

**ANDHRA PRADESH STATE CIVIL SUPPLIES CORPORATION LIMITED Head
Office: 10-152/1, Ashoknagar, Bandar Road, Vijayawada- 520007**

**SRI G.VEERAPANDIAN, I.A.S.,
V.C. & MANAGING DIRECTOR.**

CIRCULAR MEMO

No.P.Admn.A1/2327/2022

Dated: .06.2023

Sub: APSCSCL - Admn.&Vig – Hon'ble High Court of AP issued certain orders in W.P.No.42898 of 2017 – In pursuance of the said orders -Revised Roaster Panels of all cadres in the APSCSCL for the years from 2005 to 2014 before AP Re-Organization Act, 2014 – Circulating the same - Objections called for - Reg.

- Ref: 1. Tentative Seniority lists communicated vide VC & MD. Procs No.P.Admn.A2/3095/2017, dated: 23.11.2017.
2. G.O.Ms.No.143, CA, F&CS Dept, dated: 27.10.2005.
3. AP Re-Organization Act, 2014, dated: 27.10.2014.
4. G.O.Rt.No.2147, General Administration (DPC-1) Dept., Dated: 16.05.2014.
5. Interim directions of Hon'ble High Court in IA No.01 of 2017 and WPMP.No.53205 of 2017 in WP.No.42898/2017, Dated: 26.12.2018.
6. Letter No.FCS01-FCCS0SCSC/6/2022-CS-1, dt:04.08.2022. of The E.O. Secretary to Government, CA, F&CS department, A.P.Secretariat, Velagapudi.
7. Advocate General Opinion No. 118/2022, dt:24/9/22, Lr.No.462/2022, dt:26/9/2022.

1. In the reference 1st cited, a Tentative Seniority lists of all cadres in APSCSCL as on 01.06.2014 was communicated on 15.12.2017.
2. Aggrieved on the said Tentative Seniority lists, W.P.Nos.42729/2017 and 42898/2017 were filed by Sri A.S.R. Somayajulu and 9 others in the Hon'ble High Court and the Hon'ble High Court passed interim orders on 26.12.2018 directing the 2nd respondent to consider the objections made as follows:

“ Therefore, the 2nd respondent is directed to consider the objections made by the petitioners to the provisional seniority list in the cadres of Asst.Gr-I, Asst.Gr-II and Acct.Gr-II pending disposal of the Writ Petition, by strictly applying the above decisions and considering other objections raised by the petitioners also within a period of eight weeks from the date of receipt of order.”

3. As per the interim orders of Hon'ble High Court, the objections of the petitioners have to be considered strictly by applying the directions of Supreme Court in M.Nagaraj Vs Union of India and Jurnail Singh and others Vs Lachhmi Narain Guptha and others.
4. In compliance of the interim orders of Hon'ble High Court, speaking orders were issued to the Petitioners concerned stating that the objections made by the petitioners to the provisional seniority list in the cadres of Asst.Gr-I, Asst.Gr-II and Acct.Gr-II have been examined and considered with reference to the judgements of Hon'ble Supreme

