2025 INSC 212

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2025
(Arising out of SLP(Civil) No(s). 4036-4038 of 2024)

P. RAMMOHAN RAO ....APPELLANT(S)

VERSUS

K. SRINIVAS AND ORS. ETC. ....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). OF 2025
(Arising out of SLP(Civil) No(s). 4596-4597 of 2024)

CIVIL APPEAL NO(S). OF 2025
(Arising out of SLP(Civil) No(s). of 2025)
(Diary No. 27613/2024)

J U D G M E N T

Mehta, J.

Civil Appeals @ SLP(Civil) Nos. 4036-4038 of 2024
Civil Appeals @ SLP(Civil) Nos. 4596-4597 of 2024

1. Heard.

2. Leave granted.

These appeals take exception to the final judgment and common order dated 21st September, 2023 rendered by the High

Court for the State of Telangana at Hyderabad[1] whereby the Division Bench allowed the batch of writ petitions preferred by the private respondents herein and quashed the Government Office Memorandum[2] No. 262, dated 17th June, 2006, issued by the Government of Andhra Pradesh.

4. Facts in a nutshell relevant and essential for the disposal of these appeals are as under.

5. The appellants who hold the qualification of B. Tech (Bachelor of Technology) were selected and appointed as Work Inspectors in the Andra Pradesh Scheduled Castes Cooperative Development Corporation[3] on 1st January, 1990 and were serving in the said department. The Government of Andhra Pradesh issued G.O.M. No. 89, dated 9th February, 1990, sanctioning posts of Assistant Executive Engineers[4] for achieving Phase-II of the Andhra Pradesh Primary School Project[5], which was initiated in collaboration between the Government of Andhra Pradesh and the Government of United Kingdom in the year 1983. The said project

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[1] Hereinafter, being referred to as the 'High Court'.
[2] Hereinafter, being referred to as the 'G.O.M.'
[3] Hereinafter, being referred to as the 'Corporation'.
[4] Hereinafter, being referred to as 'AEEs'.
[5] To achieve the first objective 84 primary school building with improved designs were constructed in 11 selected project districts. In order to achieve phase-II of the project construction work needed to be entrusted to the Panchayat Raj Engineering department and to have a separate class of engineer's staff for undertaking construction of buildings of primary schools and teachers' centres.

was time-bound and hence, directions were issued by the Government of Andhra Pradesh to the Chief Engineer, to fill up the posts immediately from the list available with the Andra Pradesh Public Service Commission[6], and if the list was not adequate then the Chief Engineer was permitted to recruit the candidates through the employment exchange.

6. Since the list available with the APPSC was inadequate to fill the posts required for the project, the Chief Engineer wrote to the State Government, and in response thereof, G.O.M. No. 429, dated 6th March, 1990, was issued by the Panchayat Raj and Rural Development Department, Government of Andhra Pradesh, directing that these vacancies may be filled up from the Work Inspector/Draughtsman/Tracers who were already serving in the Panchayat Raj Department and possessed a graduation degree in Engineering i.e. B.E./B.Tech. It was further clarified that the nature of these appointments would be temporary under Rule 10(a)(i) of the Andra Pradesh Subordinate Service Rules[7] pending amendment to the Special Rules for Panchayat Raj Engineering Services. The said G.O.M. also contained a direction to frame a formula for the promotion of the above-mentioned candidates,

[6] Hereinafter, being referred to as 'APPSC'.
[7] Hereinafter, referred to as 'Service rules'.

taking into account the strength of cadre and the retirement vacancies in the next two years as per the rules. A Committee was also constituted to consider the proposal for temporary appointments and for filling up the remaining vacancies.

7. Thereafter, another G.O.M. No. 540, dated 30th August, 1990 was issued by the Panchayat Raj and Rural Development Department, whereby 386 posts of AEEs were sanctioned under the Cyclone Emergency Reconstruction Project[8]. The appellants herein and one individual who were already serving as Work Inspectors were appointed as temporary AEEs on 5th December, 1992 against these vacancies. It is an undisputed fact that the appellants herein and his peers were appointed against substantiate vacancies created for the project.

8. Subsequently, the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994[9] came to be enacted on 15th January, 1994 to streamline the recruitment process. The same was made effective retrospectively from 25th November, 1993.

9. Thereafter, the G.O.M. No. 391, dated 30th June, 1994, came to be issued by the Panchayat Raj and Rural Development

[8] Hereinafter, referred to as 'CERP'
[9] Hereinafter, referred to as 'Act of 1994'.

Department, creating 729 posts of AEEs for taking up the works related to rural water supply and sanitation[10]. Under the said G.O.M., employment assurance scheme and employment guarantee scheme were also created.

10. In July, 1994, the Technical Grade-I Inspectors filed Original Application No. 533 of 1994 before the Andhra Pradesh Administrative Tribunal,[11] to consider their cases for appointment as AEEs against the project based vacancies. The APAT *vide* order dated 4th July, 1994 disposed of the O.A., wherein the State Government was directed to consider the case of Work Inspectors for appointment to the posts of AEE before notifying the vacancies to employment exchange.

11. In compliance with the aforesaid direction passed by APAT, G.O.M. No. 1289, dated 10th August, 1994, came to be issued by the Panchayat Raj and Rural Development Department in relation to the appointments under the 'Jawahar Rojgar Yojana Scheme', permitting the Chief Engineer to fill up the vacancies of AEEs which had been created by way of G.O.M. No. 391, dated 30th June, 1994, from eligible Work Inspector/Draughtsman/Tracers having the requisite degree qualification. The aforesaid G.O.M. No. 1289

[10] 'Jawahar Rojgar Yojana Scheme'.
[11] Hereinafter, being referred to as 'APAT'.

contained a specific stipulation that the candidates would be appointed temporarily subject to the condition that they should make an endeavour of selection through the APPSC, failing which, they would be reverted back to their original cadre of Work Inspector/Draughtsman/Tracers.

