

CASE NO.:
Appeal (civil) 9643-9644 of 1995

PETITIONER:
V. JAGANNADHA RAO & ORS.

Vs.

RESPONDENT:
STATE OF A.P. & ORS.

DATE OF JUDGMENT: 07/11/2001

BENCH:
G.B. Pattanaik, Ruma Pal & Arijit Pasayat

JUDGMENT:

J U D G M E N T

ARIJIT PASAYAT, J.

1. Doubting correctness of the view expressed in two decisions rendered by two Hon'ble Judges in State of Andhra Pradesh and Anr. vs. V. Sadanandam & Ors. (1989 Supp. (1) SCC 574) and Govt. of A.P. & Anr. vs. B. Satyanarayana Rao (Dead) by Lrs. & Ors. (2000 (4) SCC 262) regarding scope and ambit of para 5(2) of the Presidential Order issued under Article 371-D of the Constitution of India 1950 (in short the "Constitution") a reference has been made to a three Judges Bench, and that is how the matter was listed before us.

The question for consideration in these appeals is whether the judgment of Andhra Pradesh Administrative Tribunal (in short "Tribunal") striking down certain provisions of the Special Rules framed under Article 309 of the Constitution holding them to be violative of the Presidential Order issued under Article 371D of the Constitution is correct.

2. Background facts in a nutshell are as under:-
Prior to the formation of the State of Andhra Pradesh on 1.11.1956 and thereafter, the Labour and Factories Department consisted of 3 units, namely, Labour, Factories and Boilers. The employees belonging to the ministerial cadres in all the 3 units had a channel of promotion to higher non-technical executive posts like Assistant Inspector of Labour, District Inspector of Labour etc. Further promotional avenues led to the posts of Assistant Commissioner of Labour, Deputy Commissioner of Labour, Joint Commissioner of Labour and Additional Commissioner of Labour. On 16.9.1963 Factories Unit in the department was bifurcated and subjects relating to Shops and Establishment Act, Minimum Wages Act, Motor Transport Workers Act and Payment of Wages Act in respect of non-factory establishments were transferred to the Labour unit. On 8.12.1965 one more unit, namely, Establishment Unit was created in the Labour Department by transferring non-technical posts of District Inspector of Labour (re-designated as Labour Officer) and Assistant Inspector of Labour (re-designated as Assistant Labour Officer) from the Factories Wing. Prior to this arrangement the aforesaid non-technical posts were under the control of the Factories Wing. On 15.9.1966 Government issued Rules under the proviso to Article 309 making Superintendents in the Factories and Boilers Wings and Assistant Inspectors of Labour retained in that Wing (re-designated as Assistant Inspector of Factories) eligible for appointment by

transfer as District Inspector of Labour (now Labour Officer). On 28.1.1971 Government ordered that the ministerial staff in all the 4 units, namely, Labour, Factories, Boilers and Establishment at the headquarters were to be treated as one unit. On 6.8.1974 Government ordered that the Factories and Boilers units were to function with Chief Inspector of Factories and Boilers as the head of the department, and the Labour and Establishment units were to function under the control of Commissioner of Labour. It was clarified that the ministerial staff in all the 4 units were eligible for appointment by transfer to the post of Assistant Inspector of Labour (re-designated as Assistant Labour Officer) and District Inspector of Labour (re-designated as Labour Officer). On 18.10.1975 the Presidential Order was issued under Article 371-D of the Constitution to provide for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment, education etc. On 20.5.1976 ministerial posts of Factories and Boilers Department were organized into Local cadres pursuant to the Presidential Order. Similarly, the posts in the Labour Department were also organised into local cadres. On 11.5.1977 posts of Labour Enforcement Officer (previously designated as Deputy Inspector of Labour and subsequently re-designated as Labour Officer) were organized into multi-zone cadre posts. On 2.9.1977 by the Rules made under proviso to Article 309, UDC's of the Labour Department and Factories and Boilers Department were made eligible for recruitment by transfer to the posts of Assistant Inspector of Labour/Assistant Inspector of Factories. On 20.7.1982 in G.O.503 the Government directed that the concessions given in G.O.607 dated 6.8.1974 to the effect that the ministerial staff in the Factories and Boilers Department shall be eligible for appointment by transfer to the post of Assistant Inspector of Labour (Assistant Labour Officer) and District Inspector of Labour (Labour Officer) shall continue to the last person in the department as on 20.7.1982 and the concession will be withdrawn in respect of persons appointed thereafter in the Factories and Boilers department. The said concession was extended to the last person in the department by a memorandum dated 19.5.1983. By G.O.Ms.No.72 Government issued Rules under proviso to Article 309 making Senior Assistant belonging to the Factories and Boilers departments as well as Labour department eligible for appointment by transfer to the post of Assistant Labour Officer/Assistant Inspector of Factories. These were treated to be zonal non-gazetted posts, unit of appointment being the zone. In G.O. Ms 170 Rules under proviso to Article 309 were issued constituting the posts of Labour Officer into multi-zonal cadre posts.

