

(2022) 06 TEL CK 0072

In the Telangana High Court

Case No : Writ Petition Nos. 13273, 13280, 13281, 13282, 13297, 13419, 13424, 13430, 13434, 13436, 13437, 13438, 13439, 13442, 13443, 13444, 13447, 13448, 13449, 13450, 13451, 13453, 13454, 13455, 13457, 13458, 13459, 13460, 13461, 13462, 13470, 13477, 13487, 13507

M. Venkata Sekhar

APPELLANT

Vs

Government Of Andhra Pradesh

RESPONDENT

Date of Decision : 22-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 162, 226, 309, 371D, 371D(1), 371D(2)
Evidence Act, 1872 — Section 101

Citation : (2022) 06 TEL CK 0072

Hon'ble Judges : V.Eswaraiah, J;N.Ravi Shankar, J

Bench : Division Bench

Advocate : K Lakshmi Narasimha, Raj Rural Dev

Judgement

1. In this batch of writ petitions filed under Article 226 of the Constitution, petitioners are questioning the judgment dated 23.04.2012 of a Full Bench of the Andhra Pradesh Administrative Tribunal, Hyderabad (Tribunal), dismissing O.A.No.3784 of 2007 and batch.

2. Petitioners in all these writ petitions applied for and were selected as non-locals for various categories of posts in various units of appointments or local cadres in different departments of State Government and local authorities which were organized under the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (Presidential Order) issued under Article 371D of the Constitution. Subsequently all of them were transferred to their local cadres or local units on the ground that they were erroneously selected in vacancies meant for local candidates and consequently they were found to be non-locals selected in excess of the vacancies meant for Open Competition (OC) in various local cadres in which they were selected initially.

3. Petitioners questioned their transfers in the above OAs before the Tribunal on the ground that the Government are not competent to order their transfers as they are in violation of Presidential Order. The State Government have issued various GOs purporting to act under the Presidential Order and the impugned transfers were made pursuant to and under the said GOs and their validity was also questioned by the petitioners in the OAs. Having lost their case before the Tribunal, the petitioners are again before this court.

4. The various Government Orders or Proceedings issued by the State Government and which are questioned are G.O.Ms.No.610 General Administration (SPF.A) Department dated 30.12.1985 (G.O.Ms.No.610), G.O.Ms.No.674 General Administration (SPF.A) Department dated 07.09.2007 (G.O.Ms.No.674 of 2007), G.O.Ms.No.8 General Administration (SPF.A) Department dated 08.01.2002 (G.O.Ms.No.8), G.O.Ms.No.124 General Administration (SPF.A) Department dated 07.03.2002 (G.O.Ms.No.124) and G.O.Ms.No.2, General Administration (SPF.A) Department, dated 03.01.2002 (G.O.Ms.No.2). The impugned transfers purport to have been passed pursuant to the aforesaid GOs. The main controversy in the OAs and the writ petitions relate to the questions whether the aforesaid GOs are ultra vires the Presidential Order and Article 371D of the Constitution. The contention of the petitioners is that they are, whereas the stand of the Government is they are not.

5. Before we set out the circumstances which led to the issuance of impugned GOs, it must be mentioned here straightaway that the circumstances under which Article 371D came to be introduced in the Constitution by Constitution (Thirty-second Amendment) Act, 1973, are too well known to require any mention here. The Presidential Order came to be issued by the President of India under Article 371D w.e.f. 18.10.1975 and the said Presidential Order was re-published by the Government of Andhra Pradesh vide G.O.Ms.No.674, General Administration (SPF) Department dated 20.10.1975. The object of Article 371D and the Presidential Order was to set right the regional imbalances in the State of Andhra Pradesh in the matters of public employment, education and to give equal opportunities to people of all regions/local areas of the State in the above fields and bring about all-round development. The constitutional validity of the above provisions is not in issue in these writ petitions. The controversy in these writ petitions relates only to the validity of G.O.Ms.Nos.610 and 674 of 2007. As the two GOs are in substance again based on G.O.Ms.Nos.8 and 124 and G.O.Ms.No.2 their validity has also to be considered as they are also questioned by the petitioners.

6. G.O.Ms.Nos.610 and 674 of 2007 read as follows.

G.O.Ms.No.610

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

SIX POINT FORMULA – Andhra Pradesh Public Employment (Organisation of Local Cadres

& Regulation of Direct Recruitment) Order, 1975 – Alleged violations in the implementation of Six Point Formula in Zones V to VI – Rectification – Order – Issued.

GENERAL ADMINISTRATION (SPF-A) DEPARTMENT

G.O.Ms.No.610 Dated the 30-12-1985

1. G.O.Ms.No.674, G.A. (SPF.A) Dept., dt.20-10-1975.
2. G.O.P.No.728, G.A. (SPF.A) Dept., dt.01-11-1975.
3. G.O.P.No.729, G.A. (SPF.A) Dept., dt.01-11-1975.
4. From the President, Telangana Non-Gazetted Officers Union letter dated 5-12-1985.

* * *

ORDER :

The G.O. 1st read above, which is generally known as Presidential Order, contains principles regarding Organisation of Local Cadres, allotment of personnel to the various Departments to the various local cadres, method of direct recruitment to the various categories, inter-local cadre in transfers etc., of the employees holding those posts. In the

G.Os. 2nd and 3 rd read above clarificatory instructions were issued regarding procedure for implementation of the various provisions of the Presidential Order.

2. In accordance with the provisions of the Presidential Order, local cadres have been organized to the various categories of posts in all Government Departments and allotment of personnel was made as per the guidelines contained in paragraph 4 of the said order.

3. In the representation 4th cited, the President, Telangana Non-Gazetted Officers' Union has represented that certain allotments have been made in violation of the provisions of the Presidential Order.

4. The government after carefully examining the issues raised in the representation and after having wide ranging discussions with the representatives of the Union have entered into an agreement with the Telangana Non-Gazetted Officers' Union on 7-12-1985.

5. As per the terms of agreement the following orders are issued:

(1) The employees allotted after 18-10-1975 to Zones V to VI in violation of zonalisation of local cadres under the Six Point Formula will be repatriated to

their respective zones by 31-3-1986 by creating supernumerary posts wherever necessary.

(2) In respect of Jurala, Srisailam Left Canal and Sriramsagar Project Stage.II, all the staff in the Non-Gazetted categories both technical and non-technical including Asst. Executive Engineers (formerly J.Es) coming under zonalisation of local cadres under the Presidential Order of 1975 who were posted to the Projects from outside zones V and VI after 1-3-1983, will be retransferred to their respective zones and posted either in existing vacancies in supernumerary posts where vacancies are not available. Towards this the Government will also move the Government of India for seeking amendment to Government of India's notification GSR 525-E dated 28-6-1985 to give retrospective effect to this order with effect from 1-3-1983.

(3) (a) In respect of appeals filed against orders of allotment made under paragraph 4 of the Presidential Order of 1975 to the competent authority in time and where such appeals are still pending disposal, all such cases where details are furnished by the T.N.G.Os. Union or individuals, shall be disposed of by 31-3-1986.

(b) As a result of the above exercise, consequential vacancies if any, arising shall be filled up as per the procedure laid down under the Presidential Order.

(4) In respect of first level Gazetted posts in certain Departments which are outside the purview of the Presidential Order, action should be taken to review the question of inclusion of such posts also in the scheme of localization and the matter should be taken up with the Government of India for suitable amendment to the said order.

(5) The posts in Institutions/Establishment notified in GSR No. 526 (E) dated: 18-10-1975 shall be filled up by drawing persons on tenure basis from different local cadres on an equitable basis as per the orders issued in the G.O. 3rd read above.

(6) Provision in Para 5(2)(c) of the Presidential Order relating to inter-local cadre transfers shall be strictly implemented and such transfers shall be effected only under exceptional circumstances in public interest.

(7) Action will be initiated in the concerned departments in cases brought to their notice regarding bogus registration in Employment Exchanges.

(8) On receipt of complaints, if any, made by the TNGOs Union relating to irregular allotments of candidates particularly to Zone V and VI in the category of Village Assistants the concerned Department shall take up the matter with the A.P. Public Service Commission and take such measures as may be necessary to rectify the irregular allotments made if any.

(9) The possibility of allotting persons from within the same zone/multizone against non-local vacancy in a particular local cadre will be examined in

consultation with the APPSC.

(10) The T.N.GOs. Union will furnish to Government the service/categories where for want of trained personnel, non local candidates are being appointed in zones V and VI so that Government can provide training facilities in respect of such services/categories with a view to providing adequate opportunities for recruitment and appointment of local candidates in zone V and VI.

(11) The Departments of Secretariat shall complete the review of appointments/promotions made under the Presidential Order as required under Para 13 of the said order, by 30-06-1986.

(12) (a) Immediate action will be taken to finalise the common Gradation list in respect of former Assistant Engineers (Present Dy. E.Es) as on 01-11-1956, following the prescribed procedure under the S.R. Act. 1956.

(b) In respect of former Junior Engineers (Present Asst. E.Es) the common gradation list published by the Government was quashed by the A.P. Administrative Tribunal and the Government had gone in appeal to the Supreme Court. Effective measures will be taken for the disposal of the matter before the Supreme Court, Expeditiously.

(13) The matter relating to allotment of 7 non-local personnel in the cadre of Inspector of Local Fund Audit belonging to zones 1 to IV, will be considered by the Department concerned keeping in view the provisions of the Presidential Order.

(14) The question of repatriation of 13 Deputy Executive Engineers of the Public Health Department working in the city of Hyderabad to Zones I to IV will be considered by the Department concerned keeping in view the provisions of the Presidential Order.

6. The Departments of Secretariat who are concerned with the terms shall take immediate necessary steps to implement the orders in consultation with

Law/General Administration Departments if necessary, about the legal implications/interpretation of the provisions of the Presidential Order.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

SHRAVAN KUMAR

CHIEF SECRETARY TO GOVERNMENT"

G.O.Ms.No.674 of 2007

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

The Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 – Review of appointments by

G.O.Ms.No.674

GENERAL ADMINISTRATION (MC-I) DEPARTMENT Dated: 07.09.2007

1. Circular Memo No.9543/MC/2007-11, General Administration (MC) Department, Dated: 02.07.2007
2. Circular Memo No.9543/MC/2007-13, General Administration (MC) Department, Dated 02.07.2007.

