
(2003) 09 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 15107 and 25967 of 2002 and 2575, 3793 of 2003 and Batch

Kona Srinivas and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15
Constitution of India, 1950 — Article 226

Citation : (2004) 2 ALD 654

Hon'ble Judges : Gopala Krishna Tamada, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : S. Ramachandra Rao, for M.R. Tagore, Vedula Venkata Ramana, P.V. Subrahmanyam, V. Jagayya Sarma, K. Ravi, P. Raghavendra Reddy, E.V. Bhagiratha Rao, P.V. Ramana, T.V.V. Koteswara Rao, N.M. Krishnaiah, V. Venugopal Rao, P. Sridhar Reddy, K.R. Prabhakar, A. Satya Prasad, Badana Bhaskara Rao and B. Kavitha and Ramesh Ranganathan, A.A.G. and Government Pleader, for Services-I, M. Subba Reddy, G.V.L. Murthy, C.V. Mohan Reddy, Sai Baba Bellamkonda, K.G.K. Prasad, J.R. Manohar Rao, D. Madhava Reddy, M. Indira Priyadarshani and A. Ravishankar and K.L.N. Swamy, SC for APVVP, P. Lingeswara Rao, A. Chaya Devi, A.A.G, for the Appellant;

Judgement

G. Bikshapathy, J

1. The multi pronged litigation is veering round the selections for appointment to the posts of Multipurpose Health Assistants (Males). It started with filing of O.A. No. 6856 of 2002 before the Tribunal by seven candidates challenging the notification issued by the official respondents dated 20.7.2002 published in various news papers prescribing basic qualifications S.S.C. with M.P.H.A.(M) Training Course as illegal and arbitrary and contrary to G.O. Ms. No. 273, dated: 24.4.1989 issued under proviso to Article 309 Constitution of India and for consequential direction to appoint the applicants to the post of M.P.H.A.(M) in Nalgonda District in accordance with the statutory rules. They also sought alternative prayer to declare the candidates, who obtained the M.P.H.A. one-year

training certificate with S.S.C. qualification from the Institute of Public Health, New Delhi after cut of date 2.2.2003 were not eligible for being considered for the post. However, the litigation swelled enormously due to various intervening factors leading to cancellation of notification itself. In respect of private institutions, the Government sought to cancel their recognitions. All the aforesaid actions were challenged and they were decided by this Court in this batch of writ petitions.

2. It is necessary to refer to certain relevant facts for properly appreciating the crux of the issue.

3. Applicants in the O.A. passed Intermediate and thereafter they had undergone M.P.H.A.(M) training from Government institution. It is there case that in G.O. Ms. No. 273, dated 24.4.1988, the Government prescribed the qualifications for appointment to the post of M.P.H.A.(M) as Intermediate plus diploma certificate and therefore, the notification ought to have prescribed the said qualifications in conformity with the provisions contained in G.O. Ms. No. 273 and therefore, the notification is liable to be set aside. The Tribunal framed the following points for consideration:

(i) Whether female candidates can be considered to the posts of M.P.RA.(M)?

(ii) Whether age relaxation can be given for receiving the applications of the applicants and permitting them to participate in the selection process?

(iii) Whether the Intermediate Vocational Courses passed by some of the applications could be treated as proper and equivalent qualification to the technical qualifications prescribed under the specific rules covering the posts?

(iv) Whether the qualifications prescribed of passing S.S.C. instead of Intermediate alone, in addition to the technical course, is sufficient, as mentioned in the notification with reference to statutory provisions and G.Os. covering recruitment rules?

(v) Whether the candidates who did not secure certificates in proof of passing the technical courses due to one or the other reasons as follows could be considered for the selection process.

(1) Not appeared for the written examination having completed the course (2) having appeared for the examination results not yet announced (3) with results announced but certificates not issued.

(vi) Whether the applicants who have passed the courses from the institutions which are not recognised so far (or) derecognised by the Government can be considered for the selection process?

(vii) Whether the applicants who obtained Diploma in Pharmacy with S.S.C. qualification can be considered for recruitment ignoring Intermediate qualification mentioned in Notification?

4. As far as the 1st issue is concerned, the Tribunal held that the posts advertised for M.P.H.A.(Males) can be applied by male candidates only.

5. Point No. 2, was held in negative.

6. Point No. 3 was also held in negative. On point No. 4, the tribunal held that there is no illegality in prescribing the qualifications as S.S.C. instead of Intermediate, in view of G.O. Ms. No. 111, dated 12.4.2002, but, directed that by the time of final recruitment, necessary statutory amendments should be made to the rules as submitted by the learned Government Pleader. With regard to point No.5, the Tribunal held that the applicants holding the Diploma in M.P.H.A.(M) Training Pharmacy with S.S.C. or Intermediate qualification are to be given equal opportunity and respondents were directed to receive the applications of candidates with Diploma in Pharmacy after S.S.C. or Intermediate. Regarding point No. 6, the Tribunal having held that though there was a circular instructions from the Director General of Medical and Health Services and Chairman, Para Medical Recruitment Committee that the applicants hailing from certain institutions can be allowed to examination, subject to pending decision of the Government, but their applications are not being received by the respondents, directed the official respondents to follow the said instructions of the Director General of Medical and Health Services and Chairman, Para Medical Recruitment Committee. With regard to non-production of certificates of pass either on account of the not-holding the examination or on account of the holding examination, but results not published and in some cases, where the results are said to have been published, but certificates were not produced, the Tribunal held that it cannot give any direction to the respondents to receive the applications of such applicants. The tribunal, however, held that the Order was being delivered just one day prior to the last date of receiving the applications of the persons being benefited of such order cannot submit their applications within time, the last date for receiving the applications was extended by a period of (2) days i.e., up to and inclusive of 2.8.2002 before 5 p.m. to only applicants covered by O.A.

7. Against the said order, the Writ Petition No. 15107 of 2002 was filed by the applicants in the O.A. No. 6856 of 2002. The Writ Petition No. 15107 of 2002 filed only challenging one of the directions of the tribunal wherein it was held that there was no illegality in the notification prescribing the S.S.C. as minimum qualification instead of Intermediate in view of G.O. Ms. No. 111, dated 12.4.2002, but by the time of recruitment, necessary statutory amendment shall be made as submitted by the learned Government Pleader. In the said writ petition, number of persons who passed the Training Course from the private institutions either with S.S.C. or Intermediate qualification were impleaded as party respondents. In the meanwhile, the test was conducted on 11.8.2002 and results were declared on 12.8.2002 and Counselling was commenced for verification of qualifications. At that point of time, the Government issued G.O. Ms. No. 484, dated 24.12.2002 cancelling the entire selection process. Against

the said cancellation, the Writ Petition No. 422 of 2003 was filed before this Court by some of the candidates, who were in the selection panel and the learned Single Judge of this Court on 7.1.2003 passed interim Orders to the effect that the selection process may go on and the results of the candidates of private institutions may be kept in sealed cover. Consequently, the Government issued order in G.O. Ms. No. 16, dated 3.2.2003 in conformity with the interim Order of the learned Single Judge. But, even prior to the interim order of the learned Single Judge, the Division Bench of this Court in W.P. No. 15107 of 2002 filed against the orders in O.A. No. 6856 of 2002, granted stay of selections. But, however, the Division Bench later while directing Writ Petition 422 of 2003 and 15107 of 2002 to be disposed of jointly, ordered that the selections should go on and passed interim orders that the Government candidates with Intermediate should be filled and thereafter all the private candidates with Intermediate may be filled up subject to final Orders. During the interregnum, the four institutions from which the candidates obtained Diploma certificates were issued with show-cause notice of cancellation of the recognition.

These four institutions are:

- (a) All India Institute of Local Self-Government Bombay/Karnataka
- (b) College of Medical Technology, Ongole.
- (c) Institute of Public Health and Hygiene, New Delhi.
- (d) Bethesda Institute of Health Sciences, Visakhapatnam.

However, in respect of one institution namely, College of Medical Technology, Ongole, the recognition was cancelled and that is the subject-matter in separate batch of cases. It was slated for disposal separately.

8. In the writ petitions filed by the institutions, the petitioners in W.P. No. 422 of 2003 also got impleaded. Thus, break up of the writ petitions are as follows:

W.P. No. 15107 of 2002 was filed by the applicants in O.A. No. 6856 of 2002 in which the candidates (petitioners in W.P. No. 422 of 2003), who passed the diploma from the private institutions figuring in the selection list got impleaded.

W.P. No. 422 of 2003 was filed challenging G.O. Ms. No. 484, dated 24.12.2002, cancelling the selection process. These petitioners are the implead-respondents in W.P. No. 15107 of 2002. W.P. Nos. 25967 of 2002, 2575 of 2003 and 3793 of 2003 are filed by the private institutions challenging the show-cause notice of derecognition. In the said writ petitions also, the candidate, who obtained the diplomas from the private institutions impleaded themselves as party respondents.

9. The issue that arises for consideration is :

- (i) Whether the direction issued by the Tribunal in O.A. No. 6856 of 2002 is sustainable in law ?

(ii) Whether the G.O. Ms. No. 484 cancelling the selection process is valid ?

(iii) Whether the show-cause notice issued to the private institutions is sustainable ?