3. Ministerial employees of the Labour department challenged the Rules issued in G.O.Ms 72 dated 25.2.1986 and G.O.Ms.117 dated 28.5.1986 before the Tribunal. A Full Bench of the Tribunal allowed the petitions and declared that the impugned Rules to the extent they enable the ministerial employees of the Factories and Boilers department or any other department to be considered for appointment to the posts in Labour department are violative of paras 3 and 5 of the Presidential Order and, therefore, were void. However, liberty was given to the Government to create posts in the Factories and Boilers Departments for persons who were regularly appointed more than 3 years prior to the filing of the petitions before the Tribunal in the Executive posts in Labour Department, without affecting the rights of the employees of the Labour Department in the respective zones.

4. Tribunals' conclusions essentially are as follows:-
The Presidential Order was enforced on 18.10.1975. The post of Senior Assistant is required to be organised in a zonal cadre and for the Labour Department there has to be an additional city cadre. Organising cadre in each department under para 3 includes determination of cadre strengths both in respect of permanent and temporary posts. In accordance with definition of cadre in the fundamental rules the first step which was required to be taken for implementation of the Presidential Order was localization of cadres by determining cadre strength of each post required to be organised in local cadre. In Schedule Two of the Presidential Order, the requirements indicated include geographical spread of the zone and the ratio and also the administrative needs of the department. The local cadre is the

unit under para 5(1) of the Presidential Order for recruitment, appointment, seniority, promotion and transfer. Therefore, the zone is the unit for the organised cadre of the zone. Para 9 speaks of the carry forward of a post and not a vacancy. According to para 5(1) the essential cadre of the department will be unit for the purpose of recruitment, appointment, seniority, promotion, transfer etc. Even a transfer to an equivalent post is required to be restricted within the zone. Para 5(2) enables to the State Government to make provisions for transfer of a person from and to a post in a category and a post in the same category outside the zonal cadre. It is to be noted that the essential cadre of each department is the unit not only for direct recruitment but also for recruitment by transfer, seniority and promotion in the department. An additional feeder category of ministerial employees organised in six separate cadres of another department will violate the requirements of para 3(3) and 5(1), as the seniority in the departmental cadre should be the criteria for the purposes of promotion and appointment to higher posts in the department. Accordingly, the Rules were held to be violative of Article 371-D.

5. When the matter was placed for hearing after grant of leave reliance was placed by learned counsel for the appellants on the decisions in V. Sadanandam (supra) and B. Satyanarayana Rao (supra) to contend that this Court has upheld similar provisions which have been struck down by the Tribunal as void. However, the Bench hearing the appeals expressed doubt about the correctness of the view expressed in these cases and as noted above the appeals were directed to be placed before a 3 Judges Bench.

6. Mr. P.N. Mishra, learned senior counsel appearing for the appellants submitted that the two decisions referred to above were squarely applicable to the facts of this case. In any event the Rules have been made in consonance with the Presidential Order and there is no inconsistency. Para 5(2) of the Presidential Order authorises the State Government to pass necessary orders in the circumstances indicated in the said paragraph. According to him, public interest is paramount in the case and taking into account the background facts it was felt by the Government that in order to provide for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment, impugned Rules were formulated. If the interpretation by the Tribunal is accepted it would mean the denial of opportunities and would be against the very spirit of the Presidential Order. It was also submitted that the expression 'transfer' used in para 5(2) has to be given a wider meaning, and promotional prospects are clearly inter-linked and cannot be divested from a transfer. If necessary, according to him, a purposive interpretation has to be made.

