cadre of AR Police constables from the date of their initial appointment as ARPCs by applying the principle as applied in respect of Sub-Inspectors of Police (Civil) in Rc.No.1152/E1/2010, dated 08.12.2010. Challenging the orders of the Tribunal dated 26.04.2013, the petitioners filed W.P.No.1094 of 2016.

4. The respondents (applicants) were initially appointed as PCs (AR) and thereafter selected and appointed as Police Constables (Civil) through direct recruitment.

5. In W.P.No.22176 of 2004 and batch i.e., W.P.Nos.22176, 22180 of 2004, 19618/2005 and 25871/2006, decided on 01.03.2007, the Order of the Tribunal in another O.A.No.1693 of 2002 along with O.A.No.3991 of 2001 and O.A.No.3654 of 2004, dated 02.08.2004 was under challenge. The proceedings of the State Authorities to the same effect

i.e., not counting the past service on the post of RSI for the seniority and other benefits to the post SI (Civil) on the appointment through direct recruitment to the post of SI (Civil) were in question. The O.A.No.3991 of 2001 and the connected O.As were dismissed maintaining the State proceedings. In O.A.No.3991 of 2001 and others, the applicants therein had requested to extend the benefit of the judgment of the High Court of Andhra Pradesh in WP No.2120 of 2000 and batch. The Tribunal held that the judgment in W.P.No.2120 of 2000 was different and those applicants were not entitled for the benefit of that judgment for counting their past services as RSI in the cadre of SI (Civil). The Tribunal observed that, that was a case of SI (Civil) appointed by transfer to the post of SI (Civil) from their previous service as RSI. That was not a case of direct recruitment to the post of SI (Civil). So, Rule 15 (c) of A. P.State Police Subordinate Service Rules, 1996 (in short 'Rules 1996/Special Rules') which was attracted and applied in W.P.No.2120 of 2000 had no application to the case of the applicants in O.A.No.3991 of 2001 & batch. Their appointment was through direct recruitment and not by transfer.

6. The WP No.22176 of 2004 and batch were allowed in view of the judgment in W.P.No.2120 of 2000 and batch, by judgment dated 01.03.2007, "*as it was agreed by the learned counsel for the petitioners and also the learned Government Pleader appearing for the respondents in those writ petitions that the issue involved was same as covered by a decision in WP No.2120 of 2000 and batch."* The unofficial respondents in

writ petition No.22176 of 2024 as also the State preferred Civil Appeal Nos.7370, 7375, 7368, 7378 & 7369 of 2002 and SLP (C) Nos.19858-19862 of 2007. The Civil Appeals were dismissed and in view of dismissal of the civil appeals, SLPs filed by the State of Andhra Pradesh were also dismissed by the Hon'ble Apex Court on 16.03.2010. The Review Petitions were also dismissed on 18.11.2020 on the ground of delay as also on merits by the Hon'ble Apex Court.

7. Now coming to the Order dated 27.03.2014 impugned in the Writ Petition No.24641 of 2014, the Tribunal in effect granted the benefit of the judgment of the High Court in W.P.No.2120 of 2000 and batch, dated 15.06.2001. It is to be mentioned that the benefit of the judgment in W.P.No.2120 of 2000 and batch was extended, in the batch of the subsequent writ petitions i.e., W.P.No.22176 of 2004 and batch, on the concession granted by the then learned Government Pleader that the controversy was squarely covered by the judgment dated 01.03.2007 in WP.No.2120 of 2000 and batch.

8. The impugned Order dated 26.04.2013 in W.P.No.1094 of 2016 passed by the Tribunal is on the same grounds as the Order impugned in W.P.No.24641 of 2014. There is difference of posts only but the Rules applicable are same.

II. Submissions of the learned Government Pleader for the Petitioners:

9. Learned Government Pleader for the petitioners submitted that the controversy in WP.No.2120 of 2000 was different. There, the petitioners to whom the benefit of past services as RSI was allowed to be added or counted in their services as SI (Civil) they were appointed to the post of SI (Civil) by transfer and not by direct recruitment. So, in the case of the petitioners of W.P.No.2120 of 2000 Rule 15 (c) was attracted and in view of that Rule, the benefit of past service on the post of RSI was granted. He submitted that in the case of RSI appointed subsequently directly to the post of SI (Civil) as is the case of the Applicants (respondents), Rule 15 (c) of the Rules is not attracted. Rule 15 (a) is attracted. Under Rule 15 (a) they are not entitled for the grant of benefit of past services as RSI. The WP.No.22176 of 2004 and batch was decided granting the benefit of the judgment in WP No.2120 of 2000 and batch, on the concession of the learned counsel for the State who appeared in that writ petition and as recorded had stated that the controversy was covered. Learned Government Pleader submitted that on merits the petitioners of W.P.No.22176 of 2014 were not so entitled, however the benefit came to them on the concession granted, which was not correct.

10. Learned Government Pleader further submitted that in W.P.No.1094 of 2016 that the same Rules are applicable, so, the same

submission is also advanced in W.P.No.1094 of 2016. The Tribunal erred in appreciating the Rule 15 (c) of A.P.Police Subordinate Service Rules in right perspective as the applicants were not transferred from AR PC to PC (civil) and they were not appointed by transfer from ARPC to PC (civil). They were selected afresh as PC (civil) by direct recruitment.

III. Submissions of the learned counsel for the Respondents:

11. Learned counsel for the respondents (applicants in the OA) submitted that the judgment of this Court dated 01.03.2007 passed in WP No.22176 of 2004 and batch was challenged in the Hon'ble Apex Court. The Civil Appeal of the unofficial respondents was dismissed. The SLP filed by the State of Andhra Pradesh was dismissed by the common order. The review petition was also dismissed. So, the Order passed in WP No.22176 of 2004 and batch attained finality. Subsequently in many O.As the benefit of the judgment in W.P.No.22176 of 2004 was given. In the present O.A also the same benefit has been extended. There is no illegality in the Order of the Tribunal. The same point cannot be re-agitated and reopened. In the cases of the other applicants the Government implemented the Order by issuing G.Os, granting the seniority and other benefits, adding to their services to the post of SI (Civil), their past services on the post of RSI. Even in the cases of some other applicants in whose favour the Order of the Tribunal was on the same lines, those have also been extended the same benefit. So, the

present respondents (Applicants) cannot be denied the same benefit on the principle of equality as also the finality on the same subject.

12. Learned counsel for the respondents submitted that the judgment of the Hon'ble Apex Court in SLPs and the Civil Appeals as aforesaid, shall operate as a binding precedent to be followed in the present case. The State is bound by the finality attached and it also implemented the said order, and so it shall also implement the impugned order of the Tribunal in the case of the present respondents.

IV. Points of Consideration:

13. In our view, for decision of the present writ petition, we are required to consider the rule position; the main judgment dated 15.06.2001 in WP.No.2120 of 2000 and batch, to determine if the controversy as in the present writ petition is covered by the judgment in WP No.2120 of 2000 and batch. If it is so covered, there would be no difficulty and the impugned Order of the Tribunal would not require any interference. But if the present respondents are not covered by Rule 15 (c) of the Rules, but by Rule 15 (a) and so the judgment in W.P.No.2120 of 2000 is inapplicable, then whether such benefit could be extended, only because benefit of the judgment in W.P.No.2120 of 2000 was given to the different applicants in different O.A(s) based on the judgment in W.P.No.22176 of 2004 and batch, which judgment was passed not on consideration on merits, but on the submissions advanced by both the

sides that the controversy was squarely covered by judgment in W.P.No.2120 of 2000.

14. We are then also required to consider the effect of the dismissal of the Civil Appeals of the unofficial respondents, and the dismissal of the SLP filed by the State against the judgment in WP.No.22176 of 2004 and batch. In other words, whether in view of the judgment of the Hon'ble Apex Court in SLPs and the Civil Appeals as aforesaid, notwithstanding that the respondents case is not covered by Rule 15 (c) nor by the judgment dated 15.06.2001 in W.P.No.2120 of 2000, still we have to maintain the impugned Order of the Tribunal.

V. Analysis & Consisderation:

15. The 1st respondent (Applicant No.1 in OA) was initially appointed as RSI in the direct recruitment of 1996 and the 2nd and 3rd respondents (Applicants No.2 & 3 in OA) were appointed in the direct recruitment in the year 2003. Thereafter, they participated in 2004 direct recruitment process for the post of SI of Police (Civil). They were selected and appointed as Sub-Inspector of Police (Civil) on 02.05.2005. Subsequently, they were promoted as Inspectors of Police on 14.03.2014, 13.07.2012 and 13.07.2012 respectively. So, it is not in dispute that the respondents (Applicants) were appointed to the post of SI of Police (Civil) by direct recruitment. Their appointment to the post of SI (Civil) is not an appointment by transfer from the post of RSI.

V (a). Rule position and the Citations:

16. Before coming to the judgment in W.P.No.2120 of 2000 and batch, viz., ***E. Shankar Reddy v. Government of A.P.***[1] it is to be mentioned that the services of the respondents (applicants) are governed by the Andhra Pradesh Police Subordinate Service Rules.

17. Rule 2 of the Special Rules provides for the method of appointment and promotion. The appointment is by direct recruitment, by promotion and also by transfer.

18. On the point of seniority, Rule 15 provides for determination by the date of the first appointment to a class or category or grade. However, transfer of a person from one class or category of the service to another class or category carrying the same scale of pay, shall not be treated as first appointment to the latter for the purpose of seniority. The seniority of person so transferred shall be determined with reference to the date of first appointment to the class or category from which he was transferred.

19. Rule 15 of the Andhra Pradesh Police Subordinate Service Rules reads as under:

> **"Rule – 15. Seniority:**
>
> (a) The seniority of a person in the class or category or grades shall, unless he has been reduced to lower rank as a punishment be determined by the date of his first appointment to such class or category or grade. If any portion of the service of such persons does not count

[1] 2001 SCC OnLine AP 501

towards his probation under the general rules his seniority shall be determined by the date of commencement of his service which counts towards probation:

[Provided that in the case of Sub-Inspectors, Sub-Inspectors (Intelligence) and Reserve Sub-Inspectors], the seniority inter-se shall be fixed on completion of training in the Police Training College or with the Andhra Pradesh Special Police, as the case may be, instead of at the time of selection in accordance with the list which shall be arranged in order of merit, which shall be determined in accordance with the aggregate of marks obtained by each probationer.

