

Gopalakrishna Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Jan-20-2023

Judge : S.Sunil Dutt Yadav

Appeal No. : WP 44851/2019

Appellant : Gopalakrishna

Respondent : The State Of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE20H DAY OF JANUARY 2023 BEFORE THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV WRIT PETITION No.36133/2019 (S-RES) C/W WRIT PETITION No.44851/2019 WRIT PETITION No.8160/2020 IN W.P. NO.36133/2019 BETWEEN:

1. . B. GURUMURTHY S/O B LAKKAPPA AGED ABOUT58YEARS WORKING AS CHIEF ENGINEER ELECTRICITY C, O & M ZONE BESCOM, CHITRADURGA - 577 001 2 . G ASHOK KUMAR S/O VASUDEVA RAO AGED ABOUT58YEARS, WORKING AS MANAGING DIRECTOR KAVIKA, MYSORE ROAD, BENGALURU3. K V SHIVAKUMAR S/O K VEERABHADRAPPA AGED ABOUT59YEARS WORKING AS DIRECTOR (TRANSMISSION) KPTCL, CAUVERY BHAVAN BENGALURU - 560 009 2 4 . M MALLIKARJUNA REDDY S/O MADDI REDDY AGED ABOUT58YEARS WORKING AS CHIEF ENGINEER

ELECTRICITY TRANSMISSION ZONE KPTCL, ANANDA RAO CIRCLE, BENGALURU - 560 009 5 . H K BHARATHI W/O B N RAMESH AGED ABOUT59YEARS WORKING AS MANAGING DIRECTOR PCKL, CAUVERY BHAVAN BENGALURU - 560 009 6 . N RAGHUPRAKASH S/O S V NARASIMHA MURTHY AGED ABOUT59YEARS WORKING AS DIRECTOR (TECHNICAL) CORPORATE OFFICE, MESCOM MANGALORE. 7 . SMT H V MALINI W/O R V VENKATESH AGED ABOUT59YEARS WORKING AS CHIEF GENERAL MANAGER CORPORATE OFFICE, BESCOM K R CIRCLE, BENGALURU - 560 001 8 . AFTAB AHMED S/O MOHAMED SADIQ AGED ABOUT59YEARS WORKING AS DIRECTOR (TECHNICAL) CORPORATE OFFICE, CESC, MYSORE. 9 . K S PRASANNA S/O P SHANKARAPPA AGED ABOUT56YEARS WORKING AS ADDITIONAL DIRECTOR PCKL, CAUVERY BHAVAN BENGALURU - 560 009 ... PETITIONERS3(BY SRI KUMAR PARIMAL, ADVOCATE FOR MISS SUVARNA M.L., AND SRI PUTTEGOWDA K., ADVS.) AND:

1. STATE OF KARNATAKA BY ITS ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, ENERGY DEPARTMENT, PERSONNEL AND ADMINISTRATIVE REFORMS VIDHANA SOUDHA, DR. AMBEDKAR VEEDHI BENGALURU - 560 001.

2. THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, ENERGY DEPARTMENT VIKAS SOUDHA, DR AMBEDKAR VEEDHI BENGALURU - 560 001.

3. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED REPRESENTED BY ITS MANAGING DIRECTOR CAUVERY BHAVAN, K G ROAD, BENGALURU - 560 009.

4. SRI D. NAGARJUNA S/O M. DORESWAMY AGED ABOUT54YEARS SUPERINTENDING ENGINEER (MPD & TCD), BESCOM, CORPORATE OFFICE, K.R. CIRCLE, BANGALORE - 560 009.

5. SMT. G. SHEELA D/O LATE SRI K. GURUMURTHY AGED ABOUT54YEARS SUPERINTENDING ENGINEER WORKING AS GENERAL MANAGER DSM,

CORPORATE OFFICE K.R. CIRCLE, BANGALORE - 560 009.

6. SRI GOPAL KRISHNA V., S/O C.S. VEERANNA AGED ABOUT 59 YEARS SUPERINTENDING ENGINEER R & D CENTRE, KPTCL, CAUVERY BHAVAN, BANGALORE - 560 009.

7. SRI KRISHNA MURTHY P., S/O M. PUTTASWAMY AGED ABOUT 59 YEARS SUPERINTENDING ENGINEER GENERAL MANAGER (POWER PURCHASE) BESCOM, K.R. CIRCLE, BANGALORE - 560 009. Page Nos. 3 to 5 are re-typed and replaced vide order passed in R.P. No. 73/2023 dated 25.03.2024. 4

8. SRI GOPAL N GOANKAR S/O SRI NARAYANA GAONKAR AGED ABOUT 56 YEARS WORKING AS SUPERINTENDING ENGINEER PROJECTS CESC CORPORATE OFFICE HINKAL, VIJAYANAGAR 2D STAGE, MYSORE - 570 007.

9. SRI M.K. SOMASHEKAR S/O LATE M.A. KRISHNAPPA AGED ABOUT 52 YEARS WORKING AS EXECUTIVE ENGINEER PROCUREMENT CESC CORPORATE OFFICE HINKAL, VIJAYANAGAR 2D STAGE MYSORE - 570 007.

10. SRI A.A. SUNIL KUMAR S/O LATE A.K. AYAPPA AGED ABOUT 57 YEARS WORKING AS EXECUTIVE ENGINEER CESC, O & M DIVISION, HUNSUR, MYSORE DISTRICT - 571 101.

11. KPTCL GENERAL CATEGORY ASSOCIATION (R) REPRESENTED BY ITS GENERAL SECRETARY 106 3RD CROSS, GANDHINAGAR BENGALURU - 560 009.

12. SADASHIVA N., S/O NANJAPPA AGED ABOUT 40 YEARS ASSISTANT EXECUTIVE ENGINEER O/O CHIEF ENGINEER (ELEC) SLDC, KPTCL, RACE COURSE ROAD, ANANDARAO CIRCLE, BENGALURU - 560 009.

13. P. RASHMI D/O B.V. PARAMESHWARA AGED ABOUT 36 YEARS ASSISTANT EXECUTIVE ENGINEER O/O CHIEF ENGINEER (ELEC) BMASZ ARAVINDA BHAVAN, NRUPATUNGA ROAD BENGALURU - 560 001.

14. RAVIKUMAR H.R. S/O RANGASWAMIAH AGAED ABOUT 41 YEARS ASSISTANT EXECUTIVE ENGINEER NO.391/A, 3RD BLOCK, 6TH MAIN BASAVESHWARANAGAR, BENGALURU - 560 079.

15. RAMESH KUMAR P G S/O P V GOVINDA CHETTY AGED ABOUT 44 YEARS ASSISTANT EXECUTIVE ENGINEER Page Nos.3 to 5 are re-typed and replaced vide order passed in R.P. No.73/2023 dated 25.03.2024. 5 WORKS UNIT, BESCOM, KANAKAPURA DIVISION KANAKAPURA - 562 117.

16. PRAKASH M.V. S/O VENKATASWAMY AGED ABOUT 37 YEARS ASSISTANT EXECUTIVE ENGINEER O/O CHIEF ENGINEER, TBC, SLDC, KPTCL, ANANDARAO CIRCLE, BENGALURU- 560 009. ... RESPONDENTS (BY SRI DYAN CHINNAPPA, SENIOR COUNSEL AND SMT. M.C. NAGASHREE, ADVOCATE FOR R1 & R2; SRI S. SRIRANGA, SENIOR ADVOCATE FOR SRI ARIHANT R. SUNGAY, ADVOCATE AND SMT. SUMANA NAGANANDA, ADVOCATE FOR R3; SRI VIJAYA KUMAR V.B., ADVOCATE FOR R4 TO R7; SRI K.S. ANASUYADEVI, ADVOCATE FOR R8 TO R10; SRI REUBEN JACOB, ADVOCATE FOR R12 TO R16; MISS SUVARNA M.L., ADVOCATE FOR R11; SRI ADITYA SONDHI, SENIOR COUNSEL HAS BEEN APPOINTED AS AMICUS CURIAE) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS LEADING TO CIRCULAR DTD.24.06.2019 AND PROVISIONAL SENIORITY LIST DTD.22.07.2019 AND - QUASH (I) CIRCULAR DTD.24.06.2019 (UNDER ANNEXURE-N TO THE W.P.) ISSUED BY THE R-1 IN SO FAR AS IT PERTAINS ITS IMPLEMENTATION IN THE R-3/KPTCL AND (II) NOTIFICATION DTD.22.07.2019 (UNDER ANNEXURE-S TO THE W.P.) PUBLISHING THE PROVISIONAL SENIORITY LIST ISSUED BY THE R-3/KPTCL BY ISSUE OF A WRIT IN THE NATURE OF CERIORARI AND DIRECT THE R- 3/KPTCL BY ISSUE OF A WRIT IN THE NATURE OF MANDAMUS TO FOLLOW GOVERNMENT

ORDER

S DTD.27.02.2019 AND 1505.2019 FOR IMPLEMENTATION OF THE

JUDGMENT

OF THE HON'BLE SUPREME COURT IN B.K.PAVITRA-II V. UNION OF INDIA (AIR 2019 SC2723 RENDERED ON 10 MAY 2019 AND MAINTAIN THE RATIO OF RESERVATION AT 18 FOR SC/ST AND 82 FOR OTHERS AND GRANT ALL CONSEQUENTIAL BENEFITS AND ETC. IN W.P. NO.44851/2019 BETWEEN:

1. GOPALAKRISHNA S/O LATE DEVAPPA NAYAK AGED ABOUT 59 YEARS
Page No.5 Re-typed and replaced vide chamber order dated 21.01.2023 Page Nos.3 to 5 are re-typed and replaced vide order passed in R.P. No.73/2023 dated 25.03.2024. 6 WORKING AS SUPERINTENDING ENGINEER (EL)., OFFICE OF THE CHIEF ENGINEER, TENDERING AND PROCUREMENT, KPTCL, KAVERI BHAVAN, BANGALORE - 09, AND RESIDING AT NO.05, MIG-2, 3RD MAIN, 1 CROSS, 4TH PHASE, YALAHANKA NEW TOWN, BANGALORE - 64. 2 . KOTRESHI THALASTA S/O SHANKARAPPA THALASTA, AGED ABOUT 58 YEARS WORKING AS SUPERINTENDING ENGINEER (ELE), OFFICE OF THE CHIEF ENGINEER, TRANSMISSION ZONE, KPTCL, SANTHEPETE, HASSAN - 573 201. ... PETITIONERS (BY MISS SUVARNA M.L., ADVOCATE FOR SRI K. PUTTEGOWDA, ADVOCATE) AND:

1. . THE STATE OF KARNATAKA DEPARTMENT OF ENERGY, VIKASA SOUDHA, BANGALORE - 01, REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY. 2 . THE KARNATAKA POWER TRANSMISSION CORPORATION LIMITED, KAVERI BHAVAN, BANGALORE - 09 REPRESENTED BY THE MANGALORE - 09 REPRESENTED BY THE MANAGING DIRECTOR. 3 . THE DIRECTOR (ADMN & HR), KARNATAKA POWER TRANSMISSION CORPORATION LIMITED, KAVERI BHAVAN, BANGALORE - 09. 4 . SHANTI M FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER ELECL., RT & R & D, KPTCL KAVERI BHAVAN BANGALORE - 09. 5 . SRI. RAJAPPA FATHER'S NAME NOT KNOWN TO THE PETITIONERS MAJOR IN AGE WORKING AS DIRECTOR TECHNICAL HESCOM, NAVANAGAR HUBLI - 580 025. 6 . SRI. YESWANTH CHAVAN FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER, BMRCL, SHANTI NAGAR, BANGALORE - 27. 7 . SRI. SIDDARAJU K FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER (ELE),

CO&M, BESCOM BRAZ, BANGALORE - 44. 8 . SRI. ANANDA NAIK FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER ELECL. 8 C O & M, MESCOM, SHIVAMOGGA - 577 201. 9 . SRI. SAKKARI S P FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE WORKING AS CHIEF ENGINEER ELECL., TR ZONE, KPTCL, BAGALAKOTE - 587 103. 10 . MANJUNATH M T FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER ELECL, CO&M, CESCO, MYSORE - 570 015. 11 . SRI. LAKSMAN CHAVAN FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER ELECL, CORPORATE OFFICE, GESCOM, GULBARGA - 585 101. 12 . SRI. KODANDAPANI D FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER ELECL, TR ZONE, KPTCL MYSORE - 570 007. 13 . SRI. UMESH B J FATHER'S NAME NOT KNOWN TO THE PETITIONERS MAJOR IN AGE WORKING AS CHIEF ENGINEER ELECL., CO&M, BESCOM BMASZ NORTH, BANGALORE - 560 046. 9 14 . SRI. CHANDRASHEKARAIHAH G R FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER ELECL., BESCOM PROJECTS, K R CIRCLE, BANGALORE - 01. 15 . SRI. JAYAKUMAR R FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS DIRECTOR TECHNICAL, GESCOM, GULBARGA - 585 101. 16 . ADINARAYANA C FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER ELECL., TR ZONE KPTCL, TUMKUR - 572 103. 17 . SMT. PADMAVATHI FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS CHIEF ENGINEER ELECL, C O &M, MESCOM MANGALORE - 575 004. 18 . SRI. GOVINDAPPA K V FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS SUPERINTENDING ENGINEER (ELE). CO & M, BESCOM, TUMKUR - 572 101. 10 19 . SRI. MANJUNATHA S V FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS SUPERINTENDING ENGINEER ELECL. TR. MAINTENANCE CIRCLE, BRAZ, KPTCL, HEBBAL BANGALORE - 560 024. 20 . SRI. NAGARAJAN N R M FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS SUPERINTENDING ENGINEER

ELECL. CO&M CIRCLE, BESCOM, RAMANAGAR, KENGERI, BANGALORE - 560 060 21 . SRI. KOTEPPA S FATHER'S NAME NOT KNOWN TO THE PETITIONERS, MAJOR IN AGE, WORKING AS SUPERINTENDING ENGINEER ELECL, BESCOM, PROJECTS K R CIRCLE, BANGALORE - 560 001. ... RESPONDENTS (BY SMT. SUMANA, ADVOCATE FOR R2 & R3; SRI DYAN CHINNAPPA, SENIOR COUNSEL FOR SMT. M.C. NAGASHREE, ADVOCATE FOR R1; SRI RAGHAVENDRA N., ADVOCATE AND SRI MARUTHI S., ADVOCATE FOR R4, R7, R13, R14, R16, R18, R19 & R20) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS FROM THE RESPONDENTS AND DIRECT THE R-2 TO CONSIDER OBJECTIONS FILED BY THE PETITIONERS DTD.17.8.2019 AND 16.8.2019 VIDE ANNEXURE-E AND E1 TO THE PROVISIONAL SENIORITY LIST PUBLISHED BY THE R-2 DTD.22.7.2019 VIDE ANNEXURE-D WITH A FURTHER DIRECTION NOT TO EFFECT PROMOTIONS TO THE POST OF CHIEF ENGINEERS(ELE) PENDING FINALIZATION OF THE SENIORITY LIST OF SUPERINTENDING ENGINEER(ELE) AND ETC. IN W.P. NO.8160/2020 BETWEEN:

1. MANSOOR AHMED M., S/O RAHAMATH ULLA AGED ABOUT 59 YEARS WORKING AS CHIEF ENGINEER ELECTRICITY, TA & QC KPTCL, CAUVERY BHAVAN BENGALURU - 560 009.

2. RENU PRASAD M., S/O S. MAHAKINGA SWAMY AGED ABOUT 59 YEARS WORKING AS CHIEF ENGINEER ELECTRICITY, T & P, KPTCL CAUVERY BHAVAN BENGALURU - 560 009. ... PETITIONERS (BY MISS SUVARNA, ADVOCATE FOR SRI PUTTEGOWDA K., ADVOCATE) AND:

1. STATE OF KARNATAKA BY ITS ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS VIDHANA SOUDHA DR. AMBEDKAR VEEDHI BENGALURU - 560 001. 12

2. THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT ENERGY DEPARTMENT VIKAS SOUDHA, DR. AMBEDKAR VEEDHI BENGALURU - 560 001.

3. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED REPRESENTED BY ITS MANAGING DIRECTOR CAUVERY BHAVAN, K.G. ROAD BENGALURU - 560 009. ... RESPONDENTS (BY SRI ADITYA SONDHI, SENIOR COUNSEL AND SMT. M.C. NAGASHREE, ADVOCATE FOR R1 & R2; SRI SUMANA BALIGA M., ADVOCATE FOR R3) *** THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS LEADING TO CIRCULAR DATED 24.06.2019 AND PROVISIONAL SENIORITY LIST DATED 22.7.2019 AND QUASH (I) CIRCULAR DATED 24.6.2019 (UNDER ANNEXURE-N TO THE W.P.) ISSUED BY THE R-1 IN SO FAR AS IT PERTAINS ITS IMPELMENTATION IN THE R-3/KPTCL AND ETC. THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 14.12.2022 AND COMING ON FOR PRONOUNCEMENT OF

ORDER

S THIS DAY, THE COURT MADE THE FOLLOWING:

13.

ORDER

S. SUNIL DUTT YADAV. J THIS

ORDER

HAS BEEN DIVIDED INTO THE FOLLOWING SECTIONS TO FACILITATE ANALYSIS: I RELIEF SOUGHT¹⁴ II FACTS¹⁷ III SUMMARY OF CONTENTIONS²⁴ IV ANALYSIS:

36. (cid:1) DETAILS OF

ORDER

S PASSED RELATING TO³⁶ INTERLOCUTORY APPLICATIONS (cid:1) B.K.PAVITHRA-I, B.K.PAVITHRA-II AND⁴⁵ RESERVATION ACT, 2018 (cid:1) GOVERNMENT

ORDER

NO.DPAR¹⁸⁶ SRS201849 BENGALURU DATED 27.02.2019 (cid:1) ANALYSIS OF JARNAIL SINGH-II AND⁵⁸ THE RESERVATION ACT, 2018 (cid:1) WHETHER

INADEQUACY IN REPRESENTATION MUST BE CALCULATED AT THE TIME OF EVERY PROMOTION (cid:1) ANALYSIS OF OVER ALL ADMINISTRATIVE EFFICIENCY (cid:1) CHALLENGE TO CIRCULAR BEARING DPAR18676 SRS 2018 DATED 24.06.2019 (FREQUENTLY ASKED QUESTIONS) (cid:1) CHALLENGE TO FINAL SENIORITY LIST 7914 W.P.No.8160/2020, W.P.No.36133/2019 and W.P.Nos.44851/2019 are filed by Officers of the Karnataka Power Transmission Corporation Limited (hereinafter referred to as KPTCL) and belong to the General Category (in contradistinction to those officers who belong to reserved category consisting of Scheduled Castes and Scheduled Tribes) and are aggrieved by their seniority vis--vis those who have been promoted on the basis of reservation and as the above writ petitions raise common legal questions, all the petitions are taken up together and are disposed off by this common order.