- Court in M.Nagaraj Vs Union of India and Jurnail Singh and others Vs Lachhmi Narain Guptha and others, and rules issued by the Government in fixing the Seniority of employees vide H.O. Procds.No.P.Admn.A2/3095/2017 dt: .02.2019.
5. Simultaneously, the Corporation has also sought necessary clarification on the applicability of above judgements of Hon'ble Supreme Court in fixing the Seniority of employees of APSCSCL from the Commissioner Civil Supplies and EO Secretary to Government, CA, F&CA Dept, Govt of AP, AP Secretariat Amaravati vide this office D.O.Lr.No.P.Admn.A2/3095/2017, dt: 10.04.2019.
 6. While so, Sri A S R Somayajulu and (09) others have filed Contempt Case No.86/2019 in the Hon'ble High Court and the Hon'ble High Court directed that there is dispute with regard to implementations of orders of High Court by the respondents and the Respondent No.2 is directed to file his affidavit with regard to the steps taken pursuant to the orders of this Court in I.A.No.1 of 2017 in W.P.No.42898 of 2017 and the CC.No.86/2019 listed on 09.12.2021.
 7. Accordingly, Corporation has issued revised orders duly withdrawing the earlier speaking orders issued vide this office Procds No.P.Admn.A2/ 3095/2021 dated 04.12.2021 and the copy of order was submitted to the Hon'ble High Court through the Standing Counsel of APSCSCL, Government of AP and to the Petitioners. In order to prepare the Final Seniority lists in the cadres of Assistant Gr-I, Assistant Gr-II and Accountant Gr-II as per the judgement of Supreme Court in the above cases, a Team was constituted for preparing the seniority lists with reference to the directions of Hon'ble High Court. The team is attending to the work.
 8. The Corporation has filed Additional Affidavit in Contempt Case through Standing Counsel of Corporation duly submitting that some of the team members were contacted with Covid positive and requested to grant another two months to complete the entire process. On the request of Corporation, the Hon'ble High Court has granted two more months time for completing the said exercise with affect from 25.02.2022 and the two months period will complete by 24.04.2022.
 9. In this connection, it is submitted that as far as determining the seniority of the reserved category promotes in different cadres from their date of first appointment in that category in terms of Rule-33(a) of AP State and Subordinate Service Rules, 1996 is concerned, it is submitted that as per Para-32 & 33 of Judgment dated 27-08-2015 of Hon'ble Supreme Court in S.Panneer Selvam & Ors Vs Government of Tamilnadu & Ors (paras - 32 & 33), a similar view about the similarly worded Rule-35(aa) of the Tamilnadu State and Subordinate Service Rules, was held as not comprehending the fact situation arising from roster-point promotions for being granted consequential seniority and as such, the general principle of seniority is applicable only for normal appointments to any service, class, category or grade and not for reserved category promotions.
 10. Moreover, the Learned Advocate General vide his Opinion No.118/2022, dt:24/9/22, Lr.No.462/2022, dt:26/9/22, has held as follows:

"I concur with the consultative opinion of the Law Department that the two (2) judgment of the Hon'ble Supreme Court, i.e., (2006) 8 SCC 212 and (2018) 10 SCC 396, must be mandatorily complied with in deciding the

subject related seniority list of the A.P. State Civil Supplies Corporation."

11. The principle of compliance with the law declared by the Hon'ble Supreme Court is very clear and social welfare department with the respective departments have undertaken an exercise in connection therewith, such as Roads and Buildings, Irrigation etc. You may follow the exercise, as contemplated under the rules and the government orders, and as undertaken by the respective departments, before deciding on promotions and consequential seniority arising from such promotions".
12. In view of the above for review of Panels from 2005 to 2014 a DPC Committee with three (3) Members and one expert person (from R&B Dept.) in the concerned matters are constituted as follows:
 1. VC & Managing Director, (Head of the Committee)
 2. J.D. From the Office of Commissioner Civil Supplies (Member),
 3. Manager (PDS) (Member) and
 4. An Expert person from R & B Department as per suggestions of Advocate General of AP.
13. The DPC Committee was entrusted with the task of Review of all panels regarding of all cadres in the APSCSCL from 2005 to 2014.
14. The above DPC Committee has met on 02.06.2023 at 3.00 P.M. in the chamber of VC & Managing Director of APSCSCL, AP, to review all panels of all cadres of employees of APSCSCL keeping in view of the rule position and the settled legal position, as well as the opinion rendered by the learned Advocate General of AP.
15. In this connection, it is to inform that the erstwhile combined State of AP, after examining the demand of various Service Organizations of SCs/STs, for implementation of rule of reservation in promotions in favour of SCs/STs in all department of the State, have decided to implement rule of reservation in promotion to ensure adequate representation of the SC/ST employees, i.e., 15% and 6% respectively in all categories of posts in whose cadre strength is more than five, by following the existing 100 point roster already prescribed in Rule 22 of the Andhra Pradesh State and Subordinate Service Rules – 1996. Orders to that effect were issued vide G.O.Ms. No.5 SW (SW.RoR.I) Dept, dated 14.02.2003. However, at para – 4(g) of above G.O., it was explicitly mentioned that “detailed guidelines on filling up the roster points based on the rule of reservation in promotions will be issued separately”.
16. However, the facilitative regime ushered in by Article 16(4-A) did not per se authorize or enjoin reservation in promotions in Andhra Pradesh in view of the exclusionary trajectory of Rule-22 of the AP State and Subordinate Service Rules – 1996. Furthermore, since Rule-22 of AP State and Subordinate Service Rules – 1996, issued in exercise of the powers under the proviso to Article 309 of Constitution of India, enjoined reservations in direct recruit only till issuance of G.O.Ms. No. 5 dated 14.02.2003 and hence the executive order issued in G.O.Ms. No.5 dated 14.02.2003 was per se inoperative. It was only consequent on issue of G.O.Ms.No.123 GA(Ser-D) Dept, dated 19.04.2003, which also issued under the proviso to Article 309 of

Constitution of India (with retrospective effect from 14.02.2003), the Rule-22 of 1996 Rules stood amended mandating reservation in matters of promotion and appointment by transfer, for candidates belonging to SC/ST, where the cadre strength of a category of service is more than five (5).