10. The learned Additional Advocate-General raised a preliminary objection as to the maintainability of W.P. No. 422 of 2003. He submits that the post of M.P.H.A. (M) post is a civil post. Even though the appointment is made on contract basis, yet, it does not lose its character of civil post. Therefore, any matter connected with the condition of such civil post either during pre-recruitment stage or post recruitment level, the matter has to be necessarily agitated before the Andhra Pradesh Administrative Tribunal which is vested with the jurisdiction u/s 15 of the Administrative Tribunal Act. He relies on the decision of Supreme Court in K. Narayanan and others Vs. State of Karnataka and others, . Hence the writ petition as filed under Article 226 of Constitution of India circumventing the process of Andhra Pradesh Administrative Tribunal is misconceived and the same is liable to be dismissed as not maintainable. In effect, the learned Additional Advocate-General submits that the petitioners in W.P. No. 422 of 2003 ought to have approached the tribunal as per the decision of the Apex Court in L. Chandra Kumar Vs. Union of India and others, . To support his contention that the post of M.P.H.A.(M) is a civil, the learned Additional Advocate General relies on the decision of the Supreme Court reported in State of Assam and Others Vs. Shri Kanak Chandra Dutta, and State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others,

11. On the other hand, the learned Senior Counsel for the petitioner submits that the order of cancellation is in gross violation of principles of natural justice and hence when interest of thousands of unemployed is in jeopardy offending Articles 14, 16 and 21 of Constitution of India, it is open for the petitioners to approach the High Court under Article 226 of Constitution of India. He further submits that in the W.P. No. 15107 of 2002 against the Orders in O.A. No. 6856 of 2002, the petitioners in W.P. No. 422 of 2003 were impleaded as party respondents. Even in the Writ Petitions filed by the private institutions challenging the show-cause notices issued to them, they were also impleaded as respondents. While the matter was pending in this Court in W.P. No. 15107 of 2002, the Government issued impugned G.O. Ms. No. 484, dated 24.12.2002. Therefore, if any Orders have been passed by the Government during the pendency of matter in the High Court, it is not necessary to again approach the tribunal and avail the remedy before the A.P.A.T. In order to avoid multiplicity of proceedings and to have an uniform decision, challenging the Order before the High Court cannot be said to be illegal or contrary to law.

12. The facts are not in dispute. The petitioners in W.P. No. 422 of 2003 have directly challenged the Government Order dated: 24.12.2002. The posts sought to be filled are M.P.H.A.(M) on contract basis for a period of one year. According

to Rule 9 of State and Subordinate Service Rules, method of appointment can also be by way of contract or agreement. However, for the purpose of disposal of this batch of writ petitions, we need not go into the larger aspects as to whether M.P.H.A. is a civil post or whether the petitioners ought to have approached the Andhra Pradesh Administrative Tribunal in the initial stage. Suffice, it to say that the petitioners got themselves impleaded as party respondents in W.P. No. 15107 of 2002 and obviously after filing the writ petition, the Government issued impugned G.O. Therefore, any proceedings issued in regard to the subject-matter pending in W.P. No. 15107 of 2002 could be agitated in the pending proceedings. The G.O. has the effect nullifying the entire matter pending in W.P. No. 15107 of 2002. Therefore, to save the situation, the petitioners could have sought for appropriate amendments in the pending writ petition. But, instead of doing so, they filed separate writ petition. But, for filing W.P. No. 422 of 2003, the Writ Petition No. 15107 of 2002 would have become infructuous and the decision of the Tribunal would have become final. Added to that, the Government issued show-cause notices to the Private Institutions proposing to cancel the recognition and these institutions have challenged the orders in writ proceedings. Obviously, they have to approach the High Court under Article 226 of the Constitution of India and they cannot go to the A.P.A.T. for redressal of their grievance. In the said writ petitions also, the petitioners in W.P. No. 422 of 2003 and other students of the respective institutions were impleaded as party respondents as their interest is vitally affected. Under these circumstances, requiring the petitioners again to go to Tribunal and thereafter approach the High Court is nothing but a retrograde exercise. Unless the petitioners become successful in the writ petition, they could not defend the order in O.A. No. 6856 of 2002 in W.P. No. 15107 of 2002. In case of multiple cause of actions giving rise to filing of O.As. before the A.P.A.T and also filing W.P. by some others as in this case and the impugned G.O. passed affecting thousands of applicants during the pendency of the matter before the High Court, filing W.P. directly before the High Court by invoking the provisions under Article 226 of the Constitution, cannot be said to be unavailable to the petitioners. The Supreme Court in a very recent case in T.K. Rangarajan v. Government of Tamil Nadu, 2003(5) Supreme 256, where the mass termination of service of the employees was effected in Tamil Nadu State for having resorted to strike, they filed writ petitions under Articles 226 and 227 of Constitution of India. The learned Single Judge by interim Orders directed the State Government that the suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further Orders and such employees be directed to resume duty. The interim Orders were challenged in writ appeals by the Government. However, the Government employees also filed writ petitions challenging the validity of Tamil Nadu Essential Services Maintenance Act, 2002 and also the Tamil Nadu Ordinance No. 3 of 2003. The Division Bench set aside the interim Orders of the learned Single Judge and held that without exhausting the alternative remedy of approaching the Administrative Tribunal, the writ petitions are not maintainable. This Order is challenged before the Supreme Court and for the same relief, the writ petitions

were also filed under Article 32 of Constitution of India. The Supreme Court in paras 5 to 11 observed as follows:

"5. At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel. It is equally true that extraordinary powers are required to be sparingly used. The facts of the present case reveal that this was most extraordinary case, which called for interference by the High Court, as the State Government had dismissed about two lakhs employees for going on strike.

6. It is true that in *L. Chandra Kumar Vs. Union of India and others*, , this Court has held that it will not be open to the employees directly approach the High Court even where the question of vires of the statutory legislation is challenged. However, this ratio is required to be appreciated in context of the question which was decided by this Court wherein it was sought to be contended that once the Tribunals are established under Article 323A or Article 323-B, jurisdiction of the High Court would be excluded. Negating the said contention, this Court made it clear that jurisdiction conferred upon the High Court under Article 226 of the Constitution is a part of inviolable basic structure of the Constitution and it cannot be said that such Tribunals are effective substitute of the High Courts in discharging powers of judicial review. It is also established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extraordinary jurisdiction under Article 226 and that has been reiterated by holding that the litigants must first approach the Tribunals which act like Courts of first instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to directly approach the High Court even where the question of vires of the statutory legislation is challenged.

7. In *L Chandra Kumar's* case, the Court inter alia referred to and relied upon the case in *Bidi Supply Company v. Union of India*, 1956 SCR 267, wherein Bose, J., made the following observations:

"The heart and core of a democracy lies in the judicial process, and that means independent and fearless Judges free from executive control brought up in judicial traditions and trained to judicial ways of working and thinking. The main bulwarks of liberty and freedom lie there and it is clear to me that uncontrolled rowers of discrimination in matters that seriously affect the lives and properties of people cannot be left to executive or quasi-executive bodies even if they exercise quasi-judicial functions because they are then invested with an authority that even Parliament does not possess. Under the Constitution, Acts of Parliament are subject to judicial review particularly when they are said to infringe fundamental rights, therefore, if under the Constitution Parliament itself has not uncontrolled freedom of action, it is evident that it cannot invest lesser authorities with that power,"

8. The Court further referred to the following observations from the decision in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, as under:

"77. From their conclusions, many of which have been extracted by us in toto, it appears, that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior Courts, to be integral to our constitutional scheme.

The Court further held:

"78..... We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

81. If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other Court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution....."

9. Thereafter, the Court to emphasise that Administrative Tribunals, are not functioning properly, quoted the observations with regard to the functioning of the Administrative Tribunals from the Malimath Committee's Report (1989-90), which are reproduced hereunder;

"Functioning of Tribunals

8.63 Several Tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their Constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method to working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of Administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals.

8.64 Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members

have been selected from all kinds of services including the Indian Police Service. The decision of the State Administrative Tribunals are not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in some of the States where they have been established for their abolition."

10. It is to be stated that in Tamil Nadu, at present, the Administrative is manned by only one man.

Finally, the Court held thus:

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The tribunals created under Article 323A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted it will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

11. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach that Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute."

Taking into consideration the facts and circumstances of this case and also the dicta laid down by the Supreme Court in Rangarajan's case (supra), we hold that

the Writ Petition No. 422 of 2003 as filed is maintainable.

