

CASE NO.:
Appeal (civil) 1651-1652 of 1997

PETITIONER:
GOVT. OF ANDHRA PRADESH & ORS.

Vs.

RESPONDENT:
MOHD. GHOUSE MOHINUDDIN & ORS.

DATE OF JUDGMENT: 27/08/2001

BENCH:
G.B. Pattanaik & Ruma Pal

JUDGMENT:

With Civil Appeal No. 1653/1997.

JUDGMENT

PATTANAIAK, J.

These appeals are directed against the order of the Andhra Pradesh Administrative Tribunal. By the impugned order, the Tribunal directs the re-determination of inter se seniority zone-wise basis in different cadres for promotion to the higher posts. The tribunal deals with three different departments of the Government of Andhra Pradesh, Commercial Tax Department, Revenue Department and Police Department.

After insertion of Article 371-D of the Constitution, by the Constitution (32nd Amendment) Act, 1973, the President of India, issued Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 [hereinafter referred to as the Presidential Order]. The aforesaid Presidential Order was intended for providing equitable opportunities and facilities for the people belonging to different parts of the State of Andhra Pradesh, in the matter of public employment and in the matter of education. The object of the aforesaid Article was to promote accelerated development of the backward areas of the State of Andhra Pradesh, so as to secure the balanced development of the State as a whole and to provide equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service. The expression Public employment in Article 371-D has been interpreted by this Court in the case of Government of Andhra Pradesh and Anr. vs. A. Suryanarayanarao and Ors., 1991 Supp.(2) S.C.C. 367, to mean both direct recruitment as well as promotion.

Paragraph 3 of the Presidential Order casts an obligation on the State Government to organise classes of posts in the Civil Services and the classes of Civil posts under the State, into different local cadres for different parts of the State to the extent and in the manner provided in the Presidential Order, within a period of 18 months from the commencement of the Presidential Order. Proviso to the aforesaid paragraph

enables the President to require the State Government, at any time, even after the expiry of the period of 18 months, whenever the President 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. The aforesaid enabling provision for organisation of different local cadres is obviously intended to achieve the main objective of Article 371-D, namely to provide equitable opportunities to different areas of the State, in the matter of education, employment and career prospects in public services as well as to promote accelerated development of the backward areas of the State of Andhra Pradesh, so as to secure the balanced development of the State as a whole. Sub-para (3) of Paragraph 3 of the Presidential Order reads thus:

Para 3(3). The posts belonging to each non-gazetted category, other than those referred to in sub-paragraph (2), in each department in each zone shall be organised into a separate cadre.

Sub-para (7) of Paragraph 3 reads thus:

Para 3(7) 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 6 of the Presidential Order deals with the local areas, which reads thus:

Para 6. 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 Junior Assistant or to any other category equivalent to or lower than that of a Junior Assistant;

(ii) for direct recruitment to posts in any cadre under 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 Junior Assistant or a fixed pay not exceeding that amount.

(2) Each zone 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 zone belonging to any non-gazetted category other than those referred to in sub-paragraph (1);

(ii) for direct recruitment to posts in any local cadre comprising all or any of the posts in any department in that zone belonging to the categories of Tahsildars and Junior Engineers; Assistant Agricultural Officers, Inspectors of Police and Motor Vehicles Inspectors. [G.O.Ms.

No.498, G.A.D.(SPF), Dt. 16.7.1977]

(iii)for direct recruitment to posts in any cadre under any local authority within that zone, carrying a scale of pay, the minimum of which exceeds the minimum of the scale of pay of a Junior Assistant but does not exceed Rs.480 per mensem; or a fixed pay which exceeds the minimum of the scale of pay of a Junior Assistant but does not exceed Rs.480 per mensem;

Provided that where a single cadre has been organised for two or more zones under sub-paragraph (5) of paragraph 3 of posts belonging to any of the categories referred to in clause (i) or clause (ii) each of such zones shall be regarded as a separate local area in respect of such cadre.

