

(2003) 09 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26260 of 2000 and Contempt Case No. 787 of 2003

P. Chandra Sekhar Naidu and Others

APPELLANT

Vs

Correspondent, SSRSO Upper Primary School, Srikalahasthi
and Others

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Administrative Tribunals Act, 1986 — Section 2, 39
Constitution of India, 1950 — Article 14, 16, 162, 226, 309

Citation : (2004) 1 ALD 152 : (2003) 6 ALT 693

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

Bench : Division Bench

Advocate : K.G. Krishna Moorthy, Jagannadha Rao, G. Seena Kumar, Sudheer Kumar, Ravi Kondaveti, M.R.K. Showdary, S. Ramachandra Rao, P.V. Ramana, C.V. Mohan Reddy, Y.S. Vekateswara Rao, K. Ravi, K. Ram Reddy, Venkata Rangadas Kanuri, B. Nalin Kumar and T. Nagarjuna Reddy, P. Raghavendra Reddy, S.C for Z.P., A. Ramalingeswara Rao, SC for T.T.D., D. Srinivas, SC for Z.P. Panchayats, Jagannadha Rao, K.G. Krishna Moorthy, V.V. Sarma, C. Damodhar Reddy, S. Ramachandra Rao and D. Linga Rao, C.V. Mohan Reddy, A.A.G., Additional-General and Government Pleader, for School Education, Government Pleader For Finance and Planning, Government Pleader, for Services-I and Jyothishwar, for the Appellant;

Judgement

G. Bikshapathy, J.—The batch of writ petitions and contempt cases can be disposed of by a common order as they arise out of a common order passed by the Andhra Pradesh Administrative Tribunal in O.A. No. 377 of 2001 and batch, dated 13-6-2002.

2. It is necessary to trace out few facts before going into the respective merits of the contentions, which were raised by the learned Counsel for both the parties.

3. The applicants filed O.A.No. 377 of 2001 and batch before the Tribunal, challenging the validity of G.O. Ms. No. 176, dated 22-12-2000 by which, the orders issued by the Government in G.O. Ms. No. 330, dated 10-8-1983 were

cancelled. They also prayed for further relief of fixing their pay scales without reference to the cut off date fixed in G.O. Ms. No. 330, dated 10-8-1983.

4. It is the case of the petitioners that they were appointed as Language Pandits Grade-II in Government as well as local bodies. They also possessed the qualifications required for the posts of Language Pandits Grade-II. It is their case that in respect of other S.G.B.T. teachers, who possessed the qualifications of School Assistants, they were granted the scale of School Assistants, even though they continued to work in the posts of S.G.B.T. teachers. They also took the advantage of G.O. Ms. No. 629, dated 14-6-1977 and also G.O. Ms. No. 886, dated 25-6-1977, under which, such benefit was granted to the S.G.B.T. teachers. This issue was discussed by the Government and the Government issued memorandum No. 6546/ HI/8201, dated 11-3-1982 under which, it is stated that the Government accepted the proposal to allow Grade-I Language Pandits scale of pay to the Language Pandits Grade-II also who possessed the requisite qualifications of Grade-I posts and accordingly, the Director of School Education was requested to take necessary action in the matter and thereafter, they approached the Government for financial sanction. Consequently, the Government issued G.O. Ms. No. 330, dated 10-8-1983, in pursuance of the Government Memo dated 11-3-1982 referred to earlier. In the said G.O. issued by the Government it is stated that the issue was further discussed by the Cabinet Committee constituted by the Government with the representatives of the Federation of the Andhra Pradesh Teachers' Organisation at the meeting held on 14-7-1983 and 15-7-1983. In the light of the agreement reached in the meeting, the following orders were issued:

"All Language Pandits working in the High Schools and U.P. Schools belonging to Government Local Bodies (Municipalities, Z.P.s, and P. Samithis) and private managements possessing the qualifications required to hold the post of Grade-I Language Pandit. But working in Grade-II Language Pandit posts shall be allowed the scale of pay of Grade-I Pandit i.e., Rs. 700-1200. These orders also apply to Language Pandits working in Abhudays Pradhamika Vidya Samstha, Oriental and Tribal Schools, this is applicable to those pandits working in Grade-II posts prior to 11-3-1982. These orders shall be implemented keeping in view the following instructions:

(a) The post Grade-II Language Pandits in High Schools held by pandits possessing Grade-I qualifications shall be upgraded as Grade-I posts in the scale of Rs. 700-1200, from the date of this order and the persons working in those posts shall be treated as Grade-I Pandits and their pay fixed under F.R.22(A)(II) subject to the condition that the number of Grade-I posts be sanctioned as per the existing rules to the High Schools. Persons now working as Grade-II Pandits in High Schools should be adjusted against eligible Grade-I pandits posts as per the existing rules and allowed the Grade-I scale and for such other persons who cannot be adjusted against Grade-I Pandits posts be allowed the Grade-I scale as personal scales and such persons be promoted as envisaged in "C" below.

