
(2009) 10 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No. 5141 of 2002

P.V. Radha Krishna and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Andhra Pradesh (Telangana Area) District Police Act, 1329 — Section 6
Andhra Pradesh Members of Police Force (Regulation of Transfers) Act, 1985 — Section 10, 10(2), 2, 3, 3(2)
Andhra Pradesh Police Subordinate Service Rule

Citation : (2010) 1 ALD 102 : (2010) 6 ALT 22 : (2009) 13 JT 215 : (2010) 1 SCC 11 : (2010) 1 SCC(L&S) 28 : (2009) 15 SCR 171 : (2010) 1 SLJ 196 : (2009) 6 SLR 143 : (2009) 10 UJ 4519

Hon'ble Judges : G. S. Singhvi, J;B. N. Agrawal, J

Bench : Division Bench

Advocate : L.N. Rao and Anoop G. Choudhari, G. Ramakrishna Prasad, Suyodhan Byrapaneni, Siddharth Patnaik, Narendra Kumar, M.K. Sinha, T. Anamika, T.N. Rao and Manoj Saxena, for T.V. George and K. Radha Rani, for D. Mahesh Babu and C.S.N. Mohan Rao, for the Appellant;

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The State of Andhra Pradesh comprises of three regions known as Andhra area, Telangana area and Raylaseema area. At the time of formation of the State in 1956, certain safeguards were envisaged for Telangana area in the matters of development, employment opportunities and educational facilities for the residents of that area. The legislature enacted the Public Employment (Requirement as to Residence) Act, 1957 for providing employment opportunities for the residents of Telangana area but the relevant provisions of that Act were declared unconstitutional by this Court. In 1969, an agitation was launched by some political parties demanding separate statehood for Telangana area on the ground that people of that area were not getting their due in the matters of education, government employment and economic development. In the backdrop of the agitation, a six-point formula was evolved which, among other things,

envisaged equitable employment opportunities and career prospects for the people of different areas of the State by ensuring preferential treatment to the local candidates. Subsequently, clarification dated 22.10.1973 was issued in which it was visualized that the State as a whole may consist of five or six divisions and the twin cities of Hyderabad and Secunderabad including the cantonment will be constituted into a separate division. This is evident from paragraph 7 of the clarification, which reads as under:

7. In regard to the service the basic approach of the formula is that the people of different areas should have equitable employment and career prospects. The concepts of local candidates and local areas are interrelated because local candidates will be identified with reference to a local area. In specifying any local areas it should not be necessary to go below the level of district. For recruitment of Class IV posts and posts of LDC and equivalent in district office, the district will then be the local area. For other categories of posts it would be desirable to group contiguous districts into divisions. We, however, visualize that the State as a whole may consist of five or six divisions, the twin cities including the cantonment being constituted into a separate division.

(emphasis added)

2. For giving effect to the six-point formula, Articles 371D and 371E were inserted in the Constitution by the Constitution (Thirty-second Amendment) Act, 1973. Clauses (1) and (10) of Article 371D read as under:

(1) The President may, by order made with respect to the State of Andhra Pradesh provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State.

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

3. In exercise of power under Clause (1) of Article 371D, the President made the Andhra Pradesh Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as 'the Presidential Order'). The relevant provisions of the Presidential Order, as amended from time to time, read as under:

2. INTERPRETATION: In this Order, unless the context otherwise requires.

(a) 'City of Hyderabad' means the part of the State comprising the territories specified in the First Schedule;

(b) xxxx xxxx xxxx (c) 'local area' in relation to any local cadre, means the local area specified in paragraph 6 for direct recruitment to posts in such local cadre, and includes, in respect of posts belonging to the category of Civil Assistant

Surgeons, the local area specified in sub-paragraph (5) of paragraph (6) of this Order;

(d) to (g) xxxx xxxx xxxx (h) `Schedule" means a Schedule appended to this Order;

(i) `Special Office or Establishment" means as Office or Establishment notified as such by the Central Government;

(j) `Specified gazetted category" means any gazetted category specified in the Third Schedule and includes any other gazetted category notified as such by Central Government;

(l) `State-level office or institution" means as office or institution serving, or the jurisdiction of which extends to the State as a whole and notified as such by the Central Government;

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

3. Organization of local Cadres:

(1) xxx xxx xxx (2) The posts belonging to the category of lower division clerk and each of the other categories equivalent to or lower than that of a lower division clerk in each department in each district shall be organized into separate cadre.

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

(3) The posts belonging to each non-gazetted category, other than those referred to in sub-paragraph (2), in each department in each zone shall be organized into a separate cadre.

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

(5) Notwithstanding anything contained in sub-paragraphs (3) and (4), the State Government may where it considers it expedient so to do and with the approval of the Central Government, organize the posts belonging to any of the categories referred to therein, in any department, or any establishment thereof, in two or more contiguous zones into a single cadre.

(6) Notwithstanding anything contained in sub-paragraphs (2), (3), (4) and (5), the Central Government may notify the departments in which and the categories of posts for which a separate cadre has to be organized for the City of Hyderabad and on such notification, the posts belonging to each such category in each such

department in the said City (other than those concerned with the administration of areas falling outside the said City) shall be organized into a separate cadre and the posts so organized shall be excluded from the other cadres, in pursuance of this paragraph or constituted otherwise and comprising of posts belonging to that category in that department.

5. Local Cadres and Transfer of Persons:

(1) Each part of the State, for which a local cadre has been organized 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 for 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.

(Vide G.O.Ms. No. 34, G.A. (SPF.A) Dept, dt. 24.01.1981)

6. Local Areas:

(1) Each district shall be regarded as a local area.

(i) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that district belonging to the category of a lower division clerk or to any other category equivalent to or lower than that of a lower division clerk.

