

(2014) 09 AP CK 0064

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14332 of 2014

B. Kavitha

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 371D

Citation : (2015) 3 ALD 391 : (2015) 6 ALT 72

Hon'ble Judges : K.C. Banu, J;Anis, J

Bench : Division Bench

Advocate : G. Vidyasagar, Sr. Counsel for K. Udaya Sri, Advocate for the Appellant; G. Vivekananda, SC for APPSC, K.R. Prabhakar, J.R. Manohar Rao, T. Sudhakar Reddy, J. Sudheer and Venkateswarlu Posani, Advocate for the Respondent

Judgement

K.C. Bhanu, J.—This writ petition is filed under Article 226 of the Constitution of India, challenging the order, dated 29-04-2014 in Original Application No. 970 of 2013 (for short "O.A.") on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal").

2. O.A. No. 970 of 2013 was filed by the petitioner herein along with 7 others stating that notification No. 25/2012 , dated 29-12-2012 was issued calling for applications for recruitment to the post of Child Development Project Officer (for short "CDPO") in Women Development and Child Welfare Service notifying 107 posts, Breakup vacancies are 28 for Multi Zone I and 79 for Multi Zone II for Women. In the said notification, it is made clear that the selection shall be made on State Wide merit and the candidates selected would be allotted to Multi Zone I & it at Note-5 r/w Para-8 of the Notification, which is contrary to the provisions of the Presidential Order and also Special Rules issued in G.O. Ms. No. 5, dated 01-02-2001. The 1st respondent has no authority or power to make selections on the basis of State-wide merit when the post comes under Multi zone cadre as per the provisions of the Presidential Order. The 1st respondent relied on

Government letter No. 5012/Estt. A2/2011, dated 21-06-2012, which is contrary to the earlier letter of the Government of the same department, vide letter No. 5012/Estt. A2/2011, dated 04-01-2012, wherein a detailed instructions have been issued after constituting a High Level Committee of the Secretaries. Therefore, the letter, dated 21-06-2012 is null and void. When a similar situation, arose in Notification No. 12/2004, which was impugned before the Tribunal in O.A. Nos. 5115 of 2007, 3897 of 2008 and 6405 of 2007, the Tribunal found fault with the selection of candidates on the basis of State-wide merit and disposed of the matter by declaring the action of the Andhra Pradesh Public Service Commission (for short "APPSC") is illegal and contrary to the provisions of law. In the earlier Notification No. 8/2010, dated 25-06-2010, it is mentioned that the selections will be made on the basis of Multi-zone wise. The stand of APPSC that the post of CDPO is not organized under the Presidential Order at Sub-para 3 of Para-8 is absurd since the posts which are organized in the above sub para are zonal cadre posts. Pursuant to the above Committee decision, the 2nd respondent addressed a letter, dated 04-01-2012 to APPSC based on the above meeting and found fault with APPSC making the post of CDPO as State Level Selections in stead of Multi-zone selection. Respondents 1 and 2 have not followed the provisions of the Presidential Order, Special Service Rules and Govt. Letter, dated 31-12-2007 and order of the Tribunal. The Government in G.O. Ms. No. 541, G.A. (SPF.A) dept., dated 08-08-1977 organizing the post of CDPO to two Multi-zones viz., Multi-zone I & Multi-zone II. In spite of Government clear instructions, APPSC for the reasons best known to it, started illegal selection process. Rule 11 of G.O. Ms. No. 5, dated 01-02-2001 clearly says that it should be filled up the vacancies from Multi-zone wise, not for the State-wide merit and 4th respondent is appointing authority, unit of appointment for the purpose of recruitment, discharge for want of vacancy, re-appointment and seniority etc., CDPO is equivalent to Women and Child Welfare Officer (for short "WACWO"), as these posts were equated with that of WACWO in G.O. Ms. No. 760, WD & CW, Dept., dated 21-09-1981. As per G.O. Ms. No. 541, dated 08-08-1977, the post of WACWO is Multi-zone cadre. Therefore, they pray to declare the Notification No. 25/2012, dated 29-12-2012 issued by the 1st respondent insofar as Note-5 r/w Para-8 of the said Notification as the post of CDPO is to be filled by drawing State-wide merit is concerned as illegal and arbitrary and contrary to the provisions of Presidential Order and G.O. Ms. No. 541, dated 08-08-1977 and quash the same and consequently declare that the post of CDPO is to be filled up on the basis of Multi-zone wise.

