

P. Srilakshmi Vs. Nizams Institute of Medical Sciences and ors.

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Court : Andhra Pradesh

Decided On : Jun-04-2002

Reported in : 2002(5)ALT793

Judge : S.R. Nayak and ;S.R.K. Prasad, JJ.

Acts : Nizams Institute of Medical Sciences Act, 1989 - Sections 12(1), 18(2), 40(1) and 40(2); [Constitution of India](#) - Articles 14, 16(1) and 226; Nizam's Institute of Medical Sciences Service Rules - Rules 11, 22 and 31; Nizam's Institute of Medical Sciences Regulations

Appeal No. : Writ Appeal No. 1111 of 1997

Appellant : P. Srilakshmi

Respondent : Nizams Institute of Medical Sciences and ors.

Advocate for Def. : K.G.K. Prasad, Adv. for Respondent Nos. 1 and 2 and ;P.V. Ramana, Adv. for Respondent Nos. 4, 5, 7 and 8

Advocate for Pet/Ap. : J. Sudheer, Adv.

Disposition : Appeal allowed

Judgement :

S.R. Nayak, J.

1. This Writ Appeal is directed against the judgment of the learned single Judge dated 11-7-1997 in W.P. No. 16579 of 1994 insofar as the learned Judge has not granted any relief to the petitioner as against respondents 4, 5, 7 and 8.

2. The background facts leading to the filing of the writ petition be briefly noted first and they are as follows; The appellant viz., Smt. P. Srilakshmi is the petitioner in the Writ Petition. The petitioner is a Graduate in Commerce and she has passed Stenography Examination and obtained Diploma in English from Central Institute of English and Foreign Languages. The petitioner was selected to the post of Stenographer by the Nizams Institute of Medical Sciences (for short 'NIMS') after going through the process of selection and she was appointed as Personal Secretary to the Director and she reported for duty on 6-11-1986. The Director of the NIMS issued proceedings dated 25-2-1988 regularising her services along with others. As per the said proceedings, the services of the petitioner were regularised with effect from 6-11-1987. It was stated in the said proceedings that the petitioner was placed on probation for a period of one year from the date of regularisation of her service i.e., from 6-11-1987. The Director of the NIMS issued another proceedings dated 29-6-1988 superseding earlier proceedings dated 25-2-1988, stating that the services of the staff including the petitioner have been regularised with effect from the dates shown against them and they were placed under probation for a period of two years from the date of their joining. Accordingly, the services of the petitioner were regularised from 6-11-1986 i.e., from the date of her joining. The Director of NIMS issued proceedings dated 24-11-1988 declaring the probation of the petitioner from 12-11-1988. While so, the Director of the NIMS issued a Memo dated 12-8-1989 directing the eligible Secretarial Assistants and Personal Secretaries, whose names were shown in the said memo, to appear for interview on 16-8-1989 for the purpose of considering their case to the post of Senior Assistants in the NIMS. The said Memo included the name of the petitioner also and, therefore, the petitioner and others attended the interview on 16-8-1989 for the purpose of being considered for appointment to the post of Senior Assistant. The petitioner was promoted and appointed as Senior Assistant vide proceedings dated 28-6-1991 with effect from 1-7-1991. While so, an Office Order No. 3/E1/225/NIMS/92, dated 1-6-1994 was issued stating that the tentative seniority list of Senior Assistants was communicated to the Senior Assistants and