2. Reliefs sought for in the various writ petitions are as follows:

2. 1 W.P.No.8160/2020 a) Quash the Circular bearing DPAR186SRS2018 Dated 24.06.2019, quash the Notification No.KPTCL/B100/ 3750/2019-20 dated 22.07.2019 publishing the provisional seniority list issued by the KPTCL and further direct the 15 KPTCL by issuing writ in the nature of mandamus to follow Government Orders dated 27.02.2019 and 15.05.2019 for the purpose of implementation of judgment of the Apex Court in B.K.Pavitra and Others v. Union of India and Others¹ (B.K.Pavitra II) b) to maintain ratio of reservation at 18% for SC/ST and 82% for others and grant all consequential benefits. 2.2 W.P.No.36133/2019 a) Identical relief's as in (a) and (b) in W.P.No.8160/2020 referred to above have been claimed. b) Further, by way of amendment, challenge has been laid to the seniority list dated 27.08.2021 published pursuant to the judgment in B.K.Pavitra II (supra) with further direction for restoration of the seniority list dated 27.10.2017 pursuant to the judgment in B.K.Pavithra and Others v. Union of India and Others² (B.K.Pavitra I) 1 (2019) 16 SCC1292 (2017) 4 SCC62016 c) To direct the KPTCL to make promotions in terms of the seniority list dated 27.10.2017 on the basis of deemed date of eligibility. 2.3 W.P.Nos.44851/2019 (a) Petitioners have sought for issuance of writ of mandamus to direct the KPTCL to consider objections filed by the petitioners

dated 17.08.2019 and 16.08.2019 as per Annexure-E and E1 to the provisional seniority list published by the second respondent dated 22.07.2019 with a further direction not to effect promotions to the post of Chief Engineer pending finalization of the seniority list of Superintending Engineer (Ele). b) Sought for issuance of writ of mandamus to direct the KPTCL to issue revised final seniority list of Superintending Engineers (Ele) in strict adherence to Section 5 of Act 21 of 2018.

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3. BRIEF FACTS:

3. 1 The Apex Court in the case of B.K.Pavitra I (supra) had considered a challenge to the validity of the "Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2002" (Reservation Act, 2002) and had held that Sections 3 and 4 of the Reservation Act, 2002 whereby the "catch up rule" was done away with and had provided for consequential seniority was ultra-vires Article 14 and 16 of the Constitution of India on the ground that the exercise for determining inadequacy of representation, backwardness and the impact on overall efficiency had not preceded the enactment of the law as was mandated by the decision of the Constitution Bench in M.Nagaraj and Others v. Union of India and Others³ (M.Nagaraj). The Apex Court further held that the catch up rule should apply. It was however clarified that the judgment would not affect those who had already retired and had taken financial benefits. 3 (2006) 8 SCC21218 It was further provided that promotions granted to serving employees based on consequential seniority would be treated as adhoc and liable to be reviewed. Seniority List was directed to be revised in light of the judgment. The observations made by the Apex Court are as follows:

"29. It is clear from the above discussion in S. Panneer Selvam case [S. Panneer Selvam v. State of T.N., (2015) 10 SCC292: (2016) 1 SCC (L&S) 76]. that exercise for determining inadequacy of representation, backwardness and overall efficiency, is a must for exercise of power under Article 16(4-A). Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees

who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken. The High Court erroneously observed that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a 19 senior person may be promoted later and not at the same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4-A), it is the catch-up rule which fully applies. It is not necessary to go into the question whether the Corporation concerned had adopted the rule of consequential seniority.

30. In view of the above, we allow these appeals, set aside the impugned judgment and declare the provisions of the impugned Act to the extent of doing away with the catch-up rule and providing for consequential seniority under Sections 3 and 4 to persons belonging to SCs and STs on promotion against roster points to be ultra vires Articles 14 and 16 of the Constitution. The judgment will not affect those who have already retired and will not affect financial benefits already taken. Consequential promotions granted to serving employees, based on consequential seniority benefit, will be treated as ad hoc and liable to be reviewed. Seniority list may be now revised in the light of this judgment within three months from today. Further consequential action may be taken accordingly within next three months.

3.2 After the judgment in B.K.Pavitra-I (supra), the Government of Karnataka constituted the "Rathnaprabha 20 Committee"⁴ to submit a report on the backwardness and inadequacy of representation of Scheduled Castes and Scheduled Tribes (hereinafter referred as SC/STs) in the State Civil Services and to study the impact of reservation on overall administrative efficiency. The terms of

reference of the committee was as follows: (1) Collect information on the cadre-wise representation of Scheduled Castes and Scheduled Tribes in all the government departments; (2) Collect information regarding backwardness of Scheduled Castes and Scheduled Tribes; and (3) Study the effect on the administration due to the provision of reservation in promotion to the Scheduled Castes and Scheduled Tribes. The Committee submitted its report and on the basis of which the State Government enacted the "Karnataka Extension of Consequential Seniority to Government Servants promoted on the basis of Reservation Act, 2017 (to the posts in the Civil Services of the State) (Karnataka 4 Vide G.O.No.DPAR182Sene Ni 2011; Headed by the Additional Chief Secretary to the State of Karnataka 21 Act 21 of 2018)" [hereinafter referred to as Reservation Act, 2018"].. 3.3 The validity of the Reservation Act, 2018 came to be challenged and the Apex Court in the case of B.K.Pavitra II (supra), has upheld the constitutional validity and the relevant observations of the operative order is as follows: 153. For the above reasons, we have come to the conclusion that the challenge to the constitutional validity of the Reservation Act, 2018 is lacking in substance. Following the decision in B.K.Pavitra (1) [B.K. Pavitra v. Union of India, (2017) 4 SCC620: (2017) 2 SCC (L&S) 128]. , the State Government duly carried out the exercise of collating and analysing data on the compelling factors adverted to by the Constitution Bench in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC212: (2007) 1 SCC (L&S) 1013]. . The Reservation Act, 2018 has cured the deficiency which was noticed by B.K. Pavitra (1) [B.K. Pavitra v. Union of India, (2017) 4 SCC620: (2017) 2 SCC (L&S) 128]. in respect of the Reservation Act, 2002. The Reservation Act, 2018 does not amount to a usurpation of judicial power by the State Legislature. It is Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC212: (2007) 1 SCC (L&S) 1013]. and Jarnail [Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC396: (2019) 1 SCC (L&S) 86]. compliant. The Reservation Act, 2018 is a valid exercise of the enabling power conferred by Article 16(4-A) of the Constitution. 22 3.4 In fact, the Apex Court dismissed the Review Petition⁵ seeking review of the judgment in B.K.Pavitra II (supra). The observations made by the Apex Court in the Review Petition are as follows:

"1. These proceedings have been initiated for a review of the judgment of this Court in B K Pavitra & Ors. v Union of India & Ors.[(2019) 16 SCC129].. This

Court, by its judgment dated 10 May 2019, upheld the constitutional validity of the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservations (to the Posts in the Civil Services of the State) Act 2018. The conclusion which was arrived at by the Court is extracted below: 144. For the above reasons, we have come to the conclusion that the challenge to the constitutional validity of the Reservation Act 2018 is lacking in substance. Following the decision in B K Pavitra I, the State government duly carried out the exercise of collating and analysing data on the compelling factors adverted to by the Constitution Bench in Nagaraj. The Reservation Act 2018 has cured the deficiency which was noticed by B K Pavitra I in respect of the Reservation Act 2002. The Reservation 5 Review Petition (C) No.1632 of 2019 in W.P.(C) No.764 of 2018 Decided on 30.07.2020 23 Act 2018 does not amount to a usurpation of judicial power by the State Legislature. It is Nagaraj and Jarnail compliant. The Reservation Act 2018 is a valid exercise of the enabling power conferred by Article 16 (4A) of the Constitution.

2. It has been urged in the Review Petitions that this Court did not consider the binding principles laid down by a Constitution Bench of this Court in Nagaraj v Union of India [(2006) 8 SCC212]. and Jarnail Singh v Lachhmi Narain Gupta [(2018) 10 SCC396 and that, in any case, the matter should have been referred to a Bench of a higher strength. It has also been urged, inter alia, that there is an error apparent in the findings of this Court on the retrospective application of the Reservation Act 2018 and the inapplicability of the creamy layer concept to consequential seniority.

3. We have gone through the contents of the Review Petitions. Every ground urged in the review petitions has been addressed on merits in the judgment under review. Consistent with the parameters that guide the exercise of the review jurisdiction, we do not find any error apparent on the record to justify interference. The Review Petitions are therefore dismissed."

24 4. SUMMARY OF CONTENTIONS:

4. 1 CONTENTIONS OF THE PETITIONERS: A. W.P.No.44851/2019 i) The private respondents were promoted in violation of the roster and contrary to the

prevailing reservation policy and rules. The promotion of the private respondents was in excess and beyond the quota stipulated. ii) The seniority list was required to be reviewed in terms of the procedure under Section 5 of Reservation Act, 2018, Proviso to Section 5 specifically provides that if persons belonging to SC & ST candidates are promoted in excess of the reservation specified and if they cannot be adjusted and fitted against the roster points they are required to be continued against supernumerary posts to be created in the cadres in which they are working till they obtain eligibility for promotion. It is contended that this is also in 25 accordance with Clause 8 (iii) and (iv) of the Government Order dated 24.06.1997. iii) The Government Order dated 24.06.1997 and 13.04.1999 provides that reservation in promotion in favour of Scheduled Caste and Scheduled Tribe shall not exceed 15% and 3% respectively after backlog is cleared which has not been adhered to. iv) As promotion to the private respondents was in excess of the extent of reservation, the private respondents ought to have been placed in supernumerary posts and if that were to be so, they would still be juniors to the petitioners. v) The private respondents were promoted to the post of Assistant Executive Engineers (AEE) in 1996 in excess of their quota of 15% and 3% and the seniority assigned is the starting point of illegality which has continued. The petitioners were promoted as Executive Engineers during 2008 while private respondents were promoted as Superintending 26 Engineers during January, 2008. The petitioners had to wait for their promotion to the post of Superintending Engineer till 2016 and 2018. The illegality in promotion of the private respondents in excess of their reservation quota has resulted in cascading effect on the promotional prospects of the petitioners who have been denied seniority over the private respondents resulting in prejudicing their promotional prospects to the post of Superintending Engineers for a decade. vi) Based on the judgment passed in B.K.Pavitra-II (supra) on 22.07.2019 KPTCL has published provisional seniority list of Superintending Engineers as on 01.06.2019 wherein petitioners were shown at Sl.No.61 and 44 and had filed their objections to such provisional seniority list pointing out that excess reservation was provided to Scheduled Caste and Scheduled Tribe candidates in the cadre of Assistant Executive Engineers which is required to be set right in 27 terms of procedures prescribed in Section 5 of Reservation Act, 2018. vii) The names of private respondents No.18 to 20 also