3. A common counter-affidavit was filed by APPSC admitting about notifying of 107 posts of CDPOs. It is further stated that the post of CDPO is Gazetted right from its inception in the year 1975 vide G.O, Ms. No. 868, WD & CD Dept., dated 09-10-1975. Local reservation is not applicable to Gazetted posts unless they are included in para 8(3) of the Presidential Order. The posts of Tahsildars, Assistant Executive Engineers, Assistant Agriculture Officers, Inspectors of Police and Motor Vehicle Inspectors only have been included in para 8(3) and therefore,

local reservation is applicable to them only. Some of the posts which were initially under non Gazetted category and made Gazetted, did not change their nature of local reservation in view of the order of Government in G.O. Ms. No. 924, GA (MC-III), Dept., dated 12-12-2007. As the posts have been constituted into two Multi-zones for the purpose of posting, the selections though made on State-wide merit, candidates would be allotted to Multi-zones based on merit, Multi-zonal preference and availability of vacancies. In O.As. 5115 of 2007, 8788 of 2011, 3897 of 2008, 2114 of 2012 and 2089 of 2012, APPSC took the stand that it is a non-zonal posts. However, the Government took a different view and contended that it is a zonal post and therefore, the Tribunal disposed of the O.As. except O.A. No. 3897 of 2008 on 03-08-2011 with some directions and O.A. No. 3897 of 2008 was allowed with some directions. The disposal of those O.As was not brought to the notice of the Tribunal and the Tribunal observed that though the applicant has raised his objections specifically in the OA that the post of CDPO is only a Multi-zone post not a State-wide post, the respondents did not answer this question, but stated that the selections were made State-wide. The crucial aspect that the post is a State-wide post and that no specific guidelines are provided in the Presidential Order with regard to applicability of local reservation to this post are clearly mentioned in the counter affidavit, filed by the APPSC, but the same was not properly considered by the Tribunal. In pursuance of the orders of the Tribunal, APPSC addressed a letter No. 443/Rs-11/2007, dated 15-02-2012 to the Government followed by two other letters and pursuant to the same, series of meetings were held by the APPSC with the Principal Secretary of the Department concerned and other senior officials. After prolonged deliberations, the Government through letter No. 5012/Estt/.A2/2011, dated 21-06-2012 clarified in no unclear terms that there is no reservation to locals in the matter of Direct Recruitment to the post of CDPO and that to provide reservation to locals sub-para 3 of Para 8 of Presidential Order needs to be amended duly inserting the post of CDPO in the said para. Aggrieved by the orders in O.A. 5115 of 2007 and batch, the applicants filed Contempt Applications and the Tribunal directed the Government to file its counter and Government filed counter. The Government through letter No. 5012/Estt. A2/2011, dated 24-12-2012 reiterated that there is no local reservation to the post of CDPO in the matter of direct recruitment as the same is not included in Para 8(3) of the Presidential Order.

It is further stated that a high level meeting was held on 01-12-2012 by the Chief Secretary to Government on the same issue with the senior officials of the departments concerned and a consensus was arrived in the meeting as to the nature of CDPOs post as a non-zonal post and APPSC was requested to go ahead with the issuance of notification for pending 107 posts on the said lines and accordingly the present notification was issued. In view of the above, APPSC passed speaking orders informing the applicants in O.A. Nos. 5115 of 2007 and batch that the post of CDPO is non-zonal and therefore, the selection made by APPSC in pursuance of the Notification No. 12/2004 are in order. After perusing

the same, the Tribunal was pleased to close the Contempt Applications. Thus the present issue on hand was resolved before the Tribunal on earlier round of litigation. The applicant Smt. K. Sabitha Kumari in O.A. 3897 of 2008 filed C.A. 738 of 2012, which was closed on 26-02-2013 and she did not pursue the matter further. The other applicants filed W.P. 13272 of 2012 before the High Court of AP. Though they sought interim order, the same was not granted and the Government also filed counter and the said writ petition is still pending. The applicants have approached the Tribunal seeking redressal on the same issue, which was already decided by the Tribunal. The applicants are at liberty to compete for the post, subject to their eligibility. In view of the above, the applicants are not entitled for any relief and hence, it prays to dismiss the O.As.