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

(2) Each Zone shall be regarded as a local area.

(i) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that zone belonging to any non-gazetted category other than those referred to in sub-paragraph (1)

(ii) for direct recruitment to posts in any local cadre comprising all or any of the post in any department in that zone belonging to the categories of Tahsildars, Asstt. Executive Engineers, Assistant Agricultural Officers, Inspectors of Police and Motor Vehicles Inspectors (Vide G.O.Ms. No. 498, dated 16.7.1977 G.O.Ms. No. 34, dt. 24.01.1981 and G.O.Ms. No. 635, (SPF.A) Dept. dated 30.11.1993).

(iii) for direct recruitment to posts in any cadre under any local authority within that zone, carrying a scale of pay, the minimum of which exceeds the clerk but does not exceed Rs. 480/- per mensem or a fixed pay which exceeds the minimum of the scale of pay of a lower division clerk but does not exceed Rs. 480/- per mensem or 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. (G.O.Ms. No. 635, G.A. (SPF.A) Dept. dated 30.11.1993).

Provided that where a single cadre has been organized for two or more zones under sub- paragraph (5) of paragraph 3 of posts belonging to any of the categories referred to in Clause (i) or Clause (ii) each of such zones shall be regarded as separate local area in respect of such cadre.

(3) Notwithstanding anything contained in sub-paragraphs (1) and (2)

(i) the City of Hyderabad shall be regarded as a local area for direct recruitment to posts in any local cadre under the State Government comprising all or any of the Posts in the said City in the departments and belonging to the categories notified under Sub-paragraph (6) of paragraph 3 and the said City shall be excluded from the local area relatable to any other local cadre comprising posts in the departments and belonging to the categories so notified, and

(ii) the City of Hyderabad shall be regarded as a local area for direct recruitment to posts in any cadre under a local authority within the said City comprising posts carrying a scale of pay the minimum of which does not exceed Rs. 480/- per mensum or 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 or a fixed pay not exceeding that amount, and the said City shall be excluded from the local area relatable to any cadre under any local authority not within the said City. (G.O.Ms. No. 635, G.A. (SPF.A) Dept. dated 30.11.1993).

10. Power to Authorise issue of Directions:

(1) The President, may, by order, require the State Government to issue such directions as may be necessary or expedient for the purpose of giving effect to this Order to any local authority and such local authority shall comply with such directions.

(2) The State Government may, for the purpose of issuing any direction under

sub-paragraph (1) or for satisfying itself that any directions issued under sub-paragraph (1) have been complied with require by order in writing any local authority to furnish them such information, report of particulars as may be specified in the order and such local authority shall comply with such order.

11. Order to have over-riding effect: The provision of this order shall have effect notwithstanding anything contained in any Statute, Ordinance, rule, regulation or other order made before or after the commencement of this Order in respect of direct recruitment to posts under the State Government or any local authority.

14. Saving:

Nothing in this Order shall apply to:

- (a) any post in the Secretariat of the State Government,
- (b) any post in an office of the Head of a Deptt.,
- (c) any post in a Special Office or Establishment.
- (d) any post in a State-level office or Institution.
- (e) any post other than a post belonging to any of the non- gazetted categories in the ministerial and technical services in a Major Development Project; (G.O.Ms. No. 455, G.A. (SPF.A) Dept., dated 3.10.1985 and
- (f) any post Police Officer as defined in Clause (b) of Section 3 of the Hyderabad City Police Act, 1348 F.

THE FIRST SCHEDULE [See paragraph 2(1)(a) City of Hyderabad]

(a) Hyderabad Municipal Corporation area: (i) Hyderabad Division

(ii) Secunderabad

Division (b) Secunderabad Cantonment area (c) Osmania University Campus (d) Zamistanpur Village (e) Fatehnagar Panchayat area (f) Bowenpalle Panchayat area (g) Machabolaram Panchayat area (h) Lalaguda Village Village (i) Malkajgiri Panchayat area (j) Uppal Khalsa Panchayat area (k) Alwal Panchayat area (l) Balanagar Panchayat area (m) Musapet Panchayat area (n) Kukatpalli Panchayat area

THE SECOND SCHEDULE [See paragraphs 2(1)(m) and 8(4)]

ZONES RATIO

Zone I Srikakulam, Vizianagaram 12 (1st day of June, 1979) Visakhapatnam Districts.

Zone II East Godavari, West 18 Godavari and Krishna Districts. Zone III Guntur, Prakasam and 15 Nellore Districts.

Zone IV Chittoor, Cuddapah, 18 Ananthapur and Kurnool Districts.

Zone V Adilabad, Karimnagar, 15 Warangal and Khammam Districts.

Zone VI Hyderabad, Rangareddy 22 (15th August, 1978), Nizamabad, Mahboobnagar, Medak and Nalgonda Districts.

4. In pursuance of paragraph 3(6) of the Presidential Order, the Government of India issued notification, GSR No. 528E dated 20.10.1975 and notified the departments in which and categories of posts for which separate cadres were required to be organized for the city of Hyderabad. These were the Department of Public Health and Municipal Engineering, Indian Medicines and Homeopathy, Fire Services, Jail, Judiciary, Commercial Tax, Education, Employment and Training Development (Training Wing), National Cadet Corps, Technical Education, Weights and Measures, Labour, Treasuries and Accounts. The post of Police Officer as defined in Section 3(b) of the Hyderabad City Police Act 1348 Fasli (for short 'the Hyderabad Act') was not included in that notification because the same had been excluded from the purview of the Presidential Order by virtue of paragraph 14(f) thereof. Thereafter, the Government of India issued instructions vide order dated 1.11.1975 for organization of the local cadres and allotment of persons to such cadres. Paragraph 8 of that order by which certain departments and posts were excluded from its purview reads thus:

8. Departments and posts excluded from the purview of the Order - It should be carefully noted that certain posts are altogether excluded from the application of the provisions of the Presidential Order. By virtue of paragraph 14 of the Order, posts in the Secretariat, Offices of the Heads of Departments, State level Offices/Institutions, Major Development Projects and Special Offices or establishments and posts of Police Officers as defined in Clause (b) of Section 3 of the Hyderabad City Police Act, (1348 F) are excluded. The lists of State Level Offices/Institutions, Major Development Projects and Special Offices/establishments have been notified in G.O.I. notification G.S.R. Nos. 527(E), 525 (E) and 526 (E) respectively, dated 18th October, 1975. As already indicated, non-gazetted categories of posts exempted by the notification G.S.R. No. 529(E), dated 18th October, 1975 issued under paragraph 3(8) of the order are also excluded from the local cadres. Therefore, departments which consist exclusively of posts of the nature or belongs to categories referred to above automatically get excluded from the scheme of localization. The departments lists in the Annexure to this order will be covered by the scheme.

(emphasis supplied)

5. On the same day i.e., 1.11.1975, the Government of Andhra Pradesh issued G.O. Nos. 729 and 730. In G.O. No. 729, it was emphasized that the main purpose of the Presidential Order was to ensure that major share of vacancies arising in certain categories of posts should be reserved for being filled from among the local candidates. However, in paragraphs 5 and 21 it was made clear that reservation in the matter of direct recruitment in favour of local candidates do not apply to the posts specified in paragraph 14(f) of the Presidential Order.

For the sake of convenience, these paragraphs are extracted below:

5. The provisions, of order regarding reservations in the matter of direct recruitment in favour of local candidates do not, however, apply to the posts specified in para 14 of the Order, viz., posts in the Secretariat in the offices of the Head of Departments, in the Special Offices/Establishments notified by the Central Government in G.S.R. No. 526(E), dated 18.10.1975, in the State Level Offices/Institutions notified by the Central Government in G.S.R. No. 527(E), dated 18.10.1975, in the Major Development Projects notified by the Central Government in G.S.R. No. 525(E) dated 18.10.1975 and posts of police officers as defined in Clause (b) of Section 3 of the Hyderabad City Police Act, 1348 Fasli.

21. Recruitment of posts in Secretariat. Offices of Heads of Departments, etc - As indicated earlier the scheme of reservation in favour of local candidates will not apply to posts in the secretariat, office of Heads of Department, and State- Level offices/institutions notified in G.S.R. No. 527(E), dated 18.10.1975. Direct recruitment to fill posts in these offices will be on a state wide basis. The scheme of reservation in favour of local candidates will not also apply to the posts in special offices/establishments notified in G.S.R. No. 526(E), dated 18.10.1975. It is the Governments intention that such offices and establishments should as far as possible cease to be separate units of appointment and that posts in such offices and establishment should not ordinarily be filled by direct recruitment, but by drawing persons on tenure from different local cadres on an equitable basis. The scheme of reservation does not apply to posts in Major Development Projects notified in G.S.R. No. 525(E), dated 18.10.1975. Here also it is the intention of the State Government that the posts in such projects should be largely filled by drawing persons on transfer or tenure equitably from different local cadres. Where however, any direct recruitment becomes essential it will be done on a state wide basis.

(emphasis supplied)

6. In paragraph 2 of G.O. Ms. No. 730, the aforesaid provision was reiterated in the following words:

2. The Presidential Order requires that certain categories of posts shall be organized into appropriate local cadres. These include all non-Gazetted categories of [posts other than those exempted by virtue of the notification issued under para-3(8) of the Order - vide Government of India, Ministry of Home Affairs, GSR 529(E), dated 18.10.1975] and the posts belonging to the specified gazetted categories: however, the posts for which the unit of appointment is confined to the Secretariat and the Offices of the Heads of Departments, State level Offices/Institutions, Special Offices/Establishments and Major Development Projects and posts of Police Officers as defined in the Hyderabad City Police Act, 1348 F, are excluded....

7. After about seven months, the State Government issued G.O. Ms. No. 795 dated 30.6.1976 whereby scheme for organization of local cadres for the non-

gazetted categories of posts (both Executive and Ministerial) and other posts equivalent to or lower than LDCs was formulated and circulated. The said scheme was finalized in consultation with the Allotment Committee constituted under G.O. Ms. No. 74 dated 15.11.1995. As far as the police department is concerned, the scheme of organization of local cadres excluded some of the offices and posts including the post of Police Officer as defined in Clause (b) of Section 3 of the Hyderabad Act. While creating new Police Ranges vide G.O. Ms. No. 1697 dated 10.12.1975, which were shown in Annexure - 1 appended to G.O. Ms. No. 795, Hyderabad, Secunderabad and other areas mentioned in First Schedule to the Presidential Order were separately identified as City Range. All this is evident from paragraphs 3, 4, 16 and Annexure - 1 appended to G.O. Ms. No. 795, the relevant portions of which are reproduced below:

(3) The following offices of the Police Department are outside the purview of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 for the reasons given against them:

Name of Office Reasons for exemption

1. Office of the Inspector Being office of the Head General of Police of the Department.
2. Railway Police Being Special Office or Establishment vide Notification No. GSR 526(E) dated 18.10.1975.
3. Police Communications Organization
4. Police Training College, Anentpur
5. Office of the Deputy Being the State level Inspector General of offices of Institution, Police, Railways, Crime vide Notification No. and Training, Hyderabad GSR (E) dated 18.10.75
6. Office of the Deputy Inspector General of Police, Railways, Crime and Training, Hyderabad.
7. Police Transport Organization
8. Office of the Director of Police Communications
9. Office of the Director of Forensic Science Laboratory, Hyderabad
10. All categories of posts in Being exempted the Special Police categories vide Battalions including Notification No. GSR Special Armed Police, 529(E) dated Amberpet other than 18.10.1975 Ministerial categories
11. Any post of Police Officer Vide para 14(f) of the as defined in clause (b) Presidential Order of Section 3 of the Hyderabad City Police Act, 1348-F.

