

**(2011) 12 AP CK 0002**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No's. 30784, 30785, 30790, 30803, 30811, 31053, 31064, 31130, 31440, 31444, 31554, 31676, 31794, 31797, 31911, 33392, 32412, 32447 and 32837 of 2011

A.S. Chary and Others

APPELLANT

Vs

The Vice Chairman and  
Managing Director, APSRTC, Bus  
Bhavan, Mushirabad,  
Hyderabad, The Executive  
Director (H and K), APSRTC, Bus  
Bhavan, Mushirabad,  
Hyderabad, The Chief Manager  
(HRD), APSRTC, Bus Bhavan,  
Mushirabad, Hyderabad and  
Others

RESPONDENT

**Date of Decision:** Dec. 23, 2011

**Acts Referred:**

- Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 - Regulation 3, 3(2), 3(4), 34, 8
- Constitution of India, 1950 - Article 226

**Citation:** (2012) 1 ALT 762

**Hon'ble Judges:** G. Chandraiah, J

**Bench:** Single Bench

**Advocate:** P. Venkateswar Rao, Writ Petition Nos. 30784, 30785, 30790 of 2011, Sri. R S R S Sarma, Writ Petition No. 30803 of 2011, Sri. A. Jagan, Writ Petition No. 30811 of 2011, Sri. V. Narasimha Goud, Writ Petition No. 31053 of 2011, Sri. A.K. Jayaprakash Rao, Writ Petition No 31064, 31130 of 2011, Sri. A.G. Satyanarayana Rao, Writ Petition No. 31440 of 2011, Sri. P. Venkateswar Rao, Writ Petition No. 31444 of 2011, Sri. G. Ravi Mohan, Writ Petition No. 31554 of 2011, Sri. A.G. Satyanarayana Rao, Writ Petition No. 31676, 31794 of 2011, Sri. S. Gopal Rao, Writ Petition No. 31797 of 2011, Sri. V. Narasimha Goud, Writ Petition No. 31911 of 2011, Sri. G. Vidyasagar, Writ Petition No. 32392 of 2011, Sri. A.G. Satyanarayana Rao, Writ Petition No. 32412 of 2011, Sri. G. Vidyasagar, Writ Petition No. 32447 of 2011, Sri. Suresh Kumar Reddy Kalava, Writ Petition No. 32837 of 2011, for the Appellant; C. Sunil Kumar Reddy, Writ Petition No. 30784 30785 30790 of 2011, Sri. K.

Madhava Reddy (SC for APSRTC), Writ Petition No. 30803, 30811 of 2011, Sri. C. Sunil Kumar Reddy (SC for APSRTC), Writ Petition No. 31053 of 2011, Smt. W.V.S. Rajeswari (SC for APSRTC), Writ Petition No. 31064, 31130, 31440 of 2011, Sri. C. Sunil Kumar Reddy (SC for APSRTC), Writ Petition No. 31444 of 2011, Kallakuri Srinivasarao, Writ Petition No. 31554 of 2011, Sri. K. Satyanarayana Murthy (SC for APSRTC), Writ Petition No. 31676 of 2011, Kallakuri Srinivasarao, Writ Petition No. 31794 of 2011, Smt. W.V.S. Rajeswari (SC for APSRTC), Writ Petition No. 31797 of 2011, Sri. C. Sunil Kumar Reddy (SC for APSRTC), Writ Petition No. 31911 of 2011, Arun Kumar Lathker (SC for APSRTC), Writ Petition No. 32392 of 2011, Sri. K. Satyanarayana Murthy (SC for APSRTC), Writ Petition No. 32412, 32447 of 2011, Smt. W.V.S. Rajeswari (SC for APSRTC), Writ Petition No. 32837 of 2011, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Hon"ble Sri. Justice G. Chandraiah

1. Heard the respective counsel for the petitioners and Standing Counsels for the respondent - Corporation.

2. Since the issue involved in all the writ petitions is one and the same, they are being disposed of by this common order.

3. The petitioners in all the writ petitions are working as Conductors in different zones in the State of Andhra Pradesh in the Andhra Pradesh State Road Transport Corporation (for short "the Corporation") on regular basis and put in substantial length of service. The Corporation conducted qualifying departmental tests for promoting the employees in the cadre of Routine Clerks/Conductor/Telephone Operators/Punch Operators/Comptists, to the posts of Junior Assistants in the categories of Finance, Personal and Material and the petitioners qualified in the departmental test and their names were included in the final seniority lists of eligible candidates for being promoted to the above said posts. Some of the candidates were given promotions and some are yet to get promotions. The Corporation is also taking the services of some of the petitioners, who are working as conductors, as Junior Assistants in different categories and thus some of the petitioners are officiating in the promotional posts. The petitioners are waiting for their turn to get promotions. While so, the Corporation issued notification No. R2/684(22)/2011-HRD dated 8.11.2011, to fill up the vacancies of Junior Assistants in above said categories, by direct recruitment. The Corporation also issued ancillary notification No. R2/684(22)/2011 dated 10.11.2011 for departmental eligible candidates for applying to the said vacancies, by giving age relaxation, which are notified in the notification dated 8.11.2011, meant for direct recruitment. By these notifications, the Corporation is taking steps for filling up of vacancies of 544 posts,

which include Junior Assistant (Finance) -266 posts, Junior Assistant (Personnel) -196 posts and Junior Assistant (Material) -82 posts.