Per contra, learned counsel appearing for the respondents who were the petitioners before the Tribunal submitted that the very object of the Presidential Order is to provide better employment facilities to persons of neglected areas and the scope for a departure is rather limited and if the State wanted to make a departure it is authorized to do so within the four corners of the prescriptions in the Presidential Order. Transfer according to him, is permissible in respect of similar posts, and by no stretch of imagination this is permissible to include a promotional prospect or avenue.

7. Learned counsel for the State of Andhra Pradesh submitted that though it is contended by appellant about States' stand before the Tribunal being correctness of the impugned Rules, yet on a closer reading of the provisions it has been noticed that the Tribunal's Judgment does not suffer from any infirmity and, therefore, appeals were not filed by the State. It is also pointed out that supernumerary posts have been created to effectuate the Tribunal's judgment.

In order to appreciate the rival submissions, it would be necessary to note a few statutory provisions which have reliance so far as the dispute is concerned. Article 371-D so far as relevant reads as follows:-

"371D.(1) The President may by order made with respect to the State of Andhra Pradesh provide, 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.

(2) An order made under clause (1) may, in particular

(a) require the State Government to organize 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 organized;

(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;

(ii) for direct recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

Â© specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made

(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;

(ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order, to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be.

(3) The President may, by order, provide for the constitution of an Administrative Tribunal for the State of Andhra Pradesh to exercise such jurisdiction, powers and authority [including any jurisdiction, power and authority which immediately before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, was exercisable by any court (other than the Supreme Court) or by any tribunal or other authority] as may be specified in the order with respect to the following matters, namely:-

(a) appointment, allotment or promotion to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the

State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;

(b) seniority of person appointed, allotted or promoted to such; class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;

Â© such other conditions of service of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State or to such class or classes of civil posts under the State or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order.

(4) ..
(5) ..
(6) ..
(7) ..
(8) ..

(9) Notwithstanding any judgment, decree or order of any court, tribunal or other authority

(a) no appointment, posting, promotion or transfer of any person

(i) made before the 1st day of November, 1956, to any post under the Government of, or any local authority within, the State of Hyderabad as it existed before that date; or

(ii) made before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, to any post under the Government of, or any local or other authority within the State of Andhra Pradesh; and

(b) no action taken or thing done by or before any person referred to in sub-clause (a), shall be deemed to be illegal or void or ever to have become illegal or void merely on the ground that the appointment, posting, promotion or transfer of such person was not made in accordance with any law, then in force, providing for any requirement as to residence within the State of Hyderabad or, as the case may be, within any part of the State of Andhra Pradesh, in respect of such appointment, posting, promotion or transfer.

(10) The provisions of this Article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force."

"Impugned Rules: (so far as relevant read as follows).

O R D E R

The following notification shall be published in the Andhra Pradesh Gazette:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Andhra Pradesh hereby makes the following Special Rules for the posts of Assistant labour Officers in the Andhra Pradesh Labour Subordinate Services:

The rules hereby made shall be deemed to have come into force with effect from the 2nd September, 1985;

RULES

1. CONSTITUTION: this category shall consist of Assistant Labour Officers including Labour Inspectors of factories in the Andhra Pradesh Labour Subordinate Service.

2. APPOINTMENT: Appointment to the category shall be made :

- (i) by direct recruitment;
- (ii) by recruitment by transfer from the categories of senior assistants and senior stenographers of the Labour Department and Factories and Boilers Department in the Andhra Pradesh Ministerial Services restricted to those working in the zones in which the vacancies arise;
- (iii) by recruitment by transfer from among the personnel working in the Labour Welfare Centres of the Labour Department under the Andhra Pradesh General Subordinate Service, restricted to those working in the zones in which the vacancies arise.