* * *

ORDER :

The Andhra Pradesh Public Employment (Organisazation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 provides for reservation in the matter of direct recruitment for Local Candidates in the different categories of posts specified therein.

2. In 1985 Government had issued G.O.Ms.No.610 in order to rectify certain deviations in the implementation of the provisions of the Presidential Order in Zones V and VI and again in 2001 Government constituted the One Man Commission (The Girglani Commission), to receive representations and sort out the anomalies in the implementation of the G.O.Ms.No.610 General Administration (SPF-A) Department, Dated: 30.12.1985 and take up follow up action for the rectification of defects, anomalies and irregularities in the implementation of the Presidential Order and to suggest remedial actions in matters relating to the Public Employment and it submitted report on 02.09.2004. The recommendations of the Girglani Commission were considered and accepted by the Government and in pursuance thereof, Government directed that a review be conducted of direct recruitment made from 1975 onwards in order to ensure that the provisions of the Presidential Order, 1975 are strictly implemented.

3. Government had issued G.O.Ms.No.763 General Administration (SPF-A) Department Dated: 15.11.1975 laying down the procedure to be followed in the manner of selections of local candidates. Subsequently Government revised the procedure of selection of local candidates and issued G.O.Ms.No.8 General Administration (SPF-A) Department, Dated: 08.01.2002 and also decided that the revised procedure should be made applicable to all direct recruitments in the State. It was also noticed that in some direct recruitments, the reservation for locals was reduced to 70% as against the originally provided 80%.

4. The procedure required to be followed for filling up the posts for open competition, consistent with the provisions of the Presidential Order is that all the candidates will be considered adhering to the roster points as applicable and

these should be filled first on the basis of merit. After filling these posts, the remaining posts are to be reserved for Local Candidates (80%, 70% or 60%, as the case may) and shall be filled up exclusively by local candidates.

5. By following this procedure and adhering to the prescribed percentages, the review of appointments conducted has shown that the appointment of non-locals made in certain Units of appointment in the recruitment conducted in specified years has not been strictly in accordance with the percentages and procedures as prescribed.

6. Government have now decided that the non-local candidates appointed in deviation of the Presidential Order, as identified by the respective departments by reviewing the direct recruitments made from 1975 onwards be repatriated to their respective local cadres to which the candidates would otherwise belong to.

7. After such specific identifications, non-locals who had been appointed in deviation shall be repatriated to their respective local cadres by transfer. The transfers shall be ordered in public interest as provided under Para 5(2)(c) of the Presidential Order.

8. The employees covered by such transfers shall be eligible for TTA and protection of seniority since the transfers are made in public interest.

9. Illustration :- In District Selection Committee 2000 recruitment for the post of Secondary Grade Teacher (SGT), Telugu medium, 1340 vacancies were notified. Out of these, 1185 vacancies were filled up which comprised of 834 vacancies for Government Schools and 351 vacancies for Zilla Parishad Schools. The vacancies meant for open competition in this selection are 167 for Government Schools and 75 for Zilla Parishad Schools. The remaining vacancies reserved for local candidates of Mahboobnagar District comprised of 667 vacancies for Government Schools and 276 vacancies for Zilla Parishad Schools. The list showing details of this selection is annexed to this order for the sake of clarity and uniformity.

10. It is advised that the respective Departments should prepare statements as shown in the illustration such that process can be implemented through transparent manner. It is further advised that the statement as shown in the illustration should be made available in the Web. Copies should be displayed in the Notice Board and also be made available to those who wish to have them.

11. The Ban on transfer of employees orders are not applicable to transfers effected in pursuance of these orders, as per para 3(ii) of G.O.Ms.No.154, Finance (W&M) Department, Dated:01.07.2007.

12. The orders shall be issued by the concerned Secretary to Government since it is an inter local cadre transfer.

13. This order is available in the internet and can be accessed at the address <http://www.ap.gov.in/G.O.610> details.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

J. HARINARAYAN,

CHIEF SECRETARY TO GOVERNMENT”

7. The Preambles to G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 set out the circumstances and reasons under which they came to be issued. The said Preambles state that after organization of local cadres as per the Presidential Order and the recruitments done to various local cadres, be it a district unit or a zone or a multi-zonal unit or a multiple-cadre unit, representations have been received by the Government to the effect that irregularities have been committed in recruitment process and several non-locals came to be appointed in the vacancies reserved for locals in various local cadres apart from such non-locals having been recruited in the vacancies meant for OC vacancies violating the provisions of the Presidential Order. It is the stand of the Government that many locals who were also eligible for OC vacancies have been denied opportunity to compete in the said vacancies. The above two GOs also read that the Government themselves have also reviewed the appointments and found out that the above irregularities have been committed.

8. The above Preambles further read that therefore the Government have decided to set right those irregularities and decided to transfer non-locals appointed in the vacancies meant for locals to their (non-locals) units or local cadres. Initially directions were issued in G.O.Ms.No.610 to identify all such non-locals in units in Zones-V and VI and take steps to repatriate them by 31.03.1986. Subsequently, G.O.Ms.No.674 of 2007 was issued to transfer non-locals appointed in the vacancies meant for locals in all local cadres in the entire State. In G.O.Ms.No.674 of 2007, an illustration has also been given quoting the DSC selection of 2000 for Teachers in Mahaboobnagar District and the redrawing of lists in that unit with reference to selection method prescribed in G.O.Ms.Nos.8 and 124 and directing the authorities to redraw the lists following the said example. Certain anomalies were pointed out in the said redrawn list and we will deal with them later while discussing the relevant points. Here we should mention that the word “repatriate” is normally used to denote sending back a person taken on deputation in one department to his parent department after deputation period is over. However, in the present case, this word “repatriation” is used to indicate transferring a non-local selected in a vacancy meant for locals to his identified local cadre.

9. Before issuing G.O.Ms.No.674 of 2007, a problem arose, and naturally, for Government as to how to identify and find out what went wrong in the earlier selections after 18.10.1975 which resulted in the irregularity of selecting non-locals in vacancies meant for locals in various local cadres of various departments. It is stated that the Government have appointed a Commission popularly known as “Girglani Commission” for that purpose and it appears that Government also on its own did some exercise on those aspects. It is represented that the Commission submitted its report in the year 2004 but even before that G.O.Ms.Nos.8 and 124 were issued after Government realized that

the above irregularities were committed.

10. The Government were of the view that the selection method prescribed earlier in G.O.P.No.763 and Annexures-I to III therein to implement the Presidential Order did not operate to ensure that the prescribed percentages of reservations namely 80%, 70% and 60% for locals in all local cadres could be achieved as that selection method was found to be erroneous. Annexure-I to G.O.P.No.763 prescribes the selection method for filling up the posts by direct recruitment of candidates to a single cadre be it a district or a zone. Annexure-II deals with direct recruitment for filling up of posts in a multi-zonal cadre. Annexure-III deals with filling up of posts by direct recruitment for a multiple cadre unit. The selection method prescribed is that a select list of the total candidates selected according to their merit in a unit is to be considered treating it as a provisional selection list.

11. Then on the scrutiny of that provisional selection list, if it is found that the number of local candidates selected constituted the prescribed percentage of the vacancies reserved for them or even more than that, then the provisional selection list was to be treated as final. However, on the other hand, if the number of local candidates found in such provisional selection list is found to have fallen short of the prescribed percentage of local candidates, then the non-local candidates selected were to be deleted from the list starting from the least meritorious candidate among them and fill up those vacancies with local candidates to make up the shortage of local candidates according to their merit. This was more or less the procedure for recruitment in all the units be it a district, a zone or a multi-zone or a multiple cadre unit.

12. According to the Government, the above procedure was found to have resulted in non-local candidates being selected in vacancies meant for local candidates or in other words it resulted in non-local candidates being appointed in excess of the vacancies meant for OC and the local candidates who were also eligible for OC vacancies were ignored as all such meritorious local candidates were appointed in vacancies meant for locals which was not the object of the Presidential Order. The Government therefore say that by G.O.Ms.No.8 they substituted the above selection method by a new selection method, for the purpose of what it says, to ensure that local candidates were also made eligible for OC vacancies and to fill up the vacancies meant for locals only by locals.

13. In the selection method prescribed by G.O.Ms.No.8, the procedure laid down is this. Of the total vacancies, the vacancies meant for OC candidates i.e. be it 20% or 30% or 40% as the case may be after excluding the vacancies meant for locals i.e., correspondingly 80% or 70% or 60% as the case may be, were first ordered to be filled up by choosing the meritorious candidates from among all i.e. either local or non-local. It was further ordered that thereafter all the vacancies meant or reserved for locals have to be filled up according to the merit of local candidates available. It should be mentioned here that according to Para 9 of the Presidential Order, the balance of vacancies meant for locals which, if,

remained unfilled in any recruitment were to be carried forward for a period of three years for filling them with locals in the subsequent recruitments. This procedure was extended to multi-zonal cadre and multiple cadre unit by G.O.Ms.No.124.

14. According to Government, to repeat, they (Government) have reviewed the selections made by direct recruitment in all the units previously and found that by the selection method earlier prescribed in G.O.Ms.No.763 and followed, non-local candidates came to be appointed in the vacancies meant for locals excluding locals from being considered for OC vacancies even though they were eligible. Government say, initially G.O.Ms.No.610 was issued to set right those irregularities committed in Zones V and VI which comprise of the districts in Telangana region. The further version of the Government is that subsequently a review of the appointments in the entire State disclosed that similar irregularities were committed in all the local cadres in the State. They therefore say that G.O.Ms.No.674 of 2007 was issued directing all concerned authorities to redraw the selection lists and identify the non-local candidates appointed in vacancies meant for local candidates in all the local cadres of all departments and repatriate or transfer them back to their respective local cadres by applying the selection method substituted by G.O.Ms.Nos.8 and 124 referred to supra. The Government have further clarified that the above action has become necessary in public interest and quoted that the above transfers or repatriations be made under Para-5(2) (c) of the Presidential Order which provides for such transfers in public interest. The Government are relying upon the public interest clause in Para-5(2)(c) of the Presidential Order to support their action.