4. Challenging the notification dated 8.11.2011, W.P.Nos.31503, 31130, 31064, 31554, 31797, 31911, 32392, 32447, 30803 and 32837 of 2011, have been filed and challenging the ancillary notification dated 10.11.2011, W.P.Nos. 30785, 30790, 31444, 30811, 31440, 31676, 31794, 32412 and 30784 of 2011 have been filed.

5. Now the grievance of the petitioners in these writ petitions is that without giving promotions to them who have qualified in the departmental test for promotion and who are awaiting for their promotions as per the seniority lists, the Corporation is not justified in going for direct recruitment, without making proper analysis of vacancies earmarked by promotional quota and hence the same is in violation of the Andhra Pradesh State Road Transport Corporation (Employees") Recruitment Regulations, 1966 (for short "Recruitment Regulations"). Therefore, they sought for quashing of the notifications and consequently direct the respondents to promote the petitioners by exhausting the seniority lists.

6. The respondent - Corporation filed counter affidavits in W.P.Nos.30784, 30785, 30803 and 30790 of 2011 and denied the claim of the petitioners. The tenor of the counter affidavits is that the Recruitment Regulations pertaining to filling up of vacancies of Junior Assistant (P), Junior Assistant (F) and Junior Assistant (M), provide for filling up of certain posts from promotional candidates, from feeder category and the remaining vacancies by direct recruitment. The quota reserved for promotees are being filled up from time to time and the impugned notification is meant for only direct recruitment. Therefore, it is not proper on the part of the petitioners to question the impugned notification, as the same is nothing to do with the promotional vacancies. The Corporation also issued the subsequent internal notification dated 10.11.2011, ancillary to the main notification dated 8.11.2011, enabling the eligible departmental employees to apply for direct recruitment, by giving suitable relaxation in respect of age. Therefore, the eligible employees also can apply for the said posts instead of waiting for the promotions as per their seniority list. With these averments, *inter alia*, the writ petitions were sought to be dismissed.

7. The petitioners filed reply affidavit in W.P.No.30803 of 2011 to the counter affidavit and the respondent - Corporation again filed additional counter affidavits in W.P.Nos.30784 and 30790 along with material papers, and the respective contentions in these affidavits, will be considered during the course of judgment.

8. The Learned Counsel appearing for the petitioners contended that as per the circulars of the Corporation, the petitioners, who have put in substantial length of satisfactory service, appeared for the departmental tests and qualified and accordingly *inter se* seniority lists were prepared and some of the employees in the feeder category, were given promotions and some are officiating in the promotional

posts. As per Regulation 3, the appointment to the posts in the Corporation can be made by direct recruitment and by promotion and the Annexure-A pertaining to this regulation, provides for vacancies meant for promotions and for direct recruitment and also the necessary qualifications. Under Regulation 3(4), resort to direct recruitment may be made, only when the suitable and qualified persons are not available for promotion. Under Regulation 8, a person who is already in the service of the Corporation may also be considered for appointment to a post to be filled by direct recruitment. In the present case, the Corporation has not properly analyzed the vacancies and without earmarking the vacancies for promotional candidates, as per the Regulations, issued the impugned notification, only for direct recruitment, when the in-service eligible candidates, who have qualified in the departmental test, are existing in the seniority lists. It is stated that the respondent - Corporation has to earmark the vacancies notified in the present notification for promotional candidates and direct recruitment in the existing vacancies and it cannot make reference to the total cadre strength and deny opportunity to the departmental candidates on the ground that they are occupying more number of vacancies, In support of this contention, the Learned Counsel relied on the judgment of the Apex Court reported in [Maya Mathew Vs. State of Kerala and Others](#), . It is further sought to be contended that in the present case, for the many years, due to the ban, there was no direct recruitment and no records are produced by the Corporation showing the number of vacancies to be filled by direct recruitment and by promotion and thus there was break down of rota-quota rule. It is stated that the recruitment year is only calendar year and as such back log in direct recruitment quota from 1993 to 2010 cannot be taken into account, as it stands broken down and if the present recruitment takes place, the direct candidates would become seniors to the petitioners and therefore, the Corporation has to consider the case of the departmental candidates, otherwise their seniority would be jeopardized. In support of these contentions, the Learned Counsel relied on the judgment reported in B.S. Mathur v. Union of India 2008 (8) SCJ 761. The contention of the Learned Counsels is that without exhausting the selected panel, the Corporation is not justified in issuing notification for direct recruitment. It is stated that in similar circumstances, when the Corporation resorted to direct recruitment without exhausting the selected panel, this Court in W.P.No.17152/1995 dated 23.4.1996, while setting aside the notification therein, directed the respondents to issue appointment orders to the candidates in the select list prepared by the Departmental Selection Committee dated 27.6.1991 and after exhausting the said candidates, gave liberty to the Corporation to go for direct recruitment. The said judgment of the learned single Judge was confirmed in the writ appeal in W.A.No.918 of 1996 dated 7.8.1996. With these submissions, impugned notification is sought to be set aside.