12. AEEs appointed under Rule 10(a)(i) of the Service Rules from the category of Work Inspector/Draughtsman/Tracers and the candidates, who were selected from the list tendered by the employment exchange between 2nd August, 1989 to 30th June, 1995, made several representations requesting the State Government to regularize their services as most of them had completed more than five years in service.

13. In 1995, Notification No. 8 of 1995 came to be issued by the APPSC inviting applications from eligible candidates for appointment in various posts including that of AEEs in the Panchayat Raj Department. The recruitment process for the aforesaid appointment was to be conducted under the Act of 1994. The aspiring candidates appeared in the test conducted by the APPSC and as many as 627 posts were filled and the successful candidates including the private respondents herein were appointed in the year 1997, upon due selection by APPSC.

14. Being aggrieved by the non-consideration of their representations for regularisation, the temporary AEEs (including the appellants herein), who had been appointed between the years 1990-1995, filed Original Application No. 5730 of 1995 and batch matters before the APAT, seeking regularisation of their services as they had been working on a temporary basis for several years. The APAT, *vide* order dated 19th February, 1996, disposed of these O.A.s, directing the State Government to take a decision regarding the claim of regularisation of services of temporarily appointed AEEs within a reasonable time. The APAT, further, directed that till such decision was taken, the services of the applicants therein shall not be terminated.

15. In compliance with the above direction, G.O.M. No. 997, dated 27th July, 1996, was issued by the State Government rejecting the prayer seeking regularisation of the temporarily appointed AEEs with the observation that there was no provision in the extant service rules for recruitment to the post of AEEs by promotion.

16. Aggrieved by the aforesaid G.O.M., the temporary AEEs, who were appointed between 1990-1995, again approached the APAT

via various Original Applications[12]. Initially, a stay was granted by the APAT *vide* order dated 10th August, 1996, suspending the operation of G.O.M. No. 997, dated 27th July, 1996, and a direction was issued to the State Government, not to notify the vacancies occupied by the applicants therein for the purpose of selection/appointment.

17. In the meantime, and during the pendency of the aforesaid Original Applications[13], the Government issued another G.O.M. No. 234 dated 27th June, 2005, whereby the services of all temporary AEEs appointed between 1990-1995 and continuing in service on that date were regularised. It was further clarified that the services of all the temporary AEEs, who were appointed between the years 1990-1995, shall be regularized below the last regularly selected candidate of AEEs.

18. Pursuant to the issuance of the aforesaid G.O.M., the pending Original Applications filed before the APAT were dismissed as withdrawn *vide* order dated 13th December, 2006, and liberty was granted to the applicants therein to work out their remedies, if they were still aggrieved after the issuance of G.O.M. No. 234.

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[12] O.A. No. 4991 of 1996, O.A. No. 5547 of 1996, O.A. No. 4427 of 1997 and batch matters.
[13] *Id.*

19. Though satisfied with the regularisation of their services, but aggrieved by the denial of seniority under the G.O.M. No. 234, AEEs appointed between 1990-1992, including the appellants herein, made various representations to the State Government, claiming that they were appointed before the promulgation of the Act of 1994, and thus they were required to be treated as a different class from those appointed between 1993-1995, which was after the promulgation of Act of 1994. It was asserted that G.O.M. No. 234, had caused significant prejudice and injustice as the Engineers appointed between 1990-1992 had been placed below the AEEs appointed during the year 1997 in the order of seniority, who had thereby lost nearly 10-15 years of continuous service. The State Government was requested to regularize the services of this category of AEEs appointed between 1990-1992 from the date of joining the posts.

20. The State Government, after examining the representations and the prolonged service of the temporary AEEs appointed between the years 1990-1992, modified G.O.M. No. 234, dated 27th June, 2005, and issued a revised G.O.M. No. 262, dated 17th June, 2006, which *inter alia* provided that: -

> "5. Accordingly, in partial modification of the orders issued in the G.O. 1st read above, the Government hereby directs the

> Engineer-in-Chief, Panchayat Raj, Hyderabad to regularize the services of the Assistant Executive Engineers who were appointed during the period 1990-92 **below the last regular Assistant Executive Engineer appointed through Andra Pradesh, Public Service Commission prior to the promulgation of Act, 2/94**."
>
> (emphasis supplied)

21. In effect, the above G.O.M. directed that the temporary AEEs appointed before promulgation of the Act of 1994 would retain their seniority from the date of their initial induction on the posts.

22. Being aggrieved by the issuance of the revised G.O.M. No. 262, dated 17th June, 2006, the AEEs regularly appointed through the APPSC Notification No. 8 of 1995, i.e., the private respondents herein, who had joined service in the year 1997 and also, the AEEs appointed on a temporary basis between 1993-1995, filed Original Applications[14] before the APAT. In these batches of Original Application, the State Government filed an affidavit specifically asserting that the appointments made between 1990-1992 were not *de hors* the service rules and there was no requirement of selection on these posts through the APPSC as the same were exempted from the purview of the Commission (APPSC).

[14] O.A. No. 5818/2009, O.A. No. 10733/2009, O.A. No. 5933/2009, O.A. No. 6020 of 2009 and batch matters.

23. *Vide* a common order dated 3rd February, 2011, the APAT dismissed the Original Applications[15] preferred by the 1997 Batch regularly appointed candidates (private respondents herein) and allowed the Original Applications[16] preferred by the temporary AEEs selected between 1993-1995. The APAT, while upholding the validity of G.O.M. No. 262, dated 17th June, 2006, also held that the temporary AEEs appointed between 1993-1995 were also entitled to a similar treatment as extended to those appointed between 1990-1992 and that the candidates regularly appointed through APPSC in 1997 (private respondents herein) could not claim seniority over the candidates whose regularisation was done in the year 2005.