15. It should be mentioned now that one more development took place in the year 2001 regarding the percentage of reservation prescribed for Teachers posts and that is this. Initially when the Presidential Order was brought into force, the Teachers did not fall in Para-8(1) of that Order which prescribed 80% reservation of posts for locals in direct recruitment for the non-gazetted categories specified therein, for which a District was made the unit/local cadre. In fact, in the Presidential Order as it stood originally, the Teachers fell under para-8(2) thereof which prescribed 70% reservation for local candidates as they were treated as posts other than those referred to in Para-8(1) as it originally stood though they also belonged to non-gazetted category treating the unit for them as Zone.

16. However, the President by a notification dated 13.12.2001 in S.O.1219(E) in exercise of his powers under clauses (1) and (2) of Article 371D issued an order amending the Presidential Order. This amendment order is given the title The A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) (Amendment) Order, 2001 (Presidential Amendment Order of 2001). By the said Order, the President has enacted or inserted a new item (c) in Para-8(1) including the Teachers also in the said para-8(1). This amendment has the effect of providing 80% reservation for Teachers also thus increasing reservation for those posts from 70% which was the earlier reservation to 80%

as prescribed under para-8(1). This notification was published by the State Government in G.O.Ms.No.2. The Presidential Amendment Order of 2001 itself reads that it shall be w.e.f 01.06.2001 and the same was mentioned in G.O.Ms.No.2 also. It should be noted here that G.O.Ms.No.674 of 2007 however directs the authorities to apply the ratio of reservations for Teachers also at 80% for locals and 20% for OC vacancies even in recruitments made prior to 01.06.2001 and re-draw the selection list accordingly to identify the non-locals retained in excess of 20% vacancies meant for them.

17. The petitioners have, as already mentioned, challenged G.O.Ms.Nos.8 and 124 on the ground that the Government have no power to change the selection method already prescribed by G.O.P.No.763 and in any event they cannot be given retrospective effect through G.O.Ms.No.674 of 2007. Further they also challenged G.O.Ms.No.2 on the ground that it cannot also be given retrospective effect as the Presidential Amendment Order of 2001 itself was brought into force from 02.06.2001.

18. The further contention of the petitioners is that even assuming that all the above GOs are valid, still they have been identified wrongly as non-locals selected irregularly in the vacancies meant for local candidates in various local cadres and they have not been given proper opportunity to prove their case. In this connection, they stated that in the process, the Government and the concerned authorities wrongly retained non-local candidates who are less meritorious than them (petitioners) in the OC vacancies in local cadre while illegally transferring them out. Their plea is that if they had been given proper opportunity, they would have proved their case. They further pleaded that the Full Bench of the Tribunal did not consider each of their individual cases on merits and instead without answering their contentions on this aspect dismissed their OAs and therefore in any event the OAs should be remitted back to the Tribunal to consider their individual cases on the above aspects.

19. The Government opposed all the above pleas of the petitioners and their stand is that the cases of the petitioners have been considered at length and it is well within its power to act in the matter in public interest as contemplated under Para-5(2)(c) of the Presidential Order and its action both on aspects of law and fact is in accordance with the Presidential Order and valid.

20. It may be noted that though the Tribunal framed many points, the contentions of the petitioners regarding the validity of G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 have to be considered with respect to the validity of G.O.Ms.Nos.8 and 124 and G.O.Ms.No.2 and further the power of the Government under Para-5(2)(c) of the Presidential Order. Several contentions raised by the petitioners and the relevant case law relied upon by them and as well as the learned Additional Advocate General will be considered infra in detail.

21. In our view, the controversy can be decided under the following points.

(1) Whether G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 are ultra vires the

Presidential Order?

(2) Whether the Presidential Amendment Order of 2001 and G.O.Ms.No.2 are prospective in operation from 02.06.2001, and if so, what is their effect on G.O.Ms.No.674 of 2007 with regard to posts of Teachers?

(3) Even if G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 are valid, whether the transfers of the petitioners are vitiated for not giving opportunity to them in the circumstances pleaded by the petitioners and whether OAs should be remanded on that ground for deciding their individual cases?

(4) What is the relief to be granted?

Point No.1:

22. We have already mentioned the back ground facts which led to the issuance of G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 and also their contents. It may be noted that the Government have changed the selection method issued in G.O.Ms.No.763 and substituted it by a new selection method by G.O.Ms.Nos.8 and 124. The Government made the new selection method the basis and also operated it retrospectively through G.O.Ms.No.674 of 2007 on the plea that the same is necessary for properly implementing the Presidential Order right from the beginning. It then applied G.O.Ms.No.2 also retrospectively and made that also basis for giving retrospective effect for G.O.Ms.No.674 of 2007 and this is covered by point No.2. Petitioners have challenged all the aforesaid GOs as ultra vires the Presidential Order. Thus the validity of G.O.Ms.No.674 of 2007 depends upon the validity of G.O.Ms.Nos.8 and 124 and G.O.Ms.No.2 which have now to be considered.

23. The first question that has now to be considered under this point is whether G.O.Ms.Nos.8 and 124 are valid. To consider this question, the scheme of the Presidential Order should be seen. The object of Article 371D and the Presidential Order have already been setout supra. Para-3 of the Presidential Order speaks of organization of local cadres in various posts mentioned therein by the State Government. Para-3(1) says that the State Government shall within the prescribed period therein or the extended period organize the classes of posts in the civil services of, and the classes of civil posts under the State specified therein into different local cadres for different parts of the State to the extent and in the manner provided in the said para. The expressions "local cadre", "local area", "local candidate" and "local authority" along with other expressions are all defined in Para-2 of the Presidential Order. Para-3(2) says that the posts belonging to the category of Lower Division Clerks (LDCs) and other categories equivalent to or lower than that of an LDC in each department shall be organized into a separate cadre for each district.

24. Then Para-3(3) says that the posts belonging to each non-gazetted category other than those referred to in Para-3(2) in each department in each zone shall be organized into a separate cadre i.e. zonal cadre. Para-3(4) says that the posts

belonging to each specified gazetted category (also defined) in each department in each zone shall be organized into a separate cadre. Para-3(5) speaks of creating a multi-zonal cadre for posts other than those falling under Paras-3(2) to 3(4).

25. It may then be noted that Para-3(6) speaks of the Central Government notifying departments in which and the categories of posts in which a separate cadre has to be organized for the city of Hyderabad and such posts must be other than those falling under Paras-3(2) to 3(5). Then Para-3(7) says that the State Government can create a separate cadre in respect of any category of posts in any department for any part of the State more than one cadre for such part of the State. Then Para-3(8) speaks of the power given to Central Government to exempt any non-gazetted category of posts in any department from Para-3, if it finds that it is not practicable or expedient to organize such posts into local cadres.

26. Then Para-8 prescribes the percentages of reservations i.e. 80%, 70% and 60% to be given for local candidates for direct recruitment to the posts organized into various local cadres such as district cadres, zonal cadres, multi-zonal cadres and multiple cadre posts respectively. Here it should be noted that Para-7 defines who can be treated as a local candidate in relation to any local area and Para-6 speaks of what are local areas for various posts specified therein and it is generally a corresponding provision to Para-3. The only difference is for jobs or posts in local authorities Para-6(1)(ii) stipulates that each district shall be a local area for direct recruitment for posts which are equivalent to or lower to the posts of LDCs in a local authority within a district. The Government are not separately empowered to organize those posts in the local authorities into local cadres as local area for such posts local cadre and local area are fixed by the Para-6(1)(ii) itself.

27. There are provisions in the Presidential Order which totally exempt certain categories of posts from its purview. Further Para-5(2) also empowers the Government to make transfers of persons recruited in any local cadre from that local cadre to another or any other office also which is exempt from the purview of the Presidential Order. One of the clauses in Para-5(2) i.e. sub-clause (c) thereof empowers the State Government to make such transfers in public interest also and this has got significance in the present controversy and we will mention about that and the contentions raised by the petitioners with regard to the same under the relevant question.

28. Thus the scheme of the Presidential Order would show that the President has directed how local areas are to be organized for various posts along with local cadre in each part of the State and in various cadres and how much percentages of reservations have to be provided for local candidates in direct recruitment in various local cadres constituted. All these aspects have been discussed at length in the previous decisions and the ultimate object is to see that the local candidates belonging to different local areas of the State are given preference to

bring about equitable opportunities in public employment in each part (i.e. local area) of the State. It should however be noted here that 100% reservation is not given for locals in direct recruitment in any local cadre or cadres of posts equivalent to or lower than that of LDCs in any local authority within a district as that is not permissible under the Constitution.

29. Regarding the contention of petitioners that Government have no power to prescribe the new selection method through G.O.Ms.Nos.8 and 124, it may be noted that a Division Bench of this court already upheld G.O.Ms.No.124 in P.Muralidhar v. A.P. Public Service Commission[2005(2) ALT 9 (D.B)] which is relied upon by the learned Additional Advocate General. This G.O.Ms.No.124 is merely an extended application of G.O.Ms.No.8 and all these aspects have been mentioned supra in back ground facts while comparing the selection method prescribed in G.O.Ms.No.763 with the new selection method in the aforesaid two GOs. Sri Surender Rao relied upon the aforesaid decision in P.Muralidhar's case (2005(2) ALT 9 (D.B) supra) to show that G.O.Ms.Nos.8 and 124 cannot be given retrospective effect but that is a separate question and it will be dealt with later. Thus in substance the power of the State Government to prescribe the new selection method for implementing reservations under Presidential Order has already been upheld by this Court. However, we proceed to consider the contentions of the petitioners independently on this aspect.

30. It is now well settled that the Executive Government of a State is competent to regulate public services under it i.e. to make appointments and provide for other conditions of service subject to constitutional limitations and any statutory limitations if a statute is made by the State Legislature. It is only to rule out the exercise of power by the State Officials according to their whims and fancies the Legislature of the State may make a law regulating appointments to public services and their conditions of service. Even in the absence of such a law, the Executive Government itself can make rules under Article 309 of the Constitution. The power of the State Government to make appointments to those under its service is similar to that of any private employer to employ his own persons but in the case of public services the power of the State Government, as already mentioned, is subject to the constitutional and statutory limitations. This is the settled position.