some of them have made representations against the ranking assigned and it was proposed to correct the dates of regularisation assigned earlier, and that a provisional seniority list of the Secretarial Assistants and Personal Secretaries, who were promoted as Senior Assistants, has been prepared and circulated to all persons whose names were shown and requested to file objections, if any, within 7 days from the date of receipt of the said Memo. In the said office order, the name of the petitioner was shown at Sl.No. 12 and the name of A. Ramachandra Rao, Superintendent, respondent No. 3 herein was shown at Sl.No. 6. The petitioner submitted representations on 6-6-1994 and 4-7-1994 raising several objections to the said provisional seniority list. In the said representations, the petitioner has contended that the respondent No. 3 is a junior to her in the category of Personal Secretaries and therefore, she should be assigned position over and above the 3rd respondent. The petitioner also contended that there is no rationale for fixing different ratio at different times. The petitioner also requested the Director of NIMS to supply a copy of Nizam's Institute of Medical Sciences Service Rules (for short, Service Rules) to enable her to submit a detailed representation. Thereafter, the petitioner was supplied with a set of rules stated to be the Rules under which the seniority was fixed and the petitioner submitted her further representation on 4-7-1994. Thereafter, the Director of NIMS issued Office Order No. 3/E1/225/NIMS/92, dated 23-8-1994 rejecting the objections raised by the petitioner and confirming the provisional seniority list. The petitioner being aggrieved by the Office Order dated 23-8-1994 filed W.P. No. 16579 of 1994 praying for the following relief:

'Petition under Article 226 of the [Constitution of India](#) praying that in the circumstances stated in the affidavit filed herein, the High Court will be pleased to issue a Writ, Order or direction, more particularly one in the nature of Writ of Certiorari calling for the records relating to and connected with the proceedings No. 3/225/E1/92 of the 1st respondent dated 23-8-1994 and to quash or set aside the same and consequently to direct the respondent to assign the petitioner, the correct position in the seniority list of the Senior Assistant over and above the 3rd respondent and grant all consequential benefits including the seniority and promotion by declaring the action of the respondents in promoting the 3rd respondent, who is junior to the petitioner, without promoting the petitioner as

arbitrary, illegal.'

The petitioner made the NIMS and the Executive Registrar of NIMS as respondents 1 and 2 and Mr. A.Ramachandra Rao, Superintendent, NIMS as respondent No. 3. However, subsequently by an order made by the Court in WPMP No. 20453 of 1996, dated 22-8-1996, M/s. K.Manohar Reddy, B. Sudhakar, K. Satyanarayana, Y. Ashok Kumar, P. Rajkumar were impleaded as respondents 4 to 8. Respondents 4, 5, 7 and 8, it is said, were appointed as Secretarial Assistants in the year 1987 subsequent to the appointments of the petitioner and respondent No. 3. By applying the ratio of 2:1, they came to be promoted to the post of Senior Assistant before the petitioner was promoted to that post.

3. In the writ petition, it is contended that there is no rule or regulation prescribing the ratio to be followed for promotion to the post of Senior Assistant from Secretarial Assistants and Personal Secretaries, and the promotion should have been effected basing upon the integrated seniority of the two categories. Alternatively, it is also contended that even if such ratio is permissible, there is no justification whatsoever for following different ratio i.e., 1:1 up to 30-6-1991 and 2:1 from 1-7-1991 from amongst the Secretarial Assistants and Personal Secretaries. It is also contended that the Director and the Executive Registrar have no power to lay down policy or to make rules and, therefore, they have no power to fix the ratio to be followed among different feeder categories for promotion to the post of Senior Assistants. It has been further contended that even if the ratio of 2:1 is valid, there is no reason why the 3rd respondent was promoted prior to the promotion of the petitioner, because, the petitioner joined the service on 6-11-1986 whereas the 3rd respondent joined the service on 10-11-1986 and the probation of the petitioner was declared prior to the date of declaration of probation of the 3rd respondent.

4. The writ petition was opposed by respondents 1 and 2 by filing counter-affidavit. In the counter affidavit, it is stated that the Selection Committee constituted for the purpose of selecting the candidates and the ranking maintained by them show the petitioner was placed at Sl. No. 6 and the respondent No. 3 was shown at Sl. No.