4. The Tribunal after considering the material on record, held that as the post of CDPO is not included in Sub-para (3) of para 8 of Presidential Order, it cannot be treated as Multi-zonal post. Therefore, the notification in question cannot be held bad in law and accordingly dismissed the O.As. Aggrieved thereby, the present writ petition is filed.

5. Learned counsel appearing for the petitioner contended that in G.O. Ms. No. 541, dated 08-08-1977, it is clear that CDPO is a Multi-zonal post and therefore, rule of reservation in respect of local candidate in relation to local area has to be followed in terms of para 8 of Presidential Order, that G.O.P. Nos. 728 and 729 are contrary to the Presidential Order as per Para 11 of the Presidential Order and further they are executive instructions which cannot override statutory rules and therefore, the clause in the notification is illegal and the same has to be quashed.

6. Additional Advocate General for the State of Telangana contended that G.O. Ms. No. 5, dated 01-02-2001 is a special rules and therefore, they will prevail over and other rules, that CDPO is an organized post and not to make any provision for reservation, it violates Articles 14 and 16 of the Constitution of India, that G.O.P. Nos. 728 and 729 are not issued in pursuance of the prior permission or consent taken from the President of India, that they are only administrative instructions and" they cannot prevail over the statutory rules or the Presidential Order, that Para 11 of the Presidential Order will prevail over any other statute, ordinance and rules or regulations and hence, he prays to allow the writ petition.

7. On the other hand, learned standing counsel appearing for APPSC contended that from inception in the year 1975, CDPO is a Multi-zonal post, that as per G.O. Ms. No. 868 WD & CD Department, dated 09-10-1975, local reservation is not applicable to the said post unless they are included in Para (3) of the Presidential Order and this post is not included in the Presidential Order and also not covered by G.O. Ms. No. 924, General Administration (MC-III) Department, dated 12-12-2007, that therefore, CDPO is a State-wide post and selection was made accordingly and hence, he prays to dismiss the writ petition.

8. Mr. S. Ramachandra Rao, learned senior counsel appearing for the unofficial respondents contended that CDPO is not included in para 3 of the Presidential Order, that para 4 of the Presidential Order is very clear that CDPO is not included in any of the paras of the Presidential Order, G.O.P. Nos. 728 and 729 are very clear that CDPO is a State-wide post and therefore, question of rule of reservation does not arise.

9. On the other hand, implead petitioners contended that two letters addressed by the Government to APPSC, dated 04-01-2012 and 31-12-2007 have not been taken into consideration by APPSC where a direction was given to APPSC to notify the post as Multi-zonal post and that on earlier occasion in O.A. No. 5115 of 2007, the Government admitted that CDPO is a Multi-zonal post, that in between 2004 and 2013, three notifications have been issued notifying them as Multi-zonal post and therefore, they pray to allow the writ petition.

10. In Notification No. 25/2012, dated 29-12-2012, Note-5, which is impugned in the O.A. reads as follows:

"Reservation for local candidates is not applicable. The selection shall be made on the state wide merit and allotted to Multi Zone I & II as per preference given by candidate, in terms of departmental Special Rules (Govt. Lr.No.5012/Estt.A2/2011,; dated 21-06-2012."

Para 8 is almost similar to above note, which reads that the Rule of Reservation to the Local candidates is not applicable. The selection shall be made on the statewide merit and allotted to Multi Zone I & II. In earlier round of litigation in O.A. No. 3897 of 2008, Notification No. 12/2004 issued by APPSC for recruitment to the post of CDPO in notifying vacancies as statewide was under challenge. As per G.O. Ms. No. 5, dated 01-02-2001, the post of CDPO is only Multi-zonal post and unit of appointment is zone, but not statewide post. Similarly in O.A. No. 64405 of 2007, CDPO is a Multi-zonal post.

11. Now the points that arise for consideration are:

"(1) Whether the post of CDPO is a state-wide post or Multi-zonal post?

