

PETITIONER:
S. PRAKASHA RAO AND ANR.

Vs.

RESPONDENT:
COMMISSIONER OF COMMERCIAL TAXES AND ORS.

DATE OF JUDGMENT 23/02/1990

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
MISRA RANGNATH
PUNCHHI, M.M.

CITATION:
1990 AIR 997 1990 SCR (1) 561
1990 SCC (2) 259 JT 1990 (3) 40
1990 SCALE (1) 456
CITATOR INFO :
RF 1991 SC2113 (12)

ACT:
Constitution of India, Article 371-D/Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975: Para 3(1), proviso and paras 3(7), 4 & 5(i)--A. P. Commercial Taxes Department--Local Cadres of Junior Assistants and Senior Assistants organised for Warangal Zone for seniority and promotion--State Government subsequently creating divisions within the zone and reallocating employees--Validity of.

HEADNOTE:

Article 371-D brought into the Constitution by Thirty-second Amendment Act, 1973, with effect from July 1, 1974 empowered the President in respect of the State of Andhra Pradesh by an Order (1) to require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot the persons holding such posts to the local cadres, and (2) to specify any part or parts of the State which shall be regarded as the local area for direct recruitment to posts in any local cadre.

In exercise of the power so conferred the President issued the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 on October 18, 1975. Para 3(1) of the Order empowered the State Government to organise the local cadre within a period of twelve months. The term 'local cadre' was defined in para 2(1)(e) to mean any local cadre of posts under the State Government organised in pursuance of para 3, or constituted otherwise, for any part of the State. The proviso added to para 3(1) subsequently and published through G.O. Ms. No. 34 dated January 24, 1981, empowered the President, notwithstanding the expiration of the period of twelve months, to require the State Government, whenever he considered it expedient so to do, to organise local cadres for different parts of the State. Para 3(7) permitted the State Government to organise or to continue more than one cadre in

respect of any category of posts in any department for any part of the State. Para 4 provided mode of allotment of employees to local cadres. Para

562

5(1) declared that each part of the State for which a local cadre has been organised, in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer. In the table in the schedule thereto the State was divided into seven zones and zone V consisted of the revenue districts of Adilabad, Karimnagar, Warangal and Khammam. Instructions were issued for implementation of the Presidential Order through G.O.Ms. No. 728 dated November 1, 1975 in organising the local cadres.

In pursuance of para 3(1) of the Order the State Government in Commercial Taxes Department issued order G.O.Ms. No. 581 dated May 24, 1976 organising zones and the Warangal Zone consisted of revenue districts of Adilabad, Karimnagar, Warangal and Khammam, which was co-terminus with zone V of the Presidential Order. The Junior Assistant in each revenue district in Warangal zone was a separate district post, but for the purpose of promotion to the post of Senior Assistants and Assistant Commercial Taxes Officers, which were zonal posts, common seniority of the Junior Assistants and Senior Assistants working in all the four revenue districts was being maintained and promotion made in accordance with the rules.

Subsequently, however, the State Government created separate divisions within the zones in the Commercial Taxes Department through G.O.Ms. No. 1900 dated December 22, 1981 carving out Adilabad and Karimnagar as Adilabad Division and Warangal and Khammam as Warangal Division. Options were called for and the employees allotted in G.O.Ms. No. 1648 dated November 22, 1982 to the respective divisions.

Agrieved by the said order respondent Nos. 4 and 5 filed a petition before the State Administrative Tribunal contending that for promotion from Senior Assistant to Assistant Commercial Taxes Officer zonal seniority of Warangal local area comprising of Warangal, Khammam, Karimnagar and Adilabad was the criteria, that the Adilabad division consisting of Adilabad and Karimnagar districts of Commercial Taxes Department could not be treated to be a zone, and that the divisional seniority prepared by the department was bad in law. The Tribunal held that the zonal seniority was the criteria for purposes of promotion, and allowed the petition.

The State Government in exercise of its power under cl. (5) of Art. 371-D annulled that order. Thereupon, respondent Nos. 4 and 5 filed a writ petition under Art. 32 of the Constitution wherein this Court

563

declared cl. (5) of Art. 371-D as ultra vires. Left with no alternative the State filed special leave petition against the original order of the Tribunal, which was dismissed.