31. Prior to the Presidential Order the State Government's power to make appointments was subject to certain restrictions in the form of fundamental rights and other constitutional provisions apart from other statutory limitations. One such restriction was that a State Government or Legislature both Central and State could not provide for local area-wise reservation dividing the State into various local areas for giving preference in public employment. Having regard to the special conditions and circumstances obtaining in the State of Andhra Pradesh prior to enactment of Article 371D, the said Article was enacted to provide for local area-wise reservations and provision in that behalf is made under the Presidential Order and the above restriction was removed.

32. No doubt there is no express provision in the Presidential Order empowering the State Government to make appointments. It should be noted that the State Government or local authorities have already that power under the constitutional scheme and the laws under which local authorities are created. The Presidential Order and its scheme only direct the State Government to exercise that power of appointment by implementing the reservations to local candidates in various posts organized into local cadres for various local areas removing the above fetters on the power of the State Government.

33. Thus the State Government or the local authorities have to exercise that power of appointment to various posts organized into local cadres by implementing the Presidential Order apart from complying with constitutional and other statutory provisions. However, Article 371D and the Presidential Order are given primacy over other provisions of the Constitution and any law which may be in force. Now for the State Government to implement the reservations for local candidates and give directions to the local authorities as contemplated under Para-10 of the Presidential Order, it has to necessarily devise a formula or selection method.

34. The State Government have earlier prescribed the selection method in G.O.Ms.No.763 soon after the commencement of the Presidential Order. Later on, the State Government say that they found that selection method to be erroneous and consequently they have changed the selection method which according to them is the correct selection method. Thus what should be noted is that it is for the State Government and State Government alone to prescribe the selection method for implementing the Presidential Order and it is not for this Court or the petitioners to say which one is the best one. We have already mentioned the details of both the selection methods while narrating the background facts which led to the filing of the OAs and these writ petitions.

35. Sri Surender Rao however relied upon a decision of this Court given in P.Padmanabha Reddy v. State of A.P.[AIR 1984 (AP) 129] to show that the Government have no power to prescribe a new selection method. In that case the court was dealing with a controversy relating to reservations for local candidates for admissions into educational institutions under the A.P. Educational Institutions (Regulation of Admission) Order, 1974 which came into force from 01.07.1974. That was also a Presidential Order issued under Article 371D providing for reservations in educational institutions run by Government or subject to its control in various local areas specified therein. Under that Presidential Order also the State Government devised a formula or selection method through G.O.P.No.646 dated 10.07.1979 and it was almost identical with the selection method prescribed in G.O.Ms.No.763 for direct recruitment in various local cadres.

36. We have gone through that judgment. In that case the petitioners' counsel therein challenged the above selection method on the ground that it would not result in complete implementation of the reservation policy under the above

Presidential Order relating to educational institutions and suggested another method which can be said to be similar to the one prescribed now by G.O.Ms.Nos.8 and 124. The Court rejected that argument holding that it was not for the petitioners to say about the selection method when the Government decided to stick to the one framed by it. That is not the case here.

37. In the present case the Government have come forward with a new selection method pleading that the earlier one was erroneous. We have already mentioned that the Government have the power to prescribe the selection method to implement the reservation policy under the Presidential Order and therefore it is competent for it to change the selection method. Thus the above decision cannot help the petitioners.

38. In fact Sri Prakash Reddy, the learned Senior Counsel appearing for one of the petitioners, across the Bar stated that the selection method prescribed by G.O.Ms.Nos.8 and 124 can be said to be a better selection method than the one prescribed in G.O.P.No.763 though he says that the previous selection method need not be changed as that cannot be said to be a totally erroneous method. We must also mention here that many of the writ petitioners did not question the new selection method and the power of the Government to prescribe it for implementing the reservations. Even otherwise we are of the opinion that as the recruiting authority in public services, the State Government have plenary power to make appointments and as it has to implement the Presidential Order it can be said to have that power either impliedly or even in exercise of its executive power under Article 162 of the Constitution.

39. On a scrutiny of both the methods which we have already discussed in the back ground facts, we are of the opinion that the selection method prescribed in G.O.Ms.Nos.8 and 124 can reasonably be said to be the correct method as it ensures that local candidates are also made eligible for OC vacancies along with non-locals. Thus, for the aforesaid reasons, we hold that the State Government have the power to issue G.O.Ms.Nos.8 and 124 and decide this question in favour of the Government.

40. The second question under this point would be whether the Government are competent to apply the new selection method prescribed by G.O.Ms.Nos.8 and 124 to all the previous selections made and finalized and identify the non-locals appointed in the vacancies meant for local candidates and transfer them back to their local cadres as ordered in G.O.Ms.No.674 of 2007. The learned counsel for petitioners say that G.O.Ms.Nos.8 and 124 themselves do not operate retrospectively and Government are not competent to apply the selection method prescribed in the said GOs to previous selections finalized by applying the earlier selection method by G.O.Ms.No.674 of 2007 i.e. another GO. So far as G.O.Ms.No.2 and the Presidential Amendment Order of 2001 which pertain to increase in reservations for Teachers posts are concerned, we will answer the contentions raised with regard to them separately under second point.

41. In P.Muralidhar's case (2005(2) ALT 9 (D.B) supra), a Division Bench of this court held that the selection method prescribed by G.O.Ms.No.124 (which is preceded by G.O.Ms.No.8) is in the nature of a procedural law and therefore the said selection method can also be applied to ongoing selection process i.e. a selection process pertaining to posts which were notified prior to the date of G.O.Ms.No.124. In that case, the A.P.Public Service Commission issued a notification dated 28.12.1999 calling for applications for recruitment to 27 categories of posts in various departments consisting of Executive and Non-executive posts. For certain categories of posts, recruitment was finalized and appointments were given following the selection method prescribed in G.O.P.No.763 (earlier selection method). However, for certain other categories covered by the same notification, selection process was commenced pursuant to orders of the Tribunal and this Court and when that selection process was going on, G.O.Ms.No.124 was issued i.e. on 07.03.2002.

42. A question was raised in the above case whether the new selection method can be applied to the said ongoing recruitment process. That question was answered in the affirmative in the aforesaid decision holding that since it is in the nature of a procedural law, it can be applied going by the principle that every procedural law must be held to have retrospective effect unless such law itself clearly specifies that it was to have only prospective operation. It was further held that there was nothing in the G.O.Ms.No.124 to show that it could not be applied to selection process which was ongoing or pending on the date of issue of the said GO.

43. Another question which was also in the above case was whether the new selection method prescribed by G.O.Ms.No.124 could be applied to the posts notified under the same notification and for which selection process was completed and finalized and appointments were also given even before G.O.Ms.No.124 was issued. This question was considered and answered in the negative for the reasons recorded therein. We are told that the judgment in P.Muralidhar's case (2005(2) ALT 9 (D.B) supra) has become final. The various learned counsel appearing for the petitioners relied upon the above view in support of their contention that G.O.Ms.Nos.8 and 124 by themselves do not operate retrospectively and their further contention is that the Government cannot also give them retrospective effect subsequently by G.O.Ms.No.674 of 2007 and disturb the selections or appointments already made and finalized from the date of commencement of the Presidential Order.

44. We must now mention here that the judgment in P.Muralidhar's case (2005(2) ALT 9 (D.B) supra) is dated 27.12.2004. Nothing is placed on record to show that by applying G.O.Ms.No.674 the selections which were finalized in respect of posts covered by the Public Service Commission's notification mentioned in P.Muralidhar's case (2005(2) ALT 9 (D.B) supra) were reopened. It is however not necessary to go into that aspect.

45. On the other hand, the stand of the Government as amplified by the learned

Additional Advocate General is that the review conducted by the Government with regard to appointments in all local cadres in the State disclosed that the Presidential Order was not properly implemented and that several non-local candidates came to be appointed in the vacancies reserved for local candidates and therefore they wanted to set right that anomalous situation to achieve or to serve the purpose of Presidential Order. The learned Additional Advocate General further says that since Government is the competent authority to make appointments or supervise the appointments, it has in exercise of its power under Para-5(2)(c) of the Presidential Order i.e. in public interest undertook the above review and took action to ensure its proper implementation by transferring all such non-locals to their local cadres.

46. He also pointed out that no non-local is ousted from service on the ground that he has been appointed illegally in violation of the Presidential Order which could have been done and therefore the petitioners who are such non-locals cannot complain any prejudice also inasmuch as their seniority in the unit to which they are transferred is also protected. He reiterated that Government could undertake this exercise and transfer the non-locals appointed in violation of the Presidential Order to their local units or cadres on the ground of public interest as contemplated under Para-5(2)(c) of the Presidential Order. He says that the words "public interest" used in Para-5(2)(c) were deliberately inserted in the said clause in order to give wide amplitude or power to the Government to enforce the Presidential Order and that the Government can exercise that power of transfer to maintain the harmony and prevent disharmony among the people of various regions and also local areas in the State. In the course of arguments certain political issues were also raised, but they are not mentioned as the controversy has to be decided in accordance with law.

47. We must mention here now that the above contentions raised on behalf of the Government have no parallel and the learned counsel for petitioners could not bring to our notice any decision of the Supreme Court or this Court in which the above stand of the Government came up earlier for consideration. In fact, the above situation was not considered in P.Muralidhar's case (2005(2) ALT 9 (D.B) supra) also and therefore the said case is easily distinguishable and need not be followed by us.