(2) Whether unsuccessful candidates can challenge anyone of the paras in the Notification No. 12/2004 having participated in the selection process?"

12. POINT No. 1: With twin object, Article 371-D was inserted by the Constitution (32nd Amendment) Act, 1973, which came into effect from 01-07-1974. The objects are; (i) to promote accelerated development of the backward areas of the composite State of Andhra Pradesh, so as to secure the balanced developmental of the State as a whole, (ii) to provide equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service. For the purpose of this case, clauses (1) and (2) of Article 371-D of the Constitution of India are relevant. They read as follows:

"371-D Special provisions with respect to the State of Andhra Pradesh:--(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 principal and procedure as may be specified in the order the persons holding such post 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 organized 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;

(c) 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."

13. His Excellency President of India in exercise of powers conferred by clauses (1) and (2) of Article 371-D of the Constitution of India made an order called The Andhra Pradesh Public Employment (Organisation Of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as "the Presidential Order"). Paragraph (3) provides that the State Government shall within a period of twenty seven 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.

From the above provision, it is clear that the Government has power to establish or create classes of posts in the civil services and classes of civil posts in the State into different local cadres for different parts of the state. In other words, 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 of Andhra Pradesh. Cadre means the strength of an establishment or service sanctioned as a separate unit vide F.R. 9(4) of Fundamental Rules. The proviso to said paragraph provides 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 organize any classes of posts in the civil services of and classes of civil posts under the State into different local cadres or different parts of the State.

Irrespective of the time limit mentioned in Para 3, the President can issue an order to establish or create any classes of posts in the civil services and classes of civil posts under the State into different cadres for different parts of the State.

Sub-para (2) of Para 3 reads that the posts belonging to the category of lower division clerk and each of the other categories equivalent to or lower than that of a lower division clerk in each department in each district shall be organized into separate cadre. This may not be relevant for deciding the issue. Explanation reads that 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 a 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. Sub-para (3) reads that 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 organized into a separate cadre. Therefore, said para deals with non-gazetted officers.

Sub-para (4) deals with the posts belonging to each specified gazetted category in each department in each zone shall be organized into a separate cadre. So from the above provision, it is clear that gazetted category can also be created or established in each zone in each department as a separate category. In other words, it can be a class, group or classification of any kind. Sub-para (5) provides that notwithstanding anything contained in sub-paragraph (3) and (4), the State Government may where it considers it expedient so to do and with the approval of the Central Government, organized 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. So, this provision empowers the State Government to create or establish a post in any department of any category in two more contiguous zones into a single cadre. It should be done by obtaining prior approval of the Central Government.

14. The proviso to sub-para 2 of Para 6 reads that where a single cadre has been organized 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 separate local area in respect of such cadre. City of Hyderabad is a part of the State for the purpose of local area. This has been mentioned in First Schedule of Presidential Order. The remaining Districts in the State of Andhra Pradesh has been divided into VI zones for the purpose reservation of posts for local candidates. It is not notified in second schedule. The posts notified in third schedule can also be organized into a separate cadre. This sub paragraph empowers the State Government to organize any one of the Gazetted category can be organized into a separate cadre. A bare reading of sub paragraphs, 2,3 and 4 make it clear that the State Government is invested legally or formally with power or authorize Gazetted or non-Gazetted category in each zone can be created into a separate cadre.

15. The Tribunal placed reliance on sub-para (3) of para 8, which does not show inclusion of CDPO so as to reserve 60% of the posts be reserved in favour of local candidates and came to the conclusion that except to the gazetted posts, included in sub-para (3) of para 8, local reservation is not available to any other post. Sub-para (3) of Para 8 reads that 60% of the posts to be filled by direct recruitment at any time in any local cadre under the State Government comprising posts belonging to the categories of Tahsildars, Assistant Executive Engineers, Assistant Agricultural Officers, Inspectors of Police and Motor Vehicle Inspectors shall be reserved in favour of local candidates in relation to the local area in respect of such cadre. Therefore, CDPO is a gazetted post and it has to be filled up treating it as a statewide post.