Provided that all appointments by transfer to the category shall be made on grounds of seniority cum efficiency.

Provided further that among the senior assistants, senior stenographers and the personnel working in the Labour Welfare Centres, in the Labour Department, the appointment to the post of Assistant Labour Officers shall be made in the ratio of 8:1:1 respectively in the following rotation:-

- 1. Senior Assistant
- 2. Senior Assistant
- 3. Senior Assistant
- 4. Labour Welfare Centre Staff
- 5. Senior Assistant
- 6. Senior Assistant
- 7. Senior Assistant
- 8. Senior Stenographer
- 9. Senior Assistant
- 10. Senior Assistant;

Provided also that in a unit of 10 vacancies other than leave vacancies, the 1st, 4th, 7th and 10th vacancies shall be filled in by direct recruitment and the remaining six vacancies shall be filled in the appointment by transfer.

Provided also that among the Senior Assistants and senior Stenographers of the Directorate and the senior assistants and senior stenographers of the subordinate offices, the appointment shall be in the ratio of 2:3 respectively in the following rotations:

1st vacancy - Subordinate Office
2nd vacancy - Directorate Office
3rd vacancy - Subordinate Office
4th vacancy - Directorate Office
5th vacancy - Subordinate Office

Provided also that if an eligible candidate belonging to Directorate Office or Subordinate Office including Labour Welfare Centre Staff, is not available for appointment in the turn allotted for them in the order of rotation, the turn allotted for them in the order of rotation, the turn shall lapse and the vacancy shall be filled in by candidate of next turn in the order of rotation.

3. APPOINTING AUTHORITY: the Deputy Commissioner of Labour in the respective zones concerned shall be the appointing authority for the posts of Assistant Labour Officers.

4. UNIT OF APPOINTMENT: For the purposes of recruitment, appointment, discharge for want of vacancy, seniority, promotion, transfer and appointment as full member, there shall be seven separate units as detailed below:

ZONE I : Comprising the districts of Srikakulam, Vizianagaram and Visakhapatnam.

ZONE - II : Comprising the districts of East Godavari, West Godavari and Krishna.

ZONE III : Comprising the districts of Guntur, Prakasam and Nellore.

ZONE IV : Comprising the districts of Kurnool, Cuddapah, Anantapur and Chittoor.

ZONE V : Comprising the districts of Adilabad, Karimnagar, Warangal and Khammam.

ZONE VI : Comprising the districts of Ragareddy, Nalgonda, Mahaboobnagar, Medak and Nizamabad.

ZONE VII : Twin cities of Hyderabad and Secundrabad."

PRESIDENTIAL ORDER : (so far as relevant) reads as follows:

"The following Order of President of India, G.S.R. 524 (E), dated the 18th October, 1975 is republished :-

THE ANDHRA PRADESH PUBLIC EMPLOYMENT
(ORGANISATION OF LOCAL CADRES AND
REGULATION OF DIRECT RECRUITMENT)
ORDER, 1975.

ORDER

G.S.R. 524(e): - In exercise of the powers conferred by clauses (1) and (2) of articles 371-D of the Constitution, the President hereby makes, with respect to the State of Andhra Pradesh, the following Order, namely:-

1. Short title, extent and commencement (i) This Order may be called the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975.

(2) It extends to the whole of the State of Andhra Pradesh.

(3) It shall come into force at once.

2. Interpretation (1) In this Order, unless the context otherwise requires

(a).

(b)

Â© '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 areas specified in sub-paragraph (5), of paragraph 8 of this Order;

(d) 'local authority; does not include any local authority which is not subject to the control of the State Government;

(e) '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;

(f) 'local candidate' in relation to any local area, means a candidate who qualifies under paragraph 7 as a local candidate in relation to such local area;

(g)..

(h) 'Schedule' means a Schedule appended to this Order;

(i)..

(j)..

(k)'State Government' means the Government of Andhra Pradesh.

(l).

(m)'Zone' means a zone specified in the Second Schedule comprising the territories mentioned therein;

(2) The General Clauses Act, 1897 (10 of 1897) applies for the interpretation of this Order as it applies for the interpretation of a Central Act.