(3).Notwithstanding anything contained in sub-paragraph (1) and (2):--

(i)the City of Hyderabad shall be regarded as a local area for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in the said City in the departments and belonging to the categories notified under sub-paragraph (6) of paragraph 3, and said City shall be excluded from the local area relatable to any other local cadre comprising posts in the departments and belonging to the categories so notified; and

(4).Notwithstanding anything contained in sub-paragraphs (1), (2) and (3):-

(i)the districts of Medak, Rangareddy and Hyderabad shall be regarded as a local area for direct recruitment to posts in any cadre under the Hyderabad Urban Development Authority comprising posts, carrying a scale of pay, the minimum of which does not exceed the minimum of the scale of pay of a Junior Assistant or a fixed pay not exceeding that amount;

(ii)Zone VI shall be regarded as a local area for direct recruitment to posts in any cadre under the Hyderabad Urban Development Authority comprising posts, carrying a scale of pay, the minimum of which exceeds the scale of pay of Junior Assistant but does not exceed Rs.480 per mensem or a fixed pay which excess the minimum of the scale of the pay of Junior Assistant but does not exceed Rs.480 per mensem. [Sub-para (4) is added by G.O.Ms. No. 498, G.A.D., (SPF-A) Dept., Dt. 16.7.1977].

(iii)the city of Hyderabad shall be regarded as a local area for direct recruitment to posts in any cadre under a local authority within the said city comprising posts carrying a scale of pay, the minimum of which does not exceed Rs.480 per mensem or a fixed pay not exceeding that amount, and the said City shall be excluded from the local area relatable to any cadre under any local authority not within the said City.

In exercise of powers conferred upon the State Government under paragraph 3(1) of the Presidential Order, the State of Andhra Pradesh issued G.O.Ms. No. 581, organising the Commercial Tax Department by constituting different local cadres. The aforesaid Government Order, providing scheme for organisation of local cadre in Commercial Tax Department, was issued on 24th of May, 1976, and Appendix to the aforesaid scheme, indicates that while posts of Deputy Commissioners, Assistant Commissioners and Commercial Tax Officers, continue to be state level posts and as such, there was no necessity to organise any local cadre, but the posts of Deputy Commercial Tax Officers were organised into six zonal cadres and the cadre strength of different zones was also indicated in the aforesaid schedule. So far as the Non-Gazetted posts are concerned, they were organised into nine different smaller units by the State Government, for the purpose of recruitment and promotion. Necessarily, therefore, by way of an annexure, the revised jurisdiction of the Deputy Commissioners Division, after reorganisation, was indicated, indicating nine different smaller units, and these smaller units, became the area for the purpose of recruitment and promotion and seniority as well. Corresponding to G.O.Ms. No. 581 issued for the Commercial Tax Department, G.O.Ms.No. 497 dated 30th of April, 1976 deals with Revenue Department and under the aforesaid G.O.Ms, while paragraph 5 deals with gazetted posts of Tahsildars, which are required to be organised into zonal cadres and in fact six zonal cadres had been organised, but so far as non-gazetted posts are concerned, the same was organised into district-wise basis as the unit and nine such units were organised, in respect of the posts of Deputy Tahsildars, Head Clerks, Upper Division Clerks, Lower Division Clerks, Typists, Shroffs, Jeep Drivers, Record Assistants and Last Grade Servants. In an identical manner, reorganisation of posts in the local cadre in Police Department was issued under G.O.Ms. No. 795 dated 30th June, 1976. It is undisputed that in this batch of appeals, we are concerned with the question of seniority as well as promotion in respect of such non-gazetted posts in the Commercial Tax Department, in the Revenue Department and Police Department. These smaller units, organised by the State Government in discharge of its obligation under paragraph 3 of the Presidential Order, remained operative and the appointment, promotion and seniority continued to be dealt with the smaller units as the cadre, until the impugned judgment of the tribunal. It may be necessary at this stage to mention that in the Commercial Tax Department, subsequent to the issuance of G.O.Ms. No. 581, the Government of Andhra Pradesh had issued two further G.O.Ms. being G.O.Ms Nos. 1648 and 1900. The validity of the aforesaid two G.O.Ms. was the subject matter of consideration in the case of S. Prakasha Rao and anr. vs. Commissioner of Commercial Taxes and Ors., 1990(2) S.C.C. 259. A Three Judge Bench of this Court, analysed different paragraphs of the Presidential Order as well as the Order issued by the State Government, organising different classes of posts into the local cadres, in accordance with paragraph 3 of the Presidential Order and ultimately, came to the conclusion that after expiry of 18 months from the date of the issuance of the Presidential Order, there is no power with the State Government for creation of any further local cadre and, therefore, the seniority has to be prepared pursuant to the initial organisation, and the question of seniority and promotion has to be determined, within the local cadre, created by the State Government in issuing the order of