figure at Sl.No.1 to 3 as per the letter dated 26.08.2019. Provisional seniority list has been published by restoring the seniority of the Superintending Engineers as existed prior to the judgment rendered by the Apex Court in B.K. Pavitra I (supra) and such list is in violation of provisions of Reservation Act, 2018. B. W.P.No.36133/2019 i) The Circular dated 24.06.2019 issued by the State is contrary to the Government Orders earlier issued for implementation of Reservation Act, 2018 as also the Government Order dated 27.02.2019 which indicates manner of implementation. ii) The respondent-KPTCL has been operating the roster eternally as a running account even after representation 28 of Scheduled Castes and Scheduled Tribes in a cadre had reached the required percentage and consequently the reservation has exceeded the percentage of 15% and 3%. iii) Promotions made after 10.02.1995 are to be strictly in accordance with the law laid down in R.K.Sabharwal and Others v. State of Punjab and Others⁶ (R.K.Sabharwal) and once reservation is permitted, the same is to be implemented till all vacancies and posts in a cadre are filled and the question of operating roster eternally does not arise. iv) The Government Order dated 03.02.1999 provides that reservation in favour of persons belonging to Scheduled Castes and Scheduled Tribes would continue to operate till their representation in a cadre reaches the requisite percentage of 15% and 3%. Thereafter the reservation in promotion shall be continued only to maintain the reservation with respect to the aforesaid percentage. 6 (1995) 2 SCC74529 v) The KPTCL has failed to adopt application of roster on "post based" and has been continuing to operate the roster "vacancy based" which is contrary to the judgment of the Apex Court in the case of R.K.Sabharwal (supra). vi) The Government in its pleadings filed in pending proceedings before the Apex Court has taken a stand that reservation in promotion was being practiced and implemented on "vacancy based" principle till the judgment of the Apex Court in B.K. Pavitra I (supra). It was submitted that post based reservation would be made prospectively. vii) After the judgment of the Apex Court in B.K. Pavitra II (supra), the State Government has passed a Government Order dated 15.05.2019 and Clause 6 and 7 of the said Government Order stipulates that publication of provisional/ final seniority lists, assignment of dates of eligibility, review of promotions, 30 fixation of pay and pension is required to be completed within a period of 30 days. viii) Without

conducting review of promotions and notifying seniority list by official memorandum dated 20.05.2019 all persons belonging to Scheduled Castes and Scheduled Tribes have been brought back to the position that they held prior to 16.04.2018. ix) The circular regarding Frequently Asked Questions (FAQ's) has the effect of bringing back those officials who were demoted without conducting any review as was required. x) In terms of the provisional seniority list that is notified, the percentage of reservation in every cadre is beyond 15% and 3% leading to the petitioners approaching this Court challenging the Circulars of 24.06.2019 and the provisional seniority list dated 22.07.2019. xi) On the strength of the interim order the Apex Court has published final seniority list dated 27.08.2021 which is the replica of the provisional seniority list. 31 xii) After the judgment in the case of B.K. Pavitra II (supra), pronounced on 10.05.2019 Government has notified an order on 15.05.2019 reiterating the Government Order dated 27.02.2019 towards implementation of the judgment in the case of B.K. Pavitra II (supra), which would have the effect that beneficiaries of the judgment in B.K. Pavitra I (supra) would not be reverted and in terms of the Government Orders petitioners are not to be reverted or shown in a lower cadre in the provisional seniority list. xiii) The seniority list finalized and implemented as per the notification of 27.10.2017 was prepared by applying the catch up rule in terms of judgment in B.K. Pavitra I (supra). The preparation of seniority list in B.K. Pavitra II (supra), is contrary to the law laid down in M. Nagaraj (supra) and Jarnail Singh and 32 Others v. Lachhmi Narain Gupta⁷ (Jarnail Singh II). xiv) Consequent to the judgment in Jarnail Singh II (supra) if the State wishes to exercise its discretion to provide for reservation State is required to collect quantifiable data showing * inadequacy of representation of that cadre in public employment while complying with the mandate under Article 335 of the Constitution of India. xv) State is required to ensure that the provision for reservation does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely. C. W.P.No.8160/2020 The petitioners have challenged the validity of the Circular dated 24.06.2017 and the relief's sought for and 7 Civil Appeal No.629/2022 * Deleted vide order passed in R.P.No.73/2023 dated 25.03.2024. 33 contentions raised are substantially similar as raised in W.P.No.36133/2019. 4.2 SUMMARY OF CONTENTIONS OF THE

RESPONDENTS A. CONTENTIONS OF THE RESPONDENT-KPTCL i) As far as the challenge relating to the provisional seniority list as made out in the original prayer same is impermissible as it is only the final seniority list that could be challenged. ii) The Government Order dated 27.02.2019 provided for a protection against non-reversion till exercise is completed by way of revised seniority lists prepared in accordance with Sections 4, 5 and 6 of the Reservation Act, 2018 r/w Section 9 of the "Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973."

("KCS Regulation of Promotion Act, 1973). Such procedure for revising the seniority lists is being done in accordance with applicable law. 34 iii) Following the verdict of the Apex Court in B.K. Pavitra I (supra) and in light of setting aside of the Reservation Act, 2002, fresh seniority list was published on 27.10.2017. With coming into force of the Reservation Act of 2018 and protection of consequential seniority has resulted in the protection of consequential seniority from 24.04.1978. iv) The prayer of the petitioners that they shall be retained in the cadre of Chief Engineer or in the promoted post to which they were promoted in accordance with the judgment of the Apex Court in B.K. Pavitra I (supra) is liable to be rejected as the protection against reversion contemplated in the Government Order of 27.02.2019 would be only till exercise of review is completed in terms of Sections 4, 5 and 6 of the Reservation Act 2018 r/w Section 9 of the KCS Regulation of Promotion Act, 1973. 35 v) Protection of the position as per the list prepared after B.K. Pavitra I (supra) would in effect result in violation of the judgment in B.K. Pavitra II (supra). vi) The assertion that percentage of reservation is beyond permissible limit is a bald allegation and no evidence is placed to substantiate such contention. vii) The Reservation Policy does not apply to promotion to the cadre above the level of Assistant Executive Engineer and hence the allegation of excessive reservation at the higher end of the hierarchy cannot be accepted. B. CONTENTIONS OF THE RESPONDENT-STATE: i) The exercise of revision of the seniority list in terms of provisions of the Reservation Act, 2018 will have the effect of reversion of officers belonging to General Category. In light of the setting aside of the Reservation Act, 2002, officers belonging to the Scheduled Castes and Scheduled Tribes category lost 36 their consequential seniority and their positions were occupied by those in the General Category. With Reservation Act,

2018 granting consequential seniority to those from the General Category are bound to be reverted. ii) The entire list of FAQ's which forms part of the Circular dated 24.06.2019 does not take away or alter the efficacy of the Reservation Act, 2018 or the Government Order dated 27.02.2019 and it is the Reservation Act, 2018 which governs the field and would supersede the Circular in case of conflict.

5. ANALYSIS:

5. 1 DETAILS OF

ORDER

S PASSED RELATING TO INTERLOCUTORY APPLICATIONS It would be necessary to notice that during the pendency of the writ petitions, various interim orders were passed which gave rise to challenges to the said interim orders and for completeness of narration of facts, it is necessary that the said details are to be enumerated. 37 (i) 05.09.2019 - As the respondents did not file their statement of objections, an interim order of stay of the proceedings and restraining the respondents from reverting the petitioners from the post of Chief Engineer to Superintendent Engineer came to be passed. (ii) As against such order, I.A.No.4/2019 came to be filed seeking vacation of interim order dated 05.09.2019. The said application came to be disposed off permitting third respondent Corporation to publish and operate the Seniority List, while stipulating that compliance with the law laid down by the Apex Court and statement made by the State to the Apex Court in Shiv Kumar Tripathi v. Union of India and Others⁸(Shiv Kumar Tripathi) was to be ensured. (iii) It was further provided that copy of the Seniority List ought to be placed before the Court prior to publishing the same and that the petitioners, if not promoted, are 8W.P.(C) No.791/2019 38 not to be reverted till further orders are passed by the Court. It was stipulated that Seniority List to be published would be subject to the final orders to be passed and those Officers who are accorded promotions are not entitled to claim equity. (iv) 28.07.2020 - Orders were passed on I.A.No.2/2020. The said application was filed by the third respondent Corporation seeking permission for granting officiating charge to the eligible employees figuring in the Seniority List impugned in the Writ Petition to enable day-to-day operation. Said application came to be disposed off

in terms of the following:- Having heard the learned counsel for the parties, this Court accords permission to the respondent-Corporation for making placement by way of In-charge arrangement of the persons enlisted in the impugned Seniority List subject to following conditions: (a) the placement of the employees figuring in the impugned Seniority List shall be only by way of In-charge arrangement subject to outcome of the writ petitions; 39 (b) the employees placed on In-charge arrangement shall not have any right of lien to the posts in question and that they will not exercise any substantive functions of the said posts; (c) this In-charge arrangement per se shall not create any equity or right in favour of the employees now being placed in the higher positions for seeking retrospective promotion in any circumstance, whatsoever; (d) in effecting placement by way of In-charge arrangement, the extant rules of reservation shall be followed so that equity & justice are meted out to all sections of the employees; (e) the In-charge arrangement to be effected shall not result into interfering with the protection afforded to the petitioners by virtue of the interim orders or otherwise affect their powers and positions; and, (f) no party to the main proceedings shall use this In-charge arrangement or any benefit derived there under either in its favour or against the interest of the others, in any way whatsoever. (v) As against the order of 28.07.2020 on I.A.No.2/2020, Writ Appeal No.480/2020 came to be filed and was disposed off on 13.11.2020 with the following observations:

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"36. In view of the aforesaid discussion, we find that the impugned order would call for the following modification and the modified conditions shall read as under:- (a) The placement of the employees figuring in the impugned Seniority List shall be only by way of in-charge arrangement subject to outcome of the writ petitions; (b) The employees placed on in-charge arrangement shall not have any right of lien to the posts in question. They can, however, exercise substantive functions of the said posts, having regard to the interest of administration; (c) This in-charge arrangement per se shall not create any equity or right in favour of the employees now being placed in the higher positions for seeking retrospective promotion in any circumstance, whatsoever as it is being made having regard to administrative exigencies; (d) In effecting placement by way of In-charge arrangement, the extant

rules of reservation shall be followed so that equity and justice are meted out to all sections of the employees so far as practicable; (e) The In-charge arrangements to be effected shall not result into interfering with the protection afforded to the petitioners by virtue of the interim orders or otherwise affect their powers and positions; and, (f) No party to the main proceedings shall use this In-charge arrangement or any benefit ⁴¹ derived there under either in its favour or against the interest of the others, in any way whatsoever. (vi) As against the order passed on I.A.No.4/2019 dated 06.03.2020, W.A.No.448/2020 came to be filed which was also disposed off on 13.11.2020. As per order dated 06.03.2020, the Corporation was permitted to publish the Seniority List subject to compliance with order of the Apex Court in Shiv Kumar Tripathi (supra). The Division Bench stipulated that if the Scheduled Castes and Scheduled Tribes Officers are promoted against backlog vacancies which are found to be in excess and are contrary to the reservation provided and cannot be adjusted and fitted against roster points, they shall be continued against supernumerary posts till they obtain eligibility for promotion in that cadre. It was further stipulated that the final Seniority List ought to be published keeping in mind observations made therein, while reserving ⁴² liberty to those who were aggrieved to challenge the same in accordance with law. (vii) As against the order of the Division Bench dated 13.11.2020 in R.P.No.14/2021 in W.A.No.448/2020 Special Leave Petition No.11573-11574/2021 came to be filed. The Apex Court has noted the interim order permitting publishing of Final Seniority List which interim direction reads as follows:

"Pending further consideration, the petitioner is at liberty to publish Final Seniority List in terms of B.K.Pavithra-II and Section 4 and 5 of the above legislation. However, publication of such Final Seniority List shall not adversely impact or effect interest of the writ petitioners or similarly situated candidates till further orders."

The Apex Court while noting that the challenge is pending consideration before a Single Judge did not deem it appropriate to entertain the SLP's while directing that interim directions referred to above to continue during the pendency of the proceedings before the learned Single Judge in the writ ⁴³ proceedings while

directing disposal of the writ petition within six (6) months. (viii) It is the argument of the counsel appearing for the petitioner that the observations made in W.A.No.448/2020 stand undisturbed and the Apex Court while considering the SLP's filed against the said order did not set aside the observations made. * Accordingly, it is submitted that the promotions made between B.K.Pavitra I (supra) and B.K. Pavitra II (supra), are saved in terms of observations made in Para 54 and 55 of the order in W.A.No.448/2020 dated 13.11.2020 and would have the effect of non- reversion of promotees even belonging to the General Category. (ix) It must be noted that no doubt, the Apex Court did not entertain the Special Leave Petitions, but that is on the premise that the main challenge was pending consideration before the learned Single Judge and as * Deleted vide order passed in R.P.No.73/2023 dated 25.03.2024. 44 interim directions were passed by the Apex Court protecting against any adverse impact on the publication of Final Seniority List vis-a-vis the petitioners who were similarly situated persons. (x) It is clear that there has been no adjudication regarding the order passed in W.A.No.448/2020 and in light of the interim protection granted the SLP's itself were declined to be entertained. The non-entertaining of SLP must be construed in the context of entirety of facts as on date of passing of the order. It cannot however be construed to be affirmation of the observations made by the Division Bench on merits of the matter that was still pending adjudication. The Apex court in the interim directions passed on 02.08.2021 extracted in the order of 22.04.2022 clarified that the Final Seniority List must be in terms 9 "Pending further consideration, the petitioner is at liberty to publish final seniority list in terms of B.K.Pavithra-II and Sections 4 and 5 of the above legislation. However, publication of such final seniority list shall not adversely impact or affect the interest of the writ petitioners or similarly situated candidates till further orders."

45 of B.K.Pavitra II which had upheld the validity of the Reservation Act, 2018 and in terms of Section 4 and 5. (xi) Needless to state the directions passed at interim stage even in the writ appeal cannot have the effect of pre-judging the issue which is now being adjudicated upon. Accordingly to state that the protection given against demotion to those in the General Category is to continue cannot be accepted. 5.2 B.K.PAVITRA-I, B.K.PAVITRA-II AND RESERVATION ACT, 2018:
i) The judgment of the Apex Court in B.K.Pavitra I (supra) had the effect of setting

aside the Reservation Act of 2002. The court had observed that exercise prior to providing reservation as provided under Article 16 (4-A) of the Constitution of India would require determining "inadequacy of representation", "backwardness" and a study relating to reservation and its effect on overall efficiency as a condition precedent for providing reservation in 46 promotion. While holding so, the court had further held that the provisions of the Reservation Act, 2002 to the extent of doing away with the catch up rule and providing for consequential seniority under Sections 3 and 4 to persons belonging to SCs & STs on promotion against roster points was ultra-vires Article 14 and 16 of the Constitution of India. Consequently, the court directed review of the seniority list. The seniority list thus prepared and notified on 27.10.2017 in light of the directions in B.K. Pavitra I (supra) led to reversion of employees belonging to Scheduled Castes and Scheduled Tribes to lower cadres and promotion of employees belonging to the unreserved category to higher cadres. ii) The Government of Karnataka thereafter on 23.06.2018 notified the Reservation Act of 2018 which was preceded by the exercise of determining inadequacy in representation and impact of 47 reservation on overall efficiency, by way of a study that was commissioned culminating in a report from the "Rathnaprabha Committee". iii) The Reservation Act, 2018 provided for (a) seniority of those simultaneously belonging to SC & ST and Unreserved Category who are promoted to a cadre at the same time by a common order which would be determined on the basis of seniority inter se in the lower cadre¹⁰; (b) the consequential seniority accorded to the Government servants belonging to SC & ST with effect from 27.04.1978 as per various Government Orders would stand protected¹¹; (c) All promotions to the posts are required to be within the extent and in accordance with provisions of the reservation orders and other rules pertaining to method of recruitment and seniority. The Act also provided that the Appointing Authority was required to revise the existing seniority list to ensure that promotions are 10 Section 3 11 Section 4 48 made appropriately, provided that subsequent to such a review whenever it is found that the Government Servants belonging to SC & STs were promoted against reservation and backlog vacancies in excess and are contrary to the extent of reservation, same would be adjusted with reference to roster points by assigning appropriate dates of eligibility. In the event there cannot be adjustment against roster points they shall be continued

against supernumerary posts to be created by concerned administrative department which would be in operation till they obtain eligibility for promotion in that cadre¹²; (d) The Act afforded protection by stipulating that any action taken in respect of promotions and all proceedings made subsequent to 27.04.1978 in relation to promotion as per Sections 3 and 4 of the Reservation Act, 2018 before publication of the Act are deemed to be valid ¹² Section 5 49 and effective and such promotions cannot be reopened or reviewed contrary to the provisions of the Act¹³. iv) The validity of the Reservation Act, 2018 came to be assailed before the Apex Court in the case of B.K.Pavitra-II disposed off on 10.05.2019, which upheld the constitutional validity of the Act. The Apex Court has declared that the Reservation Act of 2018 is M. Nagaraj (supra) and Jarnail Singh and Others v. Lachhmi Narain Gupta and Others¹⁴ (Jarnail Singh I) compliant and that the said Act is a valid exercise of the enabling power conferred under Article 16 (4-A) of the Constitution. 5.3 GOVERNMENT