4. At that relevant time, the ratio for promotion to the post of Senior Assistant was 1 : 1 as between Personal Secretaries and Secretarial Assistants. Respondent No. 3 being senior was promoted to the post of Senior Assistant on 16-2-1990 as per the said ratio from the cadre of Personal Secretaries. On representations made by the Employees Association, the Director of NIMS has taken a decision in a Joint Meeting held on 8-5-1991 changing the ratio to 2 : 1 between Secretarial Assistants and Personal Secretaries. By this process, the petitioner was promoted to the post of Senior Assistant with effect from 1-7-1991. The Management has taken the seniority of the petitioner in the category of Personal Secretaries and following the same, respondent No. 3 was promoted much earlier to the petitioner. It is admitted that in the provisional seniority list, the dates showing the date of regularisation as the criteria for fixation of the seniority list was changed to the date of appointment to the post of Senior Assistants. Insofar as the contention of the petitioner with regard to respondent No. 3 is concerned, it is categorically stated that respondent No. 3 was given higher ranking than the petitioner by the Selection Committee in their initial appointment and, therefore, the contention of the petitioner that respondent No. 3 is junior to the petitioner is not correct. No counter-affidavit has been filed on behalf of respondent No. 3.

5. In the counter affidavit filed on behalf of respondents 4, 5, 7 and 8, reference has been made to the change of the ratio from 1:1 to 2:1 with effect from 1-7-1991 on account of inadequate representation from the side of Secretarial Assistants and the representation in that behalf made by the Employees Association as a result of which at the joint Meeting held on 8-5-1991 with the Director, decision was taken to change the ratio and the same was implemented with effect from 1-7-1991. Respondents 4, 5, 7 and 8 are from the category of Secretarial Assistants and it is, therefore, stated that the petitioner can have no grievance against these respondents' promotion to the post of Senior Assistant.

6. The learned single Judge, on consideration of rival contentions of the parties and the materials placed before him, found that the placement of respondent No. 3 above the petitioner was illegal and that the petitioner is entitled to be placed above respondent No. 3, but below respondent No. 6. Dealing with the claim of the petitioner as against the respondents 4, 5, 7 and 8, the learned Judge held:

'....In any case, the respondents 4, 5, 7 and 8 being from another category and promoted to the post of Senior Assistant pursuant to the ratio fixed for that cadre, their seniority is not liable to be either disturbed or re-fixed on account of the inter se dispute in the cadre of Personal Secretaries to which cadre, the petitioner, respondent No. 3 and respondent No. 6 belong'.

Hence this writ appeal by the writ petitioner insofar as the learned single Judge has not granted the relief to her as against respondents 4, 5, 7 and 8.

7. Sri J. Sudheer, learned counsel for the appellant would contend that the appellant in her representations dated 6-6-1994 and 4-7-1994 has raised two issues i.e., (i) relating to the action of the NIMS in treating Sri A. Ramachandra Rao, the 3rd respondent, as senior to her; and (ii) the action of the Director of NIMS in fixing the ratio of 1:1 from 28-6-1986 and changing the same to 2:1 from 1-7-1991. The learned counsel would contend that the order of the learned single Judge so far as not interfering with the ratio between Secretarial Assistants and Personal Secretaries and directing to fix inter se seniority between the appellant and respondents 3 and 6 only, instead of directing to refix the seniority afresh as per the rules, is unjustified and bad. The learned counsel would also contend that the Director of NIMS has no authority or power either to fix the ratio or to change the same without the approval of the Governing Council, which is the competent authority to frame the promotion policy, and that in that view of the matter also, the learned single Judge ought to have quashed the action of the Director of NIMS in fixing the ratio of 2:1 between the Secretarial Assistants and Personal Secretaries. The learned counsel would contest the correctness of the opinion of the learned single Judge that if the inter se seniority between the appellant and respondents 3 and 6, who come from the same cadre of Personal Secretaries, is resolved, the whole controversy can resolve by itself, and in so opining, the learned counsel would contend, the learned single Judge has completely lost sight of the fact that the appellant has been consistently contending that showing the names of the unofficial respondents above her name in the provisional seniority list dated 1-6-1994 in deviation with the tentative seniority list dated 11-7-1992 is illegal and that the provisional seniority list was confirmed without considering the objections raised by the appellant.