(4) Thus, the Presidential Order dated 18.10.1975 will apply to the remaining offices of the Police Department as given below -

1. Officers of the six Police Ranges (viz. Northern, Eastern, Central Southern, Warangal and Hyderabad)
2. Ministerial staff of the office of the Commissioner of Police, Hyderabad
3. Ministerial Staff of the Special Police Battalions including Special Armed Police
4. Ministerial staff of the District Police Office
5. District Police i.e. Regular Police Force

(16). As no separate cadre for the City of Hyderabad needs to be organized for the Police Department, the Ministerial staff of the office of the Commissioner of Police alone will be included in zone VI. However, it will be treated as a separate cadre in that zone, the other cadre being the staff under the jurisdiction of Deputy Inspector General of Police, Hyderabad Range.

ANNEXURE - 1

New Police Ranges as per Police Ranges prior to the the order issued in G.O. Ms issue of orders issued in No. 1697, Home dated 10.12.1975 G.O. Ms No.1697, Home dated 10.12.1975 ZONE-1 Northern Range Head-quarters at Vishakhapatnam

1. Srikakulam 2. Vishakhapatnam

ZONE-II Eastern Range Headquarters at Eluru

1. East Godavari 1. Srikakulam 2. West Godavari 2. Visakhapatnam 3. Krishna 3. East Godavari 4. West Godavari ZONE-III Central Range Headquarters at Guntur 1. Guntur 1. Krishna

2. Nellore 2. Guntur 3. Prakasam 3. Nellore 4. Prakasam ZONE-IV Southern Range Headquarters at Kurnool

1. Chittoor 1. Chittoor 2. Cuddapah 2. Cuddapah 3. Anantapur 3. Anantapur 4. Kurnool 4. Kurnool

ZONE-V Warangal Range Headquarters at Warangal

1. Adilabad 1. Adilabad 2. Karimnagar 2. Karimnagar 3. Warangal 3. Warangal 4. Khammam 4. Khammam 5. Nalgonda ZONE-VI Hyderabad Range Headquarters at Hyderabad

1. Hyderabad 1. Hyderabad 2. Nizamabad 2. Nizamabad 3. Mahaboobnagar 3. Mahaboobnagar 4. Medak 4. Medak 5. Nalgonda

City Range Hyderabad and 1. Hyderabad Secunderabad 2. Secunderabad and other areas as mentioned in First Schedule to the Presidential Order

8. The posts of Hyderabad City Police were not shown in Annexures IV, V, XII and XIII appended to G.O. Ms. No. 795, which contained statements showing the cadre strength of localized cadres in respect of the posts of Constable, Head

Constable, Sub-Inspector and Inspector. The relevant portions of those Annexures are extracted below:

Annexure IV

Point No. 3 - 40 (34 permanent and 6 temporary) posts of S.B., C.I.D., Hyd. and 11 (10 permanent and 1 temporary) posts of C.B.CID attached to the City Police are not shown in the statement as the City Police is not localized.

Annexure V

Point No. 3 - 16 (11 permanent and 5 temporary) posts of S.B. and 13 (12 permanent and 1 temporary) posts of Crime Branch, C.I.D. are not shown in the statement as the City Police is not localized.

Annexure XII

Point No. 1 - Includes posts of Int., CB & RP. distributed to all units. But the posts distributed to the City Police are not shown in the statement as City Police is not localized.

Annexure XIII

Point No. 1 - The posts of CID attached to the City are not shown in the statement as City Police is not localized.

9. At this stage, we may notice Sections 3(b), 4 and 7 of the Hyderabad Act and Sections 2(b), (c), 3 and 4 of the Andhra Pradesh Members of Police Force (Regulation of Transfers) Act, 1985 (hereinafter referred to as 'the 1985 Act').

The Hyderabad Act

3(b) "Police Officer" shall be deemed to include every member of the City Police Force appointed under this Act and shall also include the Commissioner of City Police, Hyderabad, Deputy or Assistant Commissioner of Police, and subject to the provisions of Sub-section (2) of Section 9 and Sub-section (2) of Section 10 shall also include every person who has been appointed as an additional or special Police Officer.

4. ORGANIZATION OF POLICE - For the City of Hyderabad there shall be appointed a Police force and its strength and constitution shall be as may be prescribed in accordance with the orders of the Government issued in this behalf, from time to time.

7. POWERS OF APPOINTMENT AND PROMOTION - (1) The powers to appoint and promote an Inspector, Sub-Inspector and other subordinate of the force shall vest in the Commissioner of City Police, Hyderabad. The Government shall have the power to appoint the Deputy Commissioner and, Assistant Commissioner of Police.

(2) Powers of dismissal, discharge, demotion, suspension, fine and punishment.-

The (Commissioner of City Police, Hyderabad) may, subject to such rules and regulations, as the Government may, from time to time, promulgate in this behalf, except Deputy Commissioner and Assistant Commissioner of Police-

(a) dismiss, discharge, demote, suspend or fine to extent of half the salary, any member of the Police force when any member of the force commits, neglects or fails to perform duties or contravenes the provisions of this Act or of the rules made thereunder or commits gross misconduct during leave;

(b) impose the punishment of attendance in a Police Station for a period not exceeding three days upon a member of the force inferior in rank to that of a Head Constable, who in his presence commits a gross wrong or behaves insolently and insubordinately.