9. On the other hand, the respective earned standing counsels appearing for the respondent - Corporation, while reiterating the averments made in the counter affidavits, further submitted that the Recruitment Regulation 3 provide for direct

recruitment and by promotion. The number of vacancies to be filled by way of promotion and by direct recruit, is mentioned in Annexure A to Regulation 3 and as per the same, the recruitment notification for direct recruitment is given. It is submitted that Regulation 34 stipulates that the Corporation shall ensure direct recruitment and promotion in specified ratio and review shall be made on 1st January of every second year and the shortfall, if any, either in direct recruitment or promotion, shall be identified and in accordance thereto, direct recruitment or promotion shall be made to ensure the ratio between the direct recruitment and promotions. Therefore, the Corporation reviewed the vacancy position of Junior Assistant (Per, Fin, Mat, Per) for the years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and arrived at the figures of 544 vacancies and a proposal was submitted to the Government for filling up of the said vacancies by direct recruitment for the block period 2006-07 to 2009-10 and the Government through G.O.Ms.No.90 dated 11.6.2010, has approved for filling up of direct vacancies. Therefore, the contention of the counsel for the petitioners that the notification was issued without analyzing the vacancies, is without any basis. The Corporation conducted departmental qualifying test for eligible Routine Clerks/Telephone Operator/Punch Operators/Comptists/Conductor, for preparing an inter se - seniority list, for giving promotions and from 2005 till date, 4335 candidates were qualified in seven zones and out of them 1120 employees were given promotions, but as per the vacancies calculated under promotion quota, only 546 candidates up to the current year 2010-11, were to be given promotion. It is clear that Corporation has given promotions to 574 employees, in excess of their quota, and this was due to the ban imposed by the Government. Therefore, the Corporation contemplated to revert 574 candidates, but based on the representations of the recognized unions, it is temporarily decided to continue them in promoted posts. It is stated that the petitioners who have qualified in the departmental test and whose names were included in the inter se seniority list, will be given promotion as and when their turn comes up for consideration. It is also stated that the Corporation has issued notification dated 10.11.2011 to enable the service candidates to apply for direct recruitment by giving age relaxation. Therefore, the petitioners cannot have grievance. With these averments, the writ petitions were sought to be dismissed.

10. In view of the above rival contentions, the point that arises for my consideration is whether there are any grounds to interfere with the impugned notifications dated 8.11.2011 and 10.11.2011?

11. In order to consider the above issue, it is necessary to first note the relevant provisions under the Recruitment Regulations, as under:

### 3. Appointment and Qualifications:

- (1) Appointment to the posts in the Corporation shall be made -
  - (a) by direct recruitment; or

(b) by promotion or

(c) by transfer or deputation of an Official already in the service of a Department of the Central or State Government or a State Transport Undertaking.

(2) The method of recruitment to each post specified in column 2 of Annexure -A shall be shown in the corresponding entry in column (3) thereof and the qualifications prescribed for each such post shall be as shown in the corresponding entry in column (4).

(3) Notwithstanding anything in clause (2), the Corporation may at any time, appoint suitable Officer of the State or Central Government or any State Transport Undertaking to any of the posts specified in Annexure-A on "Foreign Service" terms.

(4) Where suitable departmental candidates are not available for promotion to any of the posts specified in Annexure-A where the posts are to be filled by promotion only, such posts may be filled by direct recruitment by selection provided that recruitment to all the higher posts from the lower posts shall be made by way of promotion and resort to direct recruitment only when suitable and qualified persons are not available for promotion.

#### ANNEXURE- A

(Class - III Services)

S.no.	Category of post	Method of recruitment	Qualifications
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5	Junior Assistant (F) (Section - F)  (Accounts Department.)	In a unit of 30 vacancies -  (a) the 1st, 11th, 21st and 27th vacancies be filled by promotion by selection from the ranks of Routine Clerk;  (b) the 4th, 6th, 9th, 14th, 23rd & 24th vacancies be filled by promotion from the rank of	1)  FOR PROMOTION:  (a) The Routine Clerk must have rendered not less than 5 years of service as such;  (b) the Telephone Operator / Punch Operator / Comptist / Conductor must have rendered not less than 7 years of service as such;  ◆ the Routine Clerk / Telephone Operator /
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Conductor. (c) The. 8th and 17th vacancies be filled by promotion by selection from the ranks of Telephone Operator/Comptist.

(d) The remaining 18 vacancies be filled by direct recruitment by selection.