17. Further, in terms of Rule-22(2)(a) of AP State and Subordinate Service Rules, the unit of appointment for the purpose of ROR in promotions shall be as per the roster points in Sub-Rule – 22(2)(e) and as such, each panel was revised in terms of Rule-5 & Rule-6 read with Rule-22(2)(e).
18. The regime of reservation in promotions with consequential seniority, for Schedule Caste and Schedule Tribes was merely an enabling provision and the Constitution per se enjoined neither reservation in promotions nor consequential seniority. That is the true position and interpretation of the Constitutional provision in the Judgment in M.Nagaraj case. On grammatical or a true and fair construction of the provision of Article 16(4-A) and in the light of the precedential authority of M. Nagaraj case, the premise that Article 16 (4-A) and the decision in M. Nagaraj Case enjoin reservation in promotions with consequent seniority, is patently unfounded.
19. As such, for arriving to the conferment of consequential seniority of reserved category promotes in each category, a careful and detailed analysis of G.O.Ms.NO.5; the administrative guidelines issued in G.O.Ms.No.21; the statutory amendments issued in G.O.Ms.No.123; the “comprehensive orders” (executive) issued in G.O.Ms.No.2; or the interactive analyses of Rules – 5,6,22 and 33 of the 1996 Rules is required. Hence, conferment of consequential seniority to the reserved category promotes is not “automatic”. Furthermore, Hon’ble High Court in its another Judgment dated 29.11.2018 in WP No.9456 of 2018 have held that “Be it noted that in terms of this exercise, the organization would have to quantify the data as to the adequacy of representation of these reservation categories in the promotional posts; assess the effect upon the efficiency of administration if such reservation is provided; examine the issue of creamy-layer as laid down in M.Nagaraj 2 and JARNAIL SINGH; apart from the other parameters which have been left untouched in M. NAGARAJA2, and thereafter confer the benefit of reservation in promotions with or without consequential seniority, as warranted”.
20. Subsequently, Hon’ble High Court of AP in its Judgment dated 11.12.2018 in “The State of Telangana Vc S.Prakash & Ors” reported in 2019 (1) ALT 335, have adjudged as follows:

a). G.O.Ms. No.5 dated 14.02.2003 was issued by Government of Andhra Pradesh with an impression that it had carte blanche power to give such orders without undertaking the bare exercise of determining the adequacy of representation clearly emanating from Article-16(4A) and as such G.O.Ms.No.5 has ignored the mandate of Article – 16(4A).

b). Even though G.O.Ms.No.26 was issued after M.Nagaraj, there was no direction by the State to undertake the exercise as mandated thereby on an individual cadre basis.

c). G.O.Ms.No.5 dated 14.02.2003 and G.O.Ms.No.26 dated 20.02.2009, though they are worded as positive directions, would have to be read down and understood in the context of the constitutional scheme of Article 16(4A), as spelt out in clear terms by the Supreme Court in M.Nagaraj case.

d). In light of the afore stated binding edicts of Supreme Court in M.Nagaraja 1 and Jarnail Singh², the State is bound to undertake the full exercise as set out in these Judgments before implementing reservation in promotions with consequential seniority. Such an exercise would have to be an ongoing exercise every time such a policy is sought to be implemented and cannot be a one-time measure.

21. Finally, Hon'ble High Court of Andhra Pradesh as per the above Judgment have directed that "The Government Orders and more particularly, G.O.Ms.No.5 dated 14.02.2003 and G.O.Ms.No.26 dated 20.02.2009 are read down to merely enable the State to implement the policy of reservation in promotions if the necessary conditions are made out and in pursuance thereof, every department of the State which seeks to implement the policy of reservation in promotions with consequential seniority in favour of Scheduled Castes and Scheduled Tribes in any particular cadre would have to undertake the full exercise as per the mandate of the Supreme Court in M.Nagaraja and Jarnail Singh before doing so every time".

22. Further, Hon'ble Supreme Court in its Judgment dated 19.10.2006 in M.Nagaraj have spelt out the constitutional scheme of Article 16(4A) in the following terms:

(a) In the said Judgement, Hon'ble Apex Court have gone in explicit terms have held that "it is not necessary for us to deal with the above arguments serially. The arguments are dealt with by us in the following paragraphs subject-wise."