(i) in respect of his record in the Police Training College or with the Andhra Pradesh Special Police, as the case may be; and

(ii) at the final examination.

In determining such order of merit, no account shall be taken of marks awarded to a probationer in any subject in which he has failed. But such seniority shall be liable to revision by the Deputy Inspector-General of Police concerned if he considers it necessary, before completion of probation.

This sub-rule shall not affect the seniority of any members of the service which may have been fixed expressly or by implication before the 19th November, 1941 or any orders so as to seniority which may have been passed by competent authority before the 19th November, 1941.

["Provided that in the case of directly recruited Sub-Inspectors of Police (Intelligence), the inter-se-seniority shall be fixed on completion of training in t the he Police Training College/Andhra Pradesh Police Academy, instead of at the time of selection, in accordance with the list which shall be arranged in order of merit, which shall be determined in accordance with the aggregate of marks obtained by each probationer in the tests and examinations prescribed for them in the training modules conducted at these Institutions.

The seniority of the Sub-Inspectors of Police (Intelligence) appointed by transfer from among Sub-Inspectors of Police (Civil) or equivalent ranks of this service carrying the same scale of pay shall not be treated as first appointment but shall be determined with reference to the date of his seniority in the Class or Category from which he was transferred."]

["Provided further that the inter-se-seniority of the Sub-Inspectors selected from among the Reserve Sub-Inspectors of Armed Reserve and Andhra Pradesh Special Police Battalions by transfer shall be fixed in the order of merit for each Range (Zone) separately based on the aggregate marks obtained by them in the final examination conducted at Police Training College at the end of six months training. In determining such order of merit, the marks secured in the failed subjects need not be taken into account; Their past service and seniority in the category from which their seniority shall be reckoned from the date of appointment as Sub-Inspector (Civil) for all purposes".]

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a class or category fix for any reason the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it.

(c) The transfer of a person from one class or category of the service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of person so transferred shall be determined with reference to the date of his first appointment to class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority.

(d) Where a member of the service in any class, category or grade is reduced to a lower class, category or grade, he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall take rank in such lower class, category or grade next below any

special member thereof.

(e) The seniority of qualified Special Policemen appointed by transfer as Constables in this service shall be determined by the date of their first appointment in this service for purposes of confirmation in vacancies in this service.

(f) The seniority of the Prohibition staff absorbed in this service shall be determined on the basis of their pay fixed with reference to Fundamental Rules 22 and 31, in the service:

Provided that the inter-se-seniority of these at the same stage of the time-scales of pay of the service will be determined by the dates on which they began to draw pay at that stage; and

Provided further that no member of the Excise and Prohibition Department will, on appointment to this service, be senior to any member of the service who has put in the same or more period of service than himself.

In the case of members of such ranks in the Excise and Prohibition Department, the scales of pay which correspond to the scales of pay of the ranks in this service, the date of their first appointment in the Excise and Prohibition Department shall determine their seniority."

20. It is not in dispute that impugned Order of the Tribunal has been passed only in view of the previous Order of the Tribunal in O.A.No. 3350 of 2012 and the judgment in W.P.No.22176 of 2004 which granted the benefit of the judgment in W.P.No.2120 of 2000 proceeding, on the statement made by the learned counsel for both the sides that the controversy was squarely covered by judgment in W.P.No.2120 of 2000.

21. So, finally it rests on the judgment dated 15.06.2001 in W.P.No.2120 of 2000 and batch, viz., ***E. Shankar Reddy*** (supra).

(i). *E. Shankar Reddy v. Government of A.P.*:

22. In ***E. Shankar Reddy*** (supra) the facts were that the 1985 batch RSIs questioned the legality and validity of an executive instruction issued by G.O.Ms.No.188, dated 30.06.1999. They prayed for reckoning their seniority from the date of initial appointment in the category of RSI in terms of the statutory rules issued under G.O.Ms.No.35 (Police) Department, dated 11.02.1999 with retrospective effect from 15.05.1992, in terms whereof, the last paragraph in G.O.Ms.No.638, dated 05.09.1994 was deleted. The petitioners therein were appointed directly as RSIs pursuant to the examination conducted in February 1985. One batch of SI (Civil) was also appointed in the year 1985. Rules 15 (a) and (c) of the A.P.State Police Subordinate Service Rules (Special Rules) framed in terms of the proviso to Article 309 of the Constitution of India, were for consideration and applicability. By reason of G.O.Ms.No.270 Home (Police-C) Department, dated 02.04.1990 the Special Rules were amended. In terms whereof a channel of transfer was provided to the SI (Civil), limited to 5% of the personnel from RSI cadre. Such provision had been made also for the posts of constable. The petitioners therein (RSIs) gave representation requesting, counting of their past service also for the purpose of seniority. A policy decision was taken by the State to amend Rule 15 (a) of the special rules, which was amended vide G.O.Ms.No.35 dated 11.02.1999 with retrospective effect from 15.05.1992, providing after amendment that '*inter se seniority of the Sub-Inspectors selected*

from among the Reserve Sub-Inspectors of Armed Reserve and Andhra Pradesh Special Police Battalions by transfer shall be fixed in the order of merit for each Range (Zone) separately based on the aggregate marks obtained by them in the final examination conducted at the Police Training College, at the end of six months training. In determining such order of merit, the marks secured in the failed subjects need not be taken into account." The Government of Andhra Pradesh issued Memo No.7067/Pol.C/AI/99-1, dated 25.02.1999 whereby and whereunder the Director General of Police was asked to regulate the seniority of the RSIs transferred to SI (Civil) as per Rule 15 (c) obviously keeping in view the amendment issued to Rule 15 (a) in G.O.Ms.No.35, dated 11.02.1999, *inter alia,* it provided that "*the seniority of RSIs transferred to Civil S.I. category shall be regulated as per clause (c) of Rule 15 of Andhra Pradesh Police Subordinate Service Rules*."

23. In ***E. Shankar Reddy*** (supra) the issue concerned the *inter se* seniority between the direct recruits of 1985 and 1989 batch of Sub-Inspectors of Police (Civil) vis-à-vis Reserve Sub-Inspectors of Police, who were appointed by way of transfer to the post of SI of Police (Civil) under 5% of quota of such post {SI (Civil)} for appointment by transfer, which is one of modes of appointment recognized under Rule 2 of the Rules.

24. In ***E. Shankar Reddy*** (supra), this Court observed that the moot question for consideration was as to whether Rule 15 (c) would be

applicable in the case of Reserve Sub-Inspectors of Police. It was observed that Rule 15 (a) deals with the determination of seniority or grade by the date of the first appointment. Appointment by way of transfer for RSI and SI of Police (Civil) was not a first appointment under A.P.Police Subordinate Service Rules. Thus, the appointment by way of transfer being not the first and initial appointment, there was no impediment in application of Rule 15 (c), in that case. This Court further held that Rule 15 (c) in no uncertain terms protected the past seniority of such categories of persons from the date of their first appointment to the class or category of service from which they had been transferred.

25. Placing reliance in ***K. Rajaiah v. State of A.P.***[2] it was observed and held in ***E. Shankar Reddy*** (supra) that by reason of Rule 15 (c), the applicability of Rule 15 (a) was clearly taken away having regard to the fact that thereby a legal fiction had been created that such appointment by transfer shall not be treated as first appointment *inter se* for the purpose of seniority. Such legal fiction must be given full effect. With respect to Rule 15 (a) it was clearly held that it dealt with the determination of seniority or grade by the date of the first appointment.

26. Paragraph Nos.48, 50, 53, 54, 55, 56, 57 and 58 of ***E. Shankar Reddy*** (supra) read as under:

> "**48.** The moot question which now arises for consideration is as to whether Rule 15(c) would be applicable in the case of RSIs.

[2] 1987 Supp SCC 345

50. Rule 15(a) deals with the determination of seniority or grade by the date of his first appointment. Appointment by way of transfer for RSI and SI (civil) is not a first appointment under A.P. Police Subordinate Service Rules. Thus the appointment by way of transfer being not the first and initial appointment, there is no impediment in application of Rule 15(c) in this case. Furthermore, the induction training done by the RSI is different from the initial training contemplated under 3rd proviso to Rule 15(a). By reason of the third proviso appended to Rule 15(a) as per G.O.Ms. No. 638, dated 5-9-1994 the past service and seniority in the category of the RSI from which they are transferred as SI (civil) was not protected and their seniority has to be reckoned from the date of appointment as SI (civil) for all purposes.

53. Furthermore, the third proviso, as it now stands, relates to the *inter se* seniority of the SI (Civil) from amongst the RSI and A.P. Special Police Battalions by transfer. It is, therefore, not correct to contend that the *inter se* seniority of the appointees would depend upon the marks obtained by them in the special training held for that purpose. In this case we are not concerned with the *inter se* seniority between the SI (Civil), RSI and A.P. Special Battalions by transfer but we are concerned with the *inter se* seniority between the direct recruits of 1995 and 1999 batch of SI (Civil) *vis-a-vis* the RSI who were appointed by way of transfer to the first mentioned category having regard to the 5% of quota mentioned therein.

54. The submission of Mr. Surender Rao that Rule 15(c) does not take within its purview an appointment by transfer is wholly misplaced. Appointment by transfer is a valid mode of recruitment. Such a transfer having regard to the special rules, can be made from one class or category of services to another class or category of services.

55. In *K. Rajaiah's case* (17 supra) the apex Court was not concerned with the question of seniority. It is true that appointment by transfer and transfer simpliciter do not stand on the same footing. But Rule 15(c) contemplates computation of *inter se* seniority between the persons who had been transferred from one class or category of the services to another class. In this case, this Court is concerned with appointments made by transfer. Such appointments are protected in terms of Rule 15(c) of the Rules. By reason of the said rule 15(c),

the applicability of rule 15(a) is clearly taken away having regard to the fact that thereby a legal fiction has been created that such appointment by transfer shall not be treated as first appointment *inter alia* for the purpose of seniority. Such legal fiction must be given full effect.