Note: Within a block period of one year, if suitable candidates from (a), (b) or (c) are not available to fill up the vacancies reserved for them, the vacancies be filled by the candidates from (d).

Punch Operator / Comptist / Conductor must have passed Departmental qualifying test.

Note:- Interse seniority among Routine clerk / Telephone Operator / Punch Operator / Comptist / Conductor should be fixed among the qualified candidates. For this purpose the date to be reckoned should be the date of completing qualifying service as prescribed for the cadre.

## 2) FOR DIRECT RECRUITMENT:

The candidate -

(a) must be a Graduate in commerce from any University recognized by the University Grants Commission; and

(b) must not be above 30 years of age as on 1st July of the year in which the recruitment is made.

<p>Junior Assistant (Personnel) Personnel Department.</p> <p>In a Unit of 60 vacancies</p> <p>(a) The 1st, 11th, 21st, 27th, 31st, 41st, 51st and 57th vacancies be filled by promotion by selection from the ranks of Routine clerk;</p> <p>(b) The 4th, 6th, 9th, 14th, 23rd, 24th, 34th, 36th, 39th, 44th 53rd, 54th vacancies be filled by promotion from the ranks of Conductor;</p> <p>(c) The 8th 17th, 38th &amp; 47th vacancies be filled in by promotion by selection from the ranks of Telephone Operator "/ Punch Operator / Comptist.</p> <p>(d) 5% of the 60 vacancies in a Unit, the 2nd 32nd and 42nd vacancies to be filled by selection from among Conductors who are in possession of qualifications prescribed for direct recruitment and put</p>	<p>1) FOR PROMOTION:</p> <p>(a) The Routine Clerk must have rendered not less than 5 years of service as such;</p> <p>(b) the Telephone Operator / Punch Operator / Comptist / Conductor must have rendered not less than 7 years of service as such;</p> <p>◆ the Routine Clerk / Telephone Operator / Punch Operator / Comptist / Conductor must have passed Departmental qualifying test.</p> <p>Note:- Interse seniority among Telephone Operator / Punch Operator / Comptist / should be fixed among the qualified candidates. For this purpose the date to be reckoned should be the date of completing qualifying service as prescribed for the cadre.</p> <p>2) FOR DIRECT RECRUITMENT: The candidate -</p> <p>(a) must be a Graduate</p>
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in 5 years of service in APSRTC as such.

(e) The remaining vacancies be filled by direct recruitment by selection.

Departmental candidates possessing the prescribed qualification may also be considered for selection along with outsiders against direct recruitment quota.

In-service employees are given age relaxation as per Regulation 9(2) of APSRTC (Employees) Recruitment Regulations, 1966.

Note: Within a block period of one year, if suitable candidates from (a), (b), (c) and (d) are not available to fill up the vacancies reserved for them, the vacancies may be filled by the candidates from (e).

in commerce from any University recognized by the University Grants Commission;

(b) must not be above 30 years of age as on 1st July of the year in which the recruitment is made.

(c) Must have passed the Lower Grade Government Technical Examination either in English or Telugu Typewriting.

Note:

(1) Preference will be given to the candidates who have acquired qualifications in one of the Computer languages such as Basic, Cobol etc.

(2) In case of dependents of employees dies in harness, spouse or son or unmarried daughter are eligible for appointment under Bread Winner Scheme, the candidates who are graduates are eligible. No Typewriting qualification is compulsory.

Junior Assistant (Material)/(Purchase)	To be filled in alternatively:	1) FOR PROMOTION:
Section F (Stores and Purchase.)	<p>(a) by promotion by selection from the rank of Mechanic/artisan and Mukaddams;</p> <p>Note: The 10th vacancy be appropriated for promotion to Mukaddams.</p> <p>(b) by direct recruitment by selection.</p> <p>Note: If no suitable candidate is available from (a) above, the vacancy may be filled by the candidates from (b) above.</p>	<p>i) the Mechanic/Aartisan</p> <p>(a) must hold a Diploma in Automobile/Mechanical engineering DAE/DME or be in possession of ITI;</p> <p>(b) the Mechanic /artisan in possession of ITI must have rendered not less than 8 years of total service and Mechanic/artisan in possession of DME/DAE must have rendered not less than 3 years of total service in the Corporation;</p> <p>(c) must pass requisite qualifying test;</p> <p>Note: Seniority among Mechanic/Artisan should be fixed among the qualified candidates. For this purpose, the</p>

date to be reckoned should be the date of qualifying service.

- ii) The Mukaddam
  - (a) must have passed SSC or its equivalent examination and must have rendered 10 years service as Mukaddam
  - (b) must pass the requisite qualifying test.

2) FOR DIRECT RECRUITMENT: The candidate -

- (a) must possess a Diploma in Automobile or Mechanical Engineering or be a Graduate from a recognized University;

And

- (b) must pass the requisite qualifying test; and

◆ must not be above 30 years of age as on 1st July of the year in which the recruitment is made.

## 8. General Provisions Regarding Appointment:

(1)...