8. Sri K.G.K. Prasad, learned Standing Counsel for respondents 1 and 2, would, while supporting the contentions of Sri J.Sudheer, submit that the records maintained by NIMS would disclose that the ratio of 2:1 was fixed by the Executive Registrar of NIMS with effect from 23-5-1991 and there is nothing on record to show that before 23-5-1991, the ratio was fixed as 1:1 between Secretarial Assistants and Personal Secretaries. The learned Standing Counsel would also point out that while the records speak in favour of the appellant and her claim, quite curiously, the Executive Registrar, who has filed the counter affidavit on behalf of the 1st respondent in the writ petition, bungled the whole issue and did not place correct facts before this Court. The learned Standing Counsel would also point out that the Executive Registrar is subordinate to the Director of NIMS in the administrative echelon and he has no authority or power to fix or change that ratio between the Secretarial Assistants and Personal Secretaries for the purposes of regulating promotion to the cadre of Senior Assistant.

9. Sri P.V. Ramana, learned counsel appearing for respondents 4, 5, 7 and 8, at the threshold, would contend that the writ appeal itself is not maintainable, because, the appellant cannot be treated as an aggrieved party by the order of the learned single Judge. Elaborating this contention, the learned counsel would point out that the only relief sought in the writ petition by the appellant was to place her above respondent No. 3 and to grant consequential benefits including seniority and promotion, and since that relief is granted by the learned single Judge, the appellant cannot be permitted to seek additional reliefs which were not sought in the writ petition by way of this writ appeal. The learned counsel would maintain that the appellant did not seek any relief in the writ petition against respondents 4, 5, 7 and 8. In support of this contention, the learned counsel would place reliance on the judgments of the Apex Court in *Chandigarh Administration v. Laxman Roller Flour Mills Pvt. Ltd.*, : (1998)8SCC326 and *State of U.P. and Ors. v. Raj Karan Singh*, : (1998)8SCC529 . As regards merits, the learned counsel, while contesting the correctness of the contention of the learned counsel for the appellant that the Director of NIMS or the Executive Registrar of NIMS has no authority or power either to fix the ratio or to change the same, would maintain that under the provisions of Nizams Institute of Medical Sciences Act, 1989 (for short, the Act), the Director has power to fix the ratio and also lay down the qualifications

for appointment to the posts. The learned counsel would contend that the Governing Council and the Executive Board of NIMS met on 28-6-1996 and decided to delegate the powers of the Executive Board to the Director with regard to creation and abolition of posts, as could be seen in the Agenda of the meeting at Item No. 13 and in that view of the matter, no exception can be taken to the decision of the Director in fixing the ratio of 1:1 or to change the same to 2:1. The learned counsel would also contend that under Rule 31 of Service Rules, before the enactment of the Act, the powers of Executive Board could be delegated to the Director and accordingly the delegation of power to the Director is valid and consequently fixation of the ratio by the Director is also valid. The learned counsel would point out that on 9-6-1990 through Resolution No. 40, the Executive Board delegated its power of appointment to the Director and the Executive Registrar based upon pay scales, and the Executive Registrar, being the appointing authority for the post of Senior Assistant, can also fix the ratio. The learned counsel would further contend that in the absence of statutory rules, it is permissible for the appointing authority to fix the ratio by issuing administrative instructions. The learned counsel would conclude by saying that the change of ratio from 1:1 to 2:1 is neither arbitrary nor irrational and this change was brought about after taking into account the proportional representation i.e., the cadre strength of Secretarial Assistants and Personal Secretaries, and it is intended to throw open equal opportunities to the officials in the feeder channels in the matter of promotion to the cadre of Senior Assistant.