(3) Nothing contained in Sub-section (2) shall effect any criminal proceeding by which any criminal liability or charge is established for an offence against any Police Officer."

The 1985 Act

2(b) "police force" means the police force constituted under the Hyderabad City Police Act, 1348 F., the Andhra Pradesh (Andhra Area) District Police Act, 1859 and the Andhra Pradesh (Telangana Area) District Police Act, 1329 F, or any other law relating to police force.

(c) "prescribed" means prescribed by rules made under this Act.

3. Regulation of transfer of members of police force: (1) Notwithstanding anything in any law for time being in force, a member of the police force shall be liable to serve in any part of the State of Andhra Pradesh. (2) The Government may make rules for the regulation of transfer of members of police force from one part of the State to another part within the State of Andhra Pradesh by such authority as may be prescribed.

4. Power to make rules: (1) The Government may, by notification in the Andhra Pradesh Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall, immediately after it is made, be laid before each House of the State Legislature if it is in session and if it is not in session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or in the annulment of the rule, the rule shall from the date on which the modification or annulment is notified in the Andhra Pradesh Gazette, have effect only in such modified form or shall stand annulled, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

10. Before enactment of the 1985 Act, the Governor of the State had, in exercise

of the powers conferred upon him by Sections 8 and 10 of the Madras District Police Act, 1859, Section 6 of the Hyderabad District Police Act 1329 Fasli and Section 7 of the Hyderabad Act read with proviso to Article 309 of the Constitution of India made the Special Rules for Andhra Pradesh Police Subordinate Service. These rules were published by G.O. Ms. No. 1263, G.A. (Rules) Dept., dated 26.8.1959. In exercise of the powers conferred upon it u/s 3(2) of the 1985 Act, the State Government framed rules for regulating transfer of the members of the police force. Those rules were circulated by G.O.Ms. No. 288 Home (Police-C) Department dated 6.5.1986. In 1999, the Governor framed another set of Special Rules for A.P. Police (Civil) Subordinate Services. The same were issued vide G.O. Ms. No. 374 Home (Police. C) dated 14.12.1999.

Pre-Presidential Order Litigation

11. Shri D. Ram Reddy and Shri T. Ram Reddy, who were recruited as Head Constable and Constable respectively in the Hyderabad City Police filed Writ Petition No. 1643/1973 questioning their transfers to Khammam and Nalgonda districts respectively by the Commissioner of Police, Hyderabad on the ground that being members of Hyderabad City Police force, they could not be transferred outside the twin cities of Hyderabad and Secunderabad. The Inspector General of Police, Andhra Pradesh and Commissioner of Police, Hyderabad, who were impleaded as respondents opposed the prayers of the petitioners by contending that the petitioners are governed by the provisions of the Andhra Pradesh Police Subordinate Rules and, as such, they are liable to be transferred and posted anywhere in the State of Andhra Pradesh. The learned Single Judge referred to the provisions of Article 309 of the Constitution, the Andhra Pradesh (Telangana Area) District Police Act 1329 (Fasli), which was extended to whole of the Telangana area except the city of Hyderabad, Section 7 of the Hyderabad Act and held that in view of the provisions contained in the latter enactment, the rules framed under proviso to Article 309, insofar as the same affected the conditions of service of the Police Officers appointed in Hyderabad City Police are ineffective. Accordingly, transfer of the writ petitioner outside the limits of twin city was declared illegal and quashed.

12. The respondents in the writ petition challenged the order of the learned Single Judge in Writ Appeal No. 890/1975. The Division Bench referred to the Presidential Order and held:

The Hyderabad City Police force comes under Article 371D of the Constitution which is a special provision made for the state of Andhra Pradesh. Under Article 371D with respect to the State of Andhra Pradesh, the President of India issued some rules as to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education and different provisions for various parts of the State. Clause 10 of Article 371D states that the provisions of this Article and of any order made by the President thereunder shall have effect not with standing anything in any other provision of

the Constitution or in any other law for the time being in force. Therefore special provisions have been made in the case of Andhra Pradesh State in regard to public employment organisation of local cadres and regulation of direct recruitment. That order stipulating the above provisions, will take precedence over the provisions of Articles 309 and 313 of the Constitution. The Presidential Order which we have referred to above in Clause (5) provides for local cadres and transfer of persons. Clause (1) of Section 5 states that for each part of the state, for which a local cadre has been organized 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. Sub-clause 2 of Section 5 states that nothing in this order shall prevent the state Government from making provision for the transfer of person from any local cadre to any office or establishment to which this order does not apply or vice-versa. Clause 14 of the order mentions special saving provisions and under Sub-Clause (f) of Clause 14 any post of police officer as defined in Clause (b) of Section 3 of the Hyderabad City Police Act 1348 F is excluded.

In view of the provisions of Clause 14(f), it is obvious that it is not open to the State Government to make rules providing transfer of persons from Hyderabad City Police Force to any other area or any other police force. On this ground alone the impugned order must be set aside apart from the ground which appealed to our brother Muktadar, J.

(emphasis supplied)

Post-Presidential Order Litigation

13. Twenty two Sub-Inspectors of Hyderabad City Police challenged the transfers of 89 Sub-Inspectors and Inspectors of different districts to the City of Hyderabad by filing an application before the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal'), which was registered as R.P. No. 1220/1977. The Tribunal relied upon the orders passed by the learned Single Judge and the Division Bench of the High Court in Writ Petition No. 1643/1973 and Writ Appeal No. 890/1975 respectively, referred to the provisions of the Hyderabad Act and quashed the transfers of the officers belonging to different districts to the Hyderabad City Police with a direction that they be sent back to their respective districts and the consequential vacancies be filled from the officers of the City Police.