13. Before we go to the crux of the actual issue, we are inclined to consider the writ petitions filed by the institutions challenging the show-cause notice of cancellation of recognition. The learned Counsel Mr. V. Jogaiah Sharma, V. Venkatramana and Subba Reddy have vehemently and vociferously contended that the show-cause notices are wholly without jurisdiction. There was no proper opportunity to them to place their respective explanation. It is their case that the Diploma certificate awarded by them was recognised by the Government of Andhra Pradesh for the purpose of appointment to the post of M.P.H.A.(M) post by incorporating in the service Rules and therefore, the question of cancelling their recognition does not arise. They further contended that very issuance of show-cause notice is incompetent and devoid of jurisdiction. It is also sought to be contended that there was no material before the Government to come to the conclusion that the diploma certificates possessed by the persons applied for the post was bogus. They have also assailed the jurisdiction and competency of the one-man committee to conduct the enquiry against the institutions. We have heard the learned Additional Advocate-General. We find it difficult to appreciate the contentions of the writ petitioners. Of course, there is no prohibition to entertain the writ petitions at the show-cause notice level, but it ought to be in exceptional cases, such total lack of jurisdiction, or incompetency. In the instant case, on the basis of the recommendations of the committee, the Government have tentatively arrived at the conclusion to cancel the recognition. In such circumstances, we feel it inappropriate to interfere at this juncture. It is but fair the petitioners should submit their representations to the show-cause notice and thereafter the Government shall pass appropriate Orders. If the petitioners seek personal hearing, the same shall also be granted to them. Thus, we do not find any grounds to interfere with the proceedings at the show-cause notice stage. Accordingly, the W.P.NOS. 25967 of 2002, 2575 of 2003 and 3793 of 2003 are disposed with the directions supra. The petitioners are granted four Weeks time from today to submit their explanation or to urge additional grounds if they so chose. The respondent shall pass appropriate orders within four Weeks thereafter. No costs.

14. The next issue falls for consideration is whether fixation of qualifications S.S.C + Diploma in training course is valid? The notification was issued for filling up various categories of paramedical posts. However, we are only concerned with the posts of M.P.H.A.(M) of which the unit of recruitment is the District. The educational qualification required for the post as published in the notification reads thus:

"S.S.C. and one year M.P.H.A.(M) Training Course from an institution recognised by the Government of Andhra Pradesh."

Under the service Rules framed in G.O. Ms. No. 273, dated 24.4.1989 containing the A.P. Public Health Subordinate Service Rules. In Rule 4 relating to the post of M.P.H.A.(Males and Females), the following is the requirement:

"Multipurpose Health Assistant (Male & Female)

By Direct Recruitment

- (i) Must have passed Intermediate or any other equivalent qualification, and
- (ii) A Sanitary Inspector Training Course Certificate awarded by the Chairman of the Board of Examiners constituted by the State Government; or
- (iii) Must possess a Certificate of Multipurpose Health Workers Training Course conducted by the State Government.
- (iv) Physical fitness for camp-life.

It is also on record that after 1995, the Government institutions stopped the training course. However, amendments were issued subsequently to Rule 3 adding the certificates issued by certain private institutions in G.O. Ms. No. 500, dated 13.10.1993 as alternate substitute qualifications. The following amendment was issued:

"AMENDMENT

Under Rule 3 i.e., "Method of Appointment" of the said rules the following shall be added against the category of Multipurpose Health Assistant (Male and Female) at the end of column 3(ii) of the table.

"OR, the certificates issued by the All India Institute by Local Self Government, Bombay-Karnataka"

Similarly, in G.O. Ms. No. 600, dated 18.11.1994, the amendment issued is as follows:

"AMENDMENT

Under Rule 4, i.e. Qualifications of the said rules, the following shall be added against the category of Multipurpose Health Assistant (Male & Female) at the end of Column (ii) of the table:

"OR"

Diploma Certificate awarded by the Board of Examinations or "the College of Medical Technology, Ongole, Andhra Pradesh".

In G.O. Ms. No. 35, dated 30.1.1995, the certificate issued by another institution was also added thus:

"AMENDMENT

Under Rule 4 i.e. qualifications of the said rules, the following shall be added against the category of Multi-Purpose Health Assistant (Male and Female) at the end of column (11) of the table.

"OR"

"Diploma Certificate awarded by the Institute of Public Health and Hygiene, New Delhi".

Yet, another G.O. Ms. No. 84, dated 26.3.2002 was issued adding another institute thus:

"AMENDMENT

In the said rules, in Rule 4 in category 3, Multipurpose Health Assistant (Male and Female) under column (3) qualifications of the Table to item (iii) the following shall be added namely:

"or Certificate of Public Health and Sanitation Technology awarded by the Bethesda Institute of Health Sciences, Visakhapatnam."

15. From the above amendments, it is clear that apart from the certificate issued by the Government institution, the Government also recognised the diploma certificates issued by the following institutions:

(e) All India Institute of Local Self-Government Bombay/Karnataka

(f) College of Medical Technology, Ongole.

(g) Institute of Public Health and Hygiene, New Delhi.

(h) Bethesda Institute of Health Sciences, Visakhapatnam.

16. It is also worth noting in this regard, that the Government advertised the posts of M.P.H.A. in the year 2001 and the persons possessing the certificates issued by Bethesda Institute were not considered, as their certificate was not recognised under the Service Rules. Therefore, the candidates who possessed certificates issued by the said institute filed O.A. No. 8123 of 2001 before the Andhra Pradesh Administrative Tribunal to treat the certificate possessed by them as equivalent qualification for the appointment. The tribunal disposed of the said O.A. with a direction to the Government to consider the representation of the certificate holders of Bethesda Institute as a recognised qualification. Accordingly, the Government considered the matter and issued G.O. Ms. No. 84, dated 26.3.2002 in respect of Bethesda Institute. That is how the certificate issued by the institute was included under the Rules.

17. Therefore, as per the Rule position, for the appointment to the post of M.P.H.A.(M), the educational requirement is Inter + Certificate Course by the Government or from the aforesaid four institutions.

18. The learned Senior Counsel Mr. S. Ramachandra Rao in his smilistic and soft soothing submission contends that the statutory rules do not apply to the appointments made to contract appointments. The said Rules apply only to permanent posts. Inasmuch as, the appointments are only for one year, the requirement of educational qualification as stipulated in statutory rules need not be followed. He also submits that the requirement of Inter was found to be not the basic requirement and S.S.C. was only minimum requirement. This was also

noticed by the Government long ago. Even in the earlier appointments made to the post of M.P.H.A., only the educational requirement was S.S.C. plus diploma either from Government Institution or the recognised institutions. He further submits that having satisfied that the entry level requirement for the M.P.H.A. (Males and Females) course is 10th Class, issued G.O. Ms. No. 352 M.H&F.W. dated 1.8.1992 and changed the qualification of Inter to that of 10th Class or equivalent. He refers to para 2 to 8 of the said G.O. which reads thus:

"2. In G.O. Ms. No. 273, Health, dated 24.4.1989, Special Rules regulating the service of the above categories have been issued in supersession of all earlier Orders according to which the qualification required for the recruitment of Multipurpose Health Assistants (Male and Female) is as follows:

(i) Must have passed Intermediate or any other equivalent qualification and

(ii) A sanitary Inspector Training Course Certificate awarded by the Chairman of Board of examinations constituted by the State Government (A.P) or must possess in a certificate of Multipurpose Health Workers Training Course conducted by the State Government.

(iii) Physical fitness for Com. life.

3. Prior to re-designation of A.N.M. as Multipurpose Health Assistant (Male and Female) the qualification for recruitment of A.N.Ms, is auxiliary Nurse Midwives Certificate from a recognised institution in the State vide G.O. Ms. No. 3042, Health dated 31.12.1964 read with G.O. Ms. No. 1051 Health, dated 4.6.1966. But, the qualification prescribed as per the instructions and guidelines issued in G.O. Ms. No. 555, dated 7.9.1989 for admission and selection of candidates in Multipurpose Health Workers Course(Female) conducted in the State is 10th Class or its equivalent.

4. It has been represented that qualification of Intermediate prescribed in G.O. Ms. No. 273, dated 24.4.1989 is not in conformity with the qualification prescribed for admission and selection of candidates in Multipurpose Health Workers Course(Female) course conducted in the State by Private/ Government Institutions which is 10th class and its equivalent.

5. The Government after careful consideration of the whole issue, decided to change the qualification, prescribed to M.P.H.W.(Male and Female) as 10th class or its equivalent instead of Intermediate.

6. Accordingly, the Government direct the qualification of Intermediate prescribed in the G.O. Ms. No. 273, dated 24.4.1989 for recruitment of M.P.H.W. (Male and Female) posts changed as 10th class and its equivalent and this will come into force with immediate effect.

7. Necessary amendments to the relevant rules will be issued separately.

8. All the District Medical and Health Officers and appointing authorities are requested to follow the above instructions scrupulously."

19. It is also admitted case of the parties that after the said G.O. the qualification of 10th Class was only insisted in the recruitments that were conducted subsequent to 1.8.1992. It is also further borne out by record that Director of Medical Education in his letter dated 28.6.1999 has clarified as follows:

"1. The applications of Staff Nurses/ M.P.H.A.(F) pharmacist who have registered themselves in their respective councils after the date of Notification dated 15.6.1999 can also be accepted.

2. The applications of M.P.H.A.(Male) with qualification of S.S.C. are also eligible as per G.O. Ms. No. 352, HM & FW (J2) Dept. dated: 1.8.1992 which is in force."

The stand of Government was reiterated in G.O. Ms. No. 111, dated 12.4.2002. Para 5 is extracted below:

"Government after careful examination of the matter observe that as a matter of policy, Government have prescribed the S.S.C. qualification for admission to the Diploma/ Certificate courses of Government recognised paramedical institutions in terms of G.O. Ms. No. 304, Health, Medical and Family Welfare (K2) Department, dated 7.8.1997 and therefore, such qualified candidates be considered eligible for appointment to the post of Laboratory Technician Grade-II. Accordingly, Government hereby direct that the qualification of the Diploma in Medical Laboratory Technician course(LT) with S.S.C. of the Government recognised Paramedical Institutions in terms of G.O. Ms. No. 304, Health, Medical and Family Welfare(K2) department dated 7.8.1997 be included as one of the qualifications for appointment to the post of Laboratory Technician Grade-II in G.O. Ms. No. 565 Medical and Health (F1) Department, dated 27.8.1979 read with G.O. Ms. No. 243, Health Medical and Family Welfare(K2) Department, dated 11.4.1990, with immediate effect pending issue of amendment to the relevant rules."