organisation, as required under paragraph 3 of the Presidential Order. In S.Prakasha Raos case, this Court came to the conclusion that the post of Junior Assistant is the District Cadre post and the posts of Senior Assistants and Assistant Commercial Tax Officers are the zonal posts. The Court also further came to the conclusion that under paragraph 3(1) of the Presidential Order, the State Government, through issuance of G.O.Ms. No. 581 had organised the Commercial Taxes Department by constituting different local cadres and having done so, the State ceases to have any power to bifurcate or reorganise a zone within a zone, cadre or cadres therein and, therefore, any such subsequent reorganisation could be only for administrative necessity and not for the purpose of recruitment, seniority and promotion etc. The Court held that for the purpose of recruitment, seniority, promotion, discharge etc., the local cadre once organised under paragraph 3(1) shall be final and continue to be operative until action is taken under proviso to sub-paragraph (1) of Paragraph 3 of the Presidential Order. With these conclusions, the action of the State Government, in issuing subsequent G.O.Ms. was held to be invalid.

A batch of cases relating to the Commercial Tax department, Revenue Department and Police Department were heard together by the Administrative Tribunal and were disposed of by the common judgment which is the subject matter of challenge in these appeals. The tribunal in the impugned order came to the conclusion that validity of G.O.Ms. No. 581, dealing with Sales tax department did not fall for consideration in the earlier round of litigation in Prakash Raos case. It further held that Division is a unit for the purpose of administration and zone is a unit for the purpose of organisation of cadres for direct recruitment, appointment, seniority, promotion and transfer under the Presidential Order. It also held that organisation of various local cadres under the notification issued by the State Government, does not satisfy the requirement of the Presidential Order as provided in para 3 and such separate cadres in smaller units affect the conditions of service mentioned in para 5(1). The tribunal held that Para 3(7) of the Presidential Order, only enables the State Government to have separate cadre for administrative convenience and that the principle on which Supreme Court struck down the subsequent G.O.Ms. in Prakash Raos case, would equally apply to G.O.Ms. No. 581. Interpreting Para 3(7), the tribunal held that the State Government cannot organise cadre in any other part of the state for the purpose of public employment. On an analysis of the G.O.Ms. No. 497, issued in respect of the posts in the Revenue Department, the tribunal held that the units of appointment for the above categories of posts in the Revenue Department, conform to the provision in the Presidential Order and hence no particular action is called for in respect of the posts in the Revenue Department. The tribunal found that the Sales Tax Department, the Revenue Department and the Police Department have acted without reference to the Presidential Order. Interpreting the expression such part of the State, it held that the State Government cannot organise cadres in any other part of the State for the purpose of public employment, mentioned in para 5(1). The tribunal ultimately held that recruitment to different posts, has to be made as per the units created under the Presidential Order and not in accordance with the reorganisation made by the State Government in exercise of powers conferred under para 3 of the Presidential Order. With these conclusions, the specific

G.O.Ms in the three departments having been annulled and further directions having been issued, these appeals have been preferred.