ORDER

NO.DPAR186SRS 2018 BENGALURU DATED 27.02.2019 i) During the pendency of the case of B.K. Pavitra II (supra) before the Apex Court, the State Government passed the Government Order dated 27.02.2019. The said Government Order even in terms of the preamble ¹³ Section 9 14 [(2018) 10 SCC396 50 has been passed in order to implement the Reservation Act, 2018 subject to the judgment of the Apex Court which was pending consideration. ii) The Government Order provided that all those officials who had been reverted would be re-posted to the cadres held by them immediately prior to their reversion and if vacant posts are not available in those cadres, supernumerary posts were to be created to accommodate them. It was further provided that Officers/Officials working at present in those cadres belonging to any category shall not be reverted¹⁵. iii) The Government Order further provided; (a) the change effected in the seniority consequent to the list prepared pursuant to the Government Order dated 06.05.2017 and officials if reverted to lower cadre would be posted back with retrospective effect to the post held by him immediately before such reversion. In the event the post in the cadre held by him ¹⁵ Point 8 of the Government Order 51 immediately before his reversion was not vacant he was required to be posted against a supernumerary post to be created by the administrative department

concerned¹⁶; (b) During this process, officers/officials working in those cadres belonging to any category shall not be reverted; (c) the supernumerary posts so created would stand abolished after action is completed in respect of the revised seniority lists prepared in accordance with Section 4, 5 and 6 of the Reservation Act, 2018 r/w Section 9 of the KCS Regulation of Promotion Act, 1973¹⁷. The observation referred to at point (b) above has been relied upon by the petitioners who claim that there could be no reversion of officials belonging to 'any category' despite any exercise of review and have also sought for the protection of the seniority list prepared subsequent to the judgment in B.K. Pavitra I (supra), in spite of the direction 16 Point (8 (1) (a) of the Government Order 17 Point (8 (1) (a) of the Government Order 52 to re-work the seniority list by virtue of Reservation Act, 2018. iv) Though this Government Order was stayed by the direction of the Apex Court on 01.03.2019 subsequently in light of upholding of the validity of the Reservation Act, 2018 by the judgment of the Apex Court in B.K. Pavitra II (supra), on 10.05.2019, the Government of Karnataka by Government Order dated 15.05.2019 vide G.O.No.DPAR186SRS2018 clarified that the Reservation Act, 2018 is required to be implemented in terms of the Government Order dated 27.02.2019. v) While the seniority list dated 27.10.2017 made post B.K.Pavithra-I by applying the catch-up rule was required to be reviewed in terms of Sections 4, 5 and 6 of the Reservation Act, 2018 r/w Section 9 of the KCS Regulation of Promotion Act, 1973 the question of reverting to the seniority list prepared consequent to B.K. Pavitra I (supra) cannot arise in light of the 53 Reservation Act, 2018 which provides for a review of the seniority list. vi) It must be noted that Section 4 of the Reservation Act, 2018 protects consequential seniority with effect from 27.04.1978, while Section 5 provides for review to ensure that promotion would be within the extent and in accordance with the provisions of the orders in force. The proviso to Section 5 further provides that subsequent to the review wherever it is found that reservation in promotion was in excess of the requisite limit, supernumerary post would be created till eligibility for promotion is obtained by the official. vii) It is clear that the Reservation Act, 2018 seeks to provide for consequential seniority and extend the same benefit as was sought to be made at the first instance under the Reservation Act, 2002. It is also clear that the reversion of those belonging to SC & ST category consequent to the review would stand

protected even if it is found that promotions were 54 made in excess of the limits as imposed in the Orders and Rules in operation, by creating supernumerary posts which would continue to be in currency till the officials belonging to the reserved category obtain eligibility for promotion in that cadre. It is also clear from the provisions of the Reservation Act, 2018 that the protection against non-reversion was only as regards those officers belonging to SC and ST. viii) Reading of the Government Order dated 27.02.2019 makes it clear from the very preamble that it was only to facilitate implementation of the Reservation Act, 2018. ix) As rightly pointed out by the Additional Advocate General appearing for State, the protection against non-reversion for "any category" of employee provided for under the Government Order dated 27.02.2019 was clearly only till the review as contemplated under Sections 4 and 5 of the Reservation Act, 2018 was completed. The protection under Section 5 of the Act 55 with regard to reversion after the exercise of review was only as regards officials belonging to SC and ST category. The Government Order of 27.02.2019 cannot confer any right to those officers of the General category against non-reversion after the exercise of review in terms of the Reservation Act, 2018 as the plain reading of the proviso of Section 5 does not permit such interpretation. It must also be noted as conceded by the Additional Advocate General that the Government Order even otherwise cannot be construed to confer any right to those officers in General Category contrary to the statutory provision of Section 5 of the Act. x) The Reservation Act, 2018 provides for protection of consequential seniority in terms of Sections 3 and 4 of the Reservation Act, 2018. It further provides that the seniority list was required to be re-worked from that as notified after B.K.Pavitra I (supra). Accordingly, the contention of continuing with the 56 seniority list of 27.10.2017 is a relief that cannot be sought for or granted. xi) It is also to be noted that the Apex Court in the case of B.K. Pavitra II (supra), has observed that the consequential seniority has been extended from the date of the Reservation Order of 1978 and also upholds protection provided for with retrospective effect under the provisions of the Reservation Act, 2018 and the legal position relating to protection with retrospectivity is summarized in Para 149 to 151 as follows:

149. Sections 3 and 4 of the Reservation Act, 2018 came into force on 17-6-1995. The other provisions came into force at once as provided in Section 1(2). Section

4 stipulates that the consequential seniority already granted to government servants belonging to the SCs and STs in accordance with the reservation order with effect from 27-4-1978 shall be valid and shall be protected. In this context, we must note from the earlier decisions of this Court that:

149. 1. The decision in Virpal Singh [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC684:

1996. SCC (L&S) 1]. held that the catch-up rule would be applied only from 10-2-1995 which was the date of the judgment 57 in Sabharwal [R.K. Sabharwal v. State of Punjab, (1995) 2 SCC745:

1995. SCC (L&S) 548]. . 149.2. The decision in Ajit Singh (2) [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC209:

1999. SCC (L&S) 1239]. specifically protected the promotions which were granted before 1-3-1996 without following the catch-up rule. 149.3. In Badappanavar [M.G.Badappanava r v. State of Karnataka, (2001) 2 SCC666:

2001. SCC (L&S) 489]., promotions of reserved candidates based on consequential seniority which took place before 1-3-1996 were specifically protected. 150 [Ed. : Para 150 corrected vide Official Corrigendum No.F.3/Ed.B.J./86/ 2019 dated 30-9-2019.]. Since promotions granted prior to 1-3-1996 were protected, it was logical for the legislature to protect consequential seniority. The object of the Reservation Act, 2018 is to accord consequential seniority to promotees against roster points. In this view of the matter, we find no reason to hold that the provisions in regard to retrospectivity in the Reservation Act, 2018 are either arbitrary or unconstitutional.

151. The benefit of consequential seniority has been extended from the date of the Reservation Order, 1978 under which promotions based on reservation were accorded. Insofar as the contention as regards the concept of creamy layer, the Apex Court in B.K. Pavitra II (supra) at Para 148 has clarified that the protection of consequential seniority as an incident of promotion does not require 58 application of the creamy layer test. The relevant observation at para 148 reads as follows:

148. ... The incorporation of consequential seniority would hence not violate the constitutional mandate of equality. This being the true constitutional position, the protection of consequential seniority as an incident of promotion does not require the application of the creamy layer test. Articles 16(4-A) and 16(4-B) were held to not obliterate any of the constitutional limitations and to fulfill the width test. In the above view of the matter, it is evident that the concept of creamy layer has no application in assessing the validity of the Reservation Act, 2018 which is designed to protect consequential seniority upon promotion of persons belonging to the SCs and STs.

5.4 JARNAIL SINGH-II AND THE RESERVATION ACT, 2018 i) The judgment of the Apex Court in Jarnail Singh and Others v. Lachhmi Narain Gupta and Others¹⁸ (Jarnail Singh II) has however disapproved certain observations of the Apex Court in B.K.Pavitra II (supra) relating to the unit with respect to which quantifiable data showing inadequacy of representation is required to be collected. 18 (2022) SCC Online SC96/ Civil Appeal No.629/2022 59 ii) The Apex Court has opined that the unit for the purpose of collection of data is a Cadre while referring to the judgment in M. Nagaraj (supra) and Jarnail Singh I (supra). iii) The Court has opined that the conclusion of the court in B.K.Pavitra II (supra) that the word "Cadre" has no fixed meaning has also been disapproved while holding that M. Nagaraj (supra) has held that the unit for collection of quantifiable data is Cadre and not Services as has been held in B.K. Pavitra II (supra). Accordingly, the court has held that the conclusion in B.K. Pavitra II (supra) that the collection of data on the basis of groups is valid, is contrary to the decision of the court in M. Nagaraj (supra) and Jarnail Singh I (supra). iv) It must be noted that the matter in Jarnail Singh II (supra) is still pending consideration and observation has been made which may have the effect of a binding finding when the challenge to the specific validity of legislations are sought to be adjudicated henceforth. As on the date of observations being made in Jarnail Singh II (supra) on 28.01.2022 the validity of the Reservation Act, 2018 had already been adjudicated upon. The nature of the finding also made in Jarnail Singh II (supra) must be read in proper context keeping in mind the observation at Para 48 wherein it is observed, it is made clear that we have not expressed any opinion on the merits of any individual case as we have only answered the common issues that were formulated after

hearing the parties; Para 49. List the matters on 24.02.2022 for further hearing. Accordingly, it is clear that the observations made are not in the context of any specific legislation and are general findings which would be applicable in case of pending adjudications. 61 v) The Apex Court in the case of Neelima Srivastava v. State U.P. and Others¹⁹ has affirmed the principle that mere overruling of the principles in a subsequent judgment will not dilute the binding effect of the decision inter-parties. The relevant extract is produced as below: 30. It becomes absolutely clear from the above clarification that earlier decisions running counter to the principles settled in the decision of Umadevi (3) will not be treated as precedents. It cannot mean that the judgment of a competent Court delivered prior to the decision in Umadevi (3) and which has attained finality and is binding inter se between the parties need not be implemented. Mere over- ruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught. There is a distinction between over-ruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognized by law. Mere over-ruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties. 19 (2021) SCC Online SC61062 vi) It is clear that the judgment in B.K. Pavitra II (supra), has not been over-ruled in Jarnail Singh II (supra). The adjudication regarding the validity of the Reservation Act of 2018 has attained finality in B.K. Pavitra II (supra). The observations made in Jarnail Singh II (supra) though may amount to an over-ruling of the principle regarding the unit of analysis being cadre and not group is a position of law that needs to be applied prospectively and does not in any way effect the conclusive adjudication made in B.K. Pavitra II (supra). Accordingly, any attempt by the petitioners to contend that the adjudication regarding the validity of the Reservation Act, 2018 requires to be re-looked cannot be permitted.