16. There cannot be any dispute that once statutory rules have been made, the recruitment has to be in accordance with such rules. Rule 11 of A.P.W.D. & C.W. Rules reads thus:

"For purpose of recruitment, appointment, discharge, for want of vacancy, re-appointment, seniority, promotion, transfer and posting and appointment as full member to the post specified in column 2 of the table below the unit of the appointment shall be as specified in column (3) thereof."

17. Column (2) and category (6) shows insofar as the present post, Women and Child Welfare Officer including Child Development Project Officer is concerned, Unit of appointment for Unit I, Multi zone I, and for Unit II, Multi zone II. Unit I Multi zone I comprising of 9 districts. Unit II Multi zone II comprising of 12 districts. So, the Service Rules clearly provides that CDPO should be filled up Multi-zonal wise. Similarly, G.O. Ms. No. 541, General Administration (S.P.F.A.) Department, dated 08-08-1977, reads as follows:

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

SIX POINT FORMULA- The Andhra Pradesh Public Employment (Organization of Local Cadre and Regulation of Direct Recruitment) Order, 19750-Organization of

Multi-zonal cadres in pursuance of Paragraph 3 (5) of the Order-Approval of Government of India obtained-Orders-issued.

GENERAL ADMINISTRATION (SPF-A) DEPARTMENT

G.O.MS. No. 541

Dated 8th August, 1977

Read the following:--

1.G.O.Ms. No. 348, G.A. (SPF-A) Dept., dated 11-5-977.

2. From the Govt. of India, M.H.A. Lt. No. 3/1/74-Poll.(K): (DV)/SR, dated 26-7-1977.. ORDER:

Sub-paragraph (5) of paragraph 3 of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 provides that the State Government may, where it considers it expedient so to do and with the approval of the Central Government organize the posts belonging to any of the categories referred to in subparagraph (3) sub-paragraph (4) of paragraph 3 of the order in any Department or any establishment there of in two or more contiguous zones into a single cadre. The Government of India has in their letter read above, communicated their approval for the organization of, single cadres in 2 or more contiguous zones in respect of 6 categories of posts given in the table below in the manner indicated against each such category. Government therefore, direct organization of Multi-zonal cadres in respect of the following 6 categories of posts specified in column (2) of the table given below comprising posts in the zones specified in column 3 thereof.

The Departments of Secretariat are informed that where direct recruitment to any of the categories indicated in para one above is required to be done under the relevant Service Rules, the proviso to sub-Paragraph (2) of paragraph 6 and subparagraph (4) of paragraph 8 of the Presidential Order and the relevant instructions contained in G.O.P. No. 728, General Administration Dept., dated 1-11-1975 and G.O.P. No. 729, General Administration Dept., dated 1-11-1975 have to be kept in view and scrupulously followed."

District Women and Child Welfare Officer is one of the categories indicated in para 1. As per the above G.O., the Government directed organization of Multi-zone cadres in respect of 6 categories of posts, one such category is District Women and Child Welfare Officer.

18. The counsel for the implead petitioner relied on the Government letter addressed to the Secretary, APPSC in Lr. No. 3222/Estt.A2/2007, dated 31-12-2007, wherein it requested APPSC to follow the Multi Zone system for the selections to 37 posts of CDPO as envisaged in the service rules of this department as contained in G.O. Ms. No. 5, WD, CW & D.W. Dept., dated 01-02-2001. The committee of officers after discussing at length with reference to rules and orders of the Tribunal, decided to address a detailed letter to APPSC

to review the selection made under the notification 12/2004 for the CDPOs and a final selection list of Multi Zone I and II sent to Government so as to do justice to the candidates who were overlooked because of State wide selection made by APPSC. Similarly another letter was addressed by the Government, Department for Women Children, Disabled and Senior Citizens to the Secretary, APPSC, dated 04-01-2012 requesting the APPSC to issue notification for the 107 posts of CDPOs//WCWOS and make the selection on Multi-zonal basis as per G.O. Ms. No. 5, WD, CW & D.W. Dept., dated 01-02-2001. Contrary to this letter, the present notification was issued for selection of CDPOs on State-wide merit. G.O. Ms. No. 541, dated 08-08-1977 was issued in terms of para 3 (5) of the order. So the State Government can organize the post belonging to any department in two or more contiguous zones into a single cadre. The Central Government has approved the certain categories of posts. In the zones specified in column 3 of G.O. Ms. No. 541, District Women and Child Welfare Officer, posts in the zones are organized into a single cadre. Therefore, in view of the above order, the post of District Women and Child Welfare Officer is a Multi-zonal post, but not a State-wide post.