48. In S.Prakasha Rao v. Commissioner of Commercial Taxes[AIR 1990(2) SCC 259], Government of A.P. v. A.Suryanarayana Rao[AIR 1991 SC 2113], Government of A.P. v. Mohd. Ghouse Mohinuddin[JT 2001 (7) SC 146] and V.Jagannadha Rao v. State of A.P.[AIR 2002 SC 77] which were relied upon by the learned counsel for petitioners are all cases where the importance of Article 371D and the Presidential Order has been emphasized and it was held that the Government cannot deviate from the Presidential Order in any manner. In some of the cases even the scope of Para-5 of the Presidential Order came up for consideration and it was held that Paras-5(1) and (2) cannot be meddled with. In Jawaharlal Nehru University v. Dr.K.S.Jawatkar[AIR 1989 SC 1577 (1)] the

Supreme Court was dealing with a case where a post-graduation centre opened in one university was transferred to another university and consequently the employees recruited for the post-graduation centre were also transferred to the latter university. The Supreme Court held that such employees cannot be transferred to the latter university as their contract of employment or appointment was in the former university. An extreme principle was also laid down in the said case which is it shall also be open for the university to terminate such employees on the principle of "last come, first go", if the abolition of posts in the post-graduation centre becomes necessary. However, in none of the first four cases referred to in this para the present situation pleaded by the Government and the scope of public interest clause contained in Para-5(2)(c) was considered and the fifth decision cited in this para is not relevant at all. A Full Bench decision of this court is relevant to Para-5(2)(c) and we will refer to it a little later. A number of other decisions were also cited by the petitioners' counsel but we do not consider it necessary to refer to them as they are not relevant for deciding this question.

49. At this stage, we may refer to Para-5 of the Presidential Order which reads as follows.

"5. Local Cadres and Transfer of Persons:— (1) Each part of the State, for which a local cadre has been organised in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters as may be specified by the State Government, in respect of that category of posts.

(2) Nothing in this order shall prevent the State Government from making provision for --

(a) the transfer of a person from any local cadre to any Office or Establishment to which this Order does not apply, or Vice Versa.

(b) the transfer of a person from local cadre comprising posts in any Office or Establishment exercising territorial jurisdiction over a part of the State to any other local cadre comprising posts in such part or Vice Versa.

(c) the transfer of a person from one local cadre to another local cadre where no qualified or suitable person is available in the latter cadre or where such transfer is otherwise considered necessary in the Public interest.

(d) the transfer of a person from one local cadre to another local cadre on a reciprocal basis, subject to the condition that the persons so transferred shall be assigned seniority in the latter cadre with reference to the date of his transfer to that cadre."

50. It is true that Para-5(1), as contended by the petitioners counsel, says that for each part of the State for which a local cadre has been organized in respect of any category of posts such local cadre shall be a separate unit for the purpose of recruitment, appointment, discharge, seniority, promotion and transfer and such

other matters as may be specified by the State Government. Here Para-5(1), it may be noted, would suggest that a person once appointed in a particular local cadre, he will get certain rights to be continued in that cadre for the purpose of seniority, promotion etc. There can be no doubt on this aspect.

51. It should however be noted that Para-5(2) starts with the words "Nothing in this Order shall prevent the State Government from making provision for effecting transfers" of employees from one local cadre to another or from one local cadre to any other office or establishment to which the Presidential Order does not apply and the various situations in which such transfers can be ordered are stipulated in clauses (a) to (d) of the said Para-5(2).

52. What should be noted is that the words "Nothing in this Order" indicates that Para-5(2) is a non-obstante clause and the State Government is given the power to effect the transfers in the situations stipulated therein from one local cadre to another notwithstanding anything contained in any other provision of the Presidential Order. Para-5(2)(c) consists of two parts. The first part says that Government can transfer a person from one local cadre to another local cadre where no qualified or suitable person is available in the latter cadre. Then the second part which is separated by the disjunctive 'or' from the first part says that Government can order such transfer i.e. from one local cadre to another where such transfer is otherwise considered necessary in the public interest (emphasis supplied). It can be said that this expression 'public interest' used in the second part of Para-5(2)(c) can be said to be of wide amplitude and indicates that Government can in the public interest transfer any employee from one local cadre to another. Whether the situation now pleaded by the Government can be treated as a sufficient public interest for applying the new selection method prescribed by G.O.Ms.Nos.8 and 124 to previous selections already made and finalized by applying the earlier selection method in G.O.P.No.763 on the ground that the latter selection method resulted in non-locals being appointed in the vacancies meant for locals. The petitioners say that it cannot be done, whereas the Government's stand is it can be done under the above 'public interest' clause.

53. Sri Surender Rao placed heavy reliance upon a Full Bench decision of this court given in *G.Anantha Reddy v. A.P.Admn. Tribunal*[2002 (1) ALT 279 (F.B.)] in support of his contention that the new selection method prescribed by G.O.Ms.Nos.8 and 124 cannot be applied retrospectively. Elaborating on this contention, he pointed out that by applying the new selection method prescribed in the aforesaid two GOs to the selections already made and finalized from 1975 onwards, the Government want to transfer the non-locals from the local cadres in which they were selected to their present identified local cadres on permanent basis and that is not permissible in view of Para-5(1) and Para-5(2) of the Presidential Order and therefore if that is permitted it would be totally violative of the Presidential Order. He says that the aforesaid Full Bench decision is an authority for this proposition. His further argument is that the Government have therefore no power to apply G.O.Ms.Nos.8 and 124 to the previous selections

already made and finalized in all categories.

54. In G. Anantha Reddy's case (2002 (1) ALT 279 (F.B.) supra), a situation of this type did not come up for consideration before the Full Bench. The point which arose before the Full Bench in that case is stated in para 2 of the judgment which was delivered by the Hon'ble the Chief Justice and it reads as follows.

"2. The core issue involved in these writ petitions is whether the transfer of the Inspectors of Police to the unit of Hyderabad City Police from other zones or the transfer of Inspectors of Police from one zone to another, as the case may be, made on administrative grounds and in public interest was on permanent basis and consequently they are entitled to take their respective seniority in the units to which they were transferred and whether they can be repatriated back to their parent zones?"

55. It is not necessary to go into the details of the said case, but it would be sufficient to note that that was not a case where the Government transferred police officers from one local cadre to another on the ground that such police officers though non-locals were wrongly selected in the vacancies meant for local candidates in a local cadre. It was a case where after the commencement of the Presidential Order the Government felt that there was a need for transfer of members of the police force from one part of the State to another and therefore for that purpose the State has enacted A.P. Members of Police Force (Regulation of Transfers) Act, 1985. The State Government also issued various GOs and also framed rules to provide for transfer of police officers from one local cadre to another and also to Hyderabad City. Such transfers were questioned. Government sought to defend them by relying upon Para-5(2)(c) of the Presidential Order invoking the public interest clause. Disposing of the said matter, the Full Bench laid down the following principles in the form of its conclusions. Of them, conclusions (e), (f), (g), (h), (i), (j), (k) and (l) are relevant for the purpose of the present writ petition and they read as follows.

"(e) The provisions of Sec.3 of the Act 1985 imposing a liability on a member of the police force to serve in any part of the State of Andhra Pradesh and the concomitant power of the State Government to effect such transfer has to be in conformity with the provisions of para 5(2) of the Presidential Order in view of the provisions of Art. 371D(10) of the Constitution and para 11 of the Presidential Order.

(f) Transfer of a member of the police force from any local cadre to any office or establishment under para 14 or vice versa, the transfer of a person from any local cadre comprising posts in any office or establishment exercising territorial jurisdiction over a part of the State to another local cadre comprising posts of such part or vice versa and the transfer of a person from one local cadre to another local cadre could be effected only where no qualified or suitable person is available in such latter cadre or where such transfer is otherwise considered necessary in the public interest and not otherwise. Wherever such transfers are

made on the ground of public interest, such public interest must be of such overriding impact as to warrant a departure from the local cadre discipline set out in paras 3, 4, 5(1) and 6 of the Presidential Order (emphasis supplied).

(g) While effecting such transfer, reasons must be recorded justifying such transfers either on the ground of there being no qualified or suitable person available in the cadre to which transfer is to be effected or on the ground of overriding public interest.

(h) Such transfers are normally to be of limited duration or tenure coterminus with the specified exigency for which the transfer is made and shall cease to be operative and the incumbent transferred liable to be reverted to the parent cadre immediately on the cessation of such exigency, which warranted the transfer.

(i) Transfer on long-term basis or of indeterminate duration should be in the rarest of circumstances, again for clearly specified reasons and there should be a periodical review of the need for continuance of the person so transferred in the transferred local cadre.

(j) In all cases of transfer made in the circumstances set out in para 5(2)(a) to (c) and on the principles after stated, the person so transferred is entitled to his seniority in the unit to which he is transferred. Rule 3 of the Rules under the Act 1985 is valid.

(k) In the case of transfers on reciprocal basis, the seniority of persons transferred shall be in accordance with the prescriptions of para 5(2)(d). Rule 3 of the Rules under the Act, 1985 is in such cases inoperative.

(l) Even in case of transfers on reciprocal basis, due regard must be had to the principles of maintenance of composition of balance local cadre with reference to age and seniority groups, the administrative needs of the posts in the local cadres and the like as set out in para 4(2) of the Presidential Order.”

56. It may be noted that of the above conclusions especially, conclusion (f) speaks of a transfer on the ground of public interest. The Full Bench held in such a case public interest must be of overriding impact as to warrant a departure from local cadre discipline. What was held is that transfers from one local cadre to another cannot in principle be made on permanent basis or for indeterminate duration unless there were compelling circumstances and that too by recording reasons even in the case of a public interest. To repeat, that was not a case where police officers were sought to be transferred on the ground that though they were non-locals they were wrongly selected and appointed in the vacancies meant for locals in the local cadres in which they were appointed but transfers were defended on the ground of public interest for some other reason.

57. It may however be noted that the word permanent transfer is not used in the said conclusion. At the same time, in para-71 of the judgment, their Lordships considered in what type or kind of situation permanent transfers from one cadre to another can be made in public interest and observed thus.

"Insofar as public interest is concerned, transfer from one cadre to another cadre is permissible. Such public interest may either be temporary or permanent in nature."

58. In our opinion, the above observations of the Full Bench in para-71 would indicate that even a permanent transfer can be made from one local cadre to another in public interest. It should also be noted that Para-5(2)(c) when it uses the term 'public interest' and does not speak of any restriction time-wise.