24. The 1997 batch regularly appointed candidates (private respondents herein) assailed the common order dated 3rd February, 2011 passed by the APAT by filing writ petitions[17] before the High Court. These writ petitions came to be allowed by the learned Division Bench *vide* final judgment and common order

[15] O.A. No. 5018/2006, O.A. No. 5109/2006, O.A. No. 5789/2006, O.A. No. 6394/2006, O.A. No. 6423/2007, O.A. No. 1892/2010 and O.A. No. 4056/2010.
[16] O.A. No. 5818/2009, O.A. No. 5933/2009, O.A. No. 6020/2009, O.A. No. 6023/2009, O.A. No. 6038/2009, O.A. No. 10733/2009 and O.A. No. 10897/2009.
[17] Writ Petition Nos. 3903, 3910, 3954, 4173, 4434, 4435, 4437, 4439, 4441 and 22422 of 2011.

dated 21st September, 2023 which is subjected to challenge in these appeals by special leave.

Submissions on behalf of the appellants: -

25. Learned senior counsel appearing on behalf of the appellants advanced the following pertinent submissions assailing the impugned judgment: -

(a) That the appellants hold the qualification of Bachelor in Engineering. They were duly selected and appointed as Work Inspectors on 1st January, 1990 in the Andhra Pradesh Scheduled Castes Co-operative Development Corporation against a sanctioned post.

(b) That the State Government felt an imminent need for qualified engineers to carry out the Cyclone Emergency Reconstruction Project (CERP) in the year 1990. The Panchayat Raj Department issued G.O.M. No. 540, dated 30th August, 1990, sanctioning another 386 posts of AEEs under the CERP. At that point in time, no rules were in place for the appointment of Engineers in the Panchayat Raj Department. To meet the exigency, the appellants and one other who were already serving as Works Inspectors in the Cooperative Department Corporation were appointed as temporary AEEs under Rule 10(a)(i)(1) of

Andhra Pradesh State and Subordinate Service Rules *vide* order dated 5th December, 1992. Their appointment was in no manner *de hors* the rules or a backdoor appointment.

(c) That no challenge was ever laid by the private respondents to the G.O.M. No. 234 dated 27th June, 2005, *vide* which the services of the appellants and other similarly situated candidates were regularized and thus, the same has attained finality. He urged that the services of the appellants and the similarly situated candidates could not be regularized at an earlier point in time due to the need for amendment of the Andhra Pradesh Panchayati Raj and Rural Development Act/Rules and for the creation of a channel for the absorption of the appellants and similarly placed persons. He urged that the delay in amending the aforesaid rules cannot be attributed to the appellants and they cannot be put to a disadvantage for this reason by placing them below the last regularly appointed employee selected after the promulgation of the Act of 1994.

(d) That the appellants and the other similarly situated candidates are of the 1990-1992 batch and have continued to discharge their functions uninterruptedly for the last 31 years while securing periodic promotions. If the impugned order is not

set aside, they would be placed below the regularly recruited batch of 1997(private respondents herein) and thereby, they would lose 7 years of seniority. He further stated the appellants are due to retire in January, 2026 and they will superannuate without receiving the promotion to which they are rightfully entitled.

(e) The learned counsel tried to draw a clear distinction between the G.O.M. No. 540, dated 30th August, 1990, *vide* which the sanctioned posts under CERP were created and the appellants were appointed as AEEs, and the G.O.M. No. 1289, dated 10th August, 1994. He urged that G.O.M. No. 1289, which permitted the department to fill up the further project-based vacancies to the posts of AEEs, contained an express stipulation that the candidates were being appointed temporarily, subject to the condition that they should seek selection by APPSC, failing which, they would be reverted as Work Inspectors, whereas, no such condition existed in G.O.M. No. 540 dated 30th August, 1990.

(f) That though the terms of appointment would show that the appointment of the appellants and the similarly situated candidates was temporary, however, it was neither limited by time, nor was it meant to be a stop-gap/*ad hoc* arrangement. He drew the Court's attention to the G.O.M. No. 391, dated 30th June, 1994,

which dealt with Jawahar Rozgar Yojana Scheme and urged that this G.O.M. contained a clause providing that as and when the Cyclone Emergency Reconstruction Project/Circles/Divisions are abolished, the persons working in these Circles/Divisions/Sub-Divisions shall be posted in newly sanctioned Circles and Divisions. The posts that were sanctioned for the CERP in the office of the Chief Engineer, CERP would stand abolished w.e.f. 30th June, 1994, but the staff would continue to attend the residual work till the work is completed. He urged that there was a clear intent on the part of the State Government while issuing this G.O.M. that the persons working in the Sub-divisions created under the CERP would be posted to new Circles/Divisions/Sub-Divisions under the Panchayat Raj Department and thus, for all practical purposes, the services of the appellants and his peers who were appointed as AEEs under the CERP were to be absorbed into the cadre of Panchayat Raj Department upon the completion of the project.

(g) That the State Government had filed a counter affidavit in the writ petitions[18] filed before the Division Bench by the regularly appointed 1997 batch recruits(private respondents herein)

[18] *Supra* Note 16.

challenging the G.O.M. No. 262, dated 17th June 2006, wherein a specific plea was taken that the appointments to the post of AEEs made between 1990-92 were not *de hors* the service rules and at that point of time, there was no requirement for these selections to be made through the APPSC as the same were exempted from the purview of the Commission (APPSC).

(h) That the Division Bench has passed the impugned order on an erroneous assumption that once the State Government issued G.O.M. No. 234 dated 27th June, 2005, it became *'functus officio'* and could not have modified the same by re-examining the case of the temporary employees appointed between 1990-1995 and supersede the same by issuance of the G.O.M. No. 262, dated 17th June, 2006. He submitted that the doctrine of *'functus officio'* is not applicable to administrative decisions based on policy considerations and if such doctrine is made applicable to the rule-making power of the Government, the administrative setup would be virtually crippled. In this regard, he placed reliance on Rule 25 of the Andhra Pradesh State and Subordinate Service Rules, 1996, and the judgment of this Court in ***Orissa Administrative Tribunal Bar Association v. UOI***[19]**.**

[19] (2023) SCC OnLine SC 309.