19. Learned counsel for the respondent placed reliance on G.O.P. No. 728, dated 01-11-1975, which deals with category of posts and manner of organizing local cadres. Para 4 reads as follows:

For the above purpose, a post shall be deemed to be equivalent to, or lower than that of Lower Division Clerk if the scale of pay of the post or where the post carries a fixed pay such fixed pay, is equal to or lower than the minimum of the scale of a Lower Division Clerk, viz., Rs. 240 (Vide explanation to Paragraph 3(2) of the Order).

While for the above purpose a district is a Revenue district, a zone is one of the groups of specified districts set out in the Second Schedule to the Order.

20. Similarly, in G.O.P. No. 729, dated 01-11-1975, 4 (B) deals with posts under local authorities, which reads as follows:

"Posts under local authorities: Posts carrying a scale of pay the minimum of which or a fixed pay which does not exceed Rs. 480 p.m. and forming part of a cadre under a local authority.

A local cadre for this purpose means any local cadre of posts under the State Government organized in pursuance of para 3 of the order or constituted otherwise for any part of the State. It may be noted here that the scheme of reservation in favour of local candidates does not apply to gazetted categories other than Tahsildars, Junior Engineers, and Civil Assistant Surgeons, even though they may have been organized into local cadres by virtue of their inclusion in Third Schedule to the Order.

The expression "local authority" does not include any local authority not under, the control of the State Government. Therefore, while Gram Panchayats,

panchayat Samithis, Zilla Parishads, Zilla Grandhalaya Samsthas, Municipalities and Hyderabad Municipal Corporation will be covered, the scheme will not apply to posts under the Port-Trust, Visakhapatnam and Secunderabad Cantonment Board".

These G.Os were issued by the Government not in terms of Para 3 nor Para 5 of the Presidential Order. They are executive instructions. They can supplement, but not supplant. Any executive instructions contrary to the Presidential Order "or Service Rules cannot be acted upon. So, the contention that the post of CDPO is a State-wide post is untenable and wholly devoid of merit. As per G.O. Ms. No. 541, dated 08-08-1977 issued by the State Government with the approval of the Government of India in terms of Para 5 of the Presidential Order, it is Multi-zonal post. Para 11 of the Presidential Order has a over-riding effect, which reads that anything contained in any Statute, Ordinance, rule, regulation or other order made before or after this order in respect of direct recruitment to posts under the State Government or any local authority. Therefore, this point is answered holding that post of CDPO is not a state-wide post, but it is a Multi-zonal post..

21. POINT No. 2: Notification No. 25/2012 was issued calling for the applications w.e.f. 22-01-2013 to 24-02-2013 for recruitment to the post of CDPO in Women Development and Child Welfare Service. Note-5 r/w para 8 is very clear that selection shall be made on State-wide merit and allotted to Multi-Zones I and II. Again same Notification No. 25/2012 was issued calling for applications w.e.f. 20-01-2013 to 20-03-2013 for the posts. This notification also shows the same thing except some modifications which are not relevant for the purpose of disposal of the case. The petitioner is one of the applicants in O.A. No. 970 of 2013 filed the O.A. challenging note 5 r/w para 8 of the Notification No. 25/2012 , dated 29-12-2012. The other applicants have not filed the writ petition. Though common order was passed along with O.A. 566 of 2013, the same was not challenged. In pursuance of the notification, written examination was held on 05-05-2013 and the interviews were held from 16-04-2014 onwards i.e., on 16-04-2014, 17-04-2014, 19-04-2014, 21-04-2014 and from 22-04-2014 to 25-04-2014. O.A. No. 970 of 2013 was filed on 06-02-2013. The petitioner made an application to the said post and when she comes under Multi-zone II, she appeared for the written examination, but unsuccessful.

22. Learned counsel appearing for the respondents relied on a decision reported in Ramesh Chandra Shah and Others v. Anil Joshi and Others wherein it was held thus (para 24):

"In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment " was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents".