Subsequently, the appellants-beneficiaries of G.O.Ms. No. 1648 of 1982, filed representative petition before the Tribunal, which was dismissed.

In the appeal by special leave it was contended for them that the State Government continues to have its inherent power to organise local cadres to meet the exigencies of administrative needs, as there was no prohibition in that regard in the Order, and that the phrase 'or constituted otherwise' engrafted in the definition of 'local cadre' in para 2(1)(e) read with para 3(7) gave ample power to the State Government to create a zone within the Warangal zone

for the purpose of recruitment, seniority and promotion in the Commercial Taxes Department.

Dismissing the appeal, the Court,

HELD: 1. The action taken by the State Government in issuing G.O.Ms. No. 1648 dated November 20, 1982 was illegal and invalid contravening the proviso to para 3(1) and para 4 of the Presidential Order. [573C]

2.1 Once the State Government had organised the Commercial Taxes Department by constituting different local cadres and Warangal zone comprising of the four revenue districts, namely, Adilabad, Karimnagar, Khammam and Warangal was declared as local area for local cadres of the Department through G.O.Ms. No. 581 dated May 24, 1976 in exercise of the powers under para 3(1), it ceased to have any power to bifurcate or reorganise a zone within a zone, cadre or cadres therein. [572E-G]

2.2 In exercise of the power under the proviso to para 3(1), it is for the President and President alone notwithstanding the expiry of the period of twelve months prescribed in para 3(1), by an order require the State Government whenever he considers it expedient so to do to have the power under para 3(1) exercised. Therefore, the State Government shall have to place necessary material before the President; the President shall consider that it is expedient to organise any class or classes of posts in the civil services of and class or classes of civil posts under, the State into a further local cadre within the local cadre in the zone already prescribed and to pass an order in that regard requiring the State Government to so organise it. [572G; 573A]

564

2.3 However, for the purpose of efficient administration or convenience, the State Government may create division/divisions within the local area or local cadre. But for the purpose of recruitment, seniority, promotion, discharge, etc. the local cadre once organised under para 3(1) shall be final and continue to be operative until action is taken under the proviso to para 3(1) of the Order. In the instant case, no order of the President, as provided under the proviso, was made. [573A-B]

3. The Presidential Order was made pursuant to the power given under Art. 371-D, which is a special provision made under the Constitution (Thirtysecond Amendment) Act, 1973 peculiar to the State of Andhra Pradesh. Therefore, the State Government had no inherent power in creating a zone or organising local cadres within the zones except in accordance with the provisions of the said Order. [573D]

4. The phrase 'or constituted otherwise' defined in para 2(1)(e) is only related to the power given by the President to the State Government to organise local cadre. Para 3(1) is the source of that power. The said phrase is, therefore, to be understood in the context and purpose which Art. 371-D and the President Order seek to achieve. The State Government cannot create local cadres at its will. [573E; 575A]

Kochuni v. States of Madras & Kerala, AIR 1960 SC 1080 and Lilavati Bai v. The State of Bombay, [1957] SCR 721 at 735, distinguished.

5. The power given to the State Government in para 3(7) of the Order is only to organise a separate cadre in respect of any category of posts in any department when more than one cadre in respect of such category exists in each department. So, the State Government may organise one cadre when more than one cadre in respect of different categories of posts exist in a zone under para 3(1) of the Order. For instance, while creating local cadre co-terminus with the

administrative control of the Dy. Commissioner, Commercial Taxes, local cadre for Senior Assistants may be created. It is also made manifest in Instruction No. 7 and 9(e) of the instructions contained in G.O.Ms. No. 728 dated November 1, 1975. But it is only for the purpose of administrative convenience, not for the purpose of recruitment, seniority or promotion etc., as the case may be. [575C-E]

Thus, the creation of a division and maintaining separate seniority of Junior Assistants and Senior Assistants in the Commercial Taxes Department for Adilabad and Warangal Divisions were illegal, contrary

565

to order issued in G.O.Ms. No. 581 and the Presidential Order. [575F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1259 of 1990.