5.5 WHETHER INADEQUACY IN REPRESENTATION MUST BE CALCULATED AT THE TIME OF EVERY PROMOTION ?. i) It is the contention of learned counsel for the petitioners that amongst the three controlling factors provided for in M. Nagaraj (supra) as regards 63 provision for backward class of citizens who are not adequately represented in the services under the State, at every stage there must be ascertainment of

inadequate representation. ii) It must be noted that Reservation Act of 2002 was earlier struck down on the ground that there was no exercise conducted to ascertain "inadequacy of representation", "backwardness" and "overall efficiency" and the Act was set aside by virtue of the judgment in B.K. Pavitra I (supra). Subsequently, the Reservation Act of 2018 was introduced preceded by an exercise of collection of data through the "Rathnaprabha Committee". The validity of Reservation Act of 2018 was also challenged on similar grounds and same came to be upheld by the Apex Court in B.K. Pavitra II (supra). iii) While enacting the Reservation Act of 2018 the Preamble of the said Act narrates the circumstances under which Act of 2002 came to be set aside in 64 B.K.Pavithra-I (supra) and also the pre-requisite of existence of "inadequacy of representation", "backwardness" and consideration of "overall efficiency" which are required before providing for reservation in promotion²⁰. iv) It is further narrated in the Preamble of the Reservation Act 2018 taking note of the law laid down in M. Nagaraj (supra), that the task of conducting study and submitting a report on the backwardness of the Scheduled Castes and Scheduled Tribes in the State and their inadequacy of representation in the State Civil Services and the effect of reservation in promotion on the State Administration was entrusted to the Additional 20 " The Preamble reads as follows: Whereas, the Hon'ble Supreme Court of India in its judgment dated 09.02.2017 in the case of B.K. Pavitra and others v/s Union of India and others in Civil Appeal No.2368 of 2011 and connected matters while dealing with the issue of consequential seniority provided to the Scheduled Castes and the Scheduled Tribes, having regard to the ratio of the decision of the Constitution Bench in M. Nagaraj in Writ Petition No.61 of 2002 has observed that a proper exercise for determining inadequacy of representation, backwardness and overall efficiency, is a must for exercise of power under Article 16(4A). The court held that in the absence of this exercise under Article 16(4A) it is the catch up rule that shall be applicable."

65 Chief Secretary as per Government Order No.DPAR182SRR2011 Dated 22.03.2017²¹. v) It is further narrated that the Additional Chief Secretary to Government has made a detailed study of quantifiable data and has submitted a report on; the backwardness of the Scheduled Castes and Scheduled Tribes in the State, inadequacy of their representation in the State Civil Services and the effect

of reservation in promotion on the State Administration. It is noted that the report confirmed the backwardness of the Scheduled Castes and Scheduled Tribes in the State and their inadequacy of representation while noting that the overall efficiency of administration will not be affected or hampered by proposed reservation in promotion and accordingly, it is narrated that the Act has been 21 "The Preamble reads as follows: Whereas, while in compliance of the Supreme Court order, the Government considering the need and taking note of the decision of the Constitution Bench in M. Nagaraj, in Writ Petition No.61 of 2002, has entrusted the task of conducting study and submitting a report on the backwardness of Scheduled Castes and Scheduled Tribes in the State, inadequacy of their representation in the State Civil Services and the effect of reservation in promotion on the State administration, to the Additional Chief Secretary to Government in Government Order No.DPAR182SRR2011dated:

22. 03.2017;"

6. enacted. It is further narrated that the Government was satisfied and has come to the conclusion that compelling reasons continue to exist for providing consequential seniority to persons promoted on the basis of Policy of Reservation "so as to ensure adequate representation of the Scheduled Castes and Scheduled Tribes across all Departments."

22 vi) The legislative exercise that has culminated in passing of the Reservation Act, 2018 provides for consequential seniority for those promoted in accordance with Policy of Reservation, Operation of Roster (Section 3), Protection of Consequential Seniority already accorded 22 " The Preamble reads as follows: Whereas, the report confirms the backwardness of Scheduled Castes and Scheduled Tribes in the State, inadequacy of their representation in the State Civil Services and that the overall efficiency of administration has not been affected or hampered by extending reservation in promotion to the Scheduled Castes and Scheduled Tribes in the State and continuance of reservation in promotion within the limits will not affect or hamper overall efficiency of administration; Whereas, the Government of Karnataka has also obtained the views of Legal Experts and the Karnataka Law Commission in this regard; and Whereas, after having

examined the report submitted by the Additional Chief Secretary and the views expressed by the Legal Experts the Government of Karnataka has accepted the report. Keeping in view the findings of the report, the Government is satisfied and having identified and measured, has come to the conclusion that compelling reasons continue to exist for providing consequential seniority to persons promoted on the basis of policy of reservation in the State since 1978 so as to ensure adequate representation of the Scheduled Castes and Scheduled Tribes across all departments"; 67 from 27.04.1978 (Section 4), Revision and Re-drawing of existing seniority lists to ensure that promotions are made within the extent and in accordance with provisions of reservation orders and other Rules pertaining to method of recruitment and seniority (Section 5). vii) Once the roster point has been notified taking note of the strength of the cadre which is a part of the scheme of promotion, the operation of such roster would ensure that the last point in the roster when given effect to would ensure maintenance of 15 % and 3% in the entirety of the cadre. viii) Accordingly, the Act gives effect to the objective of maintenance of adequate representation by providing for reservation in promotion and consequential seniority. ix) Once the validity of the Reservation Act, 2018 has been upheld, in its implementation it is intended that the 68 inadequacy of representation of Scheduled Castes and Scheduled Tribes in certain cadres is taken note of. x) The scheme that is now put into place to correct the inadequacy in representation is formalised by a continuing exercise of extending benefits of reservation. This scheme also takes within its fold roster point, which would ensure maintenance of 15% and 3% in the entirety of the cadre. xi) The operation of the Scheme technically cannot result in excessive reservation. However, it is also to be noted that where candidates from the reserved category become eligible on the basis of their own merit and seniority to claim benefits of promotion then their selection/promotion will not eat into the extent of reserved category but will find its place in the unreserved category on parity with General Category candidates in the Open Category. The selection of those from the reserved category and merging them in the General Category once they are eligible as per merit 69 in the General Category, cannot be objected to and grudging contending that there is excess representation of persons belonging from the reserved category. xii) If a certain number of officers are selected to promotional posts on their own merit

such selection if taken along with the reserved category who fall within the 15% and 3% category the cumulative number of officers in both these categories if is substantial and exceeds the 15% and 3%, the same cannot be described as amounting to excessive representation. The word excessive itself would be a relative and variable concept and is dependant on various factors including their population. xiii) Even otherwise, the aspect of inadequacy or impact on efficiency are matters left to the wisdom of the State and the Courts cannot substitute their decision for that of the Government. Whether the implementation of the policy over a prolonged period of time would necessitate a review as regards necessity of continuance and other such issues are also to be left to the wisdom of the 70 State. The courts exercise power of judicial review and may intervene in circumstances, necessitating intervention and adjudication only in response to action of the State, and cannot enter into the arena exclusively within the domain of the State. xiv) Accordingly, to state that evaluation of inadequacy is to be made at every stage of making fresh promotion cannot be accepted and runs contrary to the policy of the State as reflected in the Government Orders and culminating in the Reservation Act of 2018.

5.6 OVER ALL ADMINISTRATIVE EFFICIENCY i) The mandate under Article 335 of the Constitution of India would require efficiency in administration to be a necessary consideration so as to ensure that reservation in promotion does not result in affecting efficiency in administration. ii) It is submitted by counsel appearing for the respondents that the reservation is limited upto the 71 lowest cadre of Group-A and stops at the level of Executive Engineers²³. iii) It is submitted that thereafter the promotions to the higher posts is purely on the basis of seniority-cum- merit as provided under the "Karnataka Electricity Board Recruitment and Promotions Regulations [KEB Recruitment and Promotion Regulations].; Employees (Probation) Regulations [KEB Employees Probation Regulations].; and Employees (Seniority) Regulations [KEB Employees Seniority Regulations]." which ensures that the aspect of efficiency is taken care of. It is also submitted that the promotions cannot be claimed as a matter of right and is filtered by the principle of seniority-cum-merit as is evident from the Table annexed infra. Further the Regulations also provides that vacancies by promotion need not be filled up if suitable candidates are not available as regards posts of Superintending Engineer. 23(See G.O. dated 27.04.1978) 72 iv) The assertion that

promotions above the post of AEE is on the basis of seniority-cum-merit and is not automatic, is evidenced by the Regulations in Chapter-VI of KEB Recruitment and Promotion Regulations. The following table would evidence the above.

KARNATAKA ELECTRICITY BOARD RECRUITMENT AND PROMOTION REGULATIONS, EMPLOYEES (PROBATION) REGULATIONS AND EMPLOYEES (SENIORITY) REGULATIONS CHAPTER - VI

Sl. Category	Cadre	Method of Recruitment	No. of Post
8. Assistant Executive up	by direct recruitment (both from Engineer open competition and inservice (EI) employees) on the basis of the results of the written competitive examination envisaging 400 Marks and by interview envisaging 100 Marks conducted by the Board Selection by a Committee constituted by the Board from time to time.	25% of vacancies shall be filled	
b)	45% of the vacancies shall be filled up by promotion of Assistant Engineer Elecl., (Graduate) on the basis of Seniority-cum-Merit		
c)	30% of posts shall be filled up by promotion of Assistant Engineer Elecl., (non-graduate)/Store Keeper Grade I on the basis of Seniority- cum-Merit		
d)	Posts upgraded from the cadre of 73 Assistant Engineer Elecl., to that of Assistant Executive Engineer Elecl., shall be filled by graduate Assistant Engineers Elecl.,/and non-graduate Assistant Engineers Elecl./Store Keeper Grade I in the same ratio as they would be applicable under these regulations had the posts have not been upgraded.		

7. Executive State-wide By promotion of Graduate Asst. Engineer, Executive Engineers (Civil) on the Civil basis of Seniority-cum-Merit.