(b) Grade-II Language Pandits working in U.P. Schools and possessing Grade-I Language Pandits qualification shall be given Grade-I Language Pandit Scale (Rs. 700-1200) as personal to them and their pay shall be fixed under F.R.22(A)(II). This benefit shall not however be extended to Grade-II Pandits appointed from 12-3-1982 even though they possess Grade-I Language Pandits qualifications.

(c) The posts of Language Pandits Grade-I arising in High Schools in future shall not be filled by promotion of Grade-II Pandits possessing Grade-I Pandits qualifications and enjoying the scale of Grade-I Pandits as personal to them in High Schools and U.P. Schools are absorbed in these Grade-I vacancies.

(d) The Grade-II Language Pandits who are given Grade-I Language Pandits scale as personal scale in U.P.Schools (vide (b) above) shall be absorbed in the vacancies of Grade-I Language Pandits posts arising in High Schools from 11-3-1982.

(4) It has been decided that separate qualifications shall be prescribed for Grade-II and Grade-I Language Pandits posts the qualifications for Grade-I posts being higher than the qualifications prescribed for Grade-II posts. The Commissioner of School Education is requested to submit necessary proposals in this regard immediately.

(5) This order issues with the concurrence of Finance and Planning Department vide their U.O. No. 2006/JFS(M)/83, dated 9-8-1983."

5. Consequent on the issue of the said G.O., various departmental heads have started releasing the benefit under this G.O. In certain cases, the implementation of the said G.O. was sought to be confined up to 11-3-1982 and the persons who possessed the qualifications subsequent to 11-3-1982 were not given the benefit. Therefore, the applicants filed R.P.No. 2158 of 1986 before the Andhra Pradesh Administrative Tribunal at the relevant time, which was functioning under Article 371D of the Constitution of India. The said R.P. No. 2158 of 1986 was allowed by the Tribunal by order, dated 7-8-1989, wherein it is held to the following effect:

"It was well settled that any classification must satisfy two criteria, namely, (i) the classification must be based on intelligible differentia; and (ii) that intelligible differentia must have rational nexus with the object sought to be achieved. In my judgment, both the ingredients are conspicuous by their absence in this G.O. It is not stated on what basis this classification has been adopted and what is the purpose it is going to achieve. On the contrary, this place an arbitrary embargo on all those who acquired or who are appointed subsequent to 11-3-1982 as Grade-II Language Pandits without any stipulation of period mentioned therein. In other words, for all times to come, Language Pandits Grade-II appointed subsequent on 11-3-1982 are precluded from having the benefit of this G.O. Hence, I have no doubt that this is opposed to the well-settled principles of classification offending Articles 14 and 16 of the Constitution of India. Hence, the said G.O. is struck down enabling all those who are appointed to the Grade-II Pandits to have the benefit of this G.O., without necessarily complying with the

stipulation laid down under para 3 of G.O. Ms. No. 330, dated 10-8-1983. Representation Petition is accordingly allowed. No costs."

6. It is also the case of the petitioners that some of the teachers approached the Tribunal for grant of benefits arising under G.O. Ms. No. 330, dated 10-8-1983. The Tribunal in number of cases directed the authorities to implement the orders passed by the Government in G.O. Ms. No. 330 dated 10-8-1983. However, when the orders passed by the Tribunal were not implemented, the petitioners/applicants filed the writ petitions before this Court for implementing the orders passed by the Tribunal and this Court disposed of these writ petitions directing the authorities to implement the orders of the Tribunal. However, when the orders were not implemented, they filed contempt cases before this Court. At the pain of contempt petitions, the Government implemented the orders passed by the Tribunal. But, however, some left over candidates to whom the benefit was not given, they filed batch of O.As. before the Tribunal seeking implementation of G.O. Ms. No. 330, dated 10-8-1983. It is also the case of the petitioners that the Tribunal dismissed two Original Applications on the ground that the Division Bench has already dismissed similar cases. In this regard it is to be noted that no reference was made to the numbers of the Original Applications, which were alleged to have been dismissed by the Division Bench of the Tribunal. The learned Member also did not refer to the decision of the then learned Chairman rendered in R.P. No. 2158 of 1986, dated 17-8-1989. Consequent on the orders issued by Justice Seetharamireddy in R.P. No. 2158 of 1986, the heads of the Education Department have implemented the orders by issuing appropriate proceedings.