(2) Subject to the provisions of Regulation -9 and of Annexure -A, any person who is already in the service of the Corporation may be considered for appointment to a post filled by direct recruitment.

(3)...

(4)...

#### 9. Relaxation of Age Limit:

(1) Notwithstanding anything in these Regulations, a competent authority may, in exceptional circumstances for reasons to be recorded in writing, make an order exempting any person or class of persons from the age limit prescribed therein.

(2) Where a person, who is already in the service of the Corporation and has been appointed regularly, is permitted to apply for a post filled by direct recruitment, he shall be allowed to deduct from his age the period of his service up to a maximum of 10 (ten) years for the purpose of maximum age limit.

Provided that, this age concession shall not be allowed, where the maximum age limit prescribed for the post is 40 years or above, and Provided further that the employees, belonging to Scheduled Caste, Scheduled Tribe and Backward class communities, who are already in the service of the Corporation and have been appointee regularly and are permitted to apply for the post to be filled by direct recruitment shall be allowed to deduct their entire service from the age for the purpose of maximum age prescribed for the post, subject to the condition that after allowing such concession the age of the employee should not exceed 45 (forty five) years.

(3) Subject to the age concession allowed in clause (2) above, all Departmental candidates are eligible for appointment to any of the post, to be filled by direct recruitment, as specified in Annexure - A provided they possess the qualification prescribed for the post.

(4)...

(5)...

#### 12. Reservation of appointments:

1) Direct Recruitment posts in all classes of services both technical and nontechnical shall be filled up as per the reservations given hereunder:

34. In order to ensure direct recruitment and promotion in specified ratios as per APSRTC Employees" Recruitment Regulations review shall be made on 1st January of every second year. Shortfall, if any, either in direct recruitment or promotion shall be identified. In accordance with shortfall identified either direct recruitment or

promotion shall be planned to ensure the ratio between the direct recruitment and promotion. In other words if direct recruitee has retired, resigned or falls vacant for other reasons, it will go to direct recruitee and vice-verse. Seniority will be reckoned for either of them as per Regulation 3 of Service Regulations.

12. A reading of the above provisions relating to appointment, it is clear that the Corporation, has the power to make appointment to the posts by direct recruitment or by promotion and as per the method of recruitment specified in Annexure-A, the promotional points and direct recruitment points are specifically prescribed.

13. Further, the qualifications prescribed for direct recruitment is graduation for Junior Assistant (Finance) and Junior Assistant (Personnel) and for Junior Assistant (Personnel), apart from graduation, the candidate shall possess Lower Grade Government certificate either in English or Telugu typewriting and preference and relaxation is also provided in the column no.4. In respect of Junior Assistant (Material/Purchase), the candidate for direct recruitment, shall possess Diploma or Graduation in Automobile Engineering and also shall pass in the requisite qualifying test. Whereas, in respect of departmental candidates, mainly qualifying service is necessary and passing of departmental test is prescribed for certain categories of feeder posts and in respect of Junior Assistant (Material/Purchase), possession of Diploma or ITI in the relevant trade is prescribed, for promotion. In other words, under Annexure - A, it could broadly be seen that for in-service candidates in the feeder category for promoting to the next higher posts of Junior Assistants, in the respective departments, mainly qualifying length of service and passing of departmental test are necessary and, whereas, for direct recruitees, certain necessary qualifications and passing of the qualifying test for recruitment, is prescribed under the Recruitment Regulations. Under Regulation 34, candidates from each category, has to occupy their respective slots in the roster points in the vacancies, which are to be counted unit wise. The other aspect that is conspicuously noted is that specific age limit is prescribed for direct recruitees and no such limit is prescribed for in-service candidates and qualifying service and passing in the departmental test is basically provided. Therefore, in-service candidates and direct recruitees, for considering for either promotions or appointment, emerge from different sources of selection and each cannot have any claim over the vacancies meant for other category.

14. It is made clear in the Annexure -A at "Note" underneath at each category of posts at column 3, that within a block period of one year, if suitable promotional candidates are not available for filling up the vacancies reserved for them, such vacancies can be filled by the candidates from direct recruitment by selection. However, under Regulations 8(2) and 9(3), an in-service candidate can also be considered by the Corporation for appointment to a post to be filled by direct recruitment, provided he possesses the requisite qualification prescribed for the post. The Corporation is also empowered under Regulation 9 (2) to extend age

relaxation to the in-service candidates for applying for a post to be filled by direct recruitment. Further under Regulation 34, ratio between the direct recruitment and promotions is required to be maintained and that if a direct recruitee retires, resigns or the post meant for direct recruitee, falls vacant for other reasons, it will go to direct recruitee and similarly, if a post meant for promotional category, falls vacant, it shall go to promotional candidate and seniority shall be reckoned for direct recruitees and promotional candidates as per Regulation 3 of Service Regulations.