(i) That the reasoning given by the Division Bench for quashing the G.O.M. No. 262, dated 17th June, 2006, *vide* which the benefit was given to the temporary appointees (including the appellants herein) that the same was issued without hearing the affected persons i.e. the writ petitioners(private respondents herein) is *ex-facie* misplaced. He urged that there is no requirement in law for issuance of notice to the set of employees likely to be affected where the Government takes a policy decision of conferring the benefit of regularisation and fixing the date from which the seniority is to be reckoned for a particular set of employees.

(j) That neither was the State Government denuded of the power to amend the earlier G.O.M. nor was there any requirement of hearing the candidates likely to be affected by the revised G.O.M. before its issuance thereof. He urged that the rule-making power of the State Government cannot be curtailed by the principle of *'Audi alteram partem'* because such a view would virtually bind the hands of the State Government, and it would lose the right to exercise the rule-making power. In this regard, he placed reliance on ***Patel Engg. Ltd. v. Union of India***[20].

[20] (2012) 11 SCC 257.

(k) That the G.O.M. No. 262 was passed in consonance with the extant rules and the procedural requirements. The representations filed by the appellants and his peers pursuant to the issuance of G.O.M. No. 234, dated 27th June, 2005, were objectively considered by the State Government, and a well-considered equitable policy decision was taken to count the services of the candidates appointed between 1990-92 from the date of their initial induction in service as temporary AEEs and as a sequel thereto, the appellants were assigned seniority from the said date.

(l) That the instant case falls under Proposition(B) enumerated by the Constitution Bench of this Court in the case of ***Direct Recruit Class II Engg. Officers' Association v. State Of Maharashtra***[21], which lays down that *"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."* He urged that no rules were in force in the Panchayat Raj Department when the appellants were appointed. They continued in his post till regularisation in 2005, and thus, the period of the temporary service (i.e. from 1990

[21] (1990) 2 SCC 715.

to 2005) of the appellants before the regularisation, has to be counted for determining their seniority.

He concluded his submissions by urging that the impugned judgment has disturbed the settled seniority of the cadre posts which has been in vogue for the past two decades, and as a result, the appellants are placed below the private respondents who are more than seven years junior to them at the fag end of their career and thus, deserves to be set aside.

26. Learned senior counsel representing the State Government has supported the submissions advanced by the learned counsel for the appellants.

On these grounds, learned counsel appearing for the appellants and the State implored the Court to allow the appeals, set aside the impugned judgment passed by the Division Bench, and restore the judgment passed by the Tribunal (APAT).

Submissions on behalf of the private respondents:

27. *E-converso*, learned senior counsel representing the private respondents strenuously supported the impugned judgment. He advanced the following submissions:-

(a) That the respondents were appointed as AEEs in 1997 after undergoing a regular selection process in pursuance of Notification

No. 8 of 1995, dated 8th December, 1995 issued by APPSC. On the other hand, the appellants and other similarly situated candidates were appointed as AEEs purely on a temporary basis during 1990-1995, either on promotion, on recruitment by transfer or were sponsored by the employment exchange.

(b) That the appellants and other similarly situated employees were neither appointed with due adherence to any selection procedure nor was their appointment made in accordance with any service rules. He urged that the appellants were not even borne in the cadre as on the date on which the respondents were regularly selected as AEEs in the Panchayat Raj Department and thus, the respondents who were directly recruited through APPSC are entitled to be placed above the appellants and other similarly situated temporary AEEs in the order of seniority.

(c) That the APPSC published Notification No. 4 of 1990 calling for applications from all persons aspiring to be appointed as AEEs on a regular basis. Further, a second opportunity was given *vide* another Notification No. 8 of 1995 calling for applications for regular selection on the post of AEEs. He thus urged that sufficient opportunities were given to the appellants and similarly situated

persons to get appointed *via* the direct recruitment process conducted by the APPSC, but they did not avail of the same.

(d) That *vide* G.O.M. No. 234, dated 27th June, 2005, a final decision was taken and the services of the appellants and other similarly situated employees were regularized. However, they were rightly directed to be placed below the last regularly selected candidate appointed through APPSC. He submitted that this G.O.M. was a final policy decision taken by the State Government, since it was issued after duly taking into consideration the recommendations of the Cabinet Sub-Committee and the General Administration Department and also the fact that the appellants and other similarly situated candidates had rendered more than 10 years of uninterrupted service and were working against the sanctioned posts.

(e) The learned senior counsel appearing for the private respondents fairly submitted that the decision to regularise the services of the appellants and other similarly situated candidates was justified. He, however, urged that once a final decision had been taken and orders were passed with respect to seniority *vide* G.O.M. No. 234, the State Government became *functus officio* and

could not have re-examined and re-opened the issue of seniority on the basis of representation made by the affected parties.

(f) That *vide* the revised G.O.M. No. 262, dated 17th June, 2006, one set of the employees who were appointed between 1990 and 1992(including the appellants herein) were placed above the respondents in the seniority list. He urged that the revised G.O.M. was issued without affording an opportunity of hearing to the respondents herein as no notice was given to them before taking a decision adversely affecting their seniority, which is in utter violation of principles of natural justice and thus, the same was rightly struck down by the Division Bench.

(g) That the factors forming the basis for the issuance of the revised G.O.M. No. 262 were evidently within the knowledge of the State Government at the time of issuing the earlier G.O.M. No. 234. However, no sufficient explanation has been offered by the State Government as to why these critical considerations were overlooked during the formulation of the earlier G.O.M., thereby necessitating the subsequent revision.

(h) That the instant case falls under the corollary drawn to Proposition(A) enumerated by the Constitution Bench of this Court in the case of ***Direct Recruit Class II Engg. Officers'***

Association(supra), which lays down that "*where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."* He urged that the initial appointment of the appellants and the similarly situated persons to the post of AEEs was *ad-hoc* and not according to the rules prevailing in the Panchayat Raj Department, and thus, the period of temporary service (i.e. from 1990 to 2005) rendered by the appellants prior to their regularisation cannot be counted for determining the seniority.