7. While the matter stood thus, the Government issued G.O. Ms. No. 176, dated 22-12-2000 cancelling the orders issued in G.O. Ms. No. 330, dated 10-8-1983. Challenging the said cancellation batch of Original Applications in O.A. No. 377 of 2001 and Batch have been filed, which is the subject-matter of the present writ petitions. In the said batch of Original Applications, the persons who acquired the qualifications prior to 11-3-1982 and also the persons who acquired the qualifications subsequent to 11-3-1983 are the petitioners. Therefore, they also sought a direction to implement G.O. Ms. No. 330, dated 10-8-1983, without reference to the cut off date, i.e., 11-8-1982.

8. The Tribunal disposed of the entire batch including certain contempt cases arising out of the interim orders passed by the Tribunal to the following effect:

(A) The impugned G.O. Ms. No. 176, Education (SE.SER.III) Department, dated 22-12-2000 cancelling G.O. Ms. No. 330, Education, dated 10-8-1983 is upheld.

(B) The Grade-I Language Pandit Scale allowed to Grade-II Language Pandits in pursuance of G.O. Ms. No. 330, Education, dated 10-8-1983 shall be treated as personal scale and it cannot be equated with the regular scale of Grade-I Language Pandit until and unless the respective individuals are absorbed into the regular posts of Grade-I Pandits and this cannot be claimed as a matter of right.

(C) The cut-off date 11-8-1982 mentioned in G.O. Ms. No. 330 is declared as valid one.

(D) All those Grade-II Language Pandits who acquired the requisite qualification prior to the cut-off date have to be given the financial benefits of upgradation to the extent of availability of Grade-I Language Pandit posts and their scale be fixed in the said post applying FR-22(B), in respect of other persons who could not be absorbed in the upgraded scale has to be treated as personal pay to them under FR-22(A)(I).

(E) In respect of those pandits who got Grade-I scale having acquired the qualification after the cut-off date, they are not entitled to the upgraded scale of Grade-I Language Pandits, and a review has to be undertaken in this type of cases by applying G.O.No. 176. However, the recovery of excess amounts drawn only after the date of issue of G.O. 176 shall be affected from and the earlier payments made shall be recovered.

(F) Insofar as School Assistants who claim the benefits under G.O. 330 are concerned, they are not entitled to any kind of benefit and amounts, if any, paid to them have to be recovered forthwith.

(G) Computation of service of Grade-I Language Pandits who were allowed Grade-I scale under G.O., 330 and who acquired higher qualification prior to the cut-off date, for the purpose of Automatic Advancement Scheme, shall be computed from the date of issue of G.O. 330 i.e., 10-8-1983, but regular service for purpose of promotion shall be counted from the date of absorption in Gr.I Language Pandits posts.

(H) Since G.O. 176 has been upheld, holding that the contents of the said G.O. are nothing but reiteration of the contents of G.O. 330 in a more explicit way, the proceedings of the Director of School Education, A.P., Hyderabad vide R.C. No-128/G1/98, dated 23-12-2001 stating that G.O.176 will come into force with prospective effect are redundant and are hereby set aside.

(I) If any excess amounts are drawn misinterpreting FR-22 (B) or FR-22(a)(i), they shall be recovered following the observations made in para 24 of this judgment.

(J) Insofar as the Language Pandits who retired from service are concerned, no amounts shall be recovered from them.

9. Aggrieved by the order of the Tribunal, these writ petitions were filed before this Court. The Government also filed writ petitions against the orders of the Tribunal allowing the applications filed by the applicants for implementation of G.O. Ms. No. 330 on the basis of orders passed in R.P. No. 2158 of 1986. The batch of writ petitions consist of the following cases.

(1) The cases filed by the applicants in batch of O.As. challenging G.O. Ms. No. 176, Education, dated 13-6-2002 and

(2) The cases filed by the Government upholding the cut off date pursuant to the judgment in O.A. No. 2158 of 1986.