15. Sub Clause (4) of Regulation 3 of Recruitment Regulations also provides that where the posts specified in Annexure-A are to be filled by promotion only, they shall be filled by suitable departmental candidates and if no such suitable candidates are available for promotion, such posts can be filled by direct recruitment. Under this provision, a proviso is made to the effect that recruitment to all the higher posts from the lower posts shall be made by way of promotion and resort to direct recruitment can be made only when suitable and qualified persons are not available for promotion. The contention of one of the counsels for the petitioners based on Regulation 3(4) is that the Corporation can go for direct recruitment only when suitable departmental candidates are not available for promotion and since the petitioners have already qualified in the departmental tests, without giving promotions, Corporation cannot go to direct recruitment.

16. The above contention is far from imagination and merits for outright rejection for the reason that Regulation 3(4) deals with promotions and Regulation 3 (2) clearly stipulates the method of recruitment under Annexure-A, in which roster points for direct recruitees and promotees are clearly earmarked. The proviso under clause (4) of Regulation 3 also clearly states that recruitment to all higher posts from lower posts shall be made by way of promotion. The of the word "recruitment" in the proviso, cannot be read in isolation and the said word at any stretch of imagination be understood as "direct recruitment", since recruitment cannot be made from lower post to higher post and it will only be way of promotion and in the said proviso, it is clearly stated that resort to direct recruitment can be made only when suitable and qualified persons i.e., in-service candidates, are not available for promotion. This analogy is further made clear under "Note" at column no.3 of Annexure -A.

17. If the contention of the counsel for the petitioner that direct recruitment cannot be resorted to without giving promotions, is to be accepted, then Regulation 3(2) and the Annexure-A, which prescribes the promotional and direct recruitment points, would be rendered otiose and proviso under sub clause (4) of Regulation 4 would run counter to method of recruitment under sub clause (2) of Regulation 3 and the maintenance of ratio by the Corporation between the direct recruitees and the promotees, as envisaged under Regulation 34, in terms of Annexure-A, would be an impossibility. Therefore, the contention of the counsel for the petitioners that impugned notifications is contrary to Regulation 3(4), cannot be accepted.

18. A close perusal of the Recruitment Regulations, further makes it clear that the Corporation apart from providing promotional avenues to the in-service candidates, has also made sufficient safeguards for protecting the interests, by providing them opportunity to apply for direct recruitment by giving age relaxation, provided they possesses the requisite qualifications prescribed for the post. At the same time, the Corporation under Regulation 34 was required to maintain the ratio between the direct recruits and the promotees and the roster points meant for the respective categories, have to be filled by the candidates of the same category in the event of their posts falling vacant and seniority shall be counted as per Regulation 3 of Service Regulations.

19. In the present case, the Corporation has issued the impugned notification for direct recruitment for appointment to the post of Junior Assistants in the categories of Finance, Personnel and Material. The contention of the petitioners is that they qualified in the departmental test and are in the lists of candidates qualified for promotion and unless those lists are exhausted, the Corporation without earmarking the vacancies for promotional candidates, cannot go for direct recruitment. This contention, in view of the above discussion, cannot stand to scrutiny for the reason that the Annexure -A referred to in Regulation 3 has specified vacancies to be filled by promotional candidates and by direct recruitment. Therefore, when the Recruitment Regulations, provide for appointment by way of direct recruitment to the vacancies earmarked for them, the promotional candidates cannot insist that their cases shall be considered first and then go for direct recruitment.

20. In the additional counter affidavit, which has not been disputed by way of filing any additional reply affidavits, the vacancy position earmarked for direct recruitment and for promotion, year wise, is shown in a tabular form. The same is extracted as under for better appreciation:

SL NO.	CATEGORY	2006-07		2007		2008-09		2009-10		2010	
		PR	DR	PR	DR	PR	DR	PR	DR	PR	DR
1.	J.A. (Per)	11	14	31	43	48	72	50	67	59	84
2.	J.A. (Fin)	39	59	41	63	47	69	49	75	50	76
3.	J.A. (Mat)	13	16	14	08	18	19	17	19	27	23
4.	J.A.(Pur)	11	10	08	04	03	02	03	04	07	06

## Summary

SL. NO.	CATEGORY	TOTAL	
		PR	DR
1.	J.A. (per)	199	280
2.	J.A. (Fin)	226	342
3.	J.A. (Mat)	89	85
4.	J.A. (Pur)	32	26
	Total	546	733

21. In the additional counter affidavit, it is categorically stated that for filling up of 544 vacancies of direct recruitment, vacancies for the block periods from 2006 to 2010 were taken and the vacancies arising for 2010-11 were left and that out of 4335 qualified departmental candidates in seven zones, 1120 candidates were promoted to the posts of Junior Assistants in the categories of Personnel, Finance, Material etc. and because of the ban imposed by the Government from 2006 to 2010, no direct recruitments could take place and only departmental candidates were given promotions to an extent of 1120 and as on today 574 promotees were in excess, occupying the quota meant for direct recruitment.