14. Another batch of cases was filed by the members of the Hyderabad City Police before the Tribunal questioning the validity of the 1985 Act and transfer of the Police Officers from other zonal cadres to Hyderabad City Police. The same were registered as O.A. Nos. 22622-22635/1990, R.P. Nos. 22126-22130/1989, 4761/1988, 4878/1988, 4879/1988 and 1567/1989. The Full Bench of the Tribunal made a reference to the orders passed by the learned Single Judge in W.P. No. 1643/1973 and by the Division Bench in Writ Appeal No. 890/1975 as

also order dated 18.7.1988 passed by the Tribunal in R.P. No. 1220/1977 and observed that the 1985 Act was passed to overcome the orders passed by the High Court and Tribunal. The Full Bench of the Tribunal then noted that rules for regulating transfer of members of police force from one part of the State to another were framed by the government in exercise of powers under paragraph 5(2) of the Presidential Order read with Sections 3(2) and 4(1) of the 1985 Act and also that by the time the 1985 Act and rules were framed, government had made several provisions with reference to paragraph 5(2) of the Presidential Order and recorded the following conclusions:

a) The Act and Rules do not violate Presidential Order in so far as a transfer is from a post saved under para 14 of the Presidential Order to another post saved under para 14 of a person not included in any local cadre under the Presidential Order.

b) The impugned Act and the Rules are not effective for making transfer in respect of local cadres i.e. either inter- cadre or from or to posts in the cadre to and from posts saved under para 14 of the Presidential Order, and for which provision is to be made by the Government in various clauses of 5(2) or of persons included in any local cadre under

Presidential Order.

c) It is open for the Government to make any further or other provision as contemplated by 5(2). It is made clear that we have examined the question of transfer from the city police to another local cadre on a permanent basis. We have not examined transfers of police officers bonafide in public interest in exigencies of services for short periods without affecting their continuance and position in their local cadre or effecting their seniority in the local cadre to which they are now transferred for leveled by the Head of Department viz., DGP of Police.

Recruitment of the appellants and particulars of some other advertisements

15. The appellants were appointed as Sub-Inspectors of Police in Hyderabad City. Their selection was preceded by an advertisement issued by the Public Service Commission for recruitment to various posts including Sub-Inspectors of Police. Out of 143 posts of Sub-Inspectors of Police, 93 were earmarked for Hyderabad City, which was described as Zone VII. Thirteen vacancies were reserved to be filled in by transfer from police ministerial staff. In that category also nine vacancies were shown for Zone VII. In the same advertisement, the posts of Assistant Commercial Tax Officers were shown for Hyderabad I (2) and Hyderabad II (4) falling in Zone VI. The advertisement also specified the area of Hyderabad City (Zone VII) as comprising the following:

(a) Hyderabad Municipal Corporation Area -

(i) Hyderabad Division

- (ii) Secunderabad Division
- (b) Secunderabad Cantonment Area
- (c) Usmania University Campus
- (d) Zamastanpur village Panchayat Area
- (e) Fatehnagar Panchayat Area
- (f) Bowenpalle Panchayat Area
- (g) Machabolaram Panchayat Area
- (h) Lalgura village Panchayat Area
- (i) Malkagiri Panchayat Area
- (j) Uppalkalasa Panchayat Area
- (k) Alwal Panchayat Area
- (l) Alanagar Panchayat Area
- (m) Moosapet Panchayat Area
- (n) Kukatpalle Panchayat Area

16. After completion of the process of selection, the Secretary of the Commission issued Memos dated 29.5.1985 whereby the appellants were informed about their selection and allotment to Zone VII i.e., Hyderabad City. For the sake of reference, memo issued to one of the appellants is reproduced below:

ANDHRA PRADESH PUBLIC SERVICE COMMISSION

MEMO NO.23490/J8/85 dated 29.5.1985

Sub. Recruitment (Direct) Group II - Andhra Pradesh Services 1983-84 - Allotment of selected candidates to the Department - Intimation to the selected candidates - Reg.

Ref. His application. ****

Sri Pantala Venkata Radha Krishna is informed that on the basis of the results of the competitive examination and oral test conducted by the Commission for recruitment to posts included in Group II Andhra Pradesh Services 1983-84 he/she has been selected and allotted as Sub Inspector of Police (Civil) in Zone VII Hyderabad City.

"The selection is subject to the results of the Writ Appeal regarding weightage marks to Telugu Medium candidates pending before the Supreme Court."

He may await communication from the Unit Officer i.e. Director General of Police, A.P., Hyderabad.

Sd/-

Sd/- Abdul Kareem Khan, IAS, Secretary

/f.b.o/ Asst. Secretary

To

Sri Pantala Venkata Radha Krishna _____

17. Thereafter, the Commissioner of Police in exercise of the power vested in him under Rule 2(a) and Annexure-I of the Special Rules for the Andhra Pradesh Subordinate Service issued orders for appointment of the appellants as Sub-Inspectors of Police. For the sake of reference, the order of appointment of one of the appellants, namely, P.V. Radha Krishna, is reproduced below:

GOVT. OF ANDHRA PRADESH:

Office of the Commissioner of Police. Hyderabad-A.P.

Dated 9th Sept. 1985 D.O. No. 3817 No. L&O/E2/3723/85

O R D E R:

Sub: Police - Sub-Inspectors (Civil) - Appointment of - Orders - Regarding.

In exercise of the powers vested in me under Rule 2(a) and Annexure - I of the Special Rules for the Andhra Pradesh Police Subordinate Service Sri Patnala Venkata Radha Krishna s/o. Patnala Narayana Rao is appointed on probation as Sub- Inspector of Police (Civil) in the time scale of pay of Rs.575-20-775-25-950 subject to the condition that his services are liable to be terminated at any time before the declaration of his probation under General Rule 24(a) or 25(c) of the Andhra Pradesh State and Subordinate Service Rules with one month's notice or with one month's pay in lieu thereof. He will be on probation from the date of joining the Police Training College for a continuous period of 2 years and 7 months on duty or a total period of 3 years on duty. He will be governed by the provisions of the Special Rules for the Andhra Pradesh Police Subordinate Service.