20. Taking assistance from the above Orders of Government, the learned Senior Counsel would submit that though the rule prescribe Intermediate qualification, the same was not insisted upon right from 1.8.1992 and Government had directed that for appointment of M.P.H.A., S.S.C. should be minimum requirement and further directed the recruiting agencies accordingly pending amendments to the Rules. However, rules were not amended. But, that would not make any difference. When the Government has categorically expressed its intention and its conduct subsequent to G.O. Ms. No. 352 signifies the stand, Mr. S. Ramchandra Rao contends that the direction contained in G.O. Ms. No. 352 have a statutory force under Article 162 of the Constitution of India and therefore, on the second ground also the Government is not justified in sticking to its guns that the Rule contemplated only Intermediate. He relies on certain decisions, which are discussed infra. The learned Additional Advocate-General submits that the executive instructions cannot over ride the statutory rules and hence only Intermediate is the minimum qualification for the post of M.P.H.A.(M).

In effect, he submits that rules notified in G.O. Ms. No. 273, dated 24.4.1989 are special rules for paramedical posts including M.P.H.A. (M). The rules were framed in exercise of powers conferred under proviso to Article 309 of Constitution of India. They are Legislative in character and constitute law. He seeks the support from B.S. Yadav and Others Vs. State of Haryana and Others, , P. Murugesan and Others Vs. State of Tamil Nadu and Others, , V.K. Sood Vs. Secretary, Civil Aviation and others, .

He also submits that the petitioner cannot seek mandamus compelling the Government to amend the Rules. He refers to the following decisions:

State of Jammu and Kashmir Vs. A.R. Zakki and others, ,

Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others, ,

State of Karnataka Vs. State of Andhra Pradesh and Others, ,

A. P. Sarpanchas Association v. Government of A.P., 2001 (4) ALD 704,

21. First let us consider whether the Rules framed in G.O. Ms. No. 273, dated 24.1.1989 and modified instructions in G.O. Ms. No. 352 would apply to the case on hand. As per the applicability of the Rules, they are made applicable to permanent posts of M.P.H.A. Therefore, these qualifications are essential for filling up the posts of M.P.H.A. But, we are faced with a different situation here, the posts are filled up on contract basis for one year. It is also open for the Government to apply the qualifications mentioned in G.O. Ms. No. 273 and it is also open for the Government to prescribe different qualifications. It is also beyond our comprehension that when after issue of G.O. Ms. No. 352, permanent posts covered by the Service Rules for the M.P.H.A. were filled with S.S.C. Candidates, can the Government now say that Rules in G.O. Ms. No. 275 have still to be followed. If that to be accepted, all the appointments to the posts of M.P.H.A. filled up after 1.8.1992 with S.S.C. qualification are to be held illegal and they are required to be set aside as incompetent and invalid. Therefore, it is always essential that a contention without realising the consequences ought to be advanced. Be that as it may, we need not travel so far to clear the riddle. The issue needs no magnification. It is not in dispute that Statutory rules cannot be over ridden by the executive Orders, until such time they are amended the rules continued to yield force, even though the Government contemplated amendments (See: K. Kuppusamy and Another Vs. State of T.N. and Others, .) Qualifications fixed under advertisement should not be at variance with the statutory rules (See: Rekha Chaturvedi v. University of Rajasthan 1993 (1) SLR 544.)

The question is whether there are any statutory rules governing the recruitment to the post of M.P.H.A.(M) on contract basis. The answer is emphatically in the negative. G.O.Ms.No. 273 only regulates appointment and other conditions of service including M.P.H.A.(M) in respect of holders of permanent posts. Rule 1 of

the said rules reads thus:

"Applicability of General and Special Rules:

The General and Special rules applicable in common to the holders of the permanent posts in the A.P. Public Health Subordinate Service are applicable to the holders of the posts of Multipurpose Health Extension Officer, Multipurpose Health Supervisor (Male and Female) and Multipurpose Health Assistants (Male and Female) subject to the modifications specified below."

Therefore, it is clear that these rules will apply only to the permanent posts. These rules can also be adopted by the State for the purpose of recruitment of M.P.H.A. (M), but it cannot be said that they cover the appointment of contract employment of one year. Hence, it has to be necessarily held that the recruitment rules in G.O. Ms. No. 273 *mutatis mutandis* will not apply in the absence of their applicability to contract appointments. Though the contract appointment is recognised in State and Subordinate Service Rules but insofar as recruitment Rules do not embrace the contract appointments they cannot be said to be the statutory rule for contract appointment also. In such a situation, option is left to the Government either to stipulate the qualifications prescribed in G.O. Ms. No. 273 or other qualifications as it deems fit while issuing notification for selection. Admittedly, the Government having noticed that Intermediate was not the requisite minimum qualification, but only 10th class, has issued several orders including G.O. Ms. No. 352. In fact, on that basis, even for permanent posts of M.P.H.A.(M), the recruitment was done in the previous recruitments held by the Government. When there are no statutory rules in respect of recruitment for contract appointments, the Government have fixed the qualification i.e. 10th class + Training certificate, which is in accordance with G.O, Ms. No. 352. In the absence of statutory rules, it is always open for the State to prescribe appropriate qualification by virtue of notifications, which have force of law under Article 162 of Constitution of India. In *B.N. Nagarajan and Others Vs. State of Mysore and Others*, , the Supreme Court observed that rules usually take a long time to take various authorities to be considered and it could not have been the intention of Rule 3 to halt the working of the public department till the rules are made in that behalf. The Supreme Court observed in paras 5 and 6 as follows:

"First it is not obligatory under proviso to Article 309 to make rules of recruitment, etc., before a service can be constituted or a post created or filled. This is not to say that it is not desirable that ordinarily rules should be made on all matters, which are susceptible of being embodied in rules. Secondly the State Government has executive power, in relation to all matter with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of List II, Entry 41, State Public Services. It was settled by this Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, , that it is not necessary that there must be a law already in existence before the executive is enabled to (unction and that the powers of the executive are limited merely to the carrying out of these laws. We

see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that rule or act,

6. In the background of this position we are unable to interpret Rule 3 of the General Recruitment Rules as suspending the executive power of the State till rules of recruitment of a service are specially made in that behalf. Rules usually take a long time to make; various authorities have to be consulted and it could not have been the intention of Rule 3 of the General Recruitment Rules, 1957, to halt the working of the public departments till rules were framed."

The Supreme Court further observed in para 19 as follows:

"Mr. Nambiar contends that under an act of Parliament or an act of a State Legislature the executive cannot frame rules retrospectively unless the act specifically empowers it to do so. According to him the position is the same under the proviso to Article 309. In our opinion, it is not necessary to decide this point in these cases because we are of the view that the appeal can be disposed of on another ground. Assuming for the sake of argument that Mr. Nambiar is right that the Mysore State Government could not make rules retrospectively and that the rules are thus void, so far as they operate retrospectively, we must ignore these rules and see whether the appointments made on October 31, 1961, can be upheld. We have come to the conclusion that these appointments can be considered to have been validly made in exercise of the executive power of the State under Article 162 of the Constitution. The three notifications issued by the Public Service Commission on October 1, < 1958, May 4, 1959 and April 1, 1960, must be treated to have been issued with the consent of the State Government. These notifications are not rules made under Article 309 of the Constitution, as contended by Mr. Nambiar, they are mere executive notifications issued by the Public Service Commission at least with the implied consent of the State Government. The passage reproduced above from the letter of the Government dated March 4, 1959, clearly shows that the Government was well aware of what the Public Service Commission was doing. It was aware of the action being taken by the Public Service Commission, and indeed, it can safely be assumed that the Government was aware of each step being taken by the Public Service Commission including the publication of there notifications. The position is that if we accept Mr. Nambiar's arguments that these rules purported to be made by the Mysore State Government had no retrospective validity, there were no statutory rules to govern the appointment of the 88 persons as Assistant Engineers. We have already held that the Mysore State Civil Service (General Recruitment) Rules, 1957, did not debar the Government from making appointments without making statutory rules. Therefore, we hold that these appointments were validly made."

Therefore, de-hors the contention that statutory rules would override the executive instructions, yet in the instance case and in the wake of deficiencies identified by the Government, we are inclined to accept the contention of the learned Senior Counsel Mr. S. Ramachandra Rao that fixing of S.S.C. with diploma qualification by the Government is quite competent and appropriate. The executive instructions issued by the Government in G.O. Ms. No. 352 and subsequent Orders have a statutory force under Article 162 of Constitution of India and the Rules framed in G.O. Ms. No. 273 and the qualification prescribed for permanent posts of M.P.H.A. yield force in a different direction. While former applies to persons other than holders of permanent posts (contract appointments), the latter covers the permanent appointments. The learned tribunal failed to consider the crucial aspect and approved the qualification of S.S.C + Training certificate subject to amendment of Rules. The said finding and consequential direction are illegal and unwarranted. Hence, they are set aside.