10. The main contentions raised by the learned Counsel Sri S. Ramachandrarao, Sri M.R.K. Chowdary and other learned Counsel appearing for the writ petitioners/ applicants is that the order of the Tribunal upholding the validity of G.O. Ms. No. 176 is illegal and contrary to law. They also submitted that when the applicants acquired the required qualifications, cancellation of orders issued in G.O. Ms. No. 330, dated 10-8-1983 is against the rights of several upgraded Language Pandits. They further submitted that release of benefits under G.O. Ms. No. 330 was based on the release of similar benefits to the similarly situated persons in the cadre of S.G.B.T. teachers and in respect of those teachers, that benefit was not taken away. But so far as the Language Pandits are concerned, the benefit, which was given in G.O. Ms. No. 330 was taken away and the same is wholly arbitrary and discriminatory and offending Articles 14 and 16 of the Constitution of India. They also further submitted that the Tribunal has recorded the findings, which were not the subject matter of the cases filed by them before it. The Tribunal has proceeded to consider the validity of G.O. Ms. No. 330, dated 10-8-1983 instead of considering the validity of G.O. Ms. No. 176, while so held that G.O. Ms. No. 330 was not validly issued and upheld the validity of G.O. Ms. No. 176. Such a finding was illegal and contrary to law. It is further contended by the learned Counsel that so long as judicial review was not available with regard to the order passed by the erstwhile Chairman of the Tribunal in R.P. No. 2158 of 1986, by the High Court at the relevant time, the Tribunal ought not to have entertained the Original Applications contrary to the judgment rendered in R.P. No. 2158 of 1986. It is their further contention that when once the judgment of the Tribunal was implemented and directions were issued by the authorities from time to time for the implementation of the orders in G.O. Ms. No. 330, the Government is estopped from cancelling G.O. No. 330. Hence, G.O. Ms. No. 176 is invalid as the principle of estoppel fully operates against the Government.

11. On the other hand, the learned Additional Advocate General submits that the cut off date fixed by the Government in G.O. Ms. No. 330 is quite legal and valid. The action of the Government in fixing the benefit was to release the benefits only to those persons who acquired higher qualifications up to the cut off date and it was not intended to be given to the persons who acquired the qualifications at later date. He also contended that the teachers who are covered under G.O. Ms. No. 176 are covered by the said scheme and as such, they are getting double benefits. Hence, it necessitated the Government to issue G.O. Ms. No. 176 by cancelling the orders issued in G.O. Ms. No. 330. He also submits that the orders of the erstwhile Chairman of the Tribunal in R.P. No. 2158 of 1986 is not valid and the original applications which are dismissed, can be agitated in the present writ petitions.

12. The three principal issues that arise for consideration in this batch of writ petitions are:

(1) Whether the order passed by the erstwhile Tribunal in R.P.No. 2158 of 1986 can be agitated in the present writ petitions and

(2) Whether the Tribunal can ignore the decision of the erstwhile Tribunal in the aforesaid O.As. and take a different view in the present OAs.

(3) Whether the order sustaining the validity of G.O. No. 176, dated 22-12-2000 is legal?

13. Before we go into the validity of cancellation of G.O. Ms. No. 176, we intend to decide the first two issues raised by the learned Additional Advocate General with regard to the validity of the order passed by the erstwhile Chairman of the Tribunal in R.P. No. 2158 of 1986. There is no dispute about the orders passed by the Tribunal in the aforesaid R.P. No. 2158 of 1986, wherein the cut off date was set aside and that order was implemented by the Government in number of cases and in some cases, the Government has again clarified that the order which is general in nature cannot only be applied to the individual cases but also to all the employees who are covered by the said G.O. Even in the writ petitions filed for implementation of the order passed by the Tribunal directing the implementation of G.O. No. 330, this Court allowed them and when contempt was filed, Government issued G.O. No. 644, dated 7-12-2000. G.O. Ms. No. 644, dated 7-12-2000 reads as follows:

"In G.O. Ms. No. 330, Edn., dated 10-8-1983, orders have been issued that all Language Pandits working in High Schools and Upper Primary Schools belonging to Government, Local Bodies (Municipalities, Z.Ps. and P.S.) and Private Managements, possessing the qualifications required to hold the post of Grade-I Language Pandit, but working in Grade-II Language Pandit posts, shall be allowed the scales of pay of Grade-I Pandit on the following conditions:

(1) The G.O. is applicable to those pandits working in Grade-II posts prior to 11-3-1982.

(2) The posts of Grade-II Language Pandits in High Schools held by Pandits possessing Grade-I qualifications shall be upgraded as Grade-I post from the date of orders and the persons working in those posts shall be treated as Grade-I Pandits.

(3) The posts of L.Ps. Grade-I arising in High Schools or by direct recruitment till the Grade-II Pandits possessing Grade-I Pandits qualifications and enjoying the scale of Grade-I Pandits as personal to them in High Schools and Upper Primary Schools are absorbed in these Grade-I vacancies.

(4) The Grade-II Language Pandits who are given Grade-I Language Pandits scale as personal scale in upper primary schools shall be absorbed in the vacancies of Grade-I Language Pandits arising in High Schools from 11-3-1982."