10. Having regard to the preliminary objection raised by the learned counsel for respondents 4, 5, 7 and 8, it becomes necessary first to decide whether this writ appeal is maintainable. It needs to be emphasised that the appellant, in her representations dated 6-6-1994 and 4-7-1994 filed as statements of objections to the provisional seniority list dated 1-6-1994, had categorically raised not only the dispute with regard to the 3rd respondent but also with regard to the authority of the Director to fix the ratio. The appellant in her representation dated 6-6-1994 has stated-

In this connection, I am submitting that as per para-2 of the memo of the office order referred above it was stated that the post of Senior Assistants were filled up

by promoting Secretarial Assistants and Personal Secretaries in the ratio of 1:1 respectively from August, 1989 to 30th June, 1991. Therefore, as per the promotional policy of the Nizam's Institute of Medical Sciences, the promotions to the posts of Senior Assistants affected from two sources. For this the ratio of 1:1 was prescribed. But, in this connection the fixation of the ratio of 1:1 between the Secretarial Assistants and Personal Secretaries should be based on valid resolution or following proceedings duly passed by the Executive Board. In the above referred memo there was no indication which shows that the fixation of ratio of 1:1 was fixed on the basis of no such resolution or proceedings of the Executive Board. Therefore, the fixation of ratio of 1:1 is one without having any basis and this ratio was prescribed only to suit the specific purpose of their own people. It is also respectfully submitted that as on today also I am not in a position to process out any particular service rule which governs the fixation of ratio or the methods of following while adopting the promotions.

It is also stated in the above referred memo that from 1-7-91 onwards the posts of Senior Assistants were filled up by promoting Secretarial Assistants and Personal Secretaries in the ratio of 2:1 respectively and it is also stated that the same procedure is still being followed. In this connection, I repeat the above statement and change of ratio of 2:1 between Secretarial Assistants and Personal Secretaries is also without having any base and also without having any authority of law'.

Further, in her representation dated 4-7-1994, the appellant has stated-

'As per Rule 22 of Service Rules, the promotional policy must be made in accordance with the policy laid down by the Board from time-to-time. Therefore fixing the ratio between Secretarial Assistants and Personal Secretaries as 1:1 up to 8-4-90 and 2:1 from thereof must be supported by policy decision laid down by the Board. In the absence of any such policy decision laid down by the Board fixation of ratio as 1:1 and 2:1 cannot be treated as valid one and thereby the Management is acting without any authority'.

Both the claims raised in the above representations of the appellant were rejected by the Director of NIMS by proceedings dated 23-8-1994. It reads as follows:

'NIZAM'S INSTITUTE OF MEDICAL
SCIENCES, PANJAGUTTA,
HYDERABAD.

Memo No. 3/225/E1/92 dated 23-8-94

Sub: Establishment - Smt. P. Srilakshmi, Senior Assistant - Provisional
Seniority - Objections raised -rejected.

Ref:(i) O.O. No. 3/E1/225/NIMS/92, Senior

(ii) From Smt. P. Srilakshmi, Senior Assistant, representations dt. 6-6-94 and 4-7-94.

In the reference first cited, the provisional seniority list of Senior Assistants was communicated to the Senior Assistants mentioned therein inviting their objections against the ranking assigned to them. Smt. P.Srilakshmi, Senior Assistant has submitted her representations raising objections against the ranking assigned to her. She has raised the following objections:

(i) the ratio of 1:1 up to 8-4-90 and the ratio of 2:1 from 1-7-91 from among the Secretarial Assistants and Personal Secretaries respectively was not supported by a resolution of the Executive Board and the ratio was fixed to favour some people of the choice of administration;

(ii) she was senior to Sri A. Rama-chandra Rao, in the category of Personal Secretaries and so she must be placed above Sri A. Rama-chandra Rao, in the said category;

(iii) the ratio of 1:1 and 2:1 was adopted without any provision in the rules of law and only to favour of Sri A.Ramachandra Rao, Senior Assistant;

(iv) she may be furnished the basis for fixing the ratio of 1:1 and modifying it into 2:1 subsequently and she may be furnished the copy of the rules, and

(v) according to Rule 22 the NIMS Service Rules, the promotional policy of the Institute has to be laid down by the Executive Board and according to Section 40(1) of the NIMS Act, 1989, the regulations are to be issued with the approval of the Governing Council. The resolution passed by the Executive Board on this subject may be communicated to her.