56. Rule 15(c) in no uncertain terms protects the past seniority of such categories of persons from the date of his first appointment to the class or category of service from which he has been transferred. To the said extent the decision of the Apex Court in *K. Jagannadha Rao's case* (1 supra) shall squarely apply. In the said decision it has been observed:

We do not however think it necessary to decide whether appointments to category 2 from category 3 amount to transfer attracting Rule 33(c) of the Andhra Pradesh State and Subordinate Services Rules. Under Rule 3(a) of the Andhra Pradesh Police Service Rules, 1966, appointment from category 3 is one method of recruitment to category 2 and the only question is whether giving credit to such appointees for past service in another category in the State Service is justified. We have mentioned the above points of similarity in matters of recruitment and promotion to the two respective categories. It has been noticed also that they carry the same scale of pay. Whether or not some credit should be given for past service in such circumstances is a matter of policy resting with Government. We do not find anything arbitrary or absurd in what Rule 3(d) prescribes, and that being so, the Court cannot examine the matter and come to its own conclusion about what should be the length of past service for which credit should be given……..

57. Once it is held that rule 15(c) applies to the instant case, the submission of the learned Counsel for the parties to the effect that rule 15(a) being special rule, the principle of *generalia specialibus non derogant* shall apply, cannot also be accepted.

58. For the self-same reasons, the question of the effect of the persons borne in the cadre for the first time takes a back seat in view of the fact that although the RSIs, Irving been appointed on transfer to the posts of Sis (Civil) were borne on a new cadre, their seniority is protected by reason of a statutory rule."

27. ***E. Shankar Reddy*** (supra) is an authority / law, for two propositions;

(i) in the case of direct recruitment from RSI to SI of Police (Civil) the date of first appointment in the cadre of SI of Police (Civil) is the relevant date for counting the seniority. In other words, the service rendered in RSI post, prior to their direct recruitment to SI of Police (Civil), shall not count towards the seniority on the post of SI of Police, under Rule 15 (a), and

(ii) In case of appointment by way of transfer to SI of Police (Civil) from the post of RSI, the date of appointment by transfer as SI of Police (Civil) will not be the date of the first appointment. The date of first appointment is such a case would be the appointment on the post of RSI. So, in case of appointment by transfer, the seniority would be from the date of first appointment in the post of RSI under Rule 15 (c).

(ii). *K. Rajaiah v. State of A.P.*:

28. We shall also refer the judgment of the Hon'ble Supreme Court in ***K. Rajaiah*** (supra). The facts were that K. Rajaiah was appointed to the post of RSI on 30.12.1968. He was under-graduate at that time and during service, he graduated in April 1971. Pursuant to an advertisement inviting applications for the post of Sub-Inspector of Police (Civil), he applied and was selected and appointed on 14.12.1976 on probation and after completion of probationary period, he was confirmed on 29.11.1978.

His request to take into account the period of his service as RSI in computing his seniority in the new post of Sub-Inspector of Police (civil), was not accepted by the Inspector General of Police. He made a representation to the Government which issued G.O.Ms.No.344 dated 11.06.1982 taking the view that the entire period of service as RSI should be counted under Rule 15 (c) of the A.P.State Police Subordinate Service Rules and permitted to accord the seniority from the date of his first appointment to the post of RSI. The person aggrieved filed applications before the Andhra Pradesh Administrative Tribunal. The question before the Tribunal was, whether K. Rajaiah who was appointed to the post of Sub-Inspector of Police (Civil) as direct recruit or was recruited in that post by transfer or was simply transferred to that post from the post of RSI following his selection as direct recruit. The Government had taken the view in the Government Order that he was transferred to the post from RSI to that of Sub-Inspector of Police (Civil) under Rule 15 (c) of the A.P.State Police Subordinate Service Rules. The Tribunal, however, took the view that the appointment to the post of Sub-Inspector of Police (Civil) was not by way of transfer under Rule 15 (c) nor was it by way of recruitment by transfer. The Tribunal had pointed out that Rule 2(a) read with Annexure-1 of the A.P.Police Subordinate Service Rules provided for two modes of appointment; (1) By promotion, and (2) By Direct Recruitment or Recruitment by Transfer from any other service. Finally the matter approached the Hon'ble Apex Court.

29. The Hon'ble Apex Court in ***K. Rajaiah*** (supra) held that K. Rajaiah had applied pursuant to an advertisement in the newspaper issued by the Police Department inviting the applications for appointment to the post of Sub-Inspector of Police by direct recruitment in pay scale of RS.150-300. He had undergone the entire procedure prescribed for selection by direct recruitment. He was appointed on probation for two years and on satisfactory completion of his probationary period, he was confirmed in the post of Sub-Inspector of Police. The Hon'ble Apex Court concluded that in view of the manner in which he was appointed to the post of Sub-Inspector of Police (Civil) it was difficult to accept any contention that he was transferred to that post and therefore, held that the appointment of K. Rajaiah was a case of direct recruitment and not a case of transfer. The Hon'ble Apex Court held that although a government servant can be transferred from one post to another, but when he chooses to get himself recruited to that another post after subjecting himself to all requirements and formalities of direct recruitment along with other independent candidates and is confirmed after satisfactory completion of the probationary period, his appointment as a direct recruit cannot be substituted by an order of transfer to the prejudice of the other direct recruits in the matter of computation of seniority. The Hon'ble Apex Court held that it may be that he had not resigned from the post of Reserve Sub-Inspector of Police, and also that the government allowed him the last pay drawn as Reserve Sub-Inspector of Police on his

appointment as Sub-Inspector of Police (Civil), that would not wipe out the appointment as a direct recruit. The Hon'ble Apex Court upheld the judgment of the Tribunal, holding that K. Rajaiah was directly recruited to the post of Sub-Inspector of Police (Civil), and that his seniority should be computed from the date of such appointment.

30. So, the law has been well settled in the case of ***K. Rajaiah*** (supra) by the Hon'ble Apex Court that in the case of direct recruitment of a person holding the post of Reserve Sub-Inspector of Police, to the post of Sub-Inspector of Police (Civil) by undergoing the procedure for the direct recruitment is an appointment to the post of Sub-Inspector of Police (Civil) by direct recruitment and in such a case, his seniority shall be counted only from the date of the appointment to the post of Sub-Inspector of Police (Civil) and in such a case, Rule 15 (c) would not be attracted as it would not be a case of appointment by transfer.

31. It is appropriate to reproduce paras-7 to 12 of ***K. Rajaiah*** (supra) as under:

> "**7.** The Tribunal has taken the view that appointment of the appellant to the post of Sub-Inspector of Police (Civil) was not by way of transfer under Rule 15(*c*), nor was it by way of recruitment by transfer. It has been pointed out by the Tribunal, and that rightly, that Annexure I read with Rule 2(*a*) of Andhra Pradesh Police Subordinate Service Rules provides for two modes of appointment which are—
>
> "(1) by promotion, and
>
> (2) by direct recruitment or recruitment by transfer from any other service."

8. It is not disputed that Sub-Inspectors of Police (Civil) and Reserve Sub-Inspectors of Police both belong to Andhra Pradesh Police Subordinate Service. Recruitment by transfer can only be made from "any other service". As both the posts of Sub-Inspectors of Police (Civil) and Reserve Sub-Inspectors of Police are under the same Service, the question of recruitment in the post of Sub-Inspector of Police (Civil) by transfer from the post of Reserve Sub-Inspector of Police does not arise. Mr Subba Rao, learned counsel appearing on behalf of the appellant, has not made any attempt to substantiate that the appellant's appointment to the post of Sub-Inspector of Police (Civil) was by way of recruitment by transfer. We are, therefore, left with the question whether the appellant's appointment was by way of direct recruitment or it was really a case of transfer of the appellant from the post of Reserve Sub-Inspector of Police to that of Sub-Inspector of Police (Civil). While it is strenuously urged on behalf of the appellant that he was transferred from the post of Reserve Sub-Inspector of Police to the post of Sub-Inspector of Police (Civil) under Rule 15(*c*) of the Andhra Pradesh Police Subordinate Service Rules, it is submitted by Mr P.P. Rao, learned counsel appearing on behalf of the respondents, that the appellant was directly recruited to the post of Sub-Inspector of Police (Civil)

9. It has been already noticed that the appellant applied for the post of Sub-Inspector of Police (Civil) pursuant to an advertisement in the newspaper issued by the Police Department inviting applications for appointment to the said post by direct recruitment in the pay scale of Rs 150-300. The minimum academic qualification required for the post was graduation. The vacancies to be filled up were 140 in number. The appellant succeeded in the preliminary interview and he was directed to appear at the written test. Thereafter, he was also called upon to appear at the final interview before the Selection Board on 25-2-1976 and was asked to bring with him original certificates, evidence of his date of birth, school/college conduct certificate, no objection certificate in original, if he was a Government servant, etc. In other words, the appellant had to undergo the entire procedure prescribed for selection of direct recruits. It has also been noticed earlier that the appellant was appointed on probation for two years and after the satisfactory completion of his probationary period, he was confirmed in the post of Sub-Inspector of Police (Civil). In view of the manner in which

the appellant was appointed to the post of Sub-Inspector of Police (Civil), it is difficult to accept any contention that the appellant was transferred to that post. When a Government servant is transferred from one post to another, the question of his selection after a written and a viva voce test does not at all arise. If the appellant had been transferred simpliciter, the appellant would not have been directed to appear at the written test and the interview for the purpose of selection along with other candidates, who also applied for the posts of Sub-Inspectors of Police (Civil) pursuant to the said advertisement in the local newspaper. It is not disputed that the said advertisement was published for filling up the posts of Sub-Inspectors of Police (Civil) by direct recruitment. We are, therefore, unable to accept the contention made on behalf of the appellant that it was a case of transfer and not of direct recruitment.