14. Further it is noticed that after lapse of nearly one decade the Government also reiterated its stand to abide by the orders in RP.No.2158 of 1986, dated

7-8-1989. The following is the extract of Memo No. 38329/ Ser.III-2-98-3, dated 22-12-1998:

"The attention of the Chief Executive Officer, Zilla Parishad, Adilabad is invited to the references cited and he is requested to indicate the action taken on the direction of the Hon" ble A.P.A.T. struck down the O.A. enabling all those who were appointed as Gr-II Pandits to have the benefits without necessarily complying with the stipulation laid down under para 3 of G.O. Ms. No. 330, dated 10-8-1983 and allowed R.P. The directions are general in nature but not limited to the petitioner. The Chief Executive Officer, Z.P., Adilabad is/requested to send his report in the matter for taking further action."

15. Thus it is seen that the orders of the Tribunal have been complied with and the Government has acted upon the orders passed by the Tribunal, in such circumstances can it be said that it is again open to the Tribunal to go into the validity of the cut off date as per G.O. Ms. No. 330. It is also to be noted in this regard that when once the Tribunal disposed of R.P. No. 2158 of 1986 by exercising its powers under Article 226 of the Constitution of India as conferred on the High Court, the only remedy left to the applicants is to approach the Supreme Court by way of Special Leave Petition. Admittedly, that order was not challenged before the Supreme Court and that has become final and in fact this Court also observed that the order has become final in W.P. No. 16971 of 1999, dated 25-8-1999. The order reads as follows:

"This writ petition has been filed complaining that the orders dated 10-2-1999 passed by the A.P. Administrative Tribunal in O.A. No. 503/99 have not been complied with inspite of the same becoming final.

The fact that the said order of the Tribunal had become final is stated in Paragraph 7 of the writ affidavit.

Having heard both the learned Counsel and having regard to the facts and circumstances of the case, the respondents are directed to give effect to the orders of the Tribunal referred to above, in terms thereof, within a period of two months from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of at the admission stage."

16. The Tribunal constituted under the provisions of the Administrative Tribunal Act, 1986 which is a Central Act, against which a judicial scrutiny has been provided to the High Court under Article 226 of the Constitution of India. By virtue of the decision of the Supreme Court reported in L. Chandra Kumar Vs. Union of India and others, , can it be said that the Tribunal can take a different view other than the view taken by the erstwhile Tribunal constituted under Article 371(d) of the Constitution of India in R.P.No. 2158 of 1986. As also noticed by us, no judicial review was available to this Court. When an order was passed by the Tribunal constituted under Article 371D of the Constitution of India and the order which has become final as it was not challenged before the High Court,

that cannot be ignored by the subsequent Tribunals while deciding the same issue, namely, the issue relating to the cut off date which was covered by R.P.No. 2158 of 1986.

17. The learned Additional Advocate General strenuously contended that even though the order in R.P. No. 2158 of 1986 became final and Government issued instructions for implementing the order, the Government is not precluded from taking the plea that de hors the orders in R.P. No. 2158 of 1986 and subsequent order of the Tribunal following the said order in R.P. No. 2158 of 1986, the principle laid down there is still not valid. He also submits that the orders in those cases have become final as between the employee and Government, but the principle laid down there is not immune from attack. The order as far as the Government is concerned, whether constitute *res judicata* nor *estoppel*. The Supreme Court in a decision reported in *Chief Commissioner of Income Tax (Administration), Bangalore Vs. V.K. Gururaj and Others*, , held to the following effect:

"We have heard the Counsel for the appellant. The Government in OM No. F7(52) E III/78, dated 5-5-1979 have stated that special grant of pay of Rs. 35/- per month to the Upper Division Clerks in the non-Secretariat and administrative offices was provided. Out of the UDCs carrying the scale of Rs. 330-560, 10% of the posts were earmarked with special grant of pay of Rs. 35/- in the Secretariat and other places and they were directed to handle cases of complex nature involving deep study and competence. For dealing with such cases certain officers have been promoted to that of 10% posts specified among the UDCs in the Secretariat as well as non-Secretariat administrative offices. They were being paid @ Rs. 35/- per month as compensation for discharge of special duties. The respondents were not actually discharging those duties but being UDCs, they claimed special pay of Rs. 35/-. The Tribunal in the impugned order following its earlier decision dated 9-10-1991 made in O.A. 394 of 1990 allowed the petition and directed payment. We have directed Counsel to find out whether any appeal has been filed against the said order. It would appear that no appeal has been filed against the said order. However, it being a question of law and since the matter is of perennial problem applicable to several places, we are of the considered view that the failure to file an appeal in one case does not have the effect of following in all other cases.