Mr. L. Nageswara Rao, appearing for the appellant in Civil Appeal No. 1653/1997 and Mr. G. Prabhakar, appearing for the appellant-State of Andhra Pradesh in the other appeals, contended that the reorganised units having been created by the State Government, in exercise of power under paragraph 3(1) of the Presidential Order, since 1976 and having remained operative for more than 15 years, the tribunal was not justified in entertaining applications in the years 1992 and 1993 and then interfering with the said organisational scheme and directing reconsideration of the seniority and consequential promotional avenues, which would unsettle the settled position and would create chaos in administration. It was further contended that in Prakash Raos case, this Court has examined a relevant G.O.Ms, issued by the State Government in exercise of powers under Paragraph 3(1) and has held that the units, created by the State Government under the scheme of organisation, would be the unit, for the purpose of recruitment, promotion, discharge etc., the tribunal had no jurisdiction to interfere with that conclusion and on an erroneous analysis of the provisions, the tribunal has interfered with the same and as such, the impugned order of the tribunal cannot be sustained. The counsel also urged that paragraph 3(1) of the Presidential Order, enables the State Government to organise classes of posts in the civil services, into different local cadres for different parts of the State and paragraph 3(7) of the Presidential Order makes it explicitly clear that nothing in the Presidential Order would prevent the State Government from organising separate cadre in respect of any category of posts in any department for any part of the State. A combined reading of paragraphs 3(1) and 3(7), therefore makes it clear that within 18 months from the commencement of the Presidential Order, the State Government could organise classes of posts in the civil services of the State into different local cadres for the purpose of achieving the main objective of the Presidential Order, and such organised local cadre, would be the area of operation for considering the question of recruitment, promotion etc. This being the position, the tribunal committed error by holding that paragraph 3(3) of the Presidential Order would have an over-riding effect.

Mr. P.S. Narasimha, appearing for the respondents in the appeal relating to Revenue Department, on the other hand contended that the Presidential Order, more particularly, paragraph 3(3) of the same, indicates the zone and zone should be the area of consideration and the State Government cannot be held to have any jurisdiction to constitute any smaller units for the purpose of recruitment, promotion etc., which would contravene the Presidential Order and, therefore, the tribunal was justified in issuing the impugned direction. So far as the delay in approaching the tribunal is concerned, Mr. Narasimha contends, that if the reorganisation of the cadre by the State Government is contrary to the Presidential Order and consequently, invalid and inoperative, the mere delay in approaching the tribunal, would not take away the rights of the employees and, therefore, the tribunal was justified in interfering with the G.O.Ms. issued by the State Government under paragraph 3(1) of the Presidential Order.

We have considered the rival submissions and we find considerable force in the submission of Mr. Nageswara Rao and Mr. Prabhakar, appearing for the appellants, both on the question of delay as well as on the interpretation of the Presidential Order as well as the order issued by the State Government, in exercise of powers under paragraph 3(1) of the Presidential Order. From the impugned order of the tribunal as well as the materials on record, it is crystal clear that the notifications issued by the State Government in the year 1976, organising smaller units of cadre in respect of non-gazetted posts, remained operative till the tribunal was approached in 1992-93. The recruitment, promotion and other service conditions of these employees, in respect of posts enumerated in the order of the State Government was made within the organised cadre, issued by the State Government, which was essentially meant for equitable opportunities and facilities in the matter of public employment. It is a cardinal principle in Service Jurisprudence, that a particular method or procedure adopted for a long time, need not be ordinarily interfered with, unless such method is repugnant to any constitutional provision or is contrary to any statutory rule. That apart, under the Administrative Tribunal Act, a period of limitation is provided for, in Section 21. In this view of the matter, when the units formed the cadre, pursuant to notifications issued by the State Government, in the year 1976, in respect of non-gazetted posts and on that basis, appointment to and promotion within the cadre was being considered, in respect of non-gazetted posts, applications filed before the tribunal in 1992-93, after expiry of more than 15 years, could not have been entertained and the settled position could not have been unsettled, as has been done by the tribunal in its final order. On this ground alone, the impugned order cannot be sustained.

Let us now examine the provisions of the Presidential Order as well as the notifications issued by the State Government in exercise of powers conferred upon it under the Presidential Order, to find out whether by such notifications, there has been any infraction of the constitutional provision or the provision contained in the Presidential Order itself. When one speaks of public employment, immediately Article 16 comes into focus. Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens, in the matter of appointment to any office or any employment under the State. Clauses (3) to (5) lay down exception to the above rule and Clause (4) permits reservation for backward classes of citizens, who are not in the opinion of the State, adequately represented in the services of the State. In view of the mandate of Article 16, but for the Presidential Order issued under Article 371-D, it would not have been possible to consider the question of employment within the narrower units of cadre, created by the State Government, in exercise of powers conferred upon it under paragraph 3(1) of the Presidential Order. Article 371D, however was inserted in the Constitution by the Constitution (32nd Amendment) Act, 1973, authorising the President to pass special order in respect of the State of Andhra Pradesh. The history behind insertion of the aforesaid Article has been elaborately dealt with in the impugned order of the tribunal. Suffice it to say that, as there was lot of disparity in the matter of opportunities, available in public employment between the inhabitants of Telengana region and the Andhra region, there was a political turmoil and ultimately, the political will culminated