From the Judgment and Order dated 6.10.1989 of the Andhra Pradesh Administrative Tribunal in R.P. No. 2403 of 1987.

Dr. L.M. Singhvi and Y.P. Rao for the Appellants.

P.P. Rao, K. Madhava Reddy, Ms. Rani Chhabra, T.V.S.N. Chari and B. Rajeshwar Rao for the Respondents.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. 1. Special leave granted.

This appeal under Article 136 is against the order dated October 6, 1989 made in R.P. No. 2403 of 1987. The facts are as under:

2. The respondents Nos. 4 & 5, B. Kumara Swamy and G. Amarendra, in this appeal filed R.P. No. 1615 of 1984 before the Andhra Pradesh Administrative Tribunal, Hyderabad, contending for promotion from Senior Assistant to Assistant Commercial Taxes Officer, zonal seniority of Warangal local area comprising of Warangal, Khammam, Karimnagar and Adilabad is the criteria. The Adilabad division consisting of Adilabad and Karimnagar Districts of the Commercial Taxes Division cannot be treated to be a zone and the divisional seniority prepared by the department is bad in law. It was held by the Tribunal by order dated February 18, 1986, that the zonal seniority is the criteria. Though, for the administrative convenience a division consisting of the revenue districts of Adilabad and Karimnagar may be treated as one division and Warangal and Khammam as Warangal division may be carved out, for the purpose of promotion zonal seniority has to be maintained. Accordingly, the Tribunal allowed the Representation Petition. The Government of Andhra Pradesh in exercising its power under cl. (5) of Art. 371-D annulled that order which had given rise to filing of W.P. No. 998 of 1986 in this Court under Art. 32 of the Constitution. This Court declared cl. (5) of Art. 371-D of the Constitution as ultra vires violating the basic structure. The State Government filed S.L.P. No. 8868 of 1987 against order in R.P. No. 1615 of 1984 which was dismissed by this Court on December 7, 1987. Subsequently, the petitioners impleading the

566

respondents Nos. 4 and 5 and the 6th respondent, G. Satya Rao, filed R.P. No. 2403 of 1987, which was dismissed by the Tribunal. The appellants filed Civil Appeal No. 3203 of 1989 which was allowed by this Court and remitted to the Tribunal and directed, "to examine the legal effect of the Government order in G.O.Ms. No. 1648 dated November 20, 1982 after again hearing the parties." Thereafter, the Tribunal after

considering the effects of the G.O. held that in the impugned order that G.O.Ms. No. 1648 was issued under Para 5(2)(c) of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order 1975 for that "the 'order' no allotment of cadre in terms of para 4 of the order was issued. The G.O.Ms. No. 1648 and G.O.Ms. No. 1900 do not mention the constitution of new local cadre for Adilabad Division and no order was issued constituting a separate cadre in terms of 'the order'. Accordingly, it reiterated the original order dated April 29, 1988.

3. The Constitution (Thirtysecond Amendment) Act, 1973 through s. 3 thereof brought into the Constitution Art. 371-D with effect from July 1, 1974. This is a special provision in respect of the State of Andhra Pradesh empowering the President, having regard to the requirements of the State as a whole for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State to make an order, in particular--

(a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order the persons holding such posts to the local cadres so organised;

(b) specify any part or parts of the State which shall be regarded as the local area--

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government

(Other clauses are not relevant for the purpose of this case, Hence omitted.)

567

4. In exercise of the power under cl. (1) & cl. (2) of Art. 371-D the President issued 'the order' in G.S.R. No. 524-E dated October 18, 1975 which was notified through G.O.Ms. No. 674 dated October 20, 1975. Para 2(1)(c) interpretation clause defines 'local area' in relation to local cadre thus:

"'local area', in relation to any local cadre, means the local area specified in paragraph 6 for direct recruitment to posts in such local cadre, and includes, in respect of posts belonging to the category of Civil Assistant Surgeons, the local area specified in sub-paragraph (5) of paragraph 8 of this Order."