Perhaps this must have weighed with the Hon'ble the Chief Justice in laying down the proposition mentioned in para-71 of the judgment. The stand of the Government is that the earlier selection method followed by it resulted in defeating the object of the Presidential Order in implementing the reservations for local candidates and it wants to set right that situation now by transferring the non-locals who were appointed in the vacancies meant for local candidates to their respective local cadres. The Government also say that they have protected the seniority of such non-locals in the units to which they have been transferred and they have also been paid all the benefits like Traveling Allowance etc.

59. Here, to repeat, it should be noted that so far as public interest ground is concerned, what was held in the aforesaid Full Bench decision is that it should have overriding effect so as to warrant a departure from local cadre discipline. Once a person is recruited and allotted to a local cadre/unit, he will under Para-5(1) get rights of seniority and promotion etc., in the unit in which he is appointed. This apart, the State Government is also required to implement reservation policy under Presidential Order for local candidates and maintain the balance between the local candidates and non-locals in a local cadre filling up vacancies meant for local candidates by local candidates only. If transfers are made indiscriminately on flimsy grounds that would have the effect of disturbing the composition and structure of a local cadre and it was for that reason the aforesaid principles were laid down.

60. It may however be noted and as already mentioned the aforesaid Full Bench decision does not lay down as an absolute rule that permanent transfers from one local cadre to another cannot be made even in a situation now pleaded by the Government. In the present situation pleaded by the Government we are of the opinion that individual interest must yield to larger public interest and in the present case the public interest clause is invoked to maintain the balance in the local cadre and not to disturb it.

61. In our opinion, in a situation like this, the Government can act in public interest under Para-5(2)(c) and make the transfers which it has made in order to maintain the balance in local cadres and to bring about harmony among local candidates and non-local candidates through out the State for implementing the Presidential Order. None of the petitioners have complained that they are locals in the local cadres in which they appointed. Thus the impugned transfers can be said to be permissible on the public interest ground under Para-5(2)(c). Thus the

Government can be said to have acted in accordance with law in applying the new selection method prescribed by G.O.Ms.Nos.8 and 124 to the previous selections and order the impugned transfers.

62. There is another facet of this matter also. It would be useful to note that in *V.Venkata Subrahmanyam v. District and Sessions Judge, Nellore*[2001 (5) ALT 403], the majority opinion took the view that in principle when a non-local candidate is appointed by giving a false address to treat him as local and gets an appointment as a local, such appointment would be illegal and is liable to be terminated.

63. In the above case, this court was dealing with appointment of non-locals in the posts of Record Assistant and Attenders which were part of local cadres for Nellore District in the unit of the District Court, Nellore. The matter was initially heard by a Division Bench of this Court. One of the Hon'ble Judges took the view that such appointments would be illegal, whereas the other differs with that view. The matter was referred to third opinion and the Hon'ble the Chief Justice giving the third opinion agreed in principle with the view that such appointments would be illegal. However the Hon'ble the Chief Justice having laid down that principle, directed the District Judge, Nellore to conduct an inquiry as to whether the Record Assistant and Attenders in question satisfied the criteria of locals and then take appropriate action. What appropriate action was taken is not known, but the above principle is relevant.

64. Going by the majority opinion in the above decision, it may be noted that the appointments of the petitioners in the present cases also in the vacancies meant for locals being in violation of the Presidential Order would also be illegal and liable for termination, but the Government have not taken the extreme step of ousting the petitioners from service and instead the Government are sending them back to their local cadres. It is not the case of the petitioners that they have been transferred to local cadres other than those to which they belong. These are the difficulties faced by the petitioners by the pursuit of a wrong selection method by the Government but instead of ousting them from their service, the Government are continuing them in service but are sending them to their local cadres, and therefore petitioners cannot be said to have suffered any prejudice. It is also stated by the Government that the above transfers are being effected even by creating super-numerary posts wherever necessary and this is an added ground to hold that there is no prejudice to the petitioners. So far as promotions are concerned, they are not a matter of right and once the seniority of the petitioners is protected in the units to which they have been transferred, they will get promotions subject to their eligibility in course of time depending upon the availability of vacancies in promotion posts.

65. In the face of the above legal position and circumstances, the learned counsel appearing for the petitioners could not bring to our notice any decisions of the Apex Court or this Court to show that even when public interest factor is involved in a case like this, permanent transfers cannot be ordered

notwithstanding the non-obstante clause with which Para-5(2) starts. A set of decisions were cited to show that the G.O.P.No.763 and G.O.Ms.Nos.8 and 124 are in the nature of delegated legislation and as there is no specific authorization given by the Presidential Order to make delegated legislation, the latter two GOs cannot be given retrospective effect by a subsequent GO i.e. G.O.Ms.No.674 of 2007. There is no dispute about the above principle and hence we are not mentioning the said decisions. There is however no force in this contention.

66. What should be noted here is that the Government having regard to the above legal position, can act under Para-5(2)(c) in public interest even to order permanent transfers from one local cadre to another. Having regard to the Full Bench decision of this Court in G.Anantha Reddy's case (2002 (1) ALT 279 (F.B.) supra) such transfers are not to be made on flimsy grounds and they have to be made only in exceptional circumstances as laid down in the said decision. In the present case, the Government have resorted to the above power under Para-5(2) (c) only to set right the irregular appointments made in various local cadres i.e. appointments of non-locals in the vacancies meant for local candidates because of an erroneous selection method which resulted in those irregular selections. The Government say that they have applied the new selection method in G.O.Ms.Nos.8 and 124 to set right those irregularities in the previous selections. In our view, this can be done by the Government.

67. In other words looked at from one angle, it can be said that Government is applying the selection method in G.O.Ms.Nos.8 and 124 retrospectively, but in substance, it is applying that selection method only to exercise its power under Para-5(2)(c) i.e. in public interest to set right the illegal or irregular selections which it earlier made and having regard to its power under Para-5(2)(c) i.e. public interest clause. It therefore follows that the Government have the power to apply it even retrospectively through G.O.Ms.No.674 of 2007. We accordingly answer this question also in favour of the Government.

68. We will deal with other contentions now raised by the learned counsel for petitioners under this point. Sri J.Ramachander Rao, the learned counsel appearing for the some of the writ petitions has pointed out that initially G.O.Ms.No.610 was issued only to set right the irregularities in selecting non-local candidates in the vacancies meant for local candidates only in Zones-V and VI and therefore that principle cannot be extended by G.O.Ms.No.674 of 2007 to all other local cadres in the other zones. There is no force in this contention.

69. It is true that initially G.O.Ms.No.610 was issued only in respect of Zones-V and VI comprising of all the districts in Telangana region. The Government's stand however is that subsequently the reviews conducted by it disclosed that because of the erroneous selection method in G.O.P.No.763, such irregularities were committed in all zones comprising of the districts or zones through out the Andhra Pradesh and therefore they have issued G.O.Ms.No.674 of 2007. We must mention here that the point raised by Sri Ramachander Rao does not stand any scrutiny and it has to be rejected outright in view of the above stand of the

Government. In fact it may be noted that both G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 are based on the same principle and the latter one is more comprehensive in nature covering the entire State of Andhra Pradesh, whereas the former is only in respect of Zones-V and VI.

70. Sri Surender Rao and Sri Mallikarjuna Rao and some other counsel have argued that both G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 can also be said to be violative of Para-4 of the Presidential Order and also the other paras which relate to those working in offices or establishments which are outside the purview of the Presidential Order. Para-4 deals with allotment of persons holding posts as on the date of coming into force of the Presidential Order to various local cadres. It may also be noted that certain persons/employees have also been transferred and posted in offices or establishments to which the Presidential Order does not apply. The plea of the petitioners is that G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 are violative of the above paragraphs in the Presidential Order.

71. It may be noted that the Presidential Order has come into force on 18.10.1975. We are now in the second half of 2012. More than 37 years have elapsed now. We specifically asked the learned Additional Advocate General as to whether anybody who was allotted to various local cadres and other offices as on 18.10.1975 are in service now. He stated that no such persons are in service and all of them have retired and even otherwise their rights are not been touched. The learned counsel for petitioners also could not bring to our notice that any of the petitioners are in service from 1975. In view of this, we are of the opinion that it is not necessary for us to go into the above controversy as it would only be a futile exercise and further as no court should adjudicate a controversy the result of which will not affect anybody.

72. Accordingly, for the aforesaid reasons, we hold that G.O.Ms.No.610 and G.O.Ms.No.674 of 2007 are not ultra vires the Presidential Order and are valid and answer this point in favour of the Government, subject of-course to our decision under point No.2.

Point No.2:

73. This point relates to the writ petitions in which the petitioners are Teachers. The contentions of the said petitioners have already been setout in para 16 of this order. In substance their contention is that 80% reservation for locals and 20% posts for open competition in Teachers posts was fixed from 02.06.2001 by the Presidential Amendment Order of 2001 and earlier the said ratio was 70% and 30% but by G.O.Ms.No.674 of 2007, they reopened all the previous selections made prior to 02.06.2001 by applying 80% and 20% ratio and consequently the said GO is bad to that extent. To appreciate this contention, it would be necessary to first look at sub-paras (1) and (2) of Para-8 of the Presidential Order which prescribe the percentages of reservation for non-gazetted categories as it originally stood and they read as follows.

"8. Reservation in the matter of Direct Recruitment:— (1) 80% of the posts to be filled by direct recruitment any time.

(a) in any local cadre under the State Government comprising posts belonging to the category of lower division clerk or a Category equivalent to or lower than that lower division clerk; and

(b) in any cadre under a local authority comprising post carrying a scale of pay the minimum of which, or a fixed pay which does not exceed the minimum of the scale of pay or a lower division clerk, shall be reserved in favour of local candidates in relation to the local area in respect of such cadre.

(2) 70% of the posts to be filled by direct recruitment at any time.

(a) in any local cadre under the State Government comprising posts belonging to non-gazetted categories other than those referred to in item (a) of sub-paragraph (1) and

(b) in any cadre under a local authority comprising posts carrying a scale of pay, the minimum of which, or a fixed pay which exceeds the minimum of the scale of pay of a lower division clerk, but does not exceed Rs. 480/- per mensem on any amount corresponding to it as may be specified in this regard in the successive revisions of pay scales granted by the State Government from time to time shall be reserved in favour of local candidates in relation to the local area in respect of such cadre. (G.O.Ms. No. 635, G.A. (SPF.A) Dept, dated 30-11-93)."