10. It is true that the Government has power to transfer under Rule 15(*c*) of the Andhra Pradesh Subordinate Police Service Rules. The question, however, is whether the government intended to transfer the appellant from the post of Reserve Sub-Inspector of Police to that of Sub-Inspector of Police (Civil). It has been rightly pointed out that such transfer can be made only in the public interest, but there was no question of any public interest so far as the appellant was concerned. Indeed, in the impugned government order, it was directed that the same would not be treated as a precedent. If the appellant's appointment to the post of Sub-Inspector of Police (Civil) was by way of transfer in exercise of the power under Rule 15(*c*), there was no necessity for a direction that the order would not be treated as a precedent for others. The impugned order was not made by the government out of its own, but on the representation of the appellant which was made after the appellant's request to take into account his period of service as the Reserve Sub-Inspector of Police in computing his seniority in the post of Sub-Inspector of Police (Civil) was turned down by the Inspector General of Police.

11. In support of the case for transfer, the appellant has strongly relied upon two facts, namely, (*1*) that he did not submit any resignation from the post of Reserve Sub-Inspector of Police; and (*2*) that he was allowed to draw last pay as Reserve Sub-Inspector of Police even on his appointment as the Sub-Inspector of Police (Civil). These two facts have also been relied upon by the

government in the impugned order. These two circumstances are no doubt the criteria of a transfer, but merely because of the presence of these circumstances, it will not justify a finding that the appellant was transferred, as contended by him, having regard to the manner in which the appellant was appointed to the post of Sub-Inspector of Police (Civil). Although a government servant can be transferred from one post to another, but when he chooses to get himself recruited to that another post after subjecting himself to all requirements and formalities of direct recruitment along with other independent candidates and is confirmed after satisfactory completion of the probationary period, his appointment as a direct recruit cannot be substituted by an order of transfer to the prejudice of the other direct recruits in the matter of computation of seniority. It may be that the appellant had not resigned from the post of Reserve Sub-Inspector of Police, and that the government allowed him the last pay drawn as Reserve Sub-Inspector of Police on his appointment as Sub-Inspector of Police (Civil), that would not, in our opinion, wipe out the appointment of the appellant as a direct recruit. The Tribunal, in our view, is perfectly justified in holding that the appellant was directly recruited to the post of Sub-Inspector of Police (Civil), and that his seniority should be computed from the date of such appointment.

12. For the reasons aforesaid, the appeal is dismissed. There will, however, be no order as to costs."

32. So, from a plain reading of Rules 15 (a) and 15 (c) of the Special Rules as also the law as laid down by the Coordinate Bench in ***E. Shankar Reddy*** (supra), which followed the Hon'ble Apex Court judgment in ***K. Rajaiah*** (supra), it is settled that in the case of direct recruitment, the seniority shall be from the date of the appointment in that grade, class or category of service. So, it is settled that,

(i) a person who was already working on the post of RSI but applied for the post of SI of Police (Civil), in the process for direct

recruitment and got selected and appointed to the post of SI of Police (Civil), his seniority shall be determined under Rule 15 (a) from the date of his appointment on the post of SI of Police (Civil). The past service rendered as RSI and the seniority on that post shall not be available nor counted on appointment on new post of SI of Police (Civil) pursuant to the direct recruitment, and

(ii) when it comes to the appointment of RSI, in service, to the post of SI of Police (Civil) by way of transfer permissible under Rule 2 of the Rules, under the quota prescribed, for that, Rule 15 (c) comes into play for determination of seniority and in view thereof, the appointment by transfer to SI of Police (Civil) shall not be the first appointment, so as to attract Section 15 (a). His seniority or past service on the post of RSI has been saved for the purposes of determination of seniority by creating a legal fiction that his appointment is not the first appointment.

33. The respondents' case, on which there is no dispute, is not the case of appointment by transfer. It is an appointment on the post of SI of Police (Civil) through direct recruitment.

34. We are therefore of the view that the respondents are not entitled for counting of their past services on the post of RSI for the purposes of seniority to the post of SI of Police (Civil) on which post they have been recruited directly through the direct recruitment process.

V(b). Order on wrong concession given by learned counsel:

35. The Tribunal has granted the benefit of the services on the post of RSI for the purposes of seniority to the post of SI of Police (Civil), simply, by passing the Order in view of the orders passed by the Tribunal in the other OA. The benefit has been given of the judgment dated 15.06.2001 in WP.No.2120 of 2000 and batch (supra), read with Judgment dated 01.03.2007 in W.P.No.22176 of 2004 which was on the concession granted by the then learned Government Pleader that the matter of the respondents herein (Applicants), was squarely covered by judgment dated 15.06.2001 in W.P.No.2120 of 2000.

36. We are of the view that the matter in W.P.No.22176 of 2004 (judgment dated 01.03.2007) is not covered by judgment dated 15.06.2001 in W.P.No.2120 of 2000.

37. When it comes to the applicability of ***E. Shankar Reddy*** (supra) to a case of RSIs appointed by way of transfer to the post of SI of Police (Civil), Rule 15 (c) would govern the seniority and when it comes to the appointment of RSI to the post of SI of Police (Civil) through direct recruitment, the date of appointment on the post of SI of Police (Civil) shall be the date for counting the seniority. Rule 15 (a) would apply.

38. The case of the claimants/respondents is that their appointment to the post of SI of Police (Civil) was by direct recruitment and not by

transfer. Then, Rule 15 (a) would govern their seniority, from the date of first appointment in the post of SI of Police (Civil).

39. Consequently, the concession granted by the learned Government Pleader in WP.No.22176 of 2004 and batch was not correct.

40. Consequently, further, the benefit granted to by the writ petitioners of W.P.No.22176 of 2004 could not be extended to the respondents herein. Under law, they are not so entitled and not even applying the judgment dated 15.06.2001 in W.P.No.2120 of 2000. The matter of the respondents was not considered on merit by the Tribunal, nor of the writ petitions in W.P.No.22176 of 2004. The Order was passed merely on the contention of the petitioners' counsel therein and the concession granted by the learned Government Pleader which concession that the matter was consequently covered, was not correct.

41. In ***Municipal Corporation of Delhi v. Gurnam Kaur***[3] on which the learned Government Pleader placed reliance, the Hon'ble Apex Court has held that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor does it lay down any principle. Quotability as 'law' applies to the principle of a case, its ratio decidendi. The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Paragraphs 9 and 10 of ***Gurnam Kaur*** (supra) are reproduced as under:

[3] (1989) 1 SCC 101

"**9.** We find it rather difficult to sustain the judgment of the High Court. The learned Judges failed to appreciate that this Court in *Jamna Das case* [Writ Petitions Nos. 981-82 of 1984] made a direction with the consent of parties and with the reservation that it should not be treated as a precedent. It expressed no opinion on the question whether there was any statutory obligation cast on the Municipal Corporation to provide alternative site to a person making illegal encroachment on a public place like any public street etc. contrary to Section 320 of the Act, as a condition precedent to the exercise of its powers under Section 322 of the Act for the removal of such encroachment on any public street, footpath or pavement. That apart, the High Court, could not have made the impugned direction contrary to the provisions contained in Sections 320 and 322 of the Act. Section 320(1) in terms creates a statutory bar against illegal encroachment on any portion of a public street. It provides that: "No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any booth or other structure whether fixed or movable or whether a permanent or temporary nature, or any fixture in or upon any street etc." Having regard to this express provision, the High Court failed to see that the respondent Gurman Kaur had no legally enforceable right to the grant of a writ or direction in the nature of mandamus. The High Court could not obviously issue any such direction which would tantamount to a breach of the law. Furthermore, the High Court could not also make the impugned direction in view of the provision contained in Section 322(*a*) of the Act, which expressly confers power on the Commissioner to cause the removal of any structure which constitutes an encroachment on a public place like a street which is meant for the use of the pedestrians.

10. It **is axiomatic that when a direction or order is made by consent of the parties, the court does not adjudicate upon the rights of the parties nor does it lay down any principle. Quotability as "law" applies to the principle of a case, its ratio decidendi.** The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the

present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in *Jamna Das case* [Writ Petitions Nos. 981-82 of 1984] could not be treated to be a precedent. **The High Court failed to realise that the direction in *Jamna Das case* [Writ Petitions Nos. 981-82 of 1984] was made not only with the consent of the parties** but there was an interplay of various factors and the court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned. The court no doubt made incidental observation to the Directive Principles of State Policy enshrined in Article 38(2) of the Constitution and said:

Article 38(2) of the Constitution mandates the State to strive to minimise, amongst others, the inequalities in facilities and opportunities amongst individuals. One who tries to survive by one's own labour has to be encouraged because for want of opportunity destitution may disturb the conscience of the society. Here are persons carrying on some paltry trade in an open space in the scorching heat of Delhi sun freezing cold or torrential rain. They are being denied continuance at that place under the specious plea that they constitute an obstruction to easy access to hospitals. A little more space in the access to the hospital may be welcomed but not at the cost of someone being deprived of his very source of livelihood so as to swell the rank of the fast growing unemployed. As far as possible this should be avoided which we propose to do by this short order.

This indeed was a very noble sentiment but incapable of being implemented in a fast growing city like the Metropolitan City of Delhi where public streets are overcrowded and the pavement squatters create a hazard to the vehicular traffic and cause obstruction to the pedestrians on the pavement.

42. Learned counsels for the respondents placed much reliance in the judgment of this Court in ***The Government of Andhra Pradesh v. Ch. Srinivasa Rao***[4] and some other Orders passed previously based on

[4] Unreported WP.No.17833/2014

the Order dated 01.03.2007 in W.P.No.22176 of 2004 and batch. In the said case also one O.A.No.6170 of 2011 was allowed vide Order dated 08.10.2013 by the Tribunal basing on its previous common judgment dated 02.08.2004 passed in O.A.Nos.3991 of 2001, 1693 of 2002 and 3654 of 2004, which in their turn were allowed basing on the judgment in W.P.No.22176 of 2004 and batch, which were allowed on 01.03.2007, referred to above, in view of the concession granted that the judgment in W.P.No.2120 of 2000 squarely covered the controversy. In ***Ch. Srinivasa Rao*** (W.P.No.17833 of 2014) (supra), in para-9, this Court observed and held as under:

> "9. It is not in dispute that aggrieved by the order passed by the Tribunal in O.A.Nos.3991 of 2001, 1693 of 2002 and 3654 of 2004, dated 2nd August 2004, the matters were carried to this Court in **W.P.Nos.22176 and 22180 of 2004, 19618 of 2005 and 25871 of 2006**. This Court, relying on the earlier order dated 15th June 2001, allowed the above writ petitions by order dated 1st March 2007, holding that the subsequently selected candidates are also entitled for counting their seniority in the category of Sub-Inspectors with effect from the date of their initial appointment as RSIs. This Court categorically held that all the posts are equivalent in all aspects and the service rendered as RSIs, has to be counted. This Court further held that these re-selected/converted RSIs are entitled to be considered for promotion, taking into account their entire service as Inspectors of Police. As discussed above, being aggrieved, the petitioners filed SLPs before the Supreme Court and the same were dismissed. The petitioners filed review petition before the Supreme Court and the same was also dismissed."