He will under go a course of training for a period of one year in the Police Training College, Anantapur followed by practical training for one year and 7 months including independent charge of a Police Station, for not less than one year. During the period of training he will be paid the minimum of the time scale of pay i.e., Rs.575-00 p.m. plus the allowances admissible thereon.

The training will commence from 12.9.1985 at the Police Training College, Anantpur. He should deposit a sum of Rs.300-00 (Rupees three hundred only) at the time of joining the Training College towards Mess and Uniform charges and execute a bond of security.

He is informed that if his mother tongue is not Telugu or if he has not taken Telugu as Second Language in SSC or equivalent examination or any higher examination he shall qualify himself by passing the Second Class Language test in Telugu conducted by the Andhra Pradesh Public Service Commission.

18. In 1991, advertisement Rc. No. 419/R&T Admn 1/90 dated 14.2.1991 was issued for recruitment of Civil Sub-Inspectors (Man) and Reserve Sub-Inspectors (Man) in different zones which were identified with the respective ranges. In that advertisement, 80 vacancies of Civil Sub-Inspector (Man) and 26 vacancies of Reserve Sub-Inspector (Man) were shown as earmarked for Hyderabad City Police Range, which was also described as Zone VII (free zone). In 1994 also, an advertisement was issued for recruitment of 435 Sub-Inspectors Civil/Intelligence (Man). In that advertisement 74 vacancies were shown as earmarked for Zone VII i.e., Hyderabad City (free zone). Similar advertisements were issued after 1975 for recruitment to various posts enumerated in paragraph 14(f) of the Presidential Order.

Genesis of the present litigation

19. In view of order dated 20.10.1984 passed by the Tribunal in O.A. Nos. 22622-22635/1990 and connected matters, the State Government issued G.O. Ms. No. 349 Home (Police. C) Department dated 15.12.1997 whereby the private respondents who were then working as Inspectors of Police in Hyderabad City Police (City Range), were transferred back/repatriated to their parent cadres in other police ranges specified in G.O. Ms. No. 1697, Home dated 10.12.1975 and G.O. Ms. No. 795 dated 30.6.1976. The private respondents challenged G.O. Ms. No. 349 in O.A. Nos. 7579/1998, 8430/1998, 8431/1998, 8534/1998, 58/2001 and 2139/2001. They pleaded that their transfer to Hyderabad City Police had been effected in accordance with the provisions of the 1985 Act and rules framed there under and in public interest and the Government's action to transfer them back to the ranges in which they were initially appointed is ex facie illegal, arbitrary and unjustified. They further pleaded that the order passed by the Full Bench of the Tribunal cannot be invoked for effecting their repatriation to the parent cadres because they were not parties in O.A. Nos. 22622-22635/1990 and connected matters. Another plea taken by the private respondents was that the impugned G.O. is liable to be declared arbitrary and discriminatory because while some of those who were transferred to Hyderabad City Police have been repatriated, others have been retained.

20. In the counter affidavits filed on behalf of the official respondents before the Tribunal, it was specifically averred that the applicants in O.As. were appointed in districts other than Hyderabad City Police and were promoted as Inspectors in their respective parent units as per seniority in their respective ranges and they cannot claim continuance in Hyderabad City Police. It was then pleaded that the applicants were transferred to Hyderabad City Police by the Director General and Inspector General of Police, Andhra Pradesh in exercise of the powers conferred upon him by G.O. No. 288 dated 6.5.1986 but their seniority is being maintained

in their respective police ranges and none has been assigned seniority in Hyderabad City Police. According to the official respondents, the 1985 Act and the rules framed there under are not effective for making transfer in respect of local cadres i.e., either inter cadre or from or to posts in the cadre to and from posts in paragraph 14 of the Presidential Order for which provision is to be made by the Government in terms of various clauses of paragraph 5(2). The relevant portions of the counter affidavit filed on behalf of the State Government in O.A. No. 7579/1998 - Sardar Harihar Singh and three Ors. v. State of A.P. and Ors. are extracted below:

It is further submitted that the applicants in the OA were transferred to Hyderabad City Police by the 3rd respondent in exercise of the powers conferred on him in G.O. Ms. No. 288 dated 6.5.1986 on different dates. The seniority of the above applicants is being maintained in their respective police ranges only. None of the applicants were assigned seniority in Hyderabad City Police. All of them were promoted as Inspectors of Police in their respective parent units as per their turn in seniority.

In reply to para 6(o) it is submitted that the contention of the applicants that Hyderabad City Police is not a separate zone is incorrect and baseless. It is fact that the entire AP has been divided into six zones and Hyderabad City Police has been treated as "Free Zone". The Hyderabad City Police being Free Zone has got separate entity as like other zones. The vacancies in respect of posts of Hyderabad City Police are notified separately and selection/appointment to the post of Sub-Inspectors of Police, Civil and Reserve Sub-Inspectors of Police, CAR and Police constables of both Civil and CAR to the extent of vacancies are conducted by this unit only and appointment orders to the candidates so selected after completion of recruitment process work to the said posts such as physical efficiency test, one star test, three star test and also written examination to the candidates are conducted by this unit only independently. The same process if followed in respect of posts of other six zones separately by each zone. Thus all the six zones and Hyderabad City Police are separate units for all service matters of appointment, promotion to the next rank etc. The Hyderabad City Police is not a part and parcel of Zone Six as contended by the applicants.