He concluded his submissions by urging that granting seniority to the appellants over and above the respondents is totally unconstitutional and *de hors* the rules, and, therefore, the High Court was wholly justified in quashing the revised G.O.M. No. 262. He urged that the view taken by the Division Bench of the High Court is unassailable in the eyes of law and hence, the appeals merit rejection.

28. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the impugned judgment along with the material placed on record.

Discussion and Conclusion:

29. A few important facts which are not in dispute and require mention for the adjudication of the present appeals are noted below:-

(i) The appellants and his peers were holding the qualification of B.E/B. Tech and were regularly appointed in the year 1990 as Work Inspectors in the Andhra Pradesh Schedules Castes Cooperative Development Corporation.

(ii) *Vide* G.O.M. No. 540, dated 30th August, 1990, the State Government sanctioned 386 posts of AEEs under the Cyclone Emergency Reconstruction Project (CERP) of the Panchayat Raj Department with a purpose to carry out the project-based reconstruction of the infrastructure including schools, etc., which had been destroyed in a cyclone. The appellants and one similarly placed candidate were transferred from the Corporation and came to be appointed as Assistant Executive Engineers (AEEs) on a temporary basis in the said project *vide* order dated 5th December, 1992. The relevant portion of the appointment order is extracted below: -

> "1. In pursuance of the orders issued in G.O. 3rd, 4th, and 6th cited and basing on the recommendation of the Committee, the candidates annexed to this order who were appointed as Work Inspector/Draughtsman, Tracer in S.C. Corporation, Tribal Welfare Department, weaker Section, Housing Scheme under

> Social Welfare Department and Panchayati Raj Engineering Department and possessing graduate qualification in engineering are hereby appointed as Temporary Assistant Executive Engineers in the zones mentioned against their names in the annexure I to IV in A.P.P.R.E.S. against the posts sanctioned under Cyclone reconstruction Project (CERP) sanctioned in G.O. 1st cited 2nd cited under rule 10(a)(i)(1) of the General Rules for state and Sub Ordinate services in the scale of pay of Rs. 1,330-60-1, 980-70-275/ with usual allowances as admissible under the rules from the actual date of joining and allotted to Chief Engineer (CERP) P.R. Hyderabad.
>
> 2. The appointment referred to in para (1) above is purely temporary and does not confer any right for regular appointment or otherwise liable to be terminated at any time without prior notice or intimation and without assigning any reasons therefore, since the project is temporary."

Thus, it is clear that a specific reference was given while taking the decision for these temporary appointments, that the said appointments were being made under Rule 10(a)(i) of the General Rules for State and Subordinate services i.e., Andhra Pradesh Subordinate Service Rules. In this background, there is no dispute that the appellants were appointed as AEEs against the regularly sanctioned posts *albeit* on a temporary basis.

(iii) The private respondents were appointed as AEEs in 1997, after undergoing the regular selection process through APPSC in accordance with the Act of 1994.

(iv) The appellants and similarly situated employees continued to serve as AEEs in the Panchayat Raj Department for almost 13 years before their prayer for regularisation was favourably

considered by the State Government *vide* G.O.M. No. 234, dated 27th June, 2005. However, this G.O.M contained a stipulation that the services of all temporary AEEs (including the appellants herein) appointed between 1990-1995 would be placed below the last regularly selected candidate of AEEs in terms of seniority. This G.O.M. further directed that all the temporary appointments made between 1990-1995 and continuing on that date, shall be excluded from the purview of APPSC under the proviso to clause 3 of Article 320 of the Constitution of India. Aggrieved by the denial of seniority and being placed below the private respondents, the appellants and others filed various representations to the State Government contending that the AEEs appointed during 1990-1992, i.e., before the promulgation of the Act of 1994, and those appointed between 1993-1995, i.e., after the enactment of the Act, should not be treated at par. They asserted that these groups were in different legal classes and could not be merged as directed in G.O.M. No. 234. Additionally, they claimed that significant injustice had been done to the AEEs appointed between 1990-1992, who were made junior to AEEs appointed in 1997, thus losing nearly 10-15 years of continuous service. As a result, they

would retire without the chance of receiving even a single promotion during their entire service tenure.

(v) These representations were considered and accepted by the State Government, leading to partial modification of the earlier G.O.M No. 234 and issuance of a revised G.O.M No. 262, dated 17th June, 2006, wherein the State Government introduced a classification amongst temporarily appointed AEEs based on their dates of appointment with reference to the promulgation of Act of 1994. The classification divided the AEEs into two groups: those appointed between 1990-1992 and those appointed between 1993-1995. The revised G.O.M. further stipulated that the temporary AEEs appointed between 1990-1992 would be placed below the last regular AEE appointed through the APPSC, prior to the enactment of the Act of 1994.

(vi) The reason assigned by the State Government for this modification and sub-classification (i.e. one group of AEEs appointed between 1990-1992 and the other between 1993-1995), was that the temporary AEEs in the first group had put in 10 years of interrupted service including the services in the feeder cadre of Work Inspector/Draftsmen/Tracer before their appointment as temporary AEEs. The significant delay in considering their prayer

for regularisation in the Panchayat Raj Department was attributable to the fact that the Government could not amend the service rules as per G.O.M. No. 429, dated 6th March, 1990, to take up the regularisation of the temporary AEEs. Therefore, one of the crucial factors in the decision to issue the revised G.O.M. No. 262 was the Government's inaction in amending the service rules, as required by G.O.M. No. 429.

(vii) The decision to regularize the services of the appellants and other similarly situated candidates, appointed as temporary AEEs between 1990 and 1995, taken by the State Government *vide* G.O.M. No. 234 dated 27th June 2005, remains unchallenged and has, therefore, attained finality.