22. The last and formidable issue that arises is whether the cancellation of selection was valid ?

23. It is the contention of the learned Senior Counsel that the petitioners and others who participated in the recruitment process and got selected. At the stage of Counselling and release of appointment Orders, the entire selection process was cancelled without notice. Therefore, the impugned G.O. Ms. No. 484, dated 24.12.2002 is illegal and violative of principles of natural justice. He relies on the following decisions:

North Bihar Agency and Others Vs. State of Bihar and Others, ,

Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, ,

A.M.S. Sushant v. M. Sujatha, (2000) 10 SCC 197 .

All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc., .

N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, .

24. On the other hand, the learned Additional Advocate-General expressing as experienced with discharge of heavy burden, articulated his submissions with armoury of case law. He submits that mere selection does not confer any right on the candidates to get appointed to the post. No vested right on be said to accrue for appointment on the selectees. The Government has right to cancel the selection at any time before the appointments, are issued. He seeks the assistance from the following citations:

Union of India (UOI) and Others Vs. Majji Jangamayya and Others, .

Vinodan T. and Others Vs. University of Calicut and Others, .

Rakesh Ranjan Verma and others Vs. State of Biha and others, .

25. Even on merits also he tried to justify the stand of the Government

contending that after the written test was conducted, it was brought to the notice of the Government through press, individuals and also District Officials that certain irregularities have taken place in issuing the certificates by private institutions and therefore, the Government constituted Committee in G.O. Ms. No. 349, dated 14.8.2002. The said Committee after inquiry submitted the following recommendations:

"(1) As per the findings, branches and study centres were set up unauthorisedly by College of medical Technology Ongole and Institute of Public Health and Hygiene, New Delhi respectively. It was also inferred that a significant number of students had been awarded diplomas by College of Medical Technology Ongole and Institute of Public Health and Hygiene, New Delhi without having undergone training in any standard manner, severely bringing down the credibility of the certification processes and diplomas issued by these Institutions. Further, the quality of training imparted had been very poor both in the case of Branches of College of Medical Technology Ongole and study centres of Institute of Public Health and Hygiene, New Delhi, that candidates trained in these branches and study centres cannot be considered eligible for absorption into Government service where, as Multipurpose Health Assistants (Male), they would be expected to deliver health care to the most vulnerable sections of society who depend primarily on the health services ; provided by the Government. Further the certificates of many candidates with Diploma of All India Institute of Local Self-Government, Bombay were not authentic. Also as indicated in the findings, the diplomas awarded by Bethesda Institute of Health Sciences, Visakhapatnam cannot be considered valid. In view of all this, it is strongly recommended that the written test conducted on 11.1.2002, in pursuance of the notification issued by the Director General of Medical and Health Services and Commissioner of A.P. Vaidya Vidhana Parishad, Hyderabad, be cancelled in respect of the recruitment to the post of Multipurpose Health Assistants (Male).

(2) Throughout its proceedings and deliberations, this committee has been painfully aware of the fact that a large number of students have spent considerable amounts of money as fees etc., to undergo training in the private institutions and their branches and study centres in the belief that this course would make them eligible for employment in Government and perhaps private institutions. The Committee is also equally aware of its responsibility towards ensuring that functionaries appointed in the area of public health must have a certain minimum standard of knowledge, skills and competence that equips them to discharge their duties. Faced with an overwhelming evidence and indications that (a) The branches and study centres were allowed to proliferate, (b) Infrastructure, equipment facilities, laboratories, faculty and quality of instructions at these branches and study centres was far below the acceptable standard, (c) A significant number of students were awarded diplomas by these unscrupulous institutions without undergoing training in any standard manner, the committee was constrained to conclude that the Training conducted at such branches and Centres of College of Medical Technology Ongole and Institute of

Public Health and Hygiene, New Delhi was inadequate and cannot be considered valid for the purpose of grant of Diplomas for Public Health and Sanitation Technology.

3. In view of the finds of the enquiry, it was further recommended to take action to cancel the recognition awarded to the Diploma in Public Health and Sanitation Technology of all the private institutions (i.e.,) (1) Institute of Public Health and Hygiene, New Delhi, (2) All India Institute of Local Self Government, Bombay/Karnataka, (3) Bethesda Institute of Health Sciences, Visakhapatnam. In respect of the College of medical Technology Ongole against whom also various irregularities have been found, Orders were already issued cancelling the recognition awarded to the Diploma in Public Health and Sanitation Technology vide G.O. Ms. No. 277, HM&FW (J2) Department, dated 5.7.2002 and follow up action was recommended.

4. It is also recommended to close with immediate effect all the unauthorised branches and study centres in the State, which were set up by the College of medical Technology Ongole and Institute of Public Health and Hygiene, New Delhi without permission of the Government.

5. It is also recommended to get criminal investigation conducted by a professional agency into the aspects of illegal acts and cheating by the private institutions and the so-called branches and study centres for prosecution.

6. It is recommended that the Government may appoint a Committee of Expert to examine the need of allowing private institutions in the field or otherwise, and to frame guidelines for recognition, if considered necessary.

7. It is also recommended not to accord any more recognition to private institutes in respect of Diploma of Public Health and Sanitation Technology Course, until (a) the above-mentioned Committee established the need, (b) guidelines are formulated for recognition prescribing the norms for such institutes and safeguards for ensuring that adequate facilities and qualified faculty is available and a high quality of instruction is maintained and that practical training and field placements are conducted in the manner prescribed, and also (c) a suitable regulatory mechanism is created to continuously monitor and regulate the functioning of such institutions and the quality of training imparted at such institutions.

8. It is also recommended to take action to revive Government Regional Training Centres in the State and to send the candidates who were already recruited as M.P.H.A.(M) from the year 1995 onwards based on the Diploma Certificates of Public Health and Sanitation Technology from the above private institutes, to the Government Training Centres for comprehensive refresher training programme."

He also refers to the common counter filed in W.P. No. 422 of 2003. Paras 19 to 21 reads thus:

"19. The Committee has therefore, recommended to take action to cancel the

recognition awarded to the Diploma in Public Health and Sanitation Technology of all the private institutions. The Government of Andhra Pradesh accepted the report of the committee dated 26.10.2002 and keeping in view the Orders dated 16.4.2001 in W.P. No. 3102 of 1996, had vide Memo dated 24.12.2002 issued show-cause notices asking the said colleges to show-cause as to why the recognition Orders issued in G.O. Ms. No. 500, dated 13.10.1993 and G.O. Ms. No. 35 dated: 30.1.1995 and G.O. Ms. No. 84, dated 25.3.2002 to the certificates of Public Health and Sanitary Inspectors Diploma Training course awarded by All India Institute of Local Self-Government Bombay/Karnataka and the Institute of Public Hygiene New Delhi and Bethesda Institute of Medical Sciences, Visakhapatnam should not be cancelled and directed to submit original records if any to substantiate the claim within 10 days failing which action will be taken on the basis of records available vide. The individual notices were served to these institutions. The Institute of Public Health and Hygiene, New Delhi requested the Government to furnish the report of enquiry committee which is duly furnished.

20. Aggrieved by the above notice, the Bethesda Institute of Medical Sciences filed W.P. No. 25967/2002 in this Hon"ble Court and this Hon"ble Court by Order in W.P.M.P. No. 32798/2002, dated 6.1.2003 stayed the proceedings. It is submitted that the said W.P. is not maintainable as it is only show-cause. Therefore, action will not be taken for cancellation. The final Order will be passed only after considering his explanation and connected records.

21. As the all the Private Para Medical Institutions have not followed any standards, and had failed to provide adequate Infrastructure, sufficient clinical attachment etc., the certificate issued by them cannot be considered for recruitment of M.P.H.A.(M). Since the post of Multi-Purpose Health Assistants is a basic technical category post which requires sufficient exposure in public health activities like (1) Sprayal operations for Anti-Malarial Activities, (2) Blood Smear collections for Malaria and Filariasis (3) Sprayal Operations for containing J.E. (4) Measures for containing Gastro Enteritis (5) Collecting the sputums for early T.B. detection, (6) Creating Health awareness among the public regarding Epidemics (7) taking measures to contain the spread of AIDS, Hepatitis and other such diseases, all these requires sufficient practical training in public health activities which are being carried out by the Government Institutions like Sub-Centres, Primary Health Centres and Community Health Centres."