in a six point formula and it is in implementation of the aforesaid formula, Article 371-D was inserted, conferring power on the President of India to pass appropriate order for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment. Clause (2) of Article 371D enables the President of India, to provide in the order, requiring the State Government to organise any class or classes of posts in a civil service of 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 cadre, so organised. The State Government, which is supposed to be aware of the representation of the people from different areas of the State in any class or classes of civil posts, has thus been conferred with power to organise smaller units, as cadre for the purpose of recruitment, promotion and other conditions of service in public employment, so that people from different parts can share responsibility, which in turn would ensure all round development of the State. The Presidential Order, that has been issued in exercise of powers under Clauses (1) and (2) of Article 371-D, unequivocally authorises the State Government in paragraph 3 of the Order for organisation of local cadres for different parts of the State. Sub-para (7) of Paragraph 3, itself stipulates that in the matter of organising a separate cadre in respect of any category of posts, in any department for any part of the State, nothing stated in the Presidential Order can be deemed to prevent the State Government from such act.

A combined reading of sub-para (1) of Paragraph 3 and sub-para (7) of Paragraph 3, unequivocally indicates that any order issued by the State Government in the matter of organising a separate cadre, in respect of any category of posts, will have an over-riding effect and no part of the Presidential Order, including sub-para(3) of Paragraph 3, on which Mr. Narasimha, strongly relied upon be a fetter on the said power of the State Government. Such power has been designedly conferred upon the State Government to achieve the main objective for which Article 371-D was engrafted, viz. to provide equitable opportunities to different areas of the State, in the matter of employment and career prospects in public services, and for achieving the aforesaid objective, undoubtedly, the State Government would be in possession of all data and materials, enabling it to organise different local cadres. We have no hesitation to come to the conclusion that paragraph 3(1) read with para 3(7) is not subject to Paragraph 3(3), as was held by the tribunal and as was contended by Mr. Narasimha. On the other hand, paragraph 3(7) of the Presidential Order, would have an over-riding effect over paragraph 3(3) and, therefore, any order issued by the State Government under Paragraph 3(1), constituting different local cadres for different parts of the State would be the area of operation for the purpose of recruitment, promotion and other service conditions, so far as the non-gazetted posts are concerned. In the aforesaid premises, we are of the considered opinion that the tribunal committed serious error in interpreting different provisions of the Presidential Order and the notifications of the State Government, issued in exercise of powers conferred upon it under paragraph 3(1) of the Presidential Order, and accordingly, the said order of the tribunal is set aside. The conclusions of the tribunal, on interpreting the provisions of the Presidential Order, on the face of it, are erroneous and cannot be sustained. We are unable to sustain the conclusion

that the very principle on which Supreme Court struck down the subsequent notifications, purported to have been issued in exercise of powers under paragraph 3(7) of the Order, would apply to the initial notification issued for organising various local cadres. We also fail to understand, how by organising local cadres under notifications issued by the State Government, any requirement of the Presidential Order has been contravened. The further conclusion of the tribunal that paragraph 3(7) only enables the State Government to have separate cadres for administrative convenience, is based upon a misreading of the said provision and would be repugnant to the purpose for which the Presidential Order was issued in exercise of powers under Article 371-D, and the State Government was conferred power for organising smaller cadres in different parts of the State to achieve uniform development and to offer equal opportunities in the matter of employment. We, therefore, unhesitatingly, set aside the conclusions arrived at, by the tribunal in the impugned judgment.

These appeals are allowed. The applications filed before the tribunal, stand dismissed.

.....J.
(G.B. PATTANAIAK)

.....J.
(RUMA PAL)

August 27, 2001.

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