1. Clause (4A) follows the pattern specified in clauses (3) and (4) of Article 16. Clause (4A) of Article 16 emphasizes the opinion of the States in the matter of adequacy of representation... The State has to inform its opinion on the quantifiable date regarding adequacy of representation.. The said clause is carved out of Article 16(4). Therefore, clause (4A) will be governed by the two compelling reasons "backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist then the enabling provision cannot come into force. The State can make provision for reservation only if the above two circumstances exist.

(b) If Articles 16(4A) and 16(4B) flow from Article 16(4) and if Article 16(4) is an enabling provision then Articles 16(4A) and 16(4B) are also enabling provisions.

(c) The equality of opportunity under Article 16(1) is for each individual citizen while special provision under Article 16(4) is for socially disadvantaged classes. Both should be balanced and neither should be allowed to eclipse the other.

- (d) The question of extent of reservation is closely linked to the issue whether Article 16(4) is an exception to Article 16(1) or is Article 16(4) an application of Article 16(1). If Article 16(4) is an exception to Article 16(1) then it needs to be given a limited application so as not to eclipse the general rule in Article 16(1). But if Article 16(4) is taken as an application of Article 16(1) then the two articles have to be harmonized keeping in view the interests of certain sections of the society as against the interest of the individual citizens of the society.
- (e) Article 16(4) which protects interests of certain sections of society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of principle of equality under Article 14.
- (f) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335 then this court will certainly set aside and strike down such legislation.
- (g) Article 16(4A) and Article 16(4B) fall in the pattern of Article 16(4) and as long as the parameters mentioned in those articles are complied-with by the States, the provision of reservation cannot be faulted.
- (h) As long as the boundaries mentioned in Article 16(4), namely, backwardness, inadequacy and efficiency of administration are retained in Articles 16(4A) and 16(4B) as controlling factors, we cannot attribute constitutional invalidity to these enabling provisions.
- (i) The concerned State will have to show in each case the existence of the compelling reasons, namely backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation.
- (j) The State is free to exercise its discretion of providing for reservation subject to limitation, namely, that there must exist compelling reasons of backwardness, inadequacy of representation in a class of post(s) keeping in mind the overall administrative efficiency.
- (k) It is made clear that even if the State has reasons to make reservation, as stated above, if the impugned law violates any of the above substantive limits on the width of the powers, the same would be liable to be set aside.
- (l) It is made clear that even if the State has the said compelling reasons, the State will have to see that its reservation provision does not lead to excessiveness..
- (m) The concept of reservation in Article 16(4) is hedged by three constitutional requirements, namely, backwardness, inadequacy of representation in public employment of that class and overall efficiency of the administration.
- (n) However, when the State fails to identify and implement the controlling factors then excessiveness comes in, which is to be decided on the facts of each case.

(o) In a given case, where excessiveness results in reverse discrimination, this Court has to examine individual cases and decide the matter in accordance with law.

23. GO Ms No.5 prescribed the policy of the Government in ensuring 15% and 6% of SCs / STs in the posts whose cadre strength is more than (5). But, no “controlling factors” prescribed in Article 16(4A) were incorporated in GO Ms No.5.
24. Subsequently, statutory amendments were made to the AP State and Subordinate Service Rules’1996 vide GO Ms No.123 GA(Ser-D) Dept, dated 19-04-2003 and the requisite “controlling factor” was incorporated as extracted under:

Rule-22(2)(a)(i)(C): Filling up the roster points shall continue till the required percentage of Scheduled Caste and Scheduled Tribe candidates is obtained. Once the required percentage is obtained by taking into account both the Scheduled Caste and Scheduled Tribe candidates who are found in the list of candidates fit for promotion on account of their seniority in the feeder category and those who are moved up to fill up the required roster point, further adjustment of Scheduled Caste and Scheduled Tribe employees against roster point has to be stopped.

Rule-22(2)(a)(i)(D): Unutilized roster points after the required Scheduled Caste and Scheduled Tribes percentage is met, shall lapse.