26. The learned Additional Advocate-General submits that consequent on the recommendations of the enquiry Committee, the Government issued G.O. Ms. No. 484, dated: 24.12.2002 as far as it related to recruitment to the posts of M.P.H.A.(M). It is to be noted that as on the date of cancellation, the selection list was already published and the roll numbers of the selectees were notified in the selection list. He submits that in order to obtain writ of mandamus, the petitioners have to satisfy this Court that they have a legal right to the performance of legal duty and such a right must be subsisting on the date of

filing of the writ petition. He relies upon a judgment of the Supreme Court reported in *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, . In the said decision, the Supreme Court held as follows:

"Coming to the third question, which is more important from the point of consideration of High Court's power for issuance of mandamus, it appears that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression "for any other purpose". The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognised lines and subject to certain self-imposed limitations. The expression "for any other purpose" in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Court must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior Courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. (*Kalyan Singh v. State of U.P.* AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. When the aforesaid principles are applied to the case in hand, the so-called right of the respondents, depending upon the conclusion that the amendment Act is constitutionally invalid and, therefore, the right to get interim payment will continue till the final decision of the Board of Revenue cannot be sustained when the Supreme Court itself has upheld the constitutional validity of the amendment Act in *Venkatagiri's* case on 4th of February, 1986 in Civil Appeal No. 398 and 1385 of 1972 and further declared in the said appeal that interim payments are

payable till determination is made by the Director u/s 39(1). The High Court in exercise of power of issuance of mandamus could not have said anything contrary to that on the ground that the earlier judgment in favour of the respondents became final, not being challenged. The impugned mandamus issued by the Division Bench of the Andhra Pradesh High Court in the teeth of the declaration made by the Supreme Court as to the constitutionality of the amendment Act would be an exercise of power and jurisdiction when the respondents did not have the subsisting legally enforceable right under the very Act itself. In the aforesaid circumstances, we have no hesitation to come to the conclusion that the High Court committed serious error in issuing the mandamus in question for enforcement of the so-called right which never subsisted on the date, the Court issued the mandamus in view of the decision of this Court in Venkatagiri's case. In our view, therefore, the said conclusion of the High Court must be held to be erroneous.

27. Continuing further arguments, he submits that no legal right much less at the filing of the writ petition vests with the petitioners to contend that the Government ought not to cancel the selection process. The question of legal right is that the right is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or for bear from acting in a manner so as to prevent the violation of the right. He relies on a decision reported in Mr "X" Vs. Hospital "Z", . Paras 13 and 14 of the said judgment reads thus:

"It is the basic principle of Jurisprudence that every Right has a correlative Duty and every Duty has a correlative Right. But the rule is not absolute. It is subject to certain exceptions in the sense that a person may have a Right but there may not be correlative Duty. The instant case, as we shall presently see, falls within the exceptions

"RIGHT" is an interest recognised and protected by moral or legal rules. It is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty. That is how Salmond has defined the "Right". In order, therefore, that an interest becomes the subject of a legal right, it has to have not merely legal protection but also legal recognition. The elements of a "LEGAL RIGHT" are that the "right" is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent the violation of the right. If, therefore, there is a legal right vested in a person, the latter can seek its protection against a person who is bound by a corresponding duty not to violate that right."

28. On the other hand, the learned Senior Counsel appearing for the petitioners submits that when once the petitioners have appeared for the post and become successful and also list of selected candidates were published, it cannot be said that they did not acquire any vested right. In any case, he submits that the vested right to be considered for appointment was acquired by the petitioners by

getting themselves selected in the selection panel. Therefore, the cancellation depriving that right to be considered for appointment is denied.

29. There is no dispute about the proposition that in order to invoke writ of mandamus, the petitioner has to establish the vested right. In the instant case, the question that calls for consideration is whether having the name in the selected panel would accrue right for appointment. Right to employment itself, is not a fundamental right, but right to be considered is a right enshrined under Article 16 of the Constitution of India. Therefore, when a person is selected and is empanelled in the selection list he acquires vested right to be considered for appointment and that right cannot be taken away except under reasonable circumstances. Therefore, it has to be held that the petitioners acquire a legal right to be considered for appointment basing on the selected list, in which they were figured as selectees. Under these circumstances, it cannot be said that they did not acquire any legal right. Therefore, we have to necessarily hold that they can maintain a writ petition.

30. The learned Additional Advocate-General, however, again submits that mere selection does not result in the candidate acquiring any right to the post. Even if the name is figured as selected candidate, yet it does not confer any right on him to claim the appointment. The learned Additional Advocate-General relies on the Judgments referred to hereinafter.

31. In *Shankarsan Dash Vs. Union of India*, , the Supreme Court observed that inclusion of candidate's name in the merit list, does not confer any right to be selected. It was a case where the petitioner was selected by the Union Public Service Commission for appointment to Indian Police Service, but however, he could not be appointed for want of vacancies in general category. When the appellant represented that the vacancies should be filled up, the request was turned down and the appellant moved the Delhi High Court by a writ application under Article 226 of the Constitution of India, which was dismissed in limini. Therefore, he carried the matter before the Supreme Court. At Para 7 of the Judgment, the Supreme Court observed as follows:

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the

decisions in *The State of Haryana Vs. Subash Chander Marwaha and Others*, , *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, , of *Jatinder Kumar and Others Vs. State of Punjab and Others*, "

However, it is to be noted in this regard that it is left to the discretion, of the State either to fill up the vacancies or not. But, a word of caution was made by the Supreme Court that the State has no licence to act in an arbitrary manner and any decision taken, should be supported by appropriate reasons.

32. *The State of Haryana Vs. Subash Chander Marwaha and Others*, , relates to the appointment to the post of Subordinate Judges under Punjab Civil Services (Judicial) Branch Rules. The Haryana Public Service Commission held competitive examination for recruitment of candidates for 15 vacancies of Subordinate Judges. Number of candidates appeared for the test and the result was made public by Haryana Government on 6.4.1971. The qualified marks were prescribed at 45%. On the basis of the said qualified marks, 7 persons were already appointed in order of merit and the balance appointment was yet to be made. The reason was that the Government has taken a decision to fix cutoff marks at 55% instead of 45% and also in view of the recommendations of the High Court to fix the higher cut off marks, so as to have efficient judiciary and in order to maintain high standards of competence in judicial service. The said cut off marks was challenged. The High Court agreed with the decision of the State that merely because the advertisement was for filling up 15 vacancies, the first 15 candidates in the list had no right to be appointed in the posts, but held that as long as there are requisite number of vacancies unfilled and qualified candidates were available, those candidates had a legal right to be selected under Rule 10 of Part C of the Rules. In the view of the High Court, the State Government was not entitled to impose a new standard of 55% of marks for selection as that was against the rule, which provided for a minimum of 45%. The matter was carried before the Supreme Court by the State of Haryana. The Supreme Court at Para 8 observed as follows;

"It is rather difficult to follow the reasoning of the High Court in this case, It agrees that the advertisement mentioning 15 vacancies did not give a right to any candidate to be appointed to the post of a Subordinate Judge. Even so it somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies. At one place it was stated "so long as there are number of vacancies to be filled in and there are qualified candidates in the list forwarded by the Public Service Commission along with their Rolls, they have got a legal right to be selected under Rule 10(ii) in Part "C"." One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while

making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. The true effect of Rule 10 in Part C is that if and when the State Government propose to make appointments of Subordinate Judges the State Government (i) shall not make such appointments by travelling outside the list and (ii) shall make the selection for appointments strictly in the order the candidates have been placed in the list published in the Government Gazette. In the present case neither of these two requirements is infringed by the Government. They have appointed the first seven persons in the list as Subordinate Judges. Apart from these constraints on the power to make the appointments, Rule 10 does not impose any other constraint. There is no constraint that the Government shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence."

Thus, it is the case of seeking of appointment and it has nothing to do with the cancellation. It was observed that the State Government has got power to enhance the cut off marks when more especially, the High Court recommended for such qualified marks. The Supreme Court further observed at Para 9 as follows:

"It must be remembered that the petition is for a mandamus. This Court has pointed out in *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, , that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition is clearly misconceived."

33. In *Union of India Vs. S.S. Uppal and another*, , the Supreme Court observed that the appointment of I.A.S. after inclusion of name of the candidate in the selection list, is not automatic. Mere inclusion does not confer any right of appointment. This is not a case of inordinate delay. The State Government as well as the officer concerned had to go through certain formalities before the actual appointment was made. The Supreme Court further held that mere inclusion of name in the panel did not confer upon him any right to automatic appointment to the I.A.S. nor can it be, said that he was to be treated as to have been appointed from the date when a suitable post fell vacant?

34. But, the above case has no application to the facts of the present case. It is not the case of the Government that they never wanted to fill up the vacancies. It is only on the ground that the Private institutions had no valid recognition. On that ground, the entire process of selection was sought to be challenged. Therefore, what is required to be considered is that the cancellation was for a reasonable cause or not. But, as far as the proposition is concerned, there is no dispute and mere selectee cannot have a right of appointment except the right to

be considered for appointment.

35. In Vinodan's case (supra), the matter relates to appointment of Assistants Gr.II in the University. Selection panel was prepared by the University after a written test and interview and a rank list was prepared on 25.10.1995. It was a stop gap arrangement pending regular recruitment. The Syndicate took a decision limiting the validity of the rank list prepared in the year 1995 to two years instead of three years. Therefore, challenge was made to the decision of the Syndicate before the High Court and the same was dismissed. The Supreme Court placed two restrictions on the exercise of power by the appointing authority, viz., that the appointments to the vacancies must be made in accordance with the rules, if any, relating to reservation and also that the appointment authority cannot scrap the panel of selected candidates during the period of its validity, except for well founded reasons, The Supreme Court relied upon *The State of Haryana Vs. Subash Chander Marwaha and Others*, , *R.S. Mittal v. Union of India*, 1995 Suppl. (2) SCC 230; 1995 SCC (L&S) 787: (1995) 30 ATC 53; *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, , *Shankarsan Dash Vs. Union of India*, : *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, ."