43. We are of the view that for the discussion made above, as also the law laid down in ***K.Rajaiah*** (supra) by the Hon'ble Supreme Court, the benefit of judgment dated 01.03.2007 in W.P.No.22176 of 2004 or of any other judgment based on W.P.No.22176 of 2004, cannot be extended to the respondents.

44. Learned counsel for the respondents placed much emphasis in ***P. Shankaraiah v. R. Sreenivasulu***[5] to contend that in the said case, which was also a case of RSI directly recruited to SI of Police (Civil) and the judgment of the Tribunal granting the benefit of seniority to the post of SI of Police (Civil), by including the services on the post of RSI and that Order was challenged by the third parties claiming to be affected by the Order of the Tribunal and who were not parties in the OA nor in the writ petition, the Coordinate Bench dismissed W.P.No.12190 of 2021, vide judgment dated 07.05.2025 and held that the matter could not be reopened on the petition of third parties though they might not be party in O.A and might be the affected persons, by filing the writ petition and particularly, when the Order of the Tribunal stood affirmed by the Hon'ble Apex Court.

45. So far as the aforesaid judgment dated 07.05.2025 in ***P. Shankaraiah*** (supra) (W.P.No.12190 of 2021) is concerned, in which, one of us (RNT, J) was the member and the author of the judgment, the

[5] Unreported WP No.12190 of 2021
APHC Decided on 07.05.2025

Coordinate Bench dismissed the writ petition of the third parties on the ground that even at the instance of the third parties by way of writ petition the matter could not be reopened. It was observed that the remedy, if any, may be elsewhere. The reason, as mentioned in that judgment itself, was that, the Order of the Tribunal which was challenged by the third party, the very same Order in the very same O.A had attained finality up to the Hon'ble Supreme Court. So, when the same Order had attained finality between the same parties, it was held that it could not be reopened at the instance of the third parties by filing the writ petition and the remedy, if any, to those third parties was elsewhere, which certainly meant, in the higher Forum where the SLP was dismissed i.e., Hon'ble Supreme Court. After dismissal of the SLP against the same judgment, the writ petition was considered as not maintainable to reopen the matter by the High Court.

46. Paragraph No.30 of the judgment in ***P. Shankaraiah*** (supra) W.P.No.12190 of 2021 reads as under:

> "30. Under the aforesaid circumstances, we are of the view that after such round of litigation, the petitioners though may not be party and may be effected persons, as submitted, those proceedings cannot be reopened on their petition by this Court, and particularly, when the same impugned Order stand affirmed by the Hon'ble Apex Court. The submission of the petitioners' counsel that these petitioners were not party, may be correct, but even then at their instance, we are of the view that, by way of the present writ petition, the matter cannot be reopened. The remedy, if any, may be elsewhere."

47. In ***P. Shankaraiah*** (supra), the challenge was to the same judgment of the Tribunal passed in the same O.A which had attained finality by dismissal of the State Appeal in the Hon'ble Apex Court. So far as the judgment of the Tribunal impugned in the present writ petition is concerned, the matter is pending and the challenge by the State is surviving. So, the impugned judgment of the Tribunal in the present case has not attained any finality. Consequently, the ground and the reason on which W.P.No.12190 of 2021 at the instance of the third party was dismissed, is not available in the present case. In the present case, we have to decide the controversy on the merits of the judgment, under challenge, keeping in view if the respondents were legally entitled as per the rules for the relief they have been granted as also in view of the judgment dated 15.06.2021 in W.P.No.2120 of 2000, {***E. Shankar Reddy*** (supra)} which was a case of recruitment, by transfer and not of direct recruitment whereas the present case is of a direct recruitment, i.e., the modes of Recruitment and the determination of seniority depending on the mode of recruitment being different under the same Special Rules.

V (c). Law of precedent; on dismissal of SLP and Civil Appeals by the Hon'ble Apex Court:

48. Learned counsels for the respondents laid much emphasis that the judgment in WP.No.22176 of 2004 and batch, dated 01.03.2007 attained finality by dismissal of Civil Appeal Nos.7372-7374/2002 and batch, as also the dismissal of the Review Petition (c) No.1853-57/2010

by the Hon'ble Apex Court. Consequently, now, it cannot be said that the respondents are not entitled for the benefit of the judgment in W.P.No.22176 of 2004 and batch. The same is to be followed. It has been rightly followed by the Tribunal. No case for interference is made out. In their submission, this Court is bound by the principle of finality attached to the judgment in W.P.No.22176 of 2004 and batch, as also by Article 141 of the Constitution of India that, the law declared by the Hon'ble Apex Court shall be binding.

49. In view of the submissions advanced based on the dismissal of the SLP and the Civil Appeals by the Hon'ble Apex Court and that this Court is bound by Article 141 of the Constitution of India to follow the same, we consider it appropriate firstly to reproduce the Orders passed in the CA.No.7372-7374 and batch with SLP.No.19858-19862 of 2007, dated 16.03.2010 (filed against the judgment and order dated 01.03.2007 in WP No. 4770 of 2007 & WP No. 19618 of 2005 & WP No. 22176 of 2004 & WP No. 22180 of 2004 & WP No. 25871 of 2006 of the High Court of Andhra Pradesh at Hyderabad) as under, and then to consider the legal position on 'precedent' & 'declaration of law' binding under Article 141 of the Constitution of India:

> "Heard learned appearing counsel for the parties.
>
> We find no merits in the Civil Appeals.
>
> The Civil Appeals are dismissed accordingly. No costs.
>
> In view of dismissal of Civil Appeals, the special leave petitions filed by the State of Andhra Pradesh are also dismissed."

50. We also reproduce the Order dated 18.11.2010 passed in Review Petition No.1853-57 of 2010 by the Hon'ble Apex Court.

"There is a delay of 175 days in filing the review petition seeking review of this Court's order dated March 18, 2010.

We are not satisfied with the explanation offered. Although this ground is sufficient to dismiss the review petition, yet we have carefully gone through the review petition and the connected papers. We do not find any error apparent on the face of the record which calls for review of the aforesaid order.

The Review Petitions are dismissed both on the ground of delay as also on merits."

51. In ***Khoday Distilleries Limited (now known as Khoday India Limited) v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (under Liquidation)***[6] the Hon'ble Apex Court (3-Judge Bench) considered the question of the effect of the dismissal of SLP and also of the Civil Appeal, and held in paragraphs 26 to 29 as under:

"**26.** From a cumulative reading of the various judgments, we sum up the legal position as under:

26.1. The conclusions rendered by the three-Judge Bench of this Court in *Kunhayammed* [*Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359] and summed up in para 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under : (*Kunhayammed case* [*Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359] , SCC p. 384)

"(*iv*) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the

[6] (2019) 4 SCC 376

order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(*v*) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(*vi*) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(*vii*) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC."

26.3. Once we hold that the law laid down in *Kunhayammed* [*Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359] is to be followed, it will not make any difference whether the review petition was filed before the filing of special leave petition or was filed after the dismissal of special leave petition. Such a situation is covered in para 37 of *Kunhayammed case* [*Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359] .

27. Applying the aforesaid principles, the outcome of these appeals would be as under.

Civil appeal arising out of Special Leave Petition (Civil) No. 490 of 2012

28. In the instant case, since special leave petition was dismissed in limine without giving any reasons, the review petition filed by the appellant in the High Court would be maintainable and should have been decided on merits. Order dated 12-11-2008 [*Sri Mahadeswara Sahakara Sakkare Karkhane Ltd.* v. *Khoday Distilleries Ltd.*, 2008 SCC OnLine Kar 824] passed by the High Court is accordingly set aside and matter is remanded back to the High Court for deciding the review petition on merits. The civil appeal is disposed of accordingly.

Civil appeal arising out of Special Leave Petition (Civil) No. 13792 of 2013

29. In this case, we find that the special leave petition was dismissed with the following order passed on 5-1-2012 [*Ram Krushna Dasmohapatra* v. *Indian Tea Provisions*, 2012 SCC OnLine SC 1183] :

"We find no ground to interfere with the impugned order [*Indian Tea Provisions* v. *Ram Krushna Dasmohapatra*, Writ Appeal No. 367 of 2011, decided on 27-10-2011 (Ori)] . The special leave petition is dismissed."

Here also, the special leave petition was dismissed [*Ram Krushna Dasmohapatra* v. *Indian Tea Provisions*, 2012 SCC OnLine SC 1183] in limine and without any speaking order. After the dismissal of the special leave petition, the respondent in this appeal had approached the High Court with review petition. The said review petition is allowed by passing order dated 12-12-2012 [*Ram Krushna Dasmohapatra* v. *Indian Tea Provisions*, Review Petition No. 74 of 2012, order dated 12-12-2012 (Ori)] on the ground of suppression of material facts by the appellant herein and commission of fraud on the Court. Such a review petition was maintainable. Therefore, the High Court was empowered to entertain the same on merits. Insofar as appeal of the appellant challenging the order dated 12-12-2012 [*Ram Krushna Dasmohapatra* v. *Indian Tea Provisions*, Review Petition No. 74 of 2012, order dated 12-12-2012 (Ori)] on merits is concerned, the matter shall be placed before the regular Board to decide the same."