It is to be noted in this regard that facts in the said case are quite different to the facts in this case. The earlier Tribunal in that case passed an order on 9-10-1991 and subsequent order was passed by the Tribunal following the said order was on 18-5-1992 i.e., after a time gap of six months. It is to be noted that the Tribunal, which passed order is a Tribunal constituted under the provisions of A.T. Act, 1986 but not the Tribunal constituted under Article 371D of the Constitution of India. Thus the facts are entirely different. As already observed, the benefits were released right from 1982 covering the period prior to 11-3-1982 in pursuance of G.O. Ms. No. 330, dated 10-8-1983 subsequent

thereto as per the order of erstwhile Tribunal constituted under Article 371D of the Constitution of India. It is nearly more than 18 years the Government having implemented the orders of the Tribunal issued from time to time and after a period of two decades, it would not be open for the Government to contend that the cut off date is bad and the principles laid down in D.S. Nakara and Others Vs. Union of India (UOI), , case are not applicable to the present case. Therefore, on facts, the present case stands on different footing more especially when the principle of estoppel operates against the Government having been accepted and implemented the orders of the Tribunal in R.P. No. 2158 of 1986 and orders issued from time to time in this regard. It is also to be noted in this regard that the Government has issued various general instructions for the implementation of G.O. Ms. No. 330. Having implemented the G.O., without reference to the cut off date, it cannot turn round and resile from its earlier conduct and now contend that the cut off date is valid and the persons who acquired qualifications after 11-3-1982 are not eligible for the benefits given under G.O. Ms. No. 330.

18. The learned Additional Advocate General relied on yet another decision of the Supreme Court reported in *Ajay Kumar Bhuyan v. State of Orissa*, : (2003)1SCC707 , wherein it was held that various decisions of earlier Bench of the Tribunal holding the appointments in question to be ad hoc for all purposes was affirmed by the Supreme Court holding that it was impermissible for the subsequent Bench of the Tribunal to treat those attempts as regular appointments. It was further held that such an impermissible decision was not binding on later Benches. The Supreme Court deprecated the orders of the Tribunal stating that the Administrative Tribunal could not have hazarded a decision like the one rendered, which both in law and for all purposes must be treated as "non est" and at any rate not binding upon the Bench of the Tribunal (Chairman) who decided the applications on 3-1-1997 and rejected the review petition therein on 1-3-1997. It was observed by the Supreme Court that the Chairman of the Administrative Tribunal, though sitting singly, has spelled out the correct position of law emanating from the ratio and principles laid down as well as the directions contained in the earlier decisions of the Tribunal as well as the judgment of the Supreme Court. The position of law with reference to the nature and character of the powers of the DGP/IG as well as the appointments made by him in his office and the status of such officers have been categorically declared to be that of ad hoc for all purposes, in those cases and it was not only futile but also impermissible for a Bench of the Administrative Tribunal which subsequently decided the four OAs to treat them as regular appointments and to assume further that there were no vacancies to be filled up vis-a-vis the post held by such appointees, afresh under the new statutory rules. The learned Advocate General further relied on a decision of the Supreme Court reported in *Uttar Pradesh Mahavidyalaya Taadarth Shikshak Niyamitikan Abhiyan Samiti, Varanasi v. State of Uttar Pradesh and Ors.* (1987) 4 SCC 53, wherein it is held that fixation of date cannot be said to be reasonable and it has no nexus with the object sought to be achieved. Hence, it cannot be said to be violative of Article

14 of the Constitution of India. The learned Additional Advocate General also relied on a decision of the Supreme Court reported in *State of Haryana and Ors. v. Rai Chand Jain and Ors.*, 1987 (5) SCC 167, wherein it was held to the following effect:

"That the policy decision of the Government to restrict payment of back wages to a specified period only, even though the judicial directive was in general terms to grant selection grade with consequential benefits, such a decision being the policy of the Government could not be considered as arbitrary. It is for the Government to decide as a part of the executive policy, as if it would have granted to the employees. The matter being an executive policy in character, it cannot be considered as arbitrary violating Article 14 and 16 of the Constitution of India."