30. Thus, the Court finds merit in the appellants' contention that the delay in the regularisation of their service was attributable to the need for amendments to the Andhra Pradesh Panchayati Raj and Rural Development Rules, which were necessary to create a channel for absorption into the cadre.

31. Seen thus, the fundamental issue that boils down for consideration is: "Whether the period of officiating service of the temporarily appointed AEEs between 1990-1992(including the appellants herein) should be taken into account for considering

their seniority over and above the 1997 batch of regularly appointed candidates through APPSC (private respondents herein)"?

32. The Constitution Bench of this Court in the case of ***Direct Recruit Class II Engg. Officers' Association(supra)***, after considering all the earlier decisions, summarized the legal position with regard to the determination of seniority in service in para 47 of the judgment. For the purposes of the present controversy, paras (A) and (B) of para 47 are relevant and are extracted hereunder: -

> **"47.** To sum up, we hold that:-
>
> **(A)** Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.
>
> The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.
>
> **(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."**
>
> (emphasis supplied)

33. The appellants contend that their case falls under Proposition (B), while the private respondents argue that it aligns with the corollary to Proposition (A). To resolve this dispute, two crucial

aspects must be examined: (i) the prevailing rules in the Panchayat Raj Department, State of Andhra Pradesh, and (ii) whether the appellants initial appointment was purely *ad-hoc* or a temporary stop-gap arrangement.

34. It is undisputed that at the time of the appointment of the appellants and other similarly placed candidates as AEEs between the years 1990-1992, there was a vacuum in rules governing the appointment of AEEs in the Panchayat Raj Department. To address the project-based exigency, the appellants and one other were appointed as temporary AEEs under Rule 10(a)(i)(1) of the General Rules for State and Subordinate Services, i.e., Andhra Pradesh State and Subordinate Service Rules. The relevant rule is extracted below:-

> **"10. TEMPORARY APPOINTMENT INCLUDING APPOINTMENTS BY DIRECT RECRUITMENT, RECRUITMENT/APPOINTMENT BY TRANSFER OR BY PROMOTION:**
>
> (a) Where it is necessary in the public interest to fill emergently a vacancy in a post borne on the cadre of a service, class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay the appointing authority may appointing a person temporarily, otherwise than in accordance with the said rules, either by direct recruitment or by promotion or by appointment by transfer, as may be specified as the method of appointment in respect of the post, in the special rules.
>
> .....
> (i) Temporary posts requiring special qualifications. Notwithstanding anything contained in these rules or special rules, if and when, a temporary post is created as an addition

> to the cadre of any service, class or category and the holder thereof is required by the State Government to possess such special qualifications, knowledge or experience, any person who possesses such qualifications, knowledge or experience and who is considered to be the most suitable person to discharge the duties, of such post may, irrespective of other considerations, be appointed temporarily to that post by the appointing authority; but the person so appointed shall not, by reason only of such appointment, be regarded as a probationer in such-service, class or category nor shall be acquire thereby any preferential right to future appointment to such service, class or category."

35. Since there was a vacuum in the rules, it cannot be said that these appointments were *de hors* the rules. Further, this Court finds merit in the distinction drawn by the counsel for the appellants between G.O.M. No. 540 dated 30th August, 1990 and the later G.O.M. No. 1289 dated 10th August, 1994, both issued by the Panchayat Raj Department. A careful comparison of the two G.O.M's highlight a significant difference in their terms and conditions. G.O.M. No. 540, which created the sanctioned posts for AEEs under CERP, did not include any clause making the appointments conditional upon selection by the APPSC. There was no provision for reversion to a lower position if the appointees were not selected through a regular selection process conducted by the APPSC. On the other hand, G.O.M. No. 1289, issued on 10th August, 1994, explicitly provided that the appointments were temporary and subjected the appointees to the rigor of selection

through the APPSC or else face reversion. It stipulated that the candidates who were not selected through APPSC, they would be reverted to the position of Work Inspectors. This clause made it clear that the appointments under G.O.M. No. 1289 were temporary and contingent upon selection through the APPSC, a stipulation that was notably missing in G.O.M. No. 540. The absence of such a condition in G.O.M. No. 540 indicates that the appointments under that order were not of a temporary or conditional nature as those made under G.O.M. No. 1289.

36. Also, upon a perusal of G.O.M. No. 391, dated 30th June 1994, concerning the Jawahar Rozgar Yojana Scheme, it is apparent that the State Government had a specific and unequivocal intent to retain the services of individuals posted under the CERP Circles/Divisions, since, this G.O.M specifically directed that upon abolition of the CERP Circles/Divisions, the personnel temporarily appointed under the project(s) would be reassigned to the newly sanctioned Circles and Divisions, underscoring the Government's intent to maintain employment and continuity of service. The relevant extract from G.O.M. No. 391 is reproduced hereinbelow: -

> **"10.** As and when the Cyclone Emergency Reconstruction Project Circles/ Divisions are abolished, the persons working in

> these circles/ Divisions shall be posted to the new circles and divisions. The sub-divisions attending to cyclone Emergency Reconstruction Project Works shall stand abolished w.e.f. 30.6.1994 A.N. and the persons working in these Sub-Divisions shall be posted to New Circles/ Divisions Sub-divisions now sanctioned.
>
> **11.** The posts which were sanctioned for Cyclone Emergency Reconstruction Project works in the office of Chief Engineer (CERP) shall also stand abolished w.e.f. 30.6.94 A.N. but the staff in O/o Chief Engineer (RWS) sanctioned in this order will continue to attend to the residual work if any of the C.E.R.P. till the work is completed.**"**

37. Thus, this Court is of the view that, notwithstanding the designation of the appointments of the appellants and similarly situated candidates as being temporary, such appointments were neither restricted by a fixed tenure nor conceived as a stop-gap or *ad-hoc* arrangement. While characterized as temporary, these appointments were not intended to address a transient or interim requirement, rather, they were structured to ensure continuity and stability within the workforce.