Para 2(1)(e) defines 'local cadre':

"'local cadre' means any local cadre of posts under the State Government organised in pursuance of paragraph 3, or constituted otherwise, for any part of the State."

Para 2(1)(m) defines 'zone':

"'zone' means a zone specified in the Second Schedule comprising the territories mentioned therein."

Para 3(1) provides organisation of local cadres:

"The State Government shall, within a period of twelve months from the commencement of this Order, organise classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State to the extent, and in the manner, hereinafter provided."

The proviso thereto was added and was published through G.O.Ms. No. 34G.A.(SPF. A.) Deptt. dated January 24, 1981,

which reads thus:

"Provided that, notwithstanding the expiration of the said period, the President may by order, require the State Government, whenever he considers it expedient so to do, to organise any classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State."

(emphasis supplied)

568

Sub-paragraph (2) provides that the posts belonging to the category of lower division clerk, (now redesignated as Junior Assistant), and to each of the other categories equivalent to, or lower than that of a lower division clerk, in each department in each district shall be organised into a separate cadre. Sub-paragraph (3) provides the posts belonging to each non-gazetted category, other than those referred to in sub-paragraph (2), in each zone shall be organised into a separate cadre. Sub-paragraph (4) provides, the post belonging to each specified gazetted category in each department in each zone shall be organised into a separate cadre. Paragraph 3(5) with a non-obstanti clause provides that:

"Notwithstanding anything contained in sub-paragraphs (3) and (4), the State Government may where it considers it expedient so to do and with the approval of the Central Government organise the posts belonging to any of the categories referred to therein, in any department, or any establishment thereof, in two or more contiguous zones into a single cadre."

Sub-paragraph (6) is not material. Hence omitted.

Sub-paragraph (7) provides:

"In organising a separate cadre in respect of any category of posts in any department for any part of the State, nothing in this Order shall be deemed to prevent the State Government from organising or continuing more than one cadre in respect of such category in such department for such part of the State."

Paragraph 3(8) is also not necessary. Hence omitted.

(emphasis

is
supplied)

Paragraph 4 provides mode of allotment of persons, holding posts required to be organised into local cadres in accordance with the principles and procedure laid down therein, the details of which are not material. Hence omitted.

Paragraph 5 declares that:

"(1) Each part of the State, for which a local cadre has been organised, in respect of any category of posts, shall be

569

a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters as may be specified by the State Government, in respect of that category of posts."

(Other sub-paragraphs relate to transfer of persons and are not relevant for the purpose of this case. Hence omitted.).

Paragraph 6 deals with local areas:

(1) Each district shall be regarded as a local area--

(i) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that district belonging to the category of a lower division clerk or to any other category equivalent to or lower than that of a lower division clerk (Junior Assistant):

(ii) for direct recruitment to posts in any local authority within that district, carrying a scale of pay, the minimum of which does not exceed the minimum of the scale of pay of a lower division clerk or a fixed pay not exceeding that amount.

(2) Each zone shall be regarded as a local area--the details of which are not material. Hence omitted.

(emphasis supplied)

In the Table 'Local area and the ratio' in the Schedule, the State of Andhra Pradesh was divided into seven zones and zone V consists of the revenue districts of Adilabad, Karimnagar, Warangal and Khammam. Instructions have been issued for implementation of the order through G.O.Ms. No. 728 dated November 1, 1975, in organising the local cadres. Para 3 thereof postulates, after quoting paragraph 3(1) of the order referred to hereinbefore, thus:

"A local cadre is a cadre comprising the posts belonging to a category in a Department and located within a specified part of the State. The concept of the local cadre is thus related to the concept of the unit of appointment under the service rules; the part of the State for which a local cadre is organised in respect of any category will serve as a unit of appointment etc., for that category. The scheme of organisation of local cadres under the Presidential Order applies generally to all non-gazetted categories, other than those

specifically exempted under Government of India Notification G.S.R. No. 529, (E), dated 18th October, 1975 issued under paragraph 3(8) of the Order, as also to the specified gazetted categories, i.e., the gazetted categories listed in the Third Schedule to the Order and those that may be notified in pursuance of paragraph 2(i)(j) of the Order by the Central Government."