The above decisions have no application to the facts of the present case. The orders issued by the Government clearly shows that the benefits of orders in R.P.No. 2158 of 1986 released to similarly situated persons as a general principle. From the decisions relied to above it is clear that though cut off date is a relevant factor for releasing the benefits from certain date, but yet in the facts of this case, when once the Tribunal has declared the cut off date as illegal, by order based in R.P. No. 2158 of 1986, in the eye of law, that cut off date continues to be non est from the G.O. Moreover, review was also filed against the said order. Therefore, when once the judgment became final, it would not be appropriate for any other subsequent Tribunal to again consider the same and decide the validity of cut off date. While it is open for the Tribunal to follow the decisions, which became final but trying to ignore the decision and taking a different view is contrary to the judicial precedents and judicial propriety. Thus, we are unable to convince ourselves with the contentions of the learned Additional Advocate General in this regard. Accordingly, we hold that the cut off date, which was held to be illegal became final as early as on 17-8-1989 and it cannot be reopened at this point of time seeking to unsettle the settled and crystalised issues. Thus, allowing the applications of the petitioners on the basis of the order passed by the Tribunal in R.P. No. 2158 of 1986 are quite legal, valid and they cannot be said to suffer from any illegality.

19. Coming to the question of the validity of the cancellation of the order, we do not find any difficulty in finding fault with the said G.O. Admittedly, the G.O. No. 176 was issued after a lapse of 18 years. When the matters were settled long back and all the persons continued to receive the benefits for the last more than two decades, the reasons given in the said G.O stating that the Language Pandits cannot be allowed to have two benefits namely, under the automatic advancement scheme in G.O.117 and scale of Language Pandit Grade I in G.O. No. 330. But this reasoning is fallacious on the face of it. As far as automatic advancement scheme is concerned, it is conferred on an employee who has put in 10 and 15 years of service and in order to extricate from the stagnations from the present scales, higher scales were given to them without reference to the

higher qualifications. But whereas, in this batch of writ petitions, the posts occupied by the persons who were having higher qualifications and suitable for holding the post of Language Pandits Grade-I are given the scale of Language Pandits Grade-I and that was treated as personal to them. It is also stated that the said posts continued to be treated as Grade-I till the incumbents are regularly promoted to the post of Grade-I Pandits. It is also on record that the Government has issued instructions that there shall not be further creation of Grade-I posts occupied by the Language Pandits Grade-II with qualifications of Grade-I posts. Further it is admitted that the teachers other than Language Pandits Grade-II, who got the benefit of B.Ed. scale continue to get the scale even now and such benefit was not cancelled.

20. The learned Counsel for the petitioners/applicants relied on the decision of the Supreme Court reported in *P. Tulsi Das and Others Vs. Govt. of A.P. and Others*, wherein it was held that the rights acquired under the orders passed by the Government are to be treated as rights acquired and provided by law. More so, when such rights were upheld by Courts and decisions obtained finality, such rights could not be withdrawn by a Government retrospectively. Under those circumstances, the Supreme Court has laid down the provisions of the order of withdrawal and made it applicable prospectively. In paragraph 14 of the above decision the Supreme Court observed as follows:

"On a careful consideration of the principles laid down in the above decisions in the light of the fact situation in these appeals we are of the view that they squarely apply on all force to the cases on hand in favour of the appellants. The submissions on behalf of the respondent State that the rights derived and claimed by the appellants must be under any statutory enactment or rules made under Article 309 of the Constitution of India and that in other respect there could not be any acquisition of rights validly, so as to disentitle the State to enact the law of the nature under challenge to set right serious anomalies which had crept in and deserved to be undone, does not merit out acceptance. It is by now well settled that in the absence of rules under Article 309 of the Constitution and that in other respects there could not be any acquisition of rights validly, so as to disentitle the State to enact the law of the nature under challenge to set right serious anomalies which had crept in and deserved to be undone, does not merit our acceptance. It is by now well settled that in the absence of rules under Article 309 of the Constitution in respect of a particular area, aspect or subject, it is permissible for the State to make provisions in exercise of its executive powers under Article 162 which is coextensive with its legislative powers laying conditions of service and rights accrued to or acquired by a citizen would be as much rights acquired under law and protected to that extent. The orders passed by the Government, from time to time beginning from February, 1967 till 1985 and at any rate up to the passing of the Act, to meet the administrative exigencies and cater to the needs of public interest really and effectively provided sufficient legal basis for the acquisition of rights during the period when they were in full force and effect. The orders of the High Court as well as the