38. Further, it is an admitted fact that the services of the appellants and other similarly situated candidates employed between 1990-1995 were regularised vide G.O.M. No. 234, dated 27th June, 2005, which was not challenged before any forum and has attained finality. It is trite that once the services of employee(s) are regularised, the *ad-hoc* or stop-gap nature of the appointment does not survive. In this regard, we may gainfully refer to ***Santosh***

Kumar v. State of A.P.[22], wherein, while dealing with a similar issue and the self-same service rules, this Court upheld the regularisation of services of temporary employees with retrospective effect and granted them seniority from the date of initial appointment holding that their case falls under Proposition(B) of ***Direct Recruit Class II Engg. Officers' Association(supra)***. The relevant extract of the said judgment is as follows:-

> "10. ..... The respondent and others were appointed as Sub-Inspectors out of seniority looking to the outstanding merit and record prior to the direct recruits like the appellant. Their services were admittedly regularised by relaxing the Service Rules in the exercise of power available under Rule 47 of the General Rules. The appellant did not challenge the validity of Rule 47 and no mala fides were established against the authorities in exercise of powers of relaxation under the said Rule. The Tribunal has recorded a finding that the Rule relating to the method of recruitment was not relaxed but only the conditions which had to be fulfilled for the purpose of promotion to the category of Sub-Inspector were relaxed; this finding is not disturbed by the High Court; there was no relaxation as to the basic qualification; the State Government regularised the services of the respondent and others with retrospective effect from the date they were temporarily appointed as Sub-Inspectors (OSSIs). **It is also not disputed that they continued in service uninterruptedly for about 12-13 years till their services were regularised with retrospective effect. This being the factual position it could not be said that the corollary to para 47(A) of the aforementioned Constitution Bench judgment applies to the facts of the present case. Once their services were regularised it cannot be contended that their initial appointment was only on ad hoc basis and not according to the rules and made as a stopgap arrangement. On the other hand, para 47(B) supports the case of the respondent."**
>
> (emphasis supplied)

[22] (2003) 5 SCC 511.

39. Similarly, this Court in ***Amarendra Kumar Mohapatra v. State of Orissa and Ors.***[23], while dealing with a similar issue of grant of seniority to *ad-hoc* employees upon regularisation with effect from the date they were appointed on an *ad-hoc* basis especially when the *ad-hoc* appointment had continued without any interruption till their regularisation, answered it in the affirmative observing thus:-

> "**68.** Appearing for the State of Orissa, **Mr Nageswara Rao contended that grant of seniority to ad hoc Assistant Engineers regularised under the legislation w.e.f. the date they were appointed on ad hoc basis was legally permissible especially when the ad hoc appointments had continued without any interruption till their regularisation.** ..... The case at hand, according to the learned counsel, fell under Proposition B formulated in the said decision. Grant of seniority from the date of initial appointments did not, therefore, suffer from any constitutional or other infirmity to warrant interference from this Court.
>
> **69**. **Mr Shishodia appearing for some of the parties, on the other hand, contended that seniority could be granted only from the date of regularisation under the enactment and not earlier.** The learned counsel for some of the interveners adopted that contention, including Ms Aishwarya appearing for some of the diploma-holder Junior Engineers and urged that ad hoc service rendered by the Engineers appointed otherwise than in accordance with the rules could not count for the purposes of seniority and that even if Section 3(1) of the Validation Act was held to be valid, Section 3(2) which gave retrospective seniority from the date they were first appointed on ad hoc basis must go.
> .....
> **71.** There was some debate at the Bar whether the case at hand is covered by corollary to Proposition A or by Proposition B (supra). **But having given our consideration to the submissions at the Bar we are inclined to agree with Mr Rao's submission that the case at hand is more**

[23] (2014) 4 SCC 583.

> **appropriately covered by Proposition B extracted above. We say so because the initial appointment of ad hoc Assistant Engineers in the instant case was not made by following the procedure laid down by the Rules. Even so, the appointees had continued in the posts uninterruptedly till the Validation Act regularised their service.** There is, in the light of those two significant aspects, no room for holding that grant of seniority and other benefits referred to in Section 3(3) of the impugned Act were legally impermissible or violated any vested right of the in-service Assistant Engineers appointed from any other source.
>
> **72. Proposition A, in our opinion, deals with a situation where an incumbent is appointed to a post according to the rules but the question that arises for determination is whether his seniority should be counted from the date of his appointment or from the date of his confirmation in the said service. The corollary under Proposition A, in our opinion, deals with an entirely different situation, namely, where the appointment is ad hoc and made as a stop-gap arrangement in which case officiation in such post cannot be taken into consideration for seniority. Be that as it may, as between Propositions A and B the case at hand falls more accurately under Proposition B which permits grant of seniority w.e.f. the date the appointees first started officiating followed by the regularisation of their service as in the case at hand.**
>
> .....
>
> **78. Having said so, there is no reason why a similar direction regarding the writ petitioners degree-holder Junior Engineers who have been held by us to be entitled to regularisation on account of their length of service should also not be given a similar benefit**.....
>
> (emphasis supplied)

40. Applying these precedents to the facts of the case at hand, we are of the firm view that the case of the appellants clearly falls under Proposition(B) of the ***Direct Recruit Class II Engg. Officers' Association(supra)*** as there were no selection rules in force in the Panchayat Raj Department for appointment of AEEs at

the time of appointment of the appellants as temporary AEEs which was in the year 1992. These appointments though termed temporary, were not bound in a fixed tenure and were not stop-gap or *ad-hoc* in nature. The appellants worked uninterruptedly on the same post till the regularisation of their service *vide* G.O.M No. 234 dated 27th June, 2005.