5. Instruction 4(a) says that the lower division clerks or equivalent categories or lower than that were designated as a District Cadre. Posts belonging to other non-gazetted categories were designated as zonal cadre and specified gazetted cadres were also designated as zonal cadres. Instruction 7 provides thus:

"More than one Local Cadre permissible within Local Area--It should be borne in mind that where the State Government is required to organise a local cadre for any part of the State, there is no objection to organising or continuing more than one local cadre for such part of the State (vide paragraph 3(7) of the order). There is, therefore, no objection to having more than one cadre in Revenue District in respect of a post belonging to the category of Lower Division Clerk (Junior Assistant) or below or to having more than one cadre in a zone in respect of a higher category."

(emphasis supplied)

Instruction 9(e) provides re-adjustment of territorial jurisdiction, thus:

"In several departments, the unit of appointment in respect of non-gazetted categories is linked to the territorial jurisdiction of an authority or officer subordinate to the Head of Department. For instance, the unit of appointment of Upper Division Clerks (Senior Assistants) in the Commercial Taxes Department is the division in charge of Dy. Commissioner. In the case of such departments if it becomes necessary to alter the units of appointment in order to bring them into conformity with the Presidential Order, a corresponding adjustment in the territorial jurisdiction of the departmental authority may also become necessary and will have to be made

6. Thus, it is seen that pursuant to the power given under cls. (1) & (2) of Art. 371-D the President had issued the order organising local cadres and zone V consists of Adilabad, Warangal, Karimnagar and Khammam revenue districts. It is the local area for the local cadres. The post of the Junior Assistant is the district cadre post and the post of Senior Assistant and Assistant Commercial Taxes Officers, etc. are the zonal posts. The State Government is empowered under the Presidential Order to organise the local cadres within a period of twelve months from October 20, 1975. In pursuance thereof the State Government in Commercial Taxes Department issued order G.O.Ms. No. 581 dated May 24, 1976 organising zones for the purpose of Commercial Taxes Department, namely, Visakhapatnam, Kakinada, Krishna, Guntur, Tripurthi, Karnool, Warangal, Hyderabad-1 and Hyderabad-II. Warangal zone consists of revenue districts of Adilabad, Karimnagar, Warangal and Khammam. Thus, the Warangal zone of Commercial Taxes Department for the purpose of recruitment, seniority, promotion, transfer, etc. of local cadres is co-terminus with the zone V of the Presidential Order. The Junior Assistant in each revenue district in Warangal zone is a separate district post, but for the purpose of promotion to the post of Senior Assistants and Assistant Commercial Taxes Officers, which are zonal posts common seniority of the Junior Assistants, Senior Assistants working in all the four revenue districts shall have to be maintained and promotions made in accordance with Ministerial Service Rules or the Commercial Taxes Subordinate Service Rules issued under proviso to Art. 309 of the Constitution as the case may be. It would be subject to rule of reservation for local candidates as adumbrated in para 8 of the Order and the general rule of reservation made in Rule 22 in Andhra Pradesh State and Subordinate Service Rules.

7. It would appear from the record that the Government intended to reorganise, for the purpose of efficient administration of the Commercial Taxes Department and create separate divisions within the zones and issued through G.O.Ms. No. 1900 dated December 22, 1981 carving out Adilabad and Karimnagar as Adilabad division and Warangal and Khammam as Warangal division with the administrative control of the concerned Dy. Commissioner of Commercial Taxes at Adilabad and Warangal. As a follow up action options have been called for from the employees and they have been allotted in G.O.Ms. No. 1648 dated November 22, 1982 to the respective divisions. It is not disputed that the allotment and transfer were not made in terms of Para 4 of the Order. As stated earlier this action had given rise to the above Representation Petitions and the orders passed by the Tribunal and the results ensued thereunder.