(3) Organisation of local cadre

(1) The State Government shall, within a period of twelve months from the commencement of this Order, organize 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.

(2) The posts belonging to the category of lower division clerk, 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.

Explanation For the purposes of this sub-paragraph, sub-paragraph (1) of paragraph 6, and sub-paragraph (1) of paragraph 8, a category shall be deemed to be equivalent to or lower than that of lower division clerk if the minimum of the scale of pay of a post belonging to that category or, where the post carries a fixed pay, such fixed pay, is equal to or lower than the minimum of the scale of pay of a lower division clerk.

(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.

(4) The posts belonging to each specified gazetted category in each department in each zone shall be organised into a separate cadre.

(5) Notwithstanding anything contained in sub-paragraphs (3) and (4), the State Government may, where it considers it expedient so to do and with approval of the Central Government, organize the posts belonging to any of the categories referred to therein, in any department, or any

establishment thereof, in two or more continuous zones into a single cadre.

(6)..

(7) In organizing 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 organizing or continuing more than one cadre in respect of such category in such department for such part of the State.

(8) Where the Central Government is satisfied that it is not practicable or expedient to organize local cadres under this paragraph in respect of any non-gazetted category of posts in any department, it may, by notification, make a declaration to that effect and on such declaration the provisions of this paragraph shall not apply to such category of posts.

4. ..

5. Local cadres and transfer of persons:

(1) 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, and such other matters as may be specified by the State Government, in respect of that category of post.

(2) Nothing in this Order shall prevent the State Government from making provisions for :

(a) the transfer of a person from any local cadre to any Office or Establishment to which this Order does not apply, or vice-versa;

(b) the transfer of a person from a local cadre comprising posts in any Office or Establishment exercising territorial jurisdiction over a part of the State to any other local cadre comprising posts in such part, or vice-versa; and

Â© the transfer of a person from one local cadre to another local cadre where no qualified or suitable person is available in the latter cadre or where such transfer is otherwise considered necessary in the public interest."

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 lower division clerk or to any other category equivalent to or lower than that of a lower division clerk;

(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 a lower division clerk 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 such 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;

(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 lower division clerk but does not exceed Rs.480/- per mensem; or a fixed pay which exceeds the minimum of the scale of pay of a lower division clerk but does not exceed Rs.480/- per mensem;

8. The object of enacting Article 371-D appears to be two-fold:-

(1) To promote equal development of the backward areas of the State of Andhra Pradesh, so far as to secure balanced development of the State as a whole.

(2) To provide equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service.

This was observed to be so in Chief Justice of Andhra Pradesh vs. L.V.A. Dikshitulu (AIR 1979 SC 193).

9. It is to be noted that para 5(1) of the Presidential Order is in terms of para 3(3) thereof. Para 3(3) postulates that each department in each zone shall be organised into a separate cadre. Para 5(1) speaks of 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 the category of posts and each part of the State for which local cadre has been organised in respect of any category of posts is required to have a separate unit for the aforesaid purposes. Para 5(2) is in the nature of an enabling provision which authorizes the State Government to make provisions for transfer in certain specified circumstances. The present dispute relates to para 5(2) Â©. It speaks of a "transfer". Attempt of the appellants is to give enlarged meaning to the expression to include promotional aspects. It has been contended in that context that though para

5(1) treats promotion and transfer separately, yet that distinction would not be applicable to cases covered by para 5(2). The contention is clearly untenable.

10. Transfer in relation to service reduced to simple terms means a change of place of employment within an organization, as stated in New Oxford English Dictionary, 1993 Edition, Vol.2, p.3367. It is an incidence of public service and generally does not require the consent of the employee. In most service rules, there are express provisions relating to transfer. For example, Fundamental Rule 15 provides:

"F.R.15(a) The President may transfer a Government servant from one post to another; provided that except

- (1) on account of inefficiency or misbehaviour, or
- (2) on his written request,

a Government servant shall not be transferred substantively to, or, except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in clause (a) of this Rule or in clause (13) of Rule 9 shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of Rule 14."