41. The Division Bench of the High Court gave *imprimatur* to the contention of the private respondents (the regularly appointed candidates of the 1997 batch), that the issuance of G.O.M. No. 234, dated 27th June 2005, rendered the State Government *'functus officio'*, thereby precluding it from both revisiting or reopening the matter and issuing the revised G.O.M. No. 262, dated 17th June 2006. Consequently, the Division Bench allowed the writ petitions filed by the private respondents herein and quashed the revised G.O.M., observing as follows in Para 29 of the impugned judgment:

> **"29**.....After taking a final decision, the State Government could not have re-examined the case of the contesting respondents, and that too, only for such of those contesting respondents who were appointed during 1990-92, on the ground that they were appointed prior to the promulgation of Act 2 of 1994. When the State Government has taken a final decision in G.O.Ms.No.234, it becomes functus officio and hence, it could not have touched the same by re-examining the case of the contesting respondents and granted relief by issuing G.O.Ms. No.262 dt. 17-06-2006 contrary to the findings recorded in the earlier G.O....."

42. It cannot be disputed that the rule-making power of the legislature cannot be curtailed or nullified by application of the concept of *functus officio*. The principle of *functus officio* normally applies to a judicial forum or a quasi-judicial authority and would have no application to the rule-making authority which is within the domain of the State Government by virtue of Article 245 of the Constitution of India.

43. This Court in the case of ***Orrisa Administrative Tribunal Bar Associations(supra)***, while dealing with the application of the doctrine of '*functus officio*' to the sphere of the administrative decision-making by the State and its impact on the policy decisions, observed that "if the doctrine of '*functus officio*' were to be applied to the sphere of administrative decision-making/rule-making power of the State, the executive power would be virtually crippled and the State would find itself paralyzed, unable to change or reverse any policy or policy-based decision and its functioning would be brought to a grinding halt. The relevant extract from the said judgment is as follows:

> **"113.** Turning to the present case, the appellants' argument that the Union Government was rendered *functus officio* after establishing the OAT does not stand scrutiny. The decision to establish the OAT was administrative and based on policy considerations. **If the doctrine of *functus officio* were to be applied to the sphere of administrative decision-making by the state, its executive power would be crippled. The state**

> **would find itself unable to change or reverse any policy or policy-based decision and its functioning would grind to a halt. All policies would attain finality and any change would be close to impossible to effectuate.**
>
> **114. This would impact not only major policy decisions but also minor ones.** For example, a minor policy decision such as a bus route would not be amenable to any modification once it was notified. Once determined, the bus route would stay the same regardless of the demand for, say, an additional stop at a popular destination. Major policy decisions such as those concerning subsidies, corporate governance, housing, education, and social welfare would be frozen if the doctrine of *functus officio* were to be applied to administrative decisions. **This is not conceivable because it would defeat the purpose of having a government and the foundation of governance. By their very nature, policies are subject to change depending on the circumstances prevailing in society at any given time. The doctrine of *functus officio* cannot ordinarily be applied in cases where the government is formulating and implementing a policy."**
>
> (emphasis supplied)

44. Therefore, we are unable to concur with the reasoning assigned by the High Court that the State Government became *functus officio* after issuance of G.O.M. No. 234 dated 27th June, 2005 and could not have issued the revised G.O.M. No. 262 dated 17th June, 2006. The view so taken by the Division Bench is untenable and *ultra vires* the Constitution of India.

45. Further, it is a well-settled principle of law that while administrative actions and statutory rules that impact citizens' rights are subject to judicial review, the notion that the State must provide a prior hearing to affected individuals during the exercise of its rule-making power is fundamentally flawed. In this regard,

we are benefitted by the judgment of the Constitution Bench of this Court in the case of ***Union of India v. Tulsiram Patel***[24]**,** wherein it was held that:

> "**101.**.....So far as the audi alteram partem rule is concerned, both in England and in India, **it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands**, as pointed out in *Maneka Gandhi case* [(1978) 1 SCC 248 : (1978) 2 SCR 621, 676] at p. 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all-pervading sanctity than a statutory provision....."
>
> (emphasis supplied)

46. In ***Patel Engg. Ltd.(supra)***, this Court held as follows:

> "**38.** .....that there is no inviolable rule that a personal hearing of the affected party must precede every decision of the State....."

47. We are also of the considered view that the reasoning assigned by the High Court, in the impugned judgment that the private respondents herein, as affected parties, were required to be heard before the issuance of the revised G.O.M. No. 262 dated 17th June 2006, is unsustainable and contrary to the established legal

[24] (1985) 3 SCC 398.

principles. Such an interpretation by the Division Bench has far-reaching and potentially disastrous implications. If the State Government is compelled to afford an opportunity of hearing to every individual or entity likely to be affected by its administrative decision-making, it would effectively paralyze governance by imposing an undue procedural roadblock. This would place the State in a position where its rule-making authority would be severely constricted, defeating the very purpose of efficient policy implementation and undermining its ability to discharge its administrative duties.

48. In the wake of the discussion made above, we answer the issue in the affirmative and hold that the period of officiating service (i.e. period between 1990 to 2005) of the appellants and the batch of the AEEs appointed between 1990-1992 has to be counted as regular service for determining the seniority, entitling him/them to be placed above the 1997 batch of regularly appointed candidates(private respondents herein) in the seniority list. The State Government was fully justified in issuing the revised G.O.M. No. 262 dated 17th June, 2006, which is unassailable in the eyes of law.

49. Consequently, we are of the view that the impugned judgment dated 21st September, 2023, is unsustainable in the eyes of the law and thus, the same is quashed and set aside.

50. The appeals are allowed accordingly. No order as to costs.

51. Pending application(s), if any, shall also stand disposed of.

CIVIL APPEAL NO(S). OF 2025
(Arising out of SLP(Civil) No(s). _____ of 2025)
(Diary No. 27613/2024)

52. Delay condoned.

53. Leave granted.

54. In terms of the judgment passed in Civil Appeals arising out of SLP(Civil) No(s). 4036-4038 of 2024 and connected matters, these appeals are disposed of accordingly.

55. Pending application(s), if any, shall also stand disposed of.

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
FEBRUARY 13, 2025.