The above objections of Smt. P. Srilakshmi have been examined. She is informed as follows:

The Service Rules of NIMS a copy of which was furnished to her were approved by the Governing Council in its meeting held on 28-6-1986. In December, 1986 orders were issued delegating the powers to Administrative Officer to make appointments to all the posts other than the posts borne on the Faculty Services. The above rules and orders continue to be in force by virtue of Regulation No. 62 of the First Regulations issued by the Government of A.P. in June 1989.

The Executive Board had again considered the matter in June 1990 and delegated the power of making appointments to all non-faculty to Director and Executive Registrar. The appointing authorities are competent to fix the ratio of 1:1 initially and 2:1 from 1-7-91 for purpose of promotions of Secretarial Assistants and Personal Secretaries respectively. She is also informed that Secretarial Assistants are eligible for promotion as Senior Assistants whereas Personal Secretaries are eligible for promotion as Senior Stenographers. The ratio was fixed to provide promotional avenues to the Personal Secretaries. She does not object when she was promoted as Senior Assistant in 1991 by adopting the ratio. A representation dated 28-2-91 was submitted by the Personal Secretaries including Smt. P. Sri Lakshmi requesting the Director, NIMS, to continue the ratio for promotion of Secretarial Assistants and Personal Secretaries as Senior Assistants.

In view of the reasons mentioned above, there is no force in the contentions of Smt. P. Srilakshmi, Senior Assistant and they are, therefore, hereby rejected. She is also informed that the provisional seniority list of Senior Assistants

communicated to her in the reference first cited is being confirmed without any change to the ranking assigned to her.

Sd/-Director'

The above proceeding to the Director of NIMS was assailed in the writ petition. Although initially only the 3rd respondent was made as party-respondent to the writ petition, subsequently, the appellant impleaded respondents 4 to 8 in WP. MP. No. 20543 of 1996 dated 22-8-1996, who, except respondent No. 6, are from the cadre of Secretarial Assistants of 1987 batch and admittedly juniors to the appellant in terms of length of service. The 6th respondent is also a co-recruitee of the appellant as Personal Secretary, Since the appellant has filed the writ petition assailing the validity of the proceedings of the Director of NIMS dated 23-8-1994 and sought for quashing of the same by a writ of Certiorari, the prayer in the writ petition takes within its ambit both the issues raised by the appellant in her representations dated 6-6-1994 and 4-7-1994 and rejected by the Director of NIMS by the impugned proceedings. When once the ratio is held to be illegal, the placement of 3rd respondent above the appellant is also held to be illegal and if the impugned proceeding dated 23-8-1994 is quashed placing the appellant above the 3rd respondent, it is trite, the appellant is entitled to be placed above respondents 4, 5, 7 and 8 also. In view of this position, merely because the appellant has not specifically prayed in the writ petition to place her above respondents 4, 5, 7 and 8, that does not mean that the relief sought by her would not include such relief. A careful reading of the affidavit filed in support of the writ petition and the pleadings filed by NIMS as well as respondents 4, 5, 7 and 8 would show that the appellant had grievance not only against 3rd respondent but also against respondents 4, 5, 7 and 8 as regards their placement in the seniority list. The Judgments of the Apex Court ((1) and (2) supra) are of no help to respondents 4, 5, 7 and 8. In Chandigarh Administration case (1 supra), the Apex Court held that where the respondent therein did not ask for any relief in the writ petition commanding the Chandigarh Administration to issue the completion certificate, grant of such relief was not justified, and on that ground the order of the High Court of Punjab and Haryana was set aside. In that context, the Apex Court held-

' a perusal of the relief extracted above shows that the writ petitioner-respondent never asked for any relief in the writ petition commanding the Chandigarh Administration to issue completion certificate in its favour. Learned counsel for the respondent frankly stated that there is no allegation in the writ petition to the effect that Chandigarh Administration has illegally withheld the completion certificate. It is settled law that unless the allegations are made in the writ petition and a relief to that effect is also prayed for in the writ petition, the High Court is not justified in issuing any order in excess of the relief prayed for in the writ petition...'