6. Executive State-wide By promotion from the cadre of Engineers. graduate Assistant Executive Elecl. Engineers (Elecl.) on the basis of Seniority-cum-Merit

5. Public State-wide By Selection from the cadre of Relations Executive Engineer, Electrical Officer

4. Superintend State-wide By promotion on the basis of ing Seniority-cum-Merit from the cadre Engineers, of Executive Engineer, (Civil).

(Civil) 3. Superintend State-wide By promotion on the basis of ing Seniority-cum-Merit from the cadre Engineers, of Executive Engineer, (Elec). (Elec) 2. Chief

State-wide By promotion by Selection from Engineer. among the cadre of Superintending (Electricity) Engineers (Elecl.) 1. Chief State-wide By promotion by

Selection from Engineer. among the first three Chief Electy. Engineers, Electy., in line (Gen.) (Emphasis supplied) 74 v) Insofar as the post of Chief Engineer is

concerned, it is to be filled by selection from first three Chief Engineers (Electricity) in line, and even the post of Chief Engineer (Electricity) is a selection post. Upto the post of Chief Engineer, all promotions from Assistant Executive Engineers is a selection post on the principle of seniority-cum-merit which takes care of the aspect of efficiency. vi) It is also to be noted that the aspect of monitoring the efficiency is also by way of exercise of disciplinary powers in the event the officer concerned fails in maintaining requisite standards. vii) The Apex Court in the case of B.K.Pavitra II (supra), has noticed that providing of reservation for SC & ST's is not at odds with the principle of meritocracy. The Apex Court has observed that control can be exercised by taking appropriate action during officiation if he is found not suitable for the promotion 75 post²⁴. Accordingly, the question of efficiency in overall 24 131. Once we understand merit as instrumental in achieving goods that we as a society value, we see that the equation of merit with performance at a few narrowly defined criteria is incomplete. A meritocratic system is one that rewards actions that result in the outcomes that we as a society value.

132. For example, performance in standardised examinations (distinguished from administrative efficiency) now becomes one among many of the actions that the process of appointments in government services seeks to achieve. Based on the text of Articles 335, Articles 16(4) and 46, it is evident that the uplifting of the SCs and STs through employment in government services, and having an inclusive Government are other outcomes that the process of appointments in government services seeks to achieve. Sen gives exactly such an example: If, for example, the conceptualisation of a good society includes the absence of serious economic inequalities, then in the characterisation of instrumental goodness, including the assessment of what counts as merit, note would have to be taken of the propensity of putative merit to lessen - or to generate - economic inequality. In this case, the rewarding of merit cannot be done independent of its distributive consequences. *** A system of rewarding of merit may well generate inequalities of well-being and of other advantages. But, as was argued earlier, much would depend on the nature of the consequences that are sought, on the basis of which merits are to be characterised. If the results desired have a strong distributive component, with a preference for equality, then in assessing merits (through judging the generating results, including its distributive aspects), concerns about

distribution and inequality would enter the evaluation. [Sen A., Merit and Justice, in Arrow, K.J., Meritocracy and Economic Inequality (Princeton University Press 2000) (Amartya Sen, Merit and Justice).]. (emphasis supplied) Thus, the providing of reservations for SCs and the STs is not at odds with the principle of meritocracy. Merit must not be limited to narrow and inflexible criteria such as one's rank in a standardised exam, but rather must flow from the actions a society seeks to reward, including the promotion of equality in society and diversity in public administration. In fact, Sen argues that there is a risk to excluding equality from the outcomes: In most versions of modern meritocracy, however, the selected objectives tend to be almost exclusively oriented towards aggregate achievements (without any preference against inequality), and sometimes the objectives chosen are even biased (often implicitly) towards the interests of more fortunate groups favouring the outcomes that are more preferred by talented and successful sections of the population. This can reinforce and augment the tendency towards inequality that might be present even with an objective function that inter alia, attaches some weight to lower inequality levels. [Sen A., Merit and Justice, in Arrow, K.J., Meritocracy and Economic Inequality (Princeton University Press 2000) (Amartya Sen, Merit and Justice).]. 76 administration being impacted by the Reservation Act or in its operation does not arise. This would also be the conclusion in light of the reasoning supra at Para 5.5 (xii) and the said argument having been rejected in B.K. Pavitra II (supra), cannot be revisited once again. Hence, the controlling criteria of efficiency in overall administration will not be an obstacle for reservation in promotion.

5.7 CHALLENGE TO CIRCULAR BEARING DPAR186SRS 2018 DATED 24.06.2019 (FREQUENTLY ASKED QUESTIONS) i) The validity of the Government Order dated 24.06.2019 (Frequently Asked Questions) has been called in question and various contentions have been advanced including that the circular is silent as regards to the adherence to the judgment of the Apex Court in R.K.Sabharwal (supra). It must be noted that this Court has eventually held that no grounds are made to set aside the 77 seniority list as the factual foundation is insufficient for such adjudication. ii) In the course of the written submission filed by the state on 29.10.2022 as regards the attack of the circular of 24.06.2019, the Government has observed as follows:

"15. That leaves the issue with respect to Prayer 1. Prayer 1 insofar as the State is concerned is with respect to the circular dated 24.06.2019. It is trite that when a legislation governs the field, all must act in terms of the legislation. The 2018 act is the legislation which would apply to the present case."

iii) Accordingly, it is clear that manner of implementation of the Reservation Act, 2018 must be strictly in conformance with the provisions while taking note of the Judgments of the Apex Court as laid down. The Circular of 24.06.2019 does contain certain ambiguities including as regards adherence to the direction in R.K.Sabharwal (supra) as clause 3.1 is ambiguous. 78 iv) It is the stand of the State in the context of the challenge to the Government Order dated 24.06.2019, that the Reservation Act, 2018 would prevail over the notifications. If that were to be so in order to avoid any further confusion it would be appropriate that the Government Order that was specifically passed to implement the Reservation Act, 2018 be withdrawn while reserving liberty to pass a fresh Government Order containing comprehensive guidelines keeping in mind all the Judgments of the Apex Court enunciating the law in particular as regards treatment of backlog vacancies in promotion, post based reservation, addressing the issue of those from the reserved category being eligible in general merit and such other relevant aspects. This would go a long way in removing the avoidable ambiguity in implementation of the Reservation Act, 2018. It is however clarified that this direction made will not have any bearing on the conclusion arrived at that no grounds are made out for interfering with the Seniority list impugned in the Writ Petitions as this court has not found any legal lacunae made out from the pleadings that provisions of the Reservation Act, 2018 have been violated. It is further clarified that observations made regarding the ambiguities in the Government Order of 24.06.2019 should not be construed as amounting to an adjudication regarding the invalidity of the Government Order. The observations are made in the context of calling upon the State for removal of ambiguity in executive instructions to ensure that the Reservation Act, 2018 validity of which has been upheld by the Apex Court is implemented in its letter and spirit without giving rise to unnecessary litigation.

5.8 CHALLENGE TO FINAL SENIORITY LIST:- i) The challenge to final Seniority list dated 27.08.2021 pursuant to the judgment in B.K. Pavitra II (supra), is also based on the macro contention that

extent of reservation of 15% + 3% has not been 80 maintained, that Government Order passed would protect the position of the petitioners from non- reversion just as it protects the interests of those belonging to the reserved categories, that there is excessive reservation, are all aspects that have been taken note of in the discussion made above. ii) The respondent KPTCL have filed presentation regarding implementation of Reservation Act, 2018. In the said pleading filed along with the memo on 18.11.2022, the detailed explanation regarding the manner of review has been placed including pointing out that due to canceling of consequential seniority and applying the 'Catch Up Rule' mentioned in B.K.Pavitra I (supra), some of the promotions accorded to Reserved Category Officers had to be replaced with General Merit Officers. Accordingly, it was pointed out that, some of the Officers in General Merit Categories were entitled to earlier dates of promotion and those from the SC/ST Officers were 81 entitled to later dates of promotion, which dates were referred to as 'deemed dates'. Such lacunae was required to be remedied after law laid down in B.K.Pavitra II (supra), and also with the recognition of consequential seniority. iii) The material on record and pleadings made do not make out any further specific case fulfilling legal requirement as regards violation of any other principle of service jurisprudence requiring intervention. Accordingly, the exercise of review in terms of Reservation Act, 2018 does not call for any interference in the absence of specific pleadings. Such contentions may have to be raised if case is made out after taking note of the adjudication made in the present writ and if after applying the law laid down, a case is made out regarding violation of any principle of service jurisprudence relating to seniority. Consequently, the prayers sought for in the writ petitions are rejected however subject to observations 82 made with respect to the Government Order of 24.06.2019 and the direction to the State as contained supra in Para 5.7 (iv). iv) It cannot be stated that in light of all but petitioner no.9 in W.P.No.36133/2019 have attained superannuation. The adjudication in the present matter has been reduced to answering a question which vis-a-vis the petitioners who have retired would remain as an academic answer. Such contention however cannot be accepted as the final determination of seniority would have an implication as regards post-retirement emoluments as well. v) Further, the questions that have arisen are of significance and once adjudicated

would bring about a certainty in the implementation of the policy of reservation in promotion. vi) Questions raised are such that are brought before the court repeatedly and requires to be adjudicated. The 83 time taken in deciding such questions where high ranking officials who are closer to superannuation is involved would invariably result in the petitioners attaining superannuation during the course of the litigation and if that were to be so in every matter the question would remain unresolved and accordingly, contention that adjudication is not required as all but petitioner no.9 in W.P.No.36133/2019 have attained finality cannot be accepted. Accordingly the petitions are disposed off in terms of the above. This court place on record the assistance of Dr.Aditya Sondhi, the Amicus who patiently has participated in the numerous hearings and has contributed his stand to assist the court which has enabled passing of the judgment. Sd/- JUDGE
Np/-

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