The above decision has no application to the present facts of the case. In this case, recruitment was made contrary to rules with regard to locals and non-locals.

23. Sri S. Ramachandra Rao, learned senior counsel appearing for the unofficial respondents relied on a decision reported in *Dhananjay Malik and Others V State of 121 Uttaranchal and Others*, wherein it was held thus (Para 9):

"In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done."

24. He further relied on a decision reported in *Manish Kumar Shahi v State of Bihar And Others*, wherein it was held thus (Para 16):

"WE also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Art. 226 of the Constitution of India only after he found; that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , *Marripati Nagaraja and Others Vs. The Government of Andhra Pradesh and Others*, , *Dhananjay Malik and Others Vs. State of Uttaranchal and Others*, , *Amlan Jyoti Borooah Vs. State of Assam and Others*, and *K.A. Nagamani Vs. Indian Airlines and Others*, .

25. He further relied on a decision reported in *Union of India and Others V S. Vinodh Kumar and Others*, wherein it was held thus (Para 18):

"It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

26. He further relied on a decision reported in 151 *K.A. Nagamani v. Indian Airlines and Others*, wherein it was held thus (Para 54):

"The Corporation did not violate the right to equality guaranteed under Articles 14 and 16 of the Constitution. The appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot be allowed to turn round and question the very same process having

failed to qualify for the promotion."

The above case squarely applies to the facts of this case. Writ petitioner herein having participated in the selection process, she cannot contend that the post notified is a Multi-zonal post, but not a state-wide post. In the notification, it is clearly mentioned that selection of CDPO is based upon state-wide merit.

27. He further relied on a decision reported in *Marripati Nagaraja and Others v. Government of Andhra Pradesh* 161 And Others, wherein it was held thus (Para 19):

"The other contentions of Mr. Rao that the candidates had been given only seven days time for making preparation to appear in the second screening test, cannot in our considered view, give rise to a ground for setting aside the entire selection process. The Tribunal did not make any discrimination. One screening test had already been held. The number of candidates who appeared in the first screening test was 510. The Commission obtained the permission of the Tribunal for holding the second screening test. It issued a notification on 12-12-2000 stating that such a test would be conducted on 7-1-2001. All the candidates were given the same time for preparation. Only because the appellants herein were employees at the relevant time, the same by itself could not confer on them any special privilege to ask for an extended time. They had no legal right in relation thereto. The appellants had appeared at the examination without any demur. They did not question the validity of the said question of fixing of the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process."

From the above decisions, it is clear that a person who consciously take part in the process of selection, cannot turn round and question the method of selection and its outcome.

28. The process of selection is the most crucial and important part of the recruitment exercise and involves a number of functional stages. The process of selection begins, with the issuance of advertisement and ends with the filling up of notified vacancies. The process consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. The petitioner who applied for the post must aware of the fact that the selection of CDPO is based upon state-wide merit list in terms of note 5 coupled with para 6 of the notification. Having made an application and subjected to written examination, the writ petitioner cannot turn round and say that notification is contrary to Presidential Order or relevant recruitment rules.

29. The doctrine of "approbate and reprobate" is only a species of estoppel. It applies only to the conduct of the parties. As in the case of estoppel, it cannot operate against the provisions of a statute. It is only one application of the doctrine of election, and its operation must be confined to reliefs claimed in

respect of the same transaction and to the persons who are parties thereto. A man cannot both affirm and disaffirm the same transaction, show its true nature for his own relief, and insist on its apparent character to prejudice his adversary. In view of decision in Manish Kumar Shahi's case (supra), the doctrine of estoppel is applicable. Acquiescence is the common element in a somewhat indefinite group of equitable estoppels, constituted by the fact that the person entitled has, as it is said, "slept upon his rights", and by his conduct at the time of a breach of them, or subsequently thereto, has, with full knowledge both of his own rights and of the acts which infringe them, led that person responsible for the infringement to believe that he has waived or abandoned his rights. Though notification is contrary to the Presidential Order, but the petitioner who participated in the written examination and became unsuccessful cannot turn round and" question the notification. Therefore, the impugned order is correct and needs no interference by this Court. This point is answered accordingly.

30. In the result, the writ petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.