22. It is to be noticed that as per Regulation 34, the Corporation is required to ensure that the ratio between the direct recruits and the promotees, and if a direct recruit retires, resigns or if the post falls vacant for other reasons, it will have to be filled by direct recruit and vice-versa. In the present case, as already noted above, as per the case of the Corporation, 574 promotees, are occupying the posts meant for direct recruitment and, therefore, this is contrary to Regulation 34. In the present case, as stated in the counter affidavits, the Government has imposed ban on direct recruitment from 2006 to 2010 and, therefore, the Corporation could not take up direct recruitment. Therefore, in terms of Regulation 34, those posts, which remained vacant due to ban on direct recruitment, have to be invariably filled by direct recruitment. In view of these facts and circumstances, the contention of the petitioners that without earmarking the vacancies for promotees and without exhausting the list of qualified candidates, going for direct recruitment is bad, is without any basis and merits for rejection. Similarly, in view of the statistics shown in the additional counter - affidavits, with regard to promotional and direct recruitment vacancies, and also in view of the fact that the Government imposed ban from 2006 to 2010, -and in view of Regulation 34, the contention of the counsel

for the petitioners that there is break down of rota-quota rule and that the seniority of in-service candidates would be affected, cannot be accepted and the judgment of the Apex Court relied on in this behalf (cited 2 supra), cannot be made applicable to the facts of the case on hand.

23. The Learned Counsel for the petitioners relied on the judgment reported in *Maya Mathew v. State of Kerala* (1 supra), to contend that ratio for direct recruitment and for promotion has to be applied with reference to vacancies notified and not with reference to cadre strength. The facts of the said case disclose that in the total number of vacancies meant for direct recruitment and by way of transfer, the direct recruits were occupying the posts meant for transfer candidates and a special provision was made to the effect that when in a recruitment, transfer quota posts have to be filled by direct recruitment, due to non-availability of candidates from transfer categories, the backlog in regard to such transfer categories, cannot be restored in future recruitment and as a result the number of vacancies to be filled under each category at any subsequent recruitment can be only by applying the ratio for appointment to the number of vacancies existing at the time of such subsequent recruitment and not with reference to the cadre strength. Therefore, the apex court has upheld the special provision, when compared to general provision, in that regard. But in the present case, there is no special provision to that effect, as considered by the Apex Court in the above judgment, and on the contrary Regulation 34 mandates that Corporation shall ensure ratio between the direct recruits and promotees and the posts, which fell vacant in the respective categories have to be filled from those categories only and no exception is given. However, enabling provision is made for the departmental candidates by giving age relaxation for apply for direct recruitment. That is to say, that the departmental candidate by qualifying in the requisite test meant for direct recruitment, can occupy the posts of direct recruits. Further, as already noticed above, in the present case, under Annexure - A referred to in Regulation 3, if the eligible promotional candidates are not available, the said posts can be filled by direct recruitment, but no vice-verse provision is made. The facts of the present case are different from the facts of the case dealt with by Apex Court and hence same is not applicable to the facts of the case on hand.

24. Along with the material papers, the learned Standing Counsels for the respondent - Corporation, has produced copies of proposal sent by the Managing Director to the Principal Secretary, Transport, Road and Buildings Department, in R2/684(29)/2009-(R m& C) dated 28.11.2009 seeking permission for recruitment of Drivers, Conductors and other essential staff on regular basis. In the said request, the vacancy position relating to direct recruitment, has been clearly stated, by furnishing the check list under Annexure VIII and the same is extracted under for better appreciation:

CHECK LIST FOR FILLING UP OF THE POSTS BY DIRECT RECRUITMENT

1. Name of the Category, which Proposed for filling	: JR. ASSTS.
2. Scale of pay of the above category	: 4,790-10,945
3. Total Cadre strength of the above category as per the Implementation Committee G.Os.	: 1785
4. No. of persons working in the above category	: 1219
5. Total vacant posts (i.e., 3-4)	: 566
6. % of Vacancies with reference to sanctioned strength	: 32%
7. Name of the Recruiting Agency	: A.P.S.R.T.C.
8. No. of Direct Recruitment Vacancies in the above Category	: 544
9. No. of vacancies already permitted to fill up/under Process is on	:
10. Balance vacancies (i.e., 8-9)	: 544
11. When was the last recruitment conducted	: --
12. How many vacancies were notified in the last Recruitment and how many persons were joined.	: --
13. Justification for filling up of the posts in terms of work load	: Justification statement enclosed.
14. Specific Recommendations/Remarks of the Secretariat Department on the proposal	: --