Service rules sometimes define transfer. For example, supplementary Rule 2(18) of the Fundamental Rules governing Central Government servants defines transfer in the following terms:

"Rule 2(18): Transfer means the movement of a Government servant from one headquarter station in which he is employed to another such station, either

- (a) to take up the duties of a new post, or
- (b) in consequence of change of his headquarter."

Though, definitions may differ and in many cases transfer is conceived in wider terms as a movement to any other place or branch of the organization, transfer essentially is to a similar post in the same cadre as observed by this Court in B. Varadha Rao vs. State of Karnataka (AIR 1987 SC 287). It is now well settled that a government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incidence of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified non-transferable post. No transfer is made to a post higher than what a Government servant is holding. In other words, it is generally a lateral and not vertical movement within the employers organization.

11. Strong reliance has been placed in para 15 of Sadanandam's case (supra) for contending that transfer also includes promotion. The para reads as follows:

"In the first place, we must point out that the Tribunal has failed to construe para 5(2) of the Presidential Order in its proper perspective and give full effect to the powers conferred thereunder on the State Government to make provisions contrary to the scheme of local cadres prescribed under para 5(1). The words of sub-para (2) of para 5 viz. "nothing in this order shall prevent the State Government from making provision for" sets out the

overriding powers given to the State Government under the sub-para. Such overriding powers have been given to the State Government in express terms in recognition of the principle that public interest and administrative exigencies have precedence over the promotional interests of the members belonging to local cadres and zones. Since para 5(2) also forms a part of the Presidential Order, it forms part of the scheme envisaged for creating local cadres and zones. The Tribunal was, therefore, in error in taking the view that if the State Government was to exercise its powers under para 5(2) and make provision for promotion of U.D. Assistants in the Directorate and Assistant Section Officers in the Secretariat to be transferred to posts in zones I to IV, it will be the very negation of the creation of cadres and zones under para 5(1) and it will be destructive of the scheme underlying the Presidential Order. In fact the Tribunal has realized the operative force of para 5(2) to some extent but it has failed to give full effect to its realization of the scope of Section 5(2). In para 12 of its judgment in R.P.No. 1595 of 1983 the Tribunal has stated that since the amended rule refers to para 5(2) of the Presidential Order "it will no longer be open to the petitioners to attack the amendment as was done in respect of the earlier amendment in the previous R.P." The Tribunal has thus noticed that the amended rule has been brought about by the government in exercise of its powers under para 5(2) but it has failed to draw the logical inference following therefrom."

It is to be noted that in the second case relied upon by the learned counsel for the appellants reference was made to *Sadanandam case* (supra) and there was no independent analysis of the legal provisions.

12. We find that para 5(2) of the Presidential Order speaks of transfer and not of promotion. It would be hazardous to accept the contention of the appellants that promotion is included in the expression 'transfer' and no assistance can be availed from the distinction made in para 5(1) of the Order. No provisions or word in a statute has to be read in isolation. In fact, the statute has to be read as a whole. A statute is an edict of the legislature. It cannot be said that without any purpose the distinction was made in para 5(1) between transfer and promotion and such distinction was not intended to be operative in para 5(2). The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid as to what has been said as also to what has not been said. See *Mohd. Ali Khan vs. Commissioner of Wealth Tax, New Delhi* (AIR 1997 SC 1165) and *Institute of Chartered Accountants of India vs. M/s. Price Water House* (AIR 1998 SC 74). As a consequence a construction which requires for its support addition or substitution of words or which resorts for rejection of words as meaningless has to be avoided. As stated by the Privy Council in *Robert Wigram Crawford vs. Richard Spooner* (1846 (6) Moore PC 1) "We cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make deficiencies which are left there". The aforesaid decision was referred to by this Court in *State of Gujarat and Ors. vs. Dilipbhai Nathjibhai Patel & Anr.* (JT 1998 (2) SC 253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock vs. Frank Jones (Tiptan) Ltd.* (1978 [1] All.ER 948 (HL)). Similarly, it is wrong and dangerous to proceed by substituting some other words for words of the statute. (See *Pinner Vs. Everett* (1969 [3] All.ER 257). In other words, there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding a particular case. Much trouble is made by substituting other phrases assumed to be equivalent, which then are reasoned from as if they were in the Act. In *Union of India vs. Deoki Nandan Aggarwal* (AIR 1992 SC 96), it was observed that the Court cannot refrain