74. Thus Teachers as such either in the service of Government or in the service of local authorities fell under sub-para (2) of Para-8 of the Presidential Order and the local candidates reservation for the said post was 70% in any direct recruitment as they were not treated as posts equivalent to LDCs. In fact, Para-3(3) which dealt with zonal posts also stated that posts belonging to each non-gazetted category other than those mentioned in Para-3(2) in each department in each zone, shall be organized into a separate cadre i.e. zonal cadre. Teachers fell under Para-3(3) and reservations for them as per Para-8(2) was 70% for local candidates and 30% for open competition.

75. It may then be noted that even Para-6(1) as it originally stood prescribed a district as a local area for LDC post and its equivalent posts and lower posts. It was through A.P.Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) (Amendment) Order, 2000 which was republished by the State Government through G.O.Ms.No.224 GAD dated 30.06.2000. Para-6 of the Presidential Order which speaks of local areas was amended by the President with effect from 01.01.1994. Items 3 and 4 were added in Para-6(1) and the entire Para-6(1) after that amendment read as follows.

"6. Local Areas :— (1) Each district shall be regarded as a local area-

(i) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that district belonging to

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

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

(iii) For direct recruitment to all the posts in the Andhra Pradesh School Education Subordinate Services and all other similar/equivalent categories of posts of teachers under any department of the state Government.

(iv) For direct recruitment to all posts of teachers under a local authority or such other under any management, as may be notified by the State Government from time to time, carrying a scale of pay equal to that of the posts in the Andhra Pradesh School Education Subordinate Services."

76. It is thus clear that the local area for Teachers in the Government service and as well as in the service of local authorities was made a district along with other non-gazetted categories only with effect from 01.01.1994. However,

Para-8 (1) which prescribes 80% reservations for non-gazetted mentioned in the same was not amended with effect from 1.01.1994, but it was amended only by the Presidential Amendment Order of 2001 republished by the State Government through G.O.Ms.No.2 GAD dated 03.01.2002 and it also reads that it is w.e.f. 01.06.2001.

77. By the above Amendment Order Item (c) was enacted in Para-8(1) of the Presidential Order and after that amendment, Para-8(1) reads as follows.

"8. Reservation in the matter of Direct Recruitment:- (1) 80% of the posts to be filled by direct recruitment any time.

(a) in any local cadre under the State Government comprising posts belonging to the category of Junior Assistant or a Category equivalent to or lower than that of Junior Assistant; and

(b) in any cadre under a local authority comprising post carrying a scale of pay, the minimum of which, or a fixed pay which does not exceed the minimum of the scale of pay or a lower division clerk, shall be reserved in favour of local candidates in relation to the local area in respect of such cadre.

(c) (i) in any local cadre under the State Government comprising posts belonging to the categories of Teachers in the Andhra Pradesh School Education Subordinate Service and all other similar or equivalent categories of posts of teachers under any Department of the State Government; and

(ii) in any cadre under a local authority or under any such other management, as may be notified by the State Government from time to time carrying a scale of pay equal to that of posts in the Andhra Pradesh School Education Subordinate

Service shall be reserved in favour of local candidates in relation to the local area in respect of such cadre.”

78. Thus it is clear that the 80% reservation for local candidates prescribed by Para-8(1) covered the Teachers posts mentioned in Item (c) thereof only with effect from 01.06.2001 as that was the date on which the Presidential Amendment Order of 2001 came into force. Going by Para-8(1) as it stood earlier, the 80% reservation applied only to LDC posts or equivalent posts or lower posts in Government service and the service of local authorities prior to 01.06.2001 and that reservation was not for Teachers and it was 70%. In other words, the above amendment would show that 80% reservation was applied by the Presidential Amendment Order 2001 itself to the Teachers posts with effect from 01.06.2001.

79. The learned Additional Advocate General however pointed out that since local area even for Teachers posts was prescribed as a district under Para-6(1) even from 01.01.1994, 80% reservation must be held applicable to Teachers posts also at least from 01.01.1994 as that percentage of reservation is applicable to the said posts under Para-8(1) that is going by the district as a unit. He also pointed out that even prior to that date, G.O.Ms.No.529 Education Department dated 14.05.1976 was issued amending G.O.P.No.728 dated 01.11.1975 organising Teachers posts also into local cadres for each district and therefore as they were organised into district cadre, 80% reservation must be held applicable to them also even under Para-8(1) from the beginning and in fact the Presidential Amendment Order of 2001 was unnecessary. It is difficult to accept this argument.

80. It may be noted that though even admitting that Teachers posts were also organised into local cadre with effect from 14.05.1976 which is the date of G.O.Ms.No.529, they were not declared to be nor treated as posts equivalent to LDC posts and we are told that the scales for Teachers posts are higher than the scales of LDC posts. He also filed a pay scales sheet pertaining to Junior Assistants and Teachers from 1974 onwards to 2010. Those pay scales also show that Teachers’ pay scale is higher from 1982 and the scale of pay for the earlier years does not contain all the particulars to hold that the Teachers’ pay scales are equivalent to the posts of LDCs.

81. It may, even otherwise, be noted that His Excellency the President himself thought it fit to include “Teachers posts in Government service and in the service of local authorities” by enacting Item (c) in para-8(1) which prescribes 80% reservations for local candidates by the Presidential Amendment Order of 2001 with effect from 01.06.2001. It is well settled that when a Legislature amends an existing law in its wisdom applying the said amendment prospectively covering a new class or situation, a court cannot go behind it on the assumption and presumption that such an amendment is not necessary and the un-amended law itself covered such a class or situation. The same principle applies to the Presidential Amendment Order of 2001 also which is in substance a Legislation

made under Article 371D.

82. It may be noted that treating the Teachers posts in Government service as well as in the service of local authorities as higher than LDC post though in a non-gazetted category, the authorities themselves going by Para-8(2) as it originally stood applied 70% reservations for locals in Teachers posts. They can be said to have acted consistently with the Presidential Order till it was amended as stated above with regard to Teachers by the Presidential Amendment Order of 2001 with effect from 1.06.2001. It may be noted that a Division Bench of this Court also in *M.Krishna Rao v. Union of India*[10] dealing with recruitment to the posts of Teachers, Telugu and Hindi Pandits and Physical Education Teachers held, while answering other questions, that reservations for Teachers posts have to be treated as 70% for local candidates and 30% for open competition. This Bench decision which is dated 16.10.1998 dealt with a recruitment of 1998. It appears that perhaps after this decision the Presidential Amendment Order 2001 was enacted. The above Division Bench decision also fortifies our view on this aspect.

83. We are therefore, for the aforesaid reasons, unable to accept the Government's contention that it can apply 80% reservation for Teachers posts also for local candidates to all previous selections made and finalized prior to 01.06.2001 to identify the non-locals who were appointed in the vacancies meant for locals and repatriate or transfer them to their local units on that basis. Thus to this extent G.O.Ms.No.674 of 2007 can be said to be invalid or inoperative. It therefore follows that the Government can operate G.O.Ms.No.674 of 2007 retrospectively and repatriate the excess non-locals appointed in the vacancies of Teachers posts meant for locals and undertake transfers of such non-locals by applying 70% reservation for all locals in all selections made prior to 01.06.2001 and apply 20% for open competition and 80% reservation for locals for selections made and finalized subsequent to 01.06.2001 if such reservations were not applied subsequent to the said date for any reason till the issuance of G.O.Ms.No.674 of 2007. This point, to the extent indicated above, is partly answered in favour of the petitioners who are Teachers.

Point No.3:

84. Coming to this point, it relates to the plea of petitioners that their individual cases regarding the applicability or non-applicability of G.O.Ms.No.674 of 2007 to them. Several contentions were raised by the learned counsel for petitioners under this point. The first contention is that the Tribunal did not consider their individual claims that the Government/authorities have wrongly identified them as non-locals who have to be sent back while they retained the non-local candidates who were less meritorious than them in the vacancies meant for open competition. The second contention is that in some local authorities the local cadres are not organised by the Government at all and therefore their repatriations are bad on that ground. The third contention is that there are special provisions for retaining non-local candidates under the concessions given to spouses and other categories such as visually handicapped and dumb and deaf

and the Tribunal did not consider any of the above grounds.

85. In fact, it is stated on behalf of the petitioners that the Full Bench of the Tribunal should have answered the above claims of the petitioners or it should have sent back the matters to individual benches for disposal of each OA to consider the above claims of the petitioners on individual basis and therefore the matters should be remitted back to the Tribunal for considering their claims. It is true that the judgment of the Tribunal shows that the above aspects were not considered by it.

86. It may, however, be noted that though the Tribunal committed an error on the above aspects, this court can also now go into the individual claims of the petitioners and the merits in the same. We therefore called upon the learned counsel for petitioners to argue on the individual claims of the petitioners. In fact, some of the counsel argued the matters on the above aspects.

87. Regarding lack of opportunity under the above mentioned first contention, Sri Prakash Reddy, the learned senior counsel appearing for the counsel in W.P.No.13921 of 2012 invited our attention to the illustration given in G.O.Ms.No.674 of 2007. That illustration pertains to DSC-2000 recruitment of Teachers in Mahaboobnagar District. It shows that the list was redrawn applying the new selection method in G.O.Ms.Nos.8 and 124 and given as a guideline or example to be followed for implementing G.O.Ms.No.674 of 2007. We have seen that selection list at the instance of Sri Prakash Reddy. It is true that there are certain instances where less meritorious non-locals have been retained in the open competition vacancies while more meritorious non-locals selected in local vacancies were repatriated.