#### JUSTIFICATION FOR FILLING UP THE VACANCIES OF JUNIOR ASSISTANTS

The recruitment regulations provide for direct recruitment quota in the category of Junior Assistants in the departments viz., Personal, finance, Materials and Purchase Departments. But there was no recruitment in the category of Junior Assistants in the last 20 years. Therefore, all the vacancies in the Personnel and Finance departments are being filled by promoting Conductors, Routine Clerks, Telephone Operators, Comptists etc. Likewise the vacancies in the Materials and Purchase departments are being filled by promoting Mechanics/Artisans. The Conductors, Routine clerks, Telephone Operators, Comptists, Mechanics and Artisans etc., are being permitted to write edibility tests and those who qualify in the test are being promoted as Junior Assistants in the respective departments. These candidates who have put in 10-15 years of service and moulded in the functioning of parent category are not able to discharge the duties assigned to them properly. A depot which employees 500 to 800 employees are provided with 2 to 3 Junior Assistants each in the Personnel and Finance Department, to take care of the establishment matters of large number of Drivers, Conductors and Mechanics. Lack of necessary

skills leads to the delay in clearance of cases, which in turn leads to employee grievances. So the poor standards of the candidates who are getting promoted as Junior Assistants is leading to many Industrial Relations problems. Similarly Materials and Purchase departments are also suffering due to non availability of candidates with the requisite skills. The resistance to computerization and to implement any changes in the existing system is at high side as there are no direct recruits. Therefore, it is proposed to conduct direct recruitment of Junior Assistants to fill up the vacancies under direct recruitment quota in all the Departments.

#### Financial Commitment:

Since the permission is being sought to fill up the existing vacancies that arose due to retirements etc. and all the posts required to be filled are within the existing sanctions, there would be no additional Financial implications on this recruitment. Moreover all the vacancies in the category of Junior Assistants are being filled up till now by promoting the Conductors, Routine Clerks, Telephone Operators, Comptists, Mechanics and Artisans etc. The average pay of a Junior Assistant who gets promoted from the rank of Conductor, Routine Clerk, Mechanic and Artisan etc, is approximately Rs. 14,000/- per month, whereas for a newly recruited Junior Assistant, the pay would be Rs.6,900/- per month. Therefore, it would be economical to go for direct recruitment instead of filling the vacancies of Direct recruitment quota also by promotions.

Based on the request, the Government issued G.O.Ms.No.90, Transport Roads & Buildings (TR.II) Department dated 11.6.2010 permitting the Corporation to make direct recruitment to various categories including 544 posts of Junior Assistants, in different categories. Subsequently, the Managing Director by letter No.OS4/255(18)2010-PO-III addressed to the Executive director (HRD & Medical) and Secretary to the Corporation intimated the permission granted by the Government, to the fill up the vacancy in the category of Junior Assistants (P), (F), (MAT) and (Per) under direct recruitment quota and consequent thereto, the Corporation issued the impugned notification dated 8.11.2011 for direct recruitment.

25. As already noted above, under the Recruitment Regulations, the departmental candidates are also entitled to apply for direct recruitment, provided they possess the requisite qualifications and the Regulation 9(2) also provide for age relaxation. Therefore, in order to provide opportunity to the in-service candidates, the Corporation, as an ancillary notification to the main notification dated 8.11.2011, issued internal notification dated 10.11.2011 for the in-service candidates, in order to safeguard their interest by granting age relaxation in terms of Regulation 9(2). Unfortunately, this notification, which is beneficial to the in-service candidates, is also challenged in some of the writ petitions noted at paragraph no.4.

26. Coming to the judgment of the learned single Judge in W.P.17152/1995 dated 23.4.1996, which has been confirmed by the Division Bench in W.A.No.918/1996

dated 7.8.1996 is concerned, the facts of the said disclose that the Corporation conducted eligibility test for promotion and prepared a panel and some of the employees were given promotions and some were not given. The life of the panel therein was, one year and before expiry of the said period, ban was imposed and subsequently, when the Corporation has given notification without exhausting the select panel, the candidates in the panel approached this Court and this Court held that imposition of ban shall not act detriment to the employees in the panel and, therefore, the learned single Judge held that without exhausting the panel, giving fresh notification for "in-service" candidates is bad and accordingly the Corporation was directed to give promotions to the selected in-service candidates. But in the present case, as per the submissions of the standing counsels for respondent, the life of the panel is in perpetuity and as and when the vacancy arises under promotional quota, the corporation is willing to give promotions to the selected in-service candidates and the present notification under Regulation 3 for direct recruitment is for the vacancies meant for them and as per Regulation 34, the vacancies, which fell vacant for direct recruitment for any reason, have to be filled by the candidates from direct recruitment only. In the present case, the ban was imposed and there was no direct recruitment for many years and after lifting of the ban, the Corporation considering the vacancies meant for direct recruitment and after seeking permission from the Government under G.O.Ms.No.90, issued the present impugned notifications, for direct recruitment and by subsequent notification dated 10.11.2011, in-service employees were also provided opportunity by giving age relaxation. Therefore, the judgment of the learned single Judge relied on by the counsel for the petitioners, cannot be made applicable to the facts of the present case in all fours.

27. For the foregoing reasons, it is held that the impugned notifications are in accordance with the Recruitment Regulations of the Corporation and the petitioners failed to make out any case for interference of this Court under Article 226 of the Constitution of India and hence the writ petitions are devoid of any merits and they are accordingly dismissed at the stage of admission, but having regard to the facts and circumstances, without costs.