The above Judgment is an authority to state that unless there is pleading as well as prayer with regard to a relief, the Court cannot grant such relief. The ratio has no application to the facts of the present case. As pointed out supra, it is the consistent grievance of the appellant not only with regard to placement of 3rd respondent above her but also with regard to placement of respondents 4, 5, 7 and 8 in the seniority list. As already pointed out supra, the relief sought by the appellant in the writ petition encompasses both the issues raised by the appellant in the representations dated 6-6-1994 and 4-7-1994. In Raj Karan Singh's case (2 supra), the original prayer of the respondent in that case was for issuance of a writ to allow him to continue till regular selection through UPSC is made. However, by the impugned order dated 26-10-1994, the Division bench of the Allahabad High Court directed that since the respondent was reinstated in service beyond one year, he should be treated as on regular service, and his services cannot be terminated without issuing any formal order. In that context, the Apex Court held that the impugned order dated 26-10-1994 went beyond the relief claimed by the respondent in the writ petition itself. Therefore, the above Judgment of the Apex Court is an authority to state that the Court is not entitled to grant a relief to a party which has not sought such relief or which goes beyond the relief sought in the writ petition. Here again, this ratio has no application to the case on hand, because, the relief the appellant sought in this writ appeal, as already pointed out supra, very much falls within the purview of the relief claimed by her before the respondent-organisation as well as in the writ petition. It is well settled in law that this Court, while granting reliefs under Article 226 of the Constitution, can always mould the reliefs to meet the ends of justice though the prayer in the writ petition might not have been couched in the manner writs are issued by the Courts. In that

view of the matter, we do not find any merit in the contention of the learned counsel for respondents 4, 5, 7 and 8 that the writ appeal is not maintainable.

11. This takes us to the other contentions raised by the learned counsel touching on the merits of the case. The grievance of the appellant relates to two aspects, namely, with regard to fixing the ratio of 2:1 between the Secretarial Assistants and Personal Secretaries, and with regard to seniority of appellant against her co-recruitees as Personal Secretaries. As far as the ratio aspect is concerned, the case of the appellant is that the Director, NIMS, who fixed the ratio between the Secretarial Assistants and the Personal Secretaries at 1:1 and changed the same to 2:1, has no power or authority to do so. Contesting this stand of the appellant, in the counters filed in the writ petition, the respondents have contended that the Director can fix the ratio, as he is the appointing authority and the power granted to him to create and abolish posts other than teaching staff by the Governing Council in its meeting held on 28-6-1996 includes the power to fix the ratio also. Before the NIMS Act, 1989 (for short, the Act,) came into force, under Article 9(i) of the Articles of Association, it was the Executive Board which could appoint officers and also fix the terms and conditions of service. There was no provision under the Articles of Association to delegate the said power of the Executive Board to any one, including the Director. Therefore, the power of the Executive Board to issue terms and conditions could not be delegated under the Articles of Association, and nothing is placed before the Court to show that such a power has been delegated to the Director. After the Act came into force with effect from 28-4-1989, in terms of the provisions of Section 12(1)(b), the Executive Board can appoint officers and fix the terms and conditions of service. Under Section 18(2)(d) of the Act, the Director is vested with the power to create and abolish posts, but that power conferred upon the Director, in our considered opinion does not include the power to determine terms and conditions of service of the employees, and the competent authority to exercise that power is the Executive Board. Even according to NIMS, the ratio of 1:1 for promotion to the post of Senior Assistant was introduced with effect from 16-8-1989, i.e., after the Act came into force. In that view of the matter, the fixation of the ratio at 1:1 with effect from 16-8-89, regardless of the fact whether the Director or the Executive Registrar of NIMS fixed it, is one without authority of law and in infraction of the provisions of the Act.