36. The Supreme Court further observed that the person merely selected for the post, does not acquire any right to be appointed to such post. The Supreme Court further observed as follows:

"The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent Even if vacancies exist, it is open to the concerned authority to decide how many appointments should be made. However the selected candidates have a right to compel such authority (i) not to make appointments by travelling outside the list and (ii) to make the selection for appointment strictly in the order the candidates have been placed in the list. This Court has placed two further restrictions on the exercise of power by the appointing authority, namely that the appointments to the vacancies must be made in accordance with the Rules, if any, relating to reservations and also that the appointing authority cannot scrap the panel of selected candidates during the period of its validity, except for well founded reasons. It is not the appellants case that the University has made any appointments to the post of Assistants outside the Rank List or not strictly in order of merit. Let us then look at the justifiability of the reasons given by the respondents for cancelling the 1995 rank list. On 24th April 1997, the State Government affirmed a policy decision taken in December 1996 to delink pre-degree courses from colleges in the State in a phased manner. The respondents have produced a circular of the same date which contains the decision and notes that the process could involve identification of pre-degree batches in the college for delinking, issue of executive orders, orders stopping admission for the batches proposed to be discontinued and suitable deployment of the staff both teaching and non-teaching which may be rendered surplus for protecting the

service interests of the existing teaching and non-teaching staff, it was also decided that further appointments of teaching staff and non-teaching staff in the colleges and university should be stopped immediately. The circular also states that though the decision in this regard was taken in December, 1996 it is reported that the private colleges and universities have been resorting to recruitment of teaching and non-teaching staff which may become a great financial burden for Government in future."

37. In *S. Renuka and Others Vs. State of Andhra Pradesh and Another*, the State of A.P. created 10 posts of District and Sessions Judge, Grade II consequent on establishment of Mahila Courts and Family Courts. The selection took place and the panel consisted of seven candidates from the open category, one from S.C, and one from B.C. group (D). The rules however require that if no S.C. or S.T. candidate is available, then the vacancy has to be carried forward and similarly the vacancy of B.C. Groups-A, B, C and /or D could not be converted into another category. Because of the rule, the persons empanelled could not be appointed as District and Sessions Judges, Gr.II, When the matter was brought before the High Court, the Full Bench considered and dismissed the writ petition filed by the selected candidates, On carrying the matter to Supreme Court by unsuccessful candidates, the Supreme Court observed that no right accrues to a person merely because a person is selected and his/her name is put on a panel. The petitioners have no right to claim appointment. Even otherwise, the selection was contrary to the Rules in force at that time. There could not be 100% reservation for women. Also the reservation policy had not been adhered to.

38. Therefore, under these circumstances, the decision of the Full Bench was affirmed. It is also the case where there was lacuna in the selection process itself as observed above. But, this contingency would not arise in this case, as they did not find any illegality or irregularity in the process of selection.

39. Thus the judgment relied on by the learned Advocate-General, will not apply to the facts of the case accepting the principle that mere selection would not accrue any right of appointment of the selectee.

40. However, the further issue that arise for consideration is as to whether the reasons assigned for cancellation, is sustainable and the selectees are entitled for opportunity ?

41. The Government in the impugned G.O. observed in paras 6 and 7 thus:

"The Chairperson of the Enquiry Committee and Commissioner of Family Welfare and Ex-Officio Secretary to Government, Health, Medical and Family Welfare Department, has submitted the Enquiry Report to Government after inspections of the institutions including the branches by the officers of the Committee and making an in-depth study on the said allegations and after giving an opportunity to the Directors/ Representative of the Institutions.

7. The Committee *infer alia*, observed that certain private institutions have set up branches/study centres un-authorisedly. It was also stated that the significant number of students have been awarded the diplomas by the private institutions without having undergone training in any standard manner, severely bringing down the credibility of the certification process and diplomas issued by these institutions. Further, the quality of training imparted had been very poor in the branches set up by private institutions and the candidates trained in these branches and study centres cannot be considered eligible for absorption in the Government service where, as Multipurpose Health Assistant (Male), they would be expected to deliver health care to the most vulnerable section of the soc who depend primarily on the health services provided by the Government. The Committee has also observed that the certificates issued by one of the private institutions were not authentic and another private institute awarded diploma to the students who were trained prior to the recognition of the said institute by the Government. In some cases, certificates were claimed to have been issued to the students who had undergone training from July, 2001 to April, 2002 and the period of training amounts to only 9 1/2 months as against the prescribed period of one year and such certificates cannot be considered as valid. Hence, the Enquiry Committee has recommended that the written test conducted on 11.8.2002 in pursuance of the notification issued by the Director General, Medical and Health Services, and Commissioner, A.P. Vaidya Vidhana Parishad, Hyderabad be cancelled in respect of recruitment to the post of Multipurpose Health Assistants (Male)."

42. In para 8 Order of cancellations were passed. The said para is as follows:

"Government after careful examination of the matter and in view of the fact that the candidates who appeared for M.P.H.A.(Male) are holding certificates awarded by Institutions which committed grave irregularities and did not follow prescribed procedure have accepted the recommendation of the Enquiry Committee. Accordingly, Government hereby cancel the Orders issued in G.O. Rt. No. 459 Health, Medical and Family Welfare Department, dated 22.5.2002, G.O. Rt. No. 524, Health, Medical and Family Welfare Department, dated 15.6.2002, G.O. Rt. No. 561, Health, Medical and Family Welfare Department, dated 22.6.2002 to the extent of selection process of Multipurpose Health Assistants (Male) only. Accordingly, the written test conducted on 11.8.2002 in pursuance of the notification issued by the Director General of Medical and Health Services and Commissioner, Andhra Pradesh Vaidya Vidhana Parishad, in respect of the recruitment to the post of Multipurpose Health Assistants (Male) shall stand cancelled. The Director General of Medical and Health Services and Commissioner, Andhra Pradesh Vaidya Vidhana Parishad and Chairman of the State Level Committee and the Director of Health shall take necessary further action in the matter accordingly."

43. The learned Additional Advocate-General submits that the enquiry committee has verified the records maintained by the Private Institutions and submitted

recommending the cancellation of the examination. It is submitted by him that the post of Multipurpose Health Assistant (M) is required to be filled up by candidates with the necessary qualification and training, since they discharge important functions relating to maintenance of health and hygiene more particularly of the needy and the poor and since they obtained the certificates issued by the institutions which are not recognised, they were cancelled and the students are not entitled for any notice. He further submits that cancellation is for just and valid reasons, no right much less a legal and vested right accrues to the candidates and that when the entire selection list is cancelled, the question of observation of principles of natural justice, would not arise. He refers to the judgment reported in Union Territory of Chandigarh Vs. Dilbagh Singh and others, . But, this case has no application to the facts of the case on hand. The contention in the said case was that the selection list prepared by the selection committee ought not to have been cancelled without notice to the members of the selection committee. It may be noted that various irregularities were alleged against the members of the selection committee, viz., corruption, favouritism and etc. In that regard, the Supreme Court observed that the members of the selection committee did not accrue any vested right, and, therefore, the doctrine of principles of natural justice cannot be made applicable to the members of the selection committee.

44. In the instant case, it stands on a different footing. The students who obtained the certificates from the institutions appeared for the examinations and the examinations conducted for the appointment of M.P.H.A were cancelled without notice. Therefore, the said decision has no application. But, however, the learned Additional Advocate-General submits that even the candidates who appeared for the test and interview, cannot have a right of hearing. He relied on a judgment of the Supreme Court reported in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, . In the said case, the examination was cancelled on the ground that the candidates have adopted unfair means on a mass scale. But, the facts on hand are not such. There is no such illegality for the conduct of the examination.

45. He relies on a judgment reported in B. Ramanjini and Others Vs. State of Andhra Pradesh and Others, , wherein the examination was cancelled on the ground of mass copying. Even this decision has no applicability to the facts of the case.

46. In this connection, it is to be noted that admittedly, there was no opportunity to the candidates who obtained their certificates. The questions as to whether they have in fact undergone the training from the respective institutions and whether they completed the training as per the rules, if any and whether the certificates obtained by them, were authentic, are all the matters to be considered after affording an opportunity to the petitioners.

47. The Government by virtue of the impugned G.O. has virtually invalidated the Diploma certificates issued by the institutions and the same would not have been

done without affording an opportunity to them. They will be deprived of their livelihood, as the certificates obtained by them are declared invalid.

48. Under these circumstances, the fact as to whether the candidates passed the test from a recognised institution, or not, falls into insignificance, as the marks obtained by them in the training course, were not made the criteria applied and it is based on practical appreciation of the knowledge possessed by the candidates with reference to the written examination conducted by the authorities.

49. Assuming that as the institution has committed certain irregularities, it may lose the recognition subject to its right, but as on today, the recognition is not cancelled except Ongole institution, which has filed the writ petition challenging the cancellation and the same is pending disposal. However, interim stay was granted while admitting the writ petition. In respect of other private institutions, the matters are at show-cause stage only. Even if the so-called recognition is cancelled, that will not have the affect of cancelling the certificates. Such invalidation cannot be affected without affording a reasonable opportunity. For the alleged irregularities committed by the institution, the holders of the certificates cannot be penalised in absentia.

50. As observed by the Supreme Court in the decision reported in N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, , a candidate has a right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement. He does acquire a vested right for being considered for selection in accordance with the rules as they existed on the date of advertisement. It was further held in the judgment of the Supreme Court reported in North Bihar Agency and Others Vs. State of Bihar and Others, , that the principles of natural justice do apply and rights acquired cannot be cancelled without an opportunity.

