

Non-Reportable**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS. OF 2023****@SLP (C) NOS. 34255-34256 OF 2015****THE GOVERNMENT OF
ANDHRA PRADESH & ORS. ...APPELLANT(S)****VERSUS****M. RAMA RAO &
ORS. ETC. ...RESPONDENT(S)****O R D E R****VIKRAM NATH, J.**

Leave granted

2. Despite service of notice, none of the respondents have put in appearance as such the matter has been heard *ex parte*.

3. The Government of Andhra Pradesh has assailed the correctness of judgments and orders dated 12.06.2014 and 29.04.2014 passed by Division

Bench of the High Court of Judicature for the State of Telangana and State of Andhra Pradesh whereby the writ petitions were allowed and the order dated 28.11.2011 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad in a batch of applications (leading case O.A.No.283 of 2010) was set aside upholding the validity of Government orders which had been set aside by the Tribunal.

4. The State of Andhra Pradesh had issued G.O.Ms. No.3 dated 10.01.2000 providing for 100% reservation in favour of local scheduled tribal candidates for the post of teacher in all schools situated in Scheduled Areas. Later on, two further memos were issued on 19.12.2009 and 01.01.2010 by the Principal Secretary to Government, Tribal Welfare Department, Hyderabad and Commissioner of Tribal Welfare, Hyderabad respectively whereby it was provided that the State G.O.Ms. No.3 would apply to promotion also giving 100% reservation to

the local tribals and further that G.O.Ms.No.3 dated 10.01.2000 will have retrospective effect w.e.f. 05.11.1986.

5. The High Court had held that the memos are explanatory and consequential in nature and not in contravention to G.O.Ms. No.3 dated 10.01.2000 and accordingly upheld the retrospective effect also.

6. In the meantime, other matters pending before this Court in Civil Appeal No.3609 of 2002 etc. wherein the validity of G.O.Ms. No.3 dated 10.01.2000 was under challenge, was referred to a Constitution Bench. The Constitution Bench answered the reference and decided the appeal vide judgment dated 22.04.2020 in the case of **Chebrolu Leela Prasad Rao and others vs. State of Andhra Pradesh and others**¹. The operative portion of the decision of the Constitution Bench as contained in

¹ (2021) 11 SCC 401

paragraphs 167, 168 and 169 of the report is reproduced hereunder: -

“167. As a sequel to the quashing of G.O.Ms. No.3 of 2000, the appointments made in excess of the permissible reservation cannot survive and should be set aside. However, on behalf of State and other respondents, it was urged that appointments may not be set aside. In the peculiar circumstances, the incumbents, who have been appointed, cannot be said to be at fault and they belong to Scheduled Tribes.

168. We cannot ignore the fact that a similar G.O. was issued by the erstwhile State Government of Andhra Pradesh in the year 1986, which was quashed by the State Administrative Tribunal, against which an appeal was preferred in this Court, which was dismissed as withdrawn in the year 1998. After withdrawal of the appeal from this Court, it was expected of the erstwhile State of Andhra Pradesh not to resort to such illegality of providing 100% reservation once again. But instead, it issued G.O.Ms. No.3 of 2000, which was equally impermissible, even if the A.P. Regulation of Reservation and Appointment to Public Services Act, 1997 would have been amended, in that event also providing reservation beyond 50% was not permissible. It is rightly apprehended by appellants that the State may again by way of mis-adventure, resort to similar illegal exercise as was done earlier. It was least expected from the functionary like Government to act in aforesaid manner as they were bound by

the dictum laid down by this Court in *Indra Sawhney* (supra) and other decisions holding that the limit of reservation not to exceed 50%. There was no rhyme or reason with the State Government to resort to 100% reservation. It is unfortunate that illegal exercise done in 1986 was sought to be protected by yet another unconstitutional attempt by issuing G.O.Ms. No.3 of 2000 with retrospective effect of 1986, and now after that 20 years have passed. In the peculiar circumstance, we save the appointments conditionally that the reorganised States i.e. the States of Andhra Pradesh and Telangana not to attempt a similar exercise in the future. If they do so and exceed the limit of reservation, there shall not be any saving of the appointments made, w.e.f. 1986 till date. We direct the respondents States not to exceed the limits of reservation in future. Ordered accordingly.

169. Resultantly, we allow the appeals, and save the appointments made so far conditionally with the aforesaid riders. The cost of appeal is quantified at Rupees Five Lakhs and to be shared equally by the States of Andhra Pradesh and Telangana.”

7. In view of the fact that the principal G.O.Ms. No.3 dated 10.01.2000 has already been set aside by this Court, all subsequent memos would automatically lapse. Further, since the Constitution

Bench had saved the appointments and their promotion to be considered in accordance with appropriate service rules, nothing further survives in these appeals. The same are rendered infructuous as it would stand covered by the judgment of the Constitution Bench in **Chebrolu Leela Prasad Rao** (supra). Accordingly, the appeals are disposed of in terms of the authoritative pronouncement of the Constitution Bench in **Chebrolu Leela Prasad Rao and others vs. State of A.P. and others**(supra). Pending applications, if any, are also disposed of.

.....J.
(VIKRAM NATH)

.....J.
(AHSANUDDIN AMANULLAH)

NEW DELHI
MAY 19, 2023