88. It may however be noted that the petitioner in W.P.No.13921 of 2012 has not been able to demonstrate that such injustice has been caused to him. The petitioner in this writ petition is a local of Nalgonda Unit and he was selected against 30% vacancies earmarked for open competition in Hyderabad District in 1996 as a Secondary Grade Teacher and he was repatriated and transferred back to Nalgonda through G.O.Ms.No.140 School Education Department, dated 18.12.2007 by applying 20% vacancies for open competition and 80% vacancies for locals. We already upheld the contention of various Teachers that for selections made and finalized prior to 01.06.2001, 70% reservation for locals should be applied. Thus in view of that finding, the matters of the Teachers have to be again sent back to the concerned authorities to apply 70% reservation for locals and for redrawing the lists. This petitioner therefore cannot have any grievance and he can ventilate his grievance, if any, before the authority concerned when the list is again taken up for action under G.O.Ms.No.674 of 2007.

89. It should be noted that the mistakes pointed out in the illustration given in G.O.Ms.No.674 of 2007 have been relied upon by the petitioners other than those who are Teachers. Sri Mallikarjuna Rao appearing in W.P.No.13890 of 2012

and other writ petitions pointed out that the petitioner in the aforesaid writ petition was recruited as an Assistant Executive Engineer and appointed in Zone-VI though he belonged to Guntur which is in Zone-III and he was without any reason transferred to Zone-III by the impugned transfer order i.e. G.O.Ms.No.396, PR & RD (Estt.III) Department, dated 23.10.2008. His plea is that his recruitment and regularization in Zone-VI was within the open competition limit of 40% and therefore he cannot be repatriated.

90. What all that is stated in the affidavit filed in support of W.P.No.13890 of 2012 is that the authorities have not clearly mentioned as to how and on what basis the petitioner therein is treated as a non-local and therefore his writ petition should be allowed. Similar pleas are raised in the writ petitions in which Dr.Narasimha Rao the learned counsel appearing in the same. It may be noted that going by the principle laid down in V.Venkata Subrahmanyam's case (9 supra) if a candidates claims as a local candidate the burden of proving the same lies upon him by showing that he would fall under Para-7 of the Presidential Order and this is based on the rule of evidence enacted in Section 101 of the Evidence Act. The same proposition can be extended to the requirement that if a person says that he falls within the open competition quota the burden to prove that aspect lies upon him.

91. Regarding the proof to show that petitioners have been wrongly identified as non-locals to be sent out of their units while retaining less meritorious non-locals are retained, petitioners have stated that no information is forthcoming from the Government as to how they identified petitioners as persons to be sent out and therefore the Government must be made responsible for not giving the required information. In this connection, petitioners have also relied upon the requirement of preparing lists and keeping them available on the relevant website and furnish copies also to those who wish to have them and the above requirement, it is true, is laid down in Para-10 of G.O.Ms.No.674 of 2007. In many cases pertaining to writ petitions other than those filed by Teachers, the affidavits merely read that they have not been given an opportunity to demonstrate their individual cases. Only broad pleas are taken without giving details. On such blanket pleas, we cannot remand the matters. The contention of learned Additional Advocate General is that lists have been kept in the website and none of the petitioners have filed any proof to show that they approached the authorities requiring copies and in such a situation, the contentions of the petitioners cannot be accepted. This contention of the learned Additional Advocate General cannot be said to be without force.

92. One more contention which was raised was with regard to multi-zonal posts where an employee may become local for certain posts in a zone and a non-local for posts in the other zones and at least proper opportunity should have been given in those cases. It is admitted by both sides that roughly around 15,000 employees have been transferred in the present situation and around more than 8,000 employees have accepted the transfers and only petitioners are contesting

their transfers. It is also stated by the Government that various Committees/ Commissions have been appointed to identify the non-locals appointed in the vacancies meant for locals and it is only after receiving the enquiry reports, the Government have effected the transfers. In these circumstances, we are of the opinion that this controversy should be set at rest as this court cannot go into disputed questions of fact having regard to our finding that G.O.Ms.No.674 of 2007 is valid to the extent indicated under points 1 and 2.

93. Lastly, it was pointed out that in the case of visually handicapped and dumb and deaf persons and also spouses, certain GOs have been issued by the Government to look after their interest and grant exemption to them or relax the provisions of the Presidential Order also under Para-5 thereof and at least authority should be directed to consider the above cases. We will deal with this aspect in detail under Point No.4 relating to relief.

94. Regarding the plea of some of the petitioners that the posts in the local authorities have not been organized into local cadres by the Government, it should be noted that Para-3 of the Presidential Order which speaks of organization of local cadre does not empower the Government to organize the posts of LDCs and its equivalent posts in the local authorities into local cadres. On the other hand, Para-6(1)(2) of the Presidential Order itself specifically lays down that each district shall be regarded as a local area for direct recruitment to posts of LDCs and below that level in any cadre under any local authority within that district. Thus it can be said that for the above posts in local authorities, the Presidential Order declares that for all the above posts in a local authorities the local area shall be the district. It can therefore be said that the Presidential Order itself has created those local cadres. Thus the petitioners cannot complain on the above ground also. We therefore do not find any ground to interfere in these matters under this point. Regarding the submission of some of the petitioners that they should be permitted to at least submit representations to the Government, for redressal of their grievances under various GOs issued subsequently, we will deal with this aspect under point No.4.

Point No.4:

95. In the result, having regard to our finding under points 1 and 2, we hold that G.O.Ms.Nos.8 and 124 (new selection method) and G.O.Ms.No.674 of 2007 can be given retrospective effect by applying only 70% reservation in vacancies for local candidates and 30% for open competition in respect of Teachers posts alone both in Government service and in the service of local authorities in all recruitments made and finalized prior to 01.06.2001 and apply 80% and 20% subsequent to that date. It therefore follows that G.O.Ms.No.674 of 2007 cannot be sustained to the above extent. Thus in respect of Teachers posts it is clear that the writ petitions and the OAs pertaining to them have to be partly allowed and the impugned orders of transfers relating to Teachers in Government service and in the service of local authorities must be set aside remanding those matters back to the concerned educational authorities to redraw the lists as indicated

above. The said writ petitions pertaining to Teachers are accordingly partly allowed.

96. Then coming to the other writ petitions i.e. those pertaining to posts other than Teachers for which 80%, 70% and 60% reservations are applicable and for which there is no change right from the commencement of the Presidential Order, all the said writ petitions have to fail and no relief can be granted to them by this court. The transfer orders pertaining to the petitioners in the said writ petitions have to be implemented in terms of G.O.Ms.No.674 of 2007 and G.O.Ms.Nos.8 and 124. We have already mentioned that even according to the learned Additional Advocate General, the employees who were in service as on the date of commencement of Presidential Order, have almost all retired from service by now and even if some of them are in service, they are not being touched. Hence, in their cases, no relief need be granted.

97. It is now brought to our notice that after the issuance of G.O.Ms.No.674 of 2007, the Government have issued G.O.Ms.No.823 GAD (MC-III) Department dated 31.10.2007 giving certain concessions to cases of spouses, Circular Memo No.25382/MC-III/2007-1, dated 02.01.2008, granting certain concessions or exemptions to visually handicapped and hearing handicapped persons who have studied in the special schools meant for them taking into account the native place of their parents and various other GOs to consider the representations of the employees who may apply for such special treatment and granting relaxation in their case.

98. It is also brought to our notice that Government have also issued G.O.Ms.No.245 GAD (MC-I) Department, dated 3. 05.2012, constituting a One Man Commission headed by a retired Judge of this court to review the grievances relating to implementation of the Presidential Order. The said GO reads as follows.

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

G.A. Monitoring Cell – Constitution of Commission headed by Retired Judge of A.P.High Court to review the grievances related to implementation of Presidential Order – Appointment of Dr.Justice B.S.Raikote, Retired Judge of High Court of Judicature, Andhra Pradesh – terms of the reference of Commission – Orders – Issued.

G.O.Ms.No.245

GENERAL ADMINISTRATION (MC-I) DEPARTMENT Dated: 03.05.2012

1 G.O.Ms.No.299, G.A. (MC-I) Dept., GAD, dated 03.06.2011

2G.O.Ms.No.201, G.A. (MC-I) Dept., GAD, dated 16.04.2012

* * *

ORDER:

The Government issued orders vide reference 1st read above constituting a Commission to review the grievances related to implementation of Presidential Order and suggest corrective action and remedies to the Government. Orders were issued in the reference 2nd read above appointing Dr.Justice B.S.Raikote, Retired Judge of High Court of Judicature, Andhra Pradesh to head the above Commission.

2. The Commission shall be called as One Man Commission (Presidential Order, 1975). The terms of reference of the Commission are as follows:-

(i) The Commission shall examine and consider the representations received from Employees Associations, Employees and Government Institutions & Agencies and render appropriate recommendations to Government.

(ii) The Commission shall suggest modifications etc., in existing rules and Government orders relating to implementation of Presidential Order within the frame work of Presidential Order.

(iii) The Commission shall suggest feasible policy level interventions for making implementation of Presidential Order more effective and transparent.

(iv) The tenure of the Commission shall initially be for a period of three years from the date of assumption of charge.

(v) The Judge appointed will have the status of sitting High Court Judge. Therefore, the salary with DA (minus pension) and perquisites will be as applicable to a sitting Judge of High Court.

3. This order issues with the concurrence of Finance (SMPC) Department vide their U.O.No.12271-A/435/A3/SMPC-I/12, dt.2-5-2012.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

PANKAJ DWIVEDI

CHIEF SECRETARY TO GOVERNMENT"

99. A perusal of the terms of above GO constituting the One Man Commission would show that they are very wide and any employee who has been transferred pursuant to G.O.Ms.No.674 of 2007 can approach the Government or the above Commission with a representation and the Government may look into any grievance after obtaining the recommendations of the above Commission or the Government itself may act on any representation. The other GOs and circular memos pertaining to "spouse cases" and "visually and hearing handicapped persons" and even "compassionate appointees" can submit representations to the Government for redressal of their grievances. In the above circumstances and having regard to the above GOs, we are of the opinion that the petitioners

after joining at their new stations can make representations and the same can be considered by the Government or the above One Man Commission and appropriate action may be taken on such representations.

100. With the above observations, while partly allowing all the writ petitions pertaining to Teachers and remanding their matters back to the authorities for fresh consideration as indicated above, all the remaining writ petitions pertaining to other posts are dismissed. No costs in all the writ petitions. All the WPMPs pending, if any, in all the writ petitions, are closed as no further orders are necessary in them.