51. In Prabodh Verma Dal Chand's case (supra) and A.M.S. Sushanth's case (supra) and All India S.C. & S.T. Employees Association's case (supra), it was categorically held that while selected candidates may not have a vested right to be appointed, they are interested in defending the select list. Setting aside that list will affect them adversely and natural justice demands that any person who may be adversely affected by a Court order should have an opportunity of being heard.

52. In an identical issue, the Division Bench in W.P. No. 3012 of 1996 and Batch observed thus:

"There is no doubt as held by the Supreme Court in Dr. P.K. Jaiswal Vs. Ms. Debi Mukherjee and others, , that a candidate selected does not have any enforceable right of being appointed though such a candidate has a right under Articles 14 and 16 of the Constitution of India for being considered fairly and in accordance with law. A person included in the selection list, in our considered opinion, has legitimate expectation that in all probability he would be appointed by the

appointing authority. Without hearing aggrieved persons, no Court or tribunal, much less an administrative authority can pass an order prejudicial to the candidates whose names appear in the provisional selection list. Therefore, the impugned order of the Tribunal dated: 15.11.1999 suffers from grave error, and cannot be sustained. The same is accordingly set aside."

53. Thus from the aforesaid decisions, it is clear that though the mere selection list does not create any vested right in the selectees for appointment, but yet they have a right to be considered. Further, they are entitled for notice, when the list is sought to be cancelled on the ground that there was any illegality or irregularities in the process of selection or in the process of conducting the examination but not on the ground that the institutions from which they alleged to have passed the course, were not recognised. But, it is worth noting that the certificates issued by these institutions were recognised under the rules for appointment to the post of M.P.H.A. (F&M) and as already observed, the selection is not based on the marks obtained in the training course conducted by the private institutions and it is on the basis of written test. If that is the situation, it is not known as to how the selection of male candidates alone could be cancelled and the female candidates' list could be preserved. Further, it is significant to note that the very same candidates possessing the same qualifications appeared on earlier occasion during the year 2001 and their certificates were accepted. Some of the candidates were also selected. If those certificates are valid for 2001 Examination, it is not known as to how they are invalid for 2002 Examination. It is also to be noted that the Committee observed that the students were made to pay huge amounts and they were the virtual victims. However, it cannot be disputed that if the authorities want to disqualify, the Committee recognises the certificates obtained by them. It is necessary that the effected parties should be put on notice. He will have a chance to represent his case, but the cancellation of selection amounts to invalidation of certificates possessed by the candidates, without affording any opportunity. Thus, we find that the grounds of cancellation are only irrelevant and apart from, being unreasonable. Thus, we hold that G.O. Ms. No. 484, Health, Medical and Family Welfare (J2) Department, dated 24.12.2002 is illegal and arbitrary. Accordingly, it is set aside and W.P. No. 422 of 2003 is allowed.

54. However, the scenario is now changed by virtue of various orders passed by this Court from time to time. A learned Single Judge passed interim Orders in W.P. No. 422 of 2003 on 7.1.2003 as follows:

"I deem it appropriate to direct the Government to proceed with the process of selection of all the candidates from the stage where it was stopped, and orders of appointments may be given to such of those candidates who are qualified with a condition that they are not entitled to claim equity, except such of those elected candidates, who are alleged to have obtained bogus certificates from the abovementioned four training institution, as per the enquiry report, which was accepted by the Government, whose results shall be kept in sealed cover until

further Orders of the Court."

55. In pursuance of the said directions, the Government issued Orders in G.O. Ms.No. 16 dated 3.2.2003 to the following effect:

"9.The Government have examined the matter in the light of the orders of the Honourable High Court of Andhra Pradesh and decided to implement the aforesaid orders of the Honourable A.P. High Court, Hyderabad. Accordingly, in modification of the orders issued in the reference sixth read above, Government hereby direct that the following action be taken:

(i).....

(ii) Orders of appointments be given to such of those qualified candidates except such of those candidates who are alleged to have obtained certificates from the following four private institutions, (a) Institute of Public Health and Hygiene, New Delhi, (b) All India Institute of Local Self-Government, Bombay/Karnataka, (c) College of Medical Technology, Ongole and (d) Bethesda Institute of Health Sciences, Visakhapatnam..

56. The Court finds inconsistent Orders in G.O. Ms. No. 16, H.M & FW (J2) Department, dated 3.2.2003. While the learned Single Judge directed that the appointment Orders may be given to such of those candidates, who are qualified with a condition that they were not, entitled to claim equity except such of those selected candidates, who are alleged to have obtained bogus certificates from the above mentioned four training institutions. But, clause-n of Para of the G.O. says that appointment Orders be given to such of the qualified candidates, who are alleged to have obtained certificates from four private institutions. The intention appears to be obvious; to witness to eliminate en mass the candidates trained from private institutions side, so that all the other candidates of Government institutions could be selected.

57. However, when the Government trainees who filed W.P. No. 15107 of 2002 filed interim Orders were passed in W.P. No. 18906 of 2002, dated 9.9.2002 consequent on issuance of G.O. Ms. No. 16, dated 3.2.2003, they filed Contempt Case No. 193 of 2003 and on 13.2.2003 the following interim Orders were passed by the Division Bench:

"There is no need to pass any interim Order as prayed for by the petitioners in this application in view of submission made by the learned Additional Advocate-General that no formal Orders of appointment as such shall be issued to any of the candidates. However, the Counselling as per the schedule shall go on and the same shall be subject to further Orders to be passed by this Court.

It is brought to our notice that a learned Single Judge of this Court by an Order dated 7.1.2003 disposed of W.P.M.P.Nos. 554 and 574 of 2003 in W.P. No. 422 of 2003, pursuant to which the Counselling is going on.

In our considered opinion, W.P. No. 422 of 2003 and W.P. No. 15107 of 2002 out

of which the present Contempt Case arises and this Contempt Case are required to be heard together.

In view of the urgency, the matters are required to be posted on 21.2.2003."

58. Further on 18.4.2003, the Division Bench passed the following Orders:

"1. The Government shall be free to appoint candidates who have passed their Diploma in Public Health and Sanitation from Government Institutions provided such candidates have passed the Diplomas after having attained the qualification of Intermediate.

2. After the posts are filled up by the candidates who have passed through Government agencies and have Intermediate qualification, the remaining vacant posts shall be filled up by the Candidates who passed the Diploma from other private institutions and have also Intermediate qualification.

3. This Order shall not confer any right on any person appointed in pursuant to this Order. All questions which have been raised in the writ petitions are being kept open and shall be decided at the time of final hearing of the writ petitions. This Order has only been made with a view that the health of the general public may not suffer because of absence of sufficient number of health workers during the summer period.

The writ petitions shall be listed for hearing on 11.6.2003 as part heard."

59. By virtue of the aforesaid Order, all the Government trainees with Intermediate and the private institutions candidates with Intermediate have been appointed subject to the final result. It is to be noted that interlocutory orders pending disposal of writ petitions do not survive after the disposal of the main writ petitions.

60. Our conclusions/directions are:

(a) W.P. No. 422 of 2003 and other similar Writ Petition challenging G.O. Ms. No. 484 HM&FW (J2) Department, dated 24.12.2002 directly before the High Court are maintainable

(b) Prescribing S.S.C. and diploma certificate from recognised institutions by the Government is competent and legal and it did not over ride the statutory rules in G.O. Ms. No. 273, Health, Medical and Family Welfare (H1) Department, dated 24.4.1989 and accordingly the Order of Andhra Pradesh Administrative Tribunal in O.A. No. 6856 of 2002 stands modified warranting no amendments to statutory Rules noted supra,

(c) G.O. Ms. No. 484, dated 24.12.2002 is quashed and W.P. No. 422/2003 and similar writ petitions are allowed,

(d) All the interim Orders in the Batch of writ petitions ceased to have any effect. Consequently, we direct the State Government to prepare the select list of candidates in accordance with Rules, who possessed S.S.C. and Diploma

certificate either from Government institutions or the four private institutions referred to supra including College of Medical Technology, Ongole, as the cancellation of recognition of the said College was effected on 5.7.2002 which is the subject-matter in separate writ petitions. However, if any selected candidate from this institution is holding certificate issued on 5.7.2002 or thereafter it shall not be given effect to. The candidates so selected shall be issued with the appointment Orders within a period of four weeks from today duly terminating the services of the candidates, Who were appointed on the basis of interim Orders and not figuring in the select list prepared under this Order.

61. In the result, W.P. Nos.422 of 2003, 591 of 2003, 826 of 2003 and 2172 of 2003 are allowed and Writ Petition No. 15107/2002 partly allowed modifying the Orders of the Tribunal in O.A. No. 6856 of 2002, dated 30.7.2002.

62. W.P. Nos.25967 of 2002, 2575 of 2003 and 3793 of 2003 are disposed of.

63. W.P. Nos. 3625 of 2003, 3630 of 2003, 10522 of 2003, 11572 of 2003, 13608 of 2003, 13621 of 2003, 13792 of 2003, 10888 of 2003, 15359 of 2003, 3998 of 2003, 4371 of 2003, 7728 of 2003, 10822 of 2003, 11463 of 2003 and 15190 of 2003 are disposed of accordingly in terms of the directions referred to above.

64. No order as to costs.