the legislature for the very good reason that it has no power to legislate. It is incumbent on the Court to avoid the construction if reasonably permissible on the language which would render a part of the statute devoid of any meaning or application. In the interpretation of statutes, the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have an effect. We, therefore, find no reasons to accept this stand of the appellant that the expression "transfer" takes within its scope a promotion.

13. We may note here that learned counsel for the State of Andhra Pradesh submitted with reference to the counter affidavit filed in this Court that the impugned Rules were not intended to carve out a class of employees in terms of para 5(2) for "public interest". That being the position, we need not go into the question whether a consideration on a case to case basis is called for in terms of para 5(2).

13. 14. In *Sadanandam's* case (supra), while considering the legality of amended provisions of the Rules framed by the State Government and in sustaining the same, this Court was of the opinion that as the aforesaid rules had been framed under Section (3) of the Andhra Pradesh Ordinance 5 of 1983 read with paragraph 5(2)(a) of the Presidential Order, the conclusion of the Tribunal in striking down the rule is erroneous. The Court was of the opinion that mode of recruitment and category from which the recruitment to a service should be made are policy matters exclusively within the purview and domain of the executive and it would not be appropriate for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made. In our considered opinion, both the aforesaid reasons do not constitute a true interpretation of the provisions of the Presidential Order. At the outset, it may be noticed that Article 371-D (10) of the Constitution unequivocally indicates that the said Article and any order made by the President thereunder shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force. Necessarily, therefore, if it is construed and held that the Presidential Order prohibits consideration of the employees from the feeder category from other units then such a rule made by the Governor under the proviso to Article 309 of the Constitution will have to be struck down. Then again in exercise of powers under paragraph 5(2) of the Presidential Order if the State Government makes any provision, which is outside the purview of the authority of the Government under para 5(2) of the Order itself, then said provision also has to be struck down. Having construed the rules framed by the Governor under proviso to Article 309 of the Constitution from the aforesaid stand point, the conclusion is irresistible that the said rule to the extent indicated by the Tribunal is constitutionally invalid and its conclusion is unassailable. In the case in hand, the impugned provisions do not appear to have been framed in exercise of powers under paragraph 5(2) of the Presidential Order and as such the same being a rule made under proviso to Article 309 of the Constitution, the Presidential Order would prevail, as provided under Article 371-D (10) of the Constitution. Even if it is construed to be an order made under Paragraph 5(2) of the Presidential Order, then also the same would be invalid being beyond the permissible limits provided under said paragraph. In this view of the matter, the Tribunal rightly held the provision to the extent it provides for consideration of employees of the Factories and Boilers units to be invalid, for the purpose of promotion to the higher post in the Labour unit and as such we see no justification for our interference with the said conclusion of the Tribunal and the earlier judgment of this Court in *Sadanandam's* case (supra) must be held to have not been correctly decided. As a consequence, so would be the case with *Satyanarayana Rao's* case (supra).

15. Notwithstanding our aforesaid conclusion, it would be in the interest of the Administration to have a channel of promotion for every service, so as to avoid stagnation at a particular level, subject however to the condition that the incumbents of a service are otherwise qualified to shoulder the responsibilities of the higher promotional post. The appropriate authority of

the Government, therefore, should bear this in mind and consider the feasibility and desirability of continuing the supernumerary posts already created in the Boilers and Factories Department on a permanent basis, so that the employees from the lower echelon in the said Department have a promotional channel or, to make suitable promotional avenue at least upto some level, so that there would not be any discontentment amongst the employees in the concerned Department.

The appeals are without any merit and are accordingly dismissed.

..J.
(G.B. PATTANAIAK)

..J.
(RUMA PAL)

.J.
(ARIJIT PASAYAT)

November 7, 2001