52. The conclusions reached by the Hon'ble Apex Court in 3-Judge Bench judgment in ***Kunhayammed v. State of Kerala***[7]***,*** were affirmed and reiterated in ***Khoday India Limited*** (supra). As per the pronouncement, an order refusing Special Leave for Appeal may be by non-speaking order or speaking order, it does not attract the doctrine of merger and an order refusing to special leave of appeal does not stand substituted in place of the Order under challenge. All that it means was that the Hon'ble Supreme Court was not inclined to exercise its discretion so as to allow the appeal being filed. The Hon'ble Apex Court reiterated that if the Order refusing leave to appeal is a speaking order i.e., giving reasons for refusing the grant of leave, then the order has two implications. **Firstly,** the statement of law contained in the Order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution of India. **Secondly,** other than the declaration of law, whatever is stated in the Order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline. But this does not amount in saying that the order of the court, tribunal or authority below stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties. It follows therefore what clearly binding is on

[7] (2000) 6 SCC 359

dismissal of SLP by a speaking order if the order contains a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. That declaration of law would be binding notwithstanding the dismissal at the stage of SLP, and other than declaration of law, shall be binding between the parties and also on the court, tribunal or authority in any proceedings subsequent thereto.

53. We are of the view in our understanding of the aforesaid that, the proceedings subsequent thereto would certainly be the proceedings between the parties in the SLP, in which the findings have been recorded or whatever was stated in the order, other than the declaration of law. The declaration of law would be binding in other cases between different parties which may arise in future or even to the pending cases, by virtue of Article 141 of the Constitution as precedent. But so far as other than declaration of law is concerned, that would be binding only between the parties, and between the parties also in the subsequent proceedings before the tribunal, court or authority. So, what is binding as precedent is the law declared, when a SLP is dismissed at that stage, recording the reasons. When those reasons amount to declaration of law, then that shall be binding. Dismissal of the SLP without recording reasons or recording the reasons, but no declaration of law, there would be no question of binding precedent or the applicability of Article 141 of the Constitution of India.

54. In ***State of Orissa v. Dhirendra Sundar Das***[8] the Hon'ble Apex Court held that the dismissal of SLP *in limine* simply implies that the case before the Hon'ble Apex Court was not considered worthy of examination for a reason which may be other than the merits of the case. Such *in limine* dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution of India. Relevant paragraphs 9.26 & 9.27 of ***Dhirendra Sundar Das*** (supra) read as under:

> "**9.*Discussion and analysis***
>
> **9.1 to 9.25……..**
>
> **9.26.** Finally, the High Court had relied upon the decision in *Mukti Ranjan Acharya* v. *State of Orissa* [*Mukti Ranjan Acharya* v. *State of Orissa*, WP (C) No. 19827 of 2009, decided on 16-4-2012 (Ori)] to hold that promotions could be given under the repealed OAS Class II Rules, 1978 and the OAS Class II Regulations, 1978. The SLP against this judgment had been simply dismissed [*State of Odisha* v. *S.N. Mahakul*, 2012 SCC OnLine SC 1186] . The counsel for the contesting respondents prayed for dismissal of the present civil appeals by submitting that the said decision had been affirmed by this Court vide order dated 28-9-2012 [*State of Odisha* v. *S.N. Mahakul*, 2012 SCC OnLine SC 1186].
>
> **9.27.** It is a well-settled principle of law emerging from a catena of decisions of this Court, including *Supreme Court Employees' Welfare Assn.* v. *Union of India* [*Supreme Court Employees' Welfare Assn.* v. *Union of India*, (1989) 4 SCC 187, paras 22 and 23 : 1989 SCC (L&S) 569] and *State of Punjab* v. *Davinder Pal Singh Bhullar* [*State of Punjab* v. *Davinder Pal Singh Bhullar*, (2011) 14 SCC 770, paras 112 and 113 : (2012) 4 SCC (Civ) 1034 : (2012) 4 SCC (Cri) 496 : (2014) 1 SCC (L&S) 208] , that the dismissal of an SLP *in limine* simply implies that the case before this Court was not considered

[8] (2019) 6 SCC 270

worthy of examination for a reason, which may be other than the merits of the case. Such *in limine* dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution."

55. In ***Gangadhara Palo v. Revenue Divisional Officer***[9] the Hon'ble Apex Court held that a precedent is a decision which lays down some principle of law. It was further observed, "*a mere stray observation of this Court, in our opinion, would not amount to a precedent*". Paragraphs 10 and 11 of ***Gangadhara Palo*** (supra) read as under:

"**10.** We have carefully perused SCC para 4 of the aforesaid judgment. What has been observed therein is that if the review petition is filed in the High Court after the dismissal of the special leave petition, "it would be treated as an affront to the order of the Supreme Court". In our opinion, the above observations cannot be treated as a precedent at all. We are not afraid of affronts. **What has to be seen is whether a legal principle is laid down or not. It is totally irrelevant whether we have been affronted or not**.

11. A precedent is a decision which lays down some principle of law. In our view, the observations made in SCC para 4 of the aforesaid judgment, quoted above, that "[if a review petition is filed after the dismissal of the special leave petition] it would be treated as an affront to the order of the Supreme Court" is not a precedent at all. **A mere stray observation of this Court, in our opinion, would not amount to a precedent.** The above observation of this Court is, in our opinion, a mere stray observation and hence not a precedent."

56. Recently, in ***V. Senthur v. M. Vijayakumar***[10] the Hon'ble Apex Court again considered the effect of dismissal of SLP on merits and reiterated the same principle as laid down in the case of ***Khoday India***

[9] (2011) 4 SCC 602
[10] (2022) 17 SCC 568

Limited (supra). It was reiterated that if the Order of dismissal of SLP is supported by reasons, then also the doctrine of merger would not be attracted. Still, the reasons stated by the Court would attract applicability of Article 141 of the Constitution of India, if there is a law declared by the Hon'ble Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. No court, tribunal or party would have the liberty of taking or canvassing any view contrary to one expressed by the Hon'ble Apex Court.

57. Paragraphs 23 to 27 of ***V. Senthur*** (supra) read as under:

"**23.** It is thus clear that this Court in unequivocal terms has held that if the order of dismissal of SLPs is supported by reasons, then also the doctrine of merger would not be attracted. Still the reasons stated by the court would attract applicability of Article 141 of the Constitution of India, if there is a law declared by this Court which obviously would be binding on all the courts and the tribunals in India and certainly, the parties thereto. It has been held that no court, tribunal or party would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. Such an order would mean that it has declared the law and in that light, the case was considered not fit for grant of leave.

24. This Court, while dismissing the SLPs against the first judgment, has clearly held that after the emergence of the judgment in *Bimlesh Tanwar* [*Bimlesh Tanwar* v. *State of Haryana*, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] , the fundamental principle governing the determination of seniority was that, it should be based on merit list of selection and that the list made on the basis of roster point, would not be permissible in law. It could thus be seen that while dismissing the SLPs, this Court has reiterated the legal position as laid down in *Bimlesh Tanwar* [*Bimlesh Tanwar* v. *State of Haryana*, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] to the effect that while determining

seniority, what is relevant is the inter se merit in the selection list and not the roster point.

25. It is pertinent to note that though, the then learned Attorney General had raised an issue with regard to a contrary view taken by the Madurai Bench of the same High Court, this Court clearly held that since the issue was now covered by the decision of this Court in *Bimlesh Tanwar* [*Bimlesh Tanwar* v. *State of Haryana*, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] , the pendency of the SLPs challenging the judgment of Madurai Bench, would be of no consequence inasmuch as the said SLPs would be governed by the judgment of this Court in *Bimlesh Tanwar* [*Bimlesh Tanwar* v. *State of Haryana*, (2003) 5 SCC 604 : 2003 SCC (L&S) 737] .

26. It is thus clear that though it cannot be said that the second judgment of the Madras High Court has merged into the order of this Court dated 22-1-2016 [*T.N. Public Service Commission* v. *State of T.N.*, 2016 SCC OnLine SC 1950] , still the declaration of law as made in the said order, would be binding on all the courts and tribunals in the country and in any case, between the parties.

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

58. In ***State of Uttar Pradesh v. Rekha Rani***[11] the Hon'ble Apex Court held that in the previous Order of the Hon'ble Apex Court passed in the SLP there was no discussion on the merits of the case and so it was held that the said decision did not amount to precedent and no benefit could be derived there from. Para-10 of ***Rekha Rani*** (supra) reads as under:

"**10.** We have perused the order of this Court dated 19-2-1996 passed in the SLP filed against the judgment and order of the High Court in Writ Petition No. 4886 of 1990 and we **find that there is no discussion on the merits of the**

[11] (2011) 11 SCC 441

case. Thus, the aforesaid decision of this Court does not amount to a precedent and the respondent can take no benefit from the same."

59. In ***Gurnam Kaur*** (supra) the Hon'ble Apex Court further held that the judgment delivered without argument, without reference to the relevant provisions of the Act and without any citation or authority, is not an authoritative pronouncement of law. Paragraphs-11 and 12 of ***Gurnam Kaur*** (supra) read as under:

"**11.** Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in *Jamna Das case* [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. **It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority.** Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the *Salmond on Jurisprudence*, 12th Edn. explains the concept of *sub silentio* at p. 153 in these words:

A decision passes *sub silentio*, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not

have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

12. In *Gerard* v. *Worth of Paris Ltd.* (*k*). [(1936) 2 All ER 905 (CA)] , the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co.* (*London*) *Ltd.* v. *Bremith Ltd.* [(1941) 1 KB 675] , the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed *sub silentio* by counsel in order that the point of substance might be decided. **He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents *sub silentio* and without argument are of no moment. This rule has ever since been followed.** One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an *ex cathedra* statement, having the weight of authority."

60. Learned counsel for the respondents/applicants placed reliance in ***P. Rammohan Rao v. K. Srinivas***[12]. The same is not on the controversy as involved in the present writ petitions. In ***P. Rammohan***

[12] 2025 SCC OnLine SC 304

Rao (supra) different rules were for consideration. On the construction or interpretation of the special rules as involved in the present cases, they are direct authorities in the case of ***K. Rajaiah*** (supra) of the Hon'ble Supreme Court and of this Court in ***E. Shankar Reddy*** (supra).