572

8. Dr. L.M. Singhvi, the learned Senior Counsel for the appellants, contends that paragraph 3(7) of the Order empowers the State Government to create a zone within the Warangal zone for the purpose of recruitment, seniority and promotion. The State Government has inherent power in that regard. There is no express prohibition in that regard in the order. The phrase 'or constituted otherwise' engrafted in the definition of local cadre in paragraph 2(e) read with paragraph 3(7) gives ample power to the State Government to organise any local cadre within the zone for the Commercial Taxes Department. The action thus, taken by the State Government is clearly within its power. The contra finding recorded by the Tribunal is illegal. He placed strong reliance on a decision of a single member Tribunal made in R.P. No. 101 of 1982 and batch dated April 1, 1982. He further

contended that in maintaining harmony in Centre-State relationship, the State Government shall continue to have its inherent power to organise its local cadre to meet the exigencies of its administrative needs. The prior approval or concurrence of the Central Government is redundant. We find no force in these contentions. It is already seen that in exercise of the power under paragraph 3(1) of the Order the State Government shall, within a period of twelve months from the date of the commencement of the Order, organise class or classes of posts in the civil services of, and class or classes of civil posts, under the State into different local cadres for different parts of the State in the manner therein provided. It is already seen that through G.O.Ms. No. 581, the State Government in fact had organised the Commercial Taxes Departments by constituting different local cadres and Warangal zone comprised of the four revenue districts, namely, Adilabad, Karimnagar, Khammam and Warangal was declared as local area for local cadres of the Department. Having done so, the question emerged whether the State Government has further power to reorganise the local cadre within the zone. In our considered view, we have no hesitation to hold that once the State Government has organised the class or classes of posts in the civil services of and class or classes of civil posts, under the State as local cadres, it ceases to have any power to bifurcate or reorganise a zone within a zone, cadre or cadres therein. In exercise of the power under proviso to paragraph 3(1), it is for the President notwithstanding the expiry of the period of twelve months prescribed in sub-paragraph (1) of paragraph 3, by an order require the State Government whenever he considers it expedient so to do to have the power under paragraph 3(1) exercised. Thereby, it is clear that the State Government shall have to place necessary material before the President; the President shall consider that it is expedient to organise any class or classes of

573

posts in the civil services of and class or classes of civil posts, under the State into a further local cadre within the local cadre in the zone already prescribed and to pass an order in that regard requiring the State Government to so organise it. It is made clear that for the purpose of efficient administration or convenience, the State Government may create division/divisions within the local area or local cadre. But for the purpose of recruitment, seniority, promotion, discharge, etc. the local cadre once organised under para 3(1) shall be final and continue to be operative until action is taken under proviso to subparagraph (1) of paragraph 3 of the Order. When we enquired the learned counsel for the State, Shri Madhava Reddy candidly conceded that no order of the President, as provided under the proviso, was made. Therefore, the action taken by the State Government in issuing G.O.Ms. No. 1648 dated November 20, 1982 is clearly illegal and invalid contravening the proviso to subparagraph (1) of paragraph 3, undoubtedly it contravened para 4 of the Order.

9. It is seen that the order was made pursuant to the power given to the President under Art. 371-D, which is a special provision made under the Constitution (Thirty-second Amendment) Act, 1973 peculiar to the State of Andhra Pradesh due to historical background. Therefore, the State Government have no inherent power in creating a zone or organising local cadre within the zones except-in accordance with the provisions made in the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation for Direct Recruitment) Order. It is true that the clause 'or consti-

tuted otherwise' defined in paragraph 2(e) is of wide import, but is only relatable to the power given by the President to the State Government to organise local cadre. Paragraph 3(1) is the source of that power, but the exercise thereof is hedged with a limitation of twelve months from the date of the commencement of the Order. Therefore, the power to organise class or classes of posts of civil services of, and class or classes of civil posts, under the State into different local cadres should be exercised by the State Government in accordance with para 3(1) before the expiry of the twelve months from October 20, 1975. If the exercise of the power is not circumscribed within limitation, certainly under General Clauses Act the power could be exercised from time to time in organising local cadres to meet the administrative exigencies. The prescription of limitation is a fetter put on the exercise of power by the State Government. Obviously, realising this reality and the need to organise local cadres, subsequent thereto the amendment was made and was published in G.O.Ms. No. 34 G.A. dated January 24, 1981 introducing proviso to Paragraph 3(1). Thereunder, notwithstanding the expiry of the said period, the President alone has been given power