12. It needs to be emphasised that the First Regulations of the Nizam's Institute of Medical Sciences, Hyderabad, (for short the Regulations), were made under Subsection (2) of Section 40 of the Act in G.O. Ms. No. 403 dated 24-6-1989 and as per Reg. 49(iv), the employees appointed by direct recruitment in the Institute shall, until the service conditions and pay scales are determined, be governed by those applicable to the employees of the institute prior to the appointed date i.e. 28-6-1989, the date on which the Act came into force as per Reg. 2(b). This was admitted by the respondent-organisation in para 7 of the counter affidavit. Therefore, the alleged fixation of ratio of 1:1 by the Director with effect from 16-8-1989, which is not as per law, cannot be made applicable to those employees appointed prior to 28-6-1989. Consequently, it cannot be made applicable to the appellant and the unofficial respondents. Even before the Act came into force, under Article 9(i) of the Articles of Association, it was the Executive Board which could make appointments and fix the terms and conditions of service. Under Rule 11 of the Service Rules, all appointments and promotion should be made by the competent authority in the light of guidelines issued by the Governing Council, if any. Under Rule 22(i), promotion to all grades should be made as per the policy laid down by the Board from time to time having regard to the guidelines issued by the Governing Council, if any. In effect, the Board has to issue policies with regard to promotions keeping in view the guidelines, if any, issued by the Governing Council and the Director had no role to play at all. This position is admitted by the NIMS in paragraph 9 of its counter affidavit. It is not the case of the respondents that the ratio was fixed neither (sic. either) by the Executive Board nor (sic. or) the Governing Council of NIMS. Thus, it is quite clear that neither the Executive Board nor the Governing Council of NIMS had/has fixed the ratio either before or after the Act came into force, and according to the learned Standing Counsel for NIMS, the ratio was fixed by the Executive Registrar of NIMS.

13. Even the change of ratio from 1:1 to 2:1 was also without authority of law, inasmuch as the same was done by the Director of NIMS on the basis of certain representations made by the employees association with effect from 1-7-1991. It is quite curious to note that the ratio of 2:1 was introduced with effect from 1-7-1991, the date on which some more promotions were made on the basis of the results of the interviews conducted as far back as on 16-8-1989. In the first place, the

change of ratio is unauthorised and illegal, and secondly even assuming that the ratio is valid, applying that ratio with retrospective effect is bad in law.

14. The resultant position is that fixation of ratio 1:1 or changing the same to 2:1 is unauthorised and illegal and, therefore, it cannot be applied for promotion to the post of Senior Assistant from the feeder categories of Secretarial assistants and Personal Secretaries. If the ratio is eschewed, it is just and reasonable that the appointing authority should determine the seniority of the appellant and the unofficial respondents for promotion to the higher post by taking into account the total length of service in the feeder category. Such a course of action would be in consonance with the constitutional mandates flowing from Articles 14 and 16(1) of the Constitution, fair and reasonable. There is no controversy that the appellant was appointed as Personal Secretary in 1986 whereas respondents 4, 5, 7 and 8 were appointed as Secretarial Assistants in the year 1987. In that view of the matter, the appellant is entitled to seek her placement above respondents 4, 5, 7 and 8 in the seniority list and consideration for promotion to the post of Senior Assistant and other promotional posts in the promotional avenue of administrative echelon before respondents 4, 5, 7 and 8 are considered for such promotions in accordance with the relevant recruitment rules.

15. In the result and for foregoing reasons, we allow the writ appeal and set aside the order of the learned single Judge impugned in this appeal insofar as it is against the appellant and in substitution thereof, we quash the proceedings of the Director of NIMS dated 23-8-1994 and direct respondents 1 and 2 to prepare the seniority list of Senior Assistants in the light of this Judgment and taking into account the total length of service put in by each of the concerned employees in the feeder categories of Secretarial Assistants and Personal Secretaries, without following any ratio and promote the appellant to the post of Senior Assistant with effect from the date on which her immediate junior, the 3rd respondent, was promoted, and to promote her to the post of Superintendent etc., with effect from the dates on which her immediate juniors have been promoted with all consequential benefits- pecuniary and otherwise. No costs.