25. The above two provisions act as balancing factors in not allowing the provisions made in ROR in promotions in respect of SCs / STs, to eclipse on the promotional chances of the General Candidates. As such, since the judgment dated 11-12-2018 mandates for understanding of the GO Ms No.5 in the context of the constitutional scheme of Article 16(4A), as spelt out in clear terms by the Supreme Court in M.NAGARAJ, it is to be invariably read with the Rule-22(2)(a)(i)(C) and Rule-22(2)(a)(i)(D) of AP State and Subordinate Service Rules, without which, it is incomplete by all means and will become unconstitutional.
26. Right from the GO Ms No.5 dated 14-02-2003 to GO Ms No.154 SW(ROR.I) dept, dated 30-07-2008, orders were issued in prescribing the methodology to be adopted while preparing a panel of candidates fit for promotion. But, none of these GOs talk about “Consequential Seniority”.
27. For the first time, orders were issued in GO Ms No.26 to implement ROR in promotions with “Consequential Seniority”. However, no amendment was made to AP State and Subordinate Service Rules. GO 26 is merely an amendment to GO Ms No.5.
28. As already submitted supra, without giving effect to the Rule-22(2)(a)(i)(C) and Rule-22(2)(a)(i)(D) of AP State and Subordinate Service Rules, the provisions contained in GO Ms No.5 are incomplete and similarly even after amendment to GO Ms No.5 vide GO 26, it is to be invariably read with Rule-22(2)(a)(i)(C) and Rule-22(2)(a)(i)(D) of AP State and Subordinate Service Rules.

29. The “controlling factors” which are ensuring non-eclipsing of provision of ROR in promotions on Article 16(1), still remains to be in AP State and Subordinate Service Rules and required to be reinforced in the concept of “Seniority” also.
30. If the “controlling factors” enshrined under Rule-22(2)(a)(i)(C) and Rule-22(2)(a)(i)(D) of AP State and Subordinate Service Rules are not given effect, then as adjudicated by Hon’ble Supreme Court in M.NAGARAJ, the seniority to such accelerated promotees will violate the substantive limits prescribed in AP State and Subordinate Service Rules’1996 for SCs / STs.
31. Hon’ble HC in its judgment dated 11-12-2018 has categorically stated that “GO 26 was issued long after said Judgment (M.Nagaraj), yet again, there was no direction by the State govt to undertake the exercise as mandated...”.
32. Hence, an exercise is a must while effectuating GO 26. The GOs which were issued prior to Judgment dated 11-12-2018 cannot be implemented now, after 11-12-2018, as the Court have directed to understand both the GOs in the context of the constitutional scheme of Article 16(4A), as spelt out in clear terms by the Supreme Court in M.NAGARAJ.
33. As such, as per M.Nagaraj, the controlling factor of “Inadequate representation” still retained in the amended Article-16(4A) and therefore, the consequential seniority is also subject to “inadequate representation”.
34. While undertaking the above exercise as per Judgment dated 11-12-2018 of combined High Court, the Government of Telangana vide Memo No.1356/SU.I/A1/2021, dated 24-07-2021, have revised the promotions effected to the category of Section Officer from 02-06-2014 and subsequently vide Memo No.73/Cabinet/A1/2019, dated 24-07-2021 have revised the promotions effected to the categories of Assistant Secretary, Deputy Secretary, Joint Secretary, Additional Secretary to Govt from 02-06-2014 onwards based on the following methodology:
 - a. When there is no adequate representation to the SCs and STS to the extent of 15% and 6% respectively in a cadre, their consequential seniority may be considered and accordingly, they may be included in the panel against their roster points in respective panels, till adequate representation is reached to them.
 - b. When adequate representation to the SCs and STS @ 15% and 6% respectively has been reached in a cadre, the general seniority of the candidates in their initial cadre shall be taken into consideration for further promotions.
35. With the above policy, all panels of the all cadres of APSCSCL from 2005 to 2014 are reviewed accordingly.
36. Hence, all the employees concerned in the revised Panels are hereby directed to submit their Objections if any, with due supporting evidence or documents to Head Office of A.P. Unit located at Vijayawada within 15 days from the date of receipt of information, failing which it will be presumed that they have no Objections to

submit and the provisional Seniority list will be issued as per the prevailing rules in force.

37. The VC & MD, TSCSCL, Hyderabad is requested to arrange to communicate the revised panels of the above to the employees concerned and is requested to communicate with the office remarks on objections so received, within the prescribed time, to the Head Office, APSCSCL, Vijayawada, for taking further necessary action.
38. The Managers in Head Office, all District Managers and Zonal Managers of APSCSCL are requested to communicate the revised panels (from 2005 to 2014) in all cadres through mail to the all regular employees concerned working under their control without fail and send the served copies to the Head Office for record purpose under any circumstances.

Encl: As above.

VC & MANAGING DIRECTOR

To

The employees concerned indicated in the revised panels annexed.

The VC & MD, TSCSCL, Hyderabad.

The functional Managers of APSCSCL,

The DCSMs of APSCSCL/ZMs.

Copy to VC &MD's table.

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