574
to organise local cadres in respect of class or classes of posts in civil services of and class or classes of civil posts, under the State. That too subject to the conditions precedent laid therein. Thus, it is the President and the President alone has been given power under proviso by an order to require the State Government to organise the local cadres in relation to any class or classes of posts in the civil services of and class or classes of civil posts under the State into different local cadres. It could be considered in yet another perspective. Para 2(e) indicates that President himself may create a local cadre instead of requiring the State Government to organise local cadre. For instance, Para 3(6) empowered the President to create local cadre for the city of Hyderabad. Similarly, under proviso to para 3(1) the President may require the State Government to create a local cadre within a zone. So the phrase 'or constituted otherwise' cannot be understood dehorse the scheme of the Presidential order. No doubt in common parlence, the word 'otherwise' is of 'wide' amplitude. This Court in Kochuni v. States of Madras & Kerala, AIR 1960 SC 1080, Subba Rao, J., as he then was, speaking per majority in paragraph 50 while construing the word 'otherwise' held that it must be confined to things analogous to right or contract such as lost grant, immemorial user etc. The word 'otherwise' in the context only means whatever may be the origin of the receipt of maintenance. The ratio thereunder cannot be extended in the contextual circumstances obtainable on the facts in this case. Similarly, in Lilavati Bai v. The State of Bombay, [1957] SCR 721 at 735, Sinha J., as he then was, speaking for the Constitution Bench interpreting Explanation (a) to s. 6 of Bombay Land Requisition Act, 1948, as amended in 1950 and repelling the application of ejusdem generis doctrine laid the law thus:

"The legislature has been cautious and thorough-going enough to bar all avenues of escape by using the words 'or otherwise'. These words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking a tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the legislature, when it used the words 'or otherwise', apparently intended to cover other cases which may not come

within the meaning of the preceding clauses, for example a case where the tenant's occupation has ceased as a result of trespass by a third party. The legislature, in our opinion, intended to cover all possible cases of vacancy occurring due, to any reasons whatsoever."

575

Thus, contextual interpretation to the word 'or otherwise' was given by this Court. Therefore, the phrase 'constituted otherwise' is to be understood in that context and purpose which Art. 371-D and the Presidential Order seek to achieve. If the interpretation given by the appellants is given acceptance it amounts to giving blanket power to the State Government to create local cadres at its will tending to defeat the object of Art. 37 I-D and the Presidential Order. Accordingly, we have no hesitation to reject the interpretation of wider connotation. The ratio in these decisions does not render any assistance to the appellants.

11. Similarly, the power given to the State Government in subparagraph (7) of paragraph 3 of the Order is only to organise a separate cadre in respect of any category of posts in any department when more than one cadre in respect of such category exists in each department; so that State Government may organise one cadre when more than one cadre in respect of different categories of posts exist in a zone under para 3(1) of the Order. It is clear when we see the language in para 3(7) which says that: "nothing in this order shall be deemed to prevent the State from organising". Take for instance while creating local cadre co-terminus with the administrative control of the Dy. Commissioner, Commercial Taxes, local cadre for Senior Assistants may be created. It is also made manifest by Instruction No. 7 and 9(e) of the instructions contained in G.O.Ms. No. 728 G.A.D. dated November 1, 1975. But, as stated earlier, it is only for the purpose of administrative convenience, not for the purpose of recruitment, seniority or promotion etc., as the case may be. Thus, we have no hesitation to hold that the creation of a division and maintaining separate seniority of Junior Assistants and Senior Assistants for Adilabad and Warangal Divisions are illegal, contrary to order issued in G.O.Ms. No. 581 and the Andhra Pradesh Employment (Organisation of Local Cadre and Regulation of Direct Recruitment) Order, 1975. The single member of the Tribunal in R.P. No. 101/82 dated April 1, 1982 did not consider the effect of the order in proper perspective and is illegal.

12. Accordingly, the impugned order of the Administrative Tribunal is not vitiated by any manifest error of law warranting interference.

The appeal is accordingly dismissed, but without costs.

P.S. S
dismissed.

Appeal

576