Tribunal also recognized and upheld such rights and those orders attained finality without being further challenged by the Government, in the manner known to law. Such rights, benefits and perquisites acquired by the teachers concerned cannot be said to be rights acquired otherwise than in accordance with law or brushed aside and trampled at the sweet will and pleasure of the Government, with impunity. Consequently, we are unable to agree that the Legislature could have validly denied those rights acquired by the appellants retrospectively not only depriving them on such rights but also enact a provision to repay and restore the amounts paid to them to the State. The provisions of the Act, though can be valid in its operation "in future" cannot be held valid insofar as it purports to restore status quo ante for the past period taking away the benefits already available, accrued and acquired by them. For all the reasons stated above the reasons assigned by the majority opinion of the Tribunal could not be approved in our hands. The provisions of Sections 2 and 39(a) insofar as they purport to take away the rights from 10-2-1967 and obligate those who had them to repay or restore them back to the State are hereby struck down as arbitrary, unreasonable and expropriatory and as such are "violative of Articles 14 and 16 of the Constitution of India. No exception could be taken, in our view, to the prospective exercise of powers thereunder without infringing the rights already acquired by the appellants and the category of the persons similarly situated whether approached the Courts or not seeking relief individually. The provisions contained in Section 2 have to be read down so as to make it only prospective, to save the same from the unconstitutionality arising out of its retrospective application."

21. The Tribunal as we find has not considered this matter in a proper perspective. It took into consideration as to whether the Government has rightly issued the benefits under G.O. Ms. No. 330 and held that G.O. Ms. No. 330 itself could not have been issued to the benefit of the Government employees. Thus, the approach of the Tribunal was not a correct and legal approach. When an order was issued in G.O. Ms. No. 330 and no challenge is made from any circle to the said G.O., it would be inappropriate on the part of the Tribunal to go into the validity of the said G.O. and it ought to have confined to the validity of G.O. Ms. No. 176 itself rather than concentrating on G.O. Ms. No. 330. Virtually, the Tribunal had followed the retrograde step and recorded an erroneous finding.

22. The learned Additional Advocate General also submits that the qualifications of Language Pandits Grade-I and II are now same and there cannot be any better benefit to the Language Pandit Grade-II. We cannot record any finding on this issue. It is for the Government to take appropriate action.

23. For the aforesaid reasons, we find that the order of the Tribunal in upholding G.O. Ms. No. 176 is erroneous and contrary - to law. Accordingly, we set aside the orders of the Tribunal in O.A. No. 337 of 2001 and batch, dated 13-6-2002 and allowed the writ petitions filed by the claimants in W.P. Nos. 26260, 5970 of 2001, 25239 of 2002, 19231 of 2001, 23553 of 2002, 25252 of 2002, 25247 of

2002, 20821 of 2001, 21982 of 2001, 637, 1153, 4374, 22138, 22692, 22703, 23524, 23742, 23759, 24269, 25251, 25768, 25788, 25789, 25790 of 2002, 15782, 19522, 15998, 14632, 12938, 8358, 8348, 8241, 8082, 7692, 7551, 7389 of 2001, 621, 1758, 1777, 1882, 6759, 1913, 6586, 6768, 7068 of 2003, 15988 of 2001, 165, 159 and 279 of 2003, 6918, 6040, 3560 & 3149 of 2001, 25699 of 2000, 18066 of 2000, 7457, 7904, 8191, 8192, 8194, 8195, 8463 & 12132 of 2003, 22693 of 2002, 23639 of 2002, 23640 of 2002, 12939 of 2001, 23839 of 2002, 18045 of 2001, 25760, 23723, 20002, 23843 & 22090 of 2002, 550 of 2003, 7384 of 2001, 6852 of 2003, 22136, 25787 & 22690 of 2002, 11893, 1884 & 6981 of 2003, 607 of 2002, 19097 of 2001, 404 of 2003, 22095, 25484, 24026, 2824 of 2002, 100 of 2003, 26516 of 2000, 22143 of 2002, 9084 of 2003, 245 of 2003, 7884 of 2003, 20099 of 2002, 25529 of 2002, 6087 of 2001 & 1219 of 2003, 17748 & 18234 of 2003, 4833 of 2001, 13020 of 2001, & 2533 of 2002, 17509 of 2003, 21047 of 2001 & W.P.(SR) Nos. 100376, 100163 & 101266 of 2003.

24. In the result, the writ petitions filed by the Government in W.P. Nos. 20605, 25106, 25145, 25146, 25147, 25148, 25069 of 2001, 1995, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005 & 2010 of 2002, 7684 of 2002, 8413 of 2002 & 2329 of 2003 challenging the order passed by the Tribunal directing implementation of G.O. No. 330, dated 10-8-1983 basing on the judgment of the erstwhile Tribunal in R.P. No. 2158 of 1986 are dismissed. No costs.

25. In view of the orders passed in W.P. No. 26260 of 2000 and batch, dated 12-9-2003, no orders are necessary in C.C. No. 787 of 2003. Accordingly, the contempt case is closed.