61. Learned counsel for the respondents/applicants further placed reliance in ***Union of India v. A.K.Narula***[13] on the point of doctrine of doctrine of 'merger'. In the said case it was held that the decision of the Single Judge get merged with the judgment of the Division Bench in the Letter Patent Appeal. There cannot be any dispute on the doctrine of 'merger'. But no benefit can be derived based on the judgment, for the reason that in the present case the dismissal of the Civil Appeals by the Hon'ble Apex Court of the third parties and in consequence thereof dismissal of the SLP, though may result in the merger of the judgment under challenge before the Hon'ble Apex Court, but on that principle of merger that judgment would be binding between the parties, and only if any law has been declared that the declaration of law shall be followed as a binding precedent. In the orders dismissing the Civil Appeals and also the SLPs by the Hon'ble Apex Court, there was no declaration of law on the special rules. Under the same circumstances as in the present case as to when the appointment is by direct recruitment from the post of RSI to SI of Police (Civil) and not by way of transfer, Rule 15 (a) shall apply and not Rule 15 (c) which is the law laid down by the Hon'ble Apex

[13] (2007) 11 SCC 10

Court in ***K. Rajaiah*** (supra) and that is binding on this Court as precedent under Article 14 of the Constitution of India.

V (d). No negative parity/No equality in illegality:

62. It is further well settled in law that an illegality cannot be permitted to be perpetuated. There cannot be a negative parity. If some benefit has been conferred on concession which concession was not correct, the others cannot claim the same benefit on such a wrong concession on the ground of parity that they are similarly situated.

63. In ***Rekha Rani*** (supra), it was held that in view of the judgment of the Hon'ble Apex Court in the case of ***State of Rajasthan v. Daya Lal***[14] following the Constitution Bench decision in ***State of Karnataka v. Umadevi***[15] the High Court in exercise of its power under Article 226 could not regularize an employee. The Hon'ble Apex Court held that merely because some others had been regularized did not give any right to the respondent therein. An illegality cannot be perpetuated. Para-12 of the ***Rekha Rani*** (supra) reads as under:

> "**12.** It has been held in a recent decision of this Court in *State of Rajasthan* v. *Daya Lal* [(2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340] following the Constitution Bench decision of this Court in *State of Karnataka* v. *Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] that the High Court in exercise of its power under Article 226 cannot regularise an employee. Merely because some others had been regularised does not give any right to the respondent. An illegality cannot be perpetuated."

[14] (2011) 2 SCC 429
[15] (2006) 4 SCC 1

64. Similarly, in ***State of Orissa v. Prasana Kumar Sahoo***[16] it was held that only because an illegality has been committed, the same cannot be directed to be perpetuated by a court of law. It is well settled that there cannot be equality in illegality. Article 14 contains a positive concept. Paras-20 and 21 of ***Prasana Kumar Sahoo*** (supra) read as under:

> "**20. It may be that some other persons similarly situated have been appointed. But Article 14 as is well known contains a positive concept. A writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation in the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated by a court of law**.
>
> **21.** It is also well settled that **there cannot be equality in illegality**. See *Sushanta Tagore* v. *Union of India* [(2005) 3 SCC 16] , *State* v. *Sashi Balasubramanian* [(2006) 13 SCC 252 : (2007) 3 SCC (Cri) 337 : (2006) 10 Scale 541] and *U.P. State Sugar Corpn. Ltd.* v. *Sant Raj Singh* [(2006) 9 SCC 82 : 2006 SCC (L&S) 1610 : (2006) 6 Scale 205] ."

65. In ***State of Odisha v. Anup Kumar Senapati***[17] the Hon'ble Apex Court reiterated that there is no concept of negative equality under Article 14 of the Constitution of India. In case the person has a right,he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist. Negative equality, when the right does not exist, cannot be claimed. Paras-39 to 48 of ***Anup Kumar Senapati*** (supra) read as under:

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[16] (2007) 15 SCC 129
[17] (2019) 19 SCC 626

"**39.** It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid have been released under the 1994 Order as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. **In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed**.

40. In *Basawaraj* v. *LAO* [*Basawaraj* v. *LAO*, (2013) 14 SCC 81] , it was held thus: (SCC p. 85, para 8)

"*8*. It is a settled legal proposition that **Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated**. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals **or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis** of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *Chandigarh Admn.* v. *Jagjit Singh* [*Chandigarh Admn.* v. *Jagjit Singh*, (1995) 1 SCC 745] , *Anand Buttons Ltd.* v. *State of Haryana* [*Anand Buttons Ltd.* v. *State of Haryana*, (2005) 9 SCC 164] , *K.K.*

Bhalla v. *State of M.P.* [*K.K. Bhalla* v. *State of M.P.*, (2006) 3 SCC 581] and *Fuljit Kaur* v. *State of Punjab* [*Fuljit Kaur* v. *State of Punjab*, (2010) 11 SCC 455] .)"

41. In *Chaman Lal* v. *State of Punjab* [*Chaman Lal* v. *State of Punjab*, (2014) 15 SCC 715 : (2015) 3 SCC (L&S) 678] , it was observed as under: (SCC pp. 720-21, para 16)

"*16.* More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. **In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others**. This Court in *Basawaraj* v. *LAO* [*Basawaraj* v. *LAO*, (2013) 14 SCC 81] considered this issue and held as under: (SCC p. 85, para 8)

'*8.* It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *Chandigarh Admn.* v. *Jagjit Singh* [*Chandigarh Admn.* v. *Jagjit Singh*, (1995) 1 SCC 745] , *Anand Buttons Ltd.* v. *State of Haryana* [*Anand Buttons Ltd.* v. *State of Haryana*, (2005) 9 SCC 164] , *K.K. Bhalla* v. *State of M.P.* [*K.K. Bhalla* v. *State of M.P.*, (2006) 3 SCC 581] and *Fuljit Kaur* v. *State of Punjab* [*Fuljit Kaur* v. *State of Punjab*, (2010) 11 SCC 455] .)' "

42. In *Fuljit Kaur* v. *State of Punjab* [*Fuljit Kaur* v. *State of Punjab*, (2010) 11 SCC 455] , it was observed thus: (SCC p. 462, para 11)

"*11*. The respondent cannot claim parity with *D.S. Longia* v. *State of Punjab* [*D.S. Longia* v. *State of Punjab*, 1992 SCC OnLine P&H 1027 : AIR 1993 P&H 54] , in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article 14 cannot be stretched too far otherwise it would make function of the administration impossible. (Vide *Coromandel Fertilizers Ltd.* v. *Union of India* [*Coromandel Fertilizers Ltd.* v. *Union of India*, 1984 Supp SCC 457 : 1984 SCC (Tax) 225] , *Panchi Devi* v. *State of Rajasthan* [*Panchi Devi* v. *State of Rajasthan*, (2009) 2 SCC 589 : (2009) 1 SCC (L&S) 408] and *Shanti Sports Club* v. *Union of India* [*Shanti Sports Club* v. *Union of India*, (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707] .)"

43. In *Doiwala Sehkari Shram Samvida Samiti Ltd.* v. *State of Uttaranchal* [*Doiwala Sehkari Shram Samvida Samiti Ltd.* v. *State of Uttaranchal*, (2007) 11 SCC 641] , this Court in the context of negative equality observed thus: (SCC pp. 655-56, para 28)

"*28*. This Court in *Union of India* v. *International Trading Co.* [*Union of India* v. *International Trading Co.*, (2003) 5 SCC 437] has held that two wrongs do not make one right. **The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be setting a wrong right but could be perpetuating another wrong and in such matters, there is no**

discrimination involved. The concept of equal treatment on the logic of Article 14 cannot be pressed into service in such cases. But the concept of equal treatment presupposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs on a par. **The affected parties have to establish strength of their case on some other basis and not by claiming negative quality.** In view of the law laid down by this Court in the above matter, the submission of the appellant has no force. **In case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government**."

44. In *Bondu Ramaswamy* v. *BDA* [*Bondu Ramaswamy* v. *BDA*, (2010) 7 SCC 129 : (2010) 3 SCC (Civ) 1] , this Court observed thus: (SCC p. 194, para 146)

"*146*. If the rules/scheme/policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But **if under the rules or scheme or policy for deletion, his land is not eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality**. But where large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme."

45. In *Kulwinder Pal Singh* v. *State of Punjab* [*Kulwinder Pal Singh* v. *State of Punjab*, (2016) 6 SCC 532 : (2016) 2 SCC (L&S) 102] , this Court while relying upon *State of U.P.* v. *Rajkumar Sharma* [*State of U.P.* v. *Rajkumar Sharma*, (2006) 3 SCC 330 : 2006 SCC (L&S) 565] , observed as under: (*Kulwinder Pal Singh case* [*Kulwinder Pal Singh* v. *State of Punjab*, (2016) 6 SCC 532 : (2016) 2 SCC (L&S) 102] , SCC pp. 539-40, para 16)

"*16*. The learned counsel for the appellants contended that when the other candidates were appointed in the post against dereserved category, the same benefit should also be extended to the appellants. **Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage**

negative equalities. In *State of U.P.* v. *Rajkumar Sharma* [*State of U.P.* v. *Rajkumar Sharma*, (2006) 3 SCC 330 : 2006 SCC (L&S) 565] it was held as under: (SCC p. 337, para 15)

'*15*. Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha* v. *State of U.P.* [*Sneh Prabha* v. *State of U.P.*, (1996) 7 SCC 426] ; *Jaipur Development Authority* v. *Daulat Mal Jain* [*Jaipur Development Authority* v. *Daulat Mal Jain*, (1997) 1 SCC 35] ; *State of Haryana* v. *Ram Kumar Mann* [*State of Haryana* v. *Ram Kumar Mann*, (1997) 3 SCC 321 : 1997 SCC (L&S) 801] ; *Faridabad CT Scan Centre* v. *D.G. Health Services* [*Faridabad CT Scan Centre* v. *D.G. Health Services*, (1997) 7 SCC 752] ; *Jalandhar Improvement Trust* v. *Sampuran Singh* [*Jalandhar Improvement Trust* v. *Sampuran Singh*, (1999) 3 SCC 494] ; *State of Punjab* v. *Rajeev Sarwal* [*State of Punjab* v. *Rajeev Sarwal*, (1999) 9 SCC 240 : 1999 SCC (L&S) 1171] ; *Yogesh Kumar* v. *State (NCT of Delhi)* [*Yogesh Kumar* v. *State (NCT of Delhi)*, (2003) 3 SCC 548 : 2003 SCC (L&S) 346] ; *Union of India* v. *International Trading Co.* [*Union of India* v. *International Trading Co.*, (2003) 5 SCC 437] and *Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit* v. *Indore Development Authority* [*Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit* v. *Indore Development Authority*, (2006) 2 SCC 604] .)"

Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality."

46. In *Rajasthan State Industrial Development & Investment Corpn.* v. *Subhash Sindhi Coop. Housing Society* [*Rajasthan State Industrial Development & Investment Corpn.* v. *Subhash Sindhi Coop. Housing Society*, (2013) 5 SCC 427 : (2013) 3 SCC (Civ) 121] , this Court held as under: (SCC p. 436, para 19)

"*19*. Even if the lands of other similarly situated persons have been released, the Society must satisfy the Court that it is similarly situated in all respects, and

has an independent right to get the land released. Article 14 of the Constitution does not envisage negative equality, and it cannot be used to perpetuate any illegality. The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when invidious discrimination is meted out to equals, similarly circumstanced without any rational basis, or to relationship that would warrant such discrimination. [Vide *Sneh Prabha* v. *State of U.P.* [*Sneh Prabha* v. *State of U.P.*, (1996) 7 SCC 426] , *Yogesh Kumar* v. *State (NCT of Delhi)* [*Yogesh Kumar* v. *State (NCT of Delhi)*, (2003) 3 SCC 548 : 2003 SCC (L&S) 346] , *State of W.B.* v. *Debasish Mukherjee* [*State of W.B.* v. *Debasish Mukherjee*, (2011) 14 SCC 187 : (2012) 2 SCC (L&S) 869] and *Priya Gupta* v. *State of Chhattisgarh* [*Priya Gupta* v. *State of Chhattisgarh*, (2012) 7 SCC 433 : (2012) 2 SCC (L&S) 367] .]"

47. In *Arup Das* v. *State of Assam* [*Arup Das* v. *State of Assam*, (2012) 5 SCC 559 : (2012) 2 SCC (L&S) 24] , this Court observed as under: (SCC pp. 564-65, para 19)

"*19.* In a recent decision rendered by this Court in *State of U.P.* v. *Rajkumar Sharma* [*State of U.P.* v. *Rajkumar Sharma*, (2006) 3 SCC 330 : 2006 SCC (L&S) 565] , this Court once again had to consider the question of filling up of vacancies over and above the number of vacancies advertised. Referring to the various decisions rendered on this issue, this Court held that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that selectees could not claim appointments as a matter of right. It was reiterated that mere inclusion of candidates in the select list does not confer any right to be selected, even if some of the vacancies remained unfilled. **This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to perpetuate the said mistake.**"

48. In *State of Orissa* v. *Mamata Mohanty* [*State of Orissa* v. *Mamata Mohanty*, (2011) 3 SCC 436 : (2011) 2 SCC (L&S) 83] , it was observed: (SCC p. 458, para 56)

"*56.* It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. **Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.** [Vide *Chandigarh Admn.* v. *Jagjit Singh* [*Chandigarh Admn.* v. *Jagjit Singh*, (1995) 1 SCC 745] , *Yogesh Kumar* v. *Govt. (NCT of Delhi)* [*Yogesh Kumar* v. *State (NCT of Delhi)*, (2003) 3 SCC 548 : 2003 SCC (L&S) 346] , *Anand Buttons Ltd.* v. *State of Haryana* [*Anand Buttons Ltd.* v. *State of Haryana*, (2005) 9 SCC 164] , *K.K. Bhalla* v. *State of M.P.* [*K.K. Bhalla* v. *State of M.P.*, (2006) 3 SCC 581] , *Krishan Bhatt* v. *State of J&K* [*Krishan Bhatt* v. *State of J&K*, (2008) 9 SCC 24 : (2008) 2 SCC (L&S) 783] , *State of Bihar* v. *Upendra Narayan Singh* [*State of Bihar* v. *Upendra Narayan Singh*, (2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019] and *Union of India* v. *Kartick Chandra Mondal* [*Union of India* v. *Kartick Chandra Mondal*, (2010) 2 SCC 422 : (2010) 1 SCC (L&S) 385] .]"

66. Learned counsel for the respondents further placed much emphasis that the Government implemented those orders by granting seniority to directly recruited SIs of Police (Civil) from the date of their initial appointment on the post of RSI. Learned Government Pleader submitted that since those orders attained finality between the parties, the Government had to comply with those orders. But, since the Government is contesting these matters in which the Order of the Tribunal by now has not attained finality and as the clear case of the State is that these respondents are not entitled for the seniority contrary to the rule position

nor in terms of the judgment in W.P.No.2120 of 2000 and batch, merely because the Government implemented the Orders passed in the previous petitions because the judgment attained finality, the State cannot be bound to confer the benefit of those orders, contrary to the rules, when the present matter is pending for consideration and adjudication before this Court.

67. In the present case, there is no dispute that the appointment of the respondents is by direct recruitment. Once the respondents were appointed through the direct recruitment process, on the post of Sub-Inspector of Police (Civil), their seniority shall be counted from the date of their appointment on the post of Sub-Inspector of Police (Civil) under Rule 15 (a) of the Special Rules and the law laid down by the Hon'ble Apex Court in ***K. Rajaiah*** (supra) which considered the same Rules.

VI. Conclusions:

68. We are of the considered view that;

(i) Only for the judgment in W.P.No.22176 of 2004, dated 01.03.2007 the Tribunal has allowed the claim of the respondents;

(ii) The judgment in W.P.No.22176 of 2004 was based on the statement of the petitioners' counsel as also the learned Government Pleader that the controversy was squarely covered by the judgment in W.P.No.2120 of 2000 and batch, dated 15.06.2001 {***E.Shankar Reddy*** (supra)}.

(iii) There is no consideration on merit of the right of the claimants/respondents for the seniority, prior to the date of their appointment on the post of Sub-Inspector of Police (Civil), under the Special Rules.

(iv) In the absence of any right under the Special Rules for claiming the seniority counting their past service as RSI (s), as has been granted to them, which in the undisputed facts, is contrary to Rule 15 (a) of the Special Rules, the judgment in ***E. Shankar Reddy*** (supra) was not attracted nor any benefit was available in terms of the judgment in ***E. Shankar Reddy*** (supra).

(v) When only concession was granted, which concession was against the legal position as per the law laid down in W.P.No.2120 of 2000 and batch ***E. Shankar Reddy*** (supra), as also the law laid down by the Hon'ble Apex Court in ***K. Rajaiah*** (supra), merely on the ground that others had been granted the benefit in different proceedings, the respondents could not be granted that benefit, on the ground of any alleged parity as it is settled in law that the illegality cannot be permitted to be perpetuated and as there is no concept of negative parity under Article 14 of the Constitution of India.

(vi) The judgment of the Hon'ble Apex Court in ***K. Rajaiah*** (supra) is directly on the point of seniority under Rule 15 of the A. P. Police Subordinate Service Rules, in which it has been laid

down that in the case of the direct recruitment to the post of Sub-Inspector of Police (Civil), of those who were working as Reserve Sub-Inspectors of Police, they would be entitled for the seniority only from the date of appointment on the post of Sub-Inspector of Police (Civil) under Rule 15 (a).

(vii) The present is also a case of direct recruitment and not of recruitment by transfer.

(viii) In view of the law laid down by the Hon'ble Apex Court in ***K. Rajaiah*** (supra) which is binding on this Court under Article 141 of the Constitution of India, the judgment of the Tribunal cannot be sustained and deserves to be set aside.

(ix) The Applicants/respondents are not entitled for the benefit of the judgments in W.P.No.2120 of 2000 & batch, dated 15.06.2001, which was a case of appointment by transfer attracting rule 15 (c) whereas the present is a case of direct appointment – attracting rule 15 (a).

(x) The respondents are also not entitled for the benefit of the judgment in W.P.No.22176 of 2004 and batch, dated 01.03.2007, even if affirmed by the Hon'ble Apex Court by dismissal of the SLP *in limine,* of the State & the Civil Appeal of third parties.

(xi) The dismissal of the SLP against the judgment in W.P.No.22176 of 2004, did not contain any declaration of law on the

interpretation of Rule 15 of the Special Rules. On such Rules and under the same circumstances as in the present case of the direct recruitment to the post of Sub-Inspector of Police (Civil), there is a direct authority of the Hon'ble Apex Court in ***K. Rajaiah*** (supra) declaring the law.

(xii) In those cases where the SLP was dismissed and Civil Appeals were also dismissed, the judgment of the Hon'ble Apex Court in ***K. Rajaiah*** (supra) does not find consideration. So, simple dismissal of SLP without reasons, or without declaration of law, without considering the rule position as also the authoritative pronouncement of the Hon'ble Supreme Court itself in ***K. Rajaiah*** (supra), we are of the view, it cannot be said that any law has been declared in the SLP (s) or the Civil Appeals, which though was dismissed observing on merit, but without any such consideration, such dismissal would be binding on the parties to those proceedings on the doctrine of merger & finality but shall not be binding as a precedent under Article 141 of the Constitution of India.

(xiii) We are bound by the declaration of law on the same Rules by the Hon'ble Apex Court in ***K. Rajaiah*** (supra) as binding precedent under Article 141 of the Constitution of India.

(xiv) Following ***K. Rajaiah*** (supra) judgment of the Hon'ble Supreme Court, the writ petitions deserve to be allowed, the Orders passed by the Tribunal deserve to be set aside.

VII. Result:

69. In the result,

(i) W.P.No.24641 of 2014 is allowed, judgment dated 01.04.2014 in O.A.No.3350 of 2012 with V.M.A.No.1127 of 2012 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad is set aside.

(ii) W.P.No.1094 of 2016 is allowed, judgment dated 26.04.2013 in O.A.No.2943 of 2011 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad is set aside.

70. No order as to costs

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

SUBHENDU SAMANTA, J

Date:22.09.2026
Dsr

Whether the order is:

Reasoned 'Yes'

Reportable 'Yes' (LR copy to be marked)