(emphasis supplied)

21. After taking note of the respective pleadings, the Tribunal dismissed the O.As. The argument of the applicants that Hyderabad City Police is part and parcel of Zone VI was rejected by the Tribunal in the following words:

There is no separate zones for Hyderabad city. It is thus a free zone. It thus follows that the Hyderabad City Police Unit is a free zone. Separate and independent recruitment is being made in respect of post of Hyderabad city police. In short, Hyderabad city police is being treated as a free zone where there is independent recruitment.

22. The private respondents challenged the order of the Tribunal by filing

different writ petitions which were heard and disposed of by the Full Bench of the High Court. The Full Bench observed that the provisions of the 1985 Act will have to be construed in harmony with the provisions of the Presidential Order which prevail over any other provisions of the Constitution or any other law for the time being in force. The Full Bench then referred to various paragraphs of the Presidential Order and observed:

In construing the power granted to the State Government under para 5(2) for making provision for transfers of persons, we must not lose sight of the historical compulsions which have led to the enactment of the Presidential Order, which is buttressed by the overriding effect given to the provisions of the Presidential Order not only against the exercise of the majoritarian, political and executive choices of the State, but is also made operative against any other provisions of the Constitution of India (Article 371D(10) read with para 11 of the Presidential Order).

23. The Full Bench then delved into the grounds on which power under paragraph 5 of the Presidential Order could be exercised and observed:

Having regard to the provisions of para 14 of the Presidential Order, no limitations are prescribed on the power of the State Government to provide for transfer of the incumbent of a post in any department, institution or establishment enumerated in para 14 to another such department, institution or establishment.

Insofar as transfers of persons falling within the ambit of para 5(2)(a) to (c) is concerned, provisions of the Act 1985 and the rules thereunder set out in G.O.Ms. No. 288 dated 6.5.1986, must be construed as enabling such transfers only when no qualified or suitable person is available in a particular local cadre or where such transfer is otherwise considered necessary in the public interest and for no other reason. Normally such transfers must necessarily be of limited duration or tenure to meet the specified exigency namely either during the period no qualified or suitable person is available or the public interest that necessitated such transfer, continues. Immediately on cessation of such circumstances - as and when a qualified or suitable person is available or when the public interest concerned ceases to operate, the person so transferred in the above exigencies must need be repatriated to the local cadre to which he belongs either by allotment or direct recruitment to it. There may be very rare circumstances, and very rare they must necessarily be, where a person is required to be transferred to another local cadre on a longer term basis. Clear reasons for such long term transfer must not only exist but must be clearly recorded. In any case wherever such transfer, be it for a short term or longer term, the transfers made in the circumstances set out in para 5(2)(a) to (c) being on administrative exigencies, must enable person so transferred to carry the benefit of his seniority to the transferred local cadre. To this extent Rule 3 of the Rules made under the Act 1985 must be held to be valid.

In the case of a transfer on reciprocal basis, para 5(2)(d) itself mandates that the person transferred shall be assigned seniority in the later cadre with effect from the date of his transfer to such cadre. Rule 3 of the Rules made under the Act 1985 would have no application in such a case and the provisions of para 5(2)(d) would operate. We are of the opinion that even in respect of a transfer under para 5(2)(d) the principles/guidelines for allotment in para 4(2) should be borne in mind and reciprocal transfers should not be freely approved which would gravely disrupt the need for composition of balance cadre having regard to age and seniority or the administrative needs of the posts in the local cadre.

24. On the question whether there is a separate cadre for Hyderabad City Police or the same falls in Zone-VI which includes District of Hyderabad, the Full Bench observed as under:

Nothing has been placed before this Court to demonstrate that any appointment of police officers have been made only under the provisions of either the Hyderabad City Police Act 1348 Fasli but they have been made also under the Andhra Pradesh (Andhra Area) District Police Act 1859 or the Andhra Pradesh (Telengana Area) District Police Act 1349 Fasli. All appointments have been made under the relevant Rules made under provision to Article 309 of the Constitution including the Andhra Pradesh Police Service Rules; Andhra Pradesh Police Subordinate Service Rules; Andhra Pradesh Police (Armed Reserve) Service Rules; Andhra Pradesh (Communications) Subordinate Service Rules; Andhra Pradesh Police (Computer Centre) Service Rules and the Andhra Pradesh Police (Computer Centre) Subordinate Service Rules, etc.

Section 3(b) of Hyderabad City Police Act 1348 Fasli defines a Police Officer to include every member of the City Police Force appointed under this Act as also the Commissioner of City Police, Hyderabad, the Deputy or Assistant Commissioner of Police and subject to provisions of Sub-section (2) of Section 9 and Sub-section (2) of Section 10 every person who has been appointed as an Additional or Special Police Officer. Section 7 of this Act vests in the Commissioner of City Police the power to appoint and promote Inspector of Police, Sub Inspector of Police and other subordinates of the force and empowers the Government to appoint the Deputy Commissioner and Assistant Commissioner of Police. Sections 9 and 10 provide the power to appoint Additional Police Officer and Special Police respectively. No Police Officer has been appointed under the provisions of this Act. All recruitments are notified and appointment made under the Special Rules made under the provision to Article 309 of the Constitution. Thus, though the post of a Police Officer as defined in Section 3(b) of the Hyderabad City Police Act 1348 Fasli is beyond the purview of the Presidential Order in view of para 14 of the said Order, there is in fact no Police Officer as defined in Section 3(b) of the Hyderabad City Police Act 1348 Fasli, factually in existence.

As there has been no constitution of a separate cadre for the city of Hyderabad for members of the Police Force in terms of para 3(6) of the Presidential Order,

members of the police force allotted or recruited to Hyderabad must be construed as having been so allotted or recruited to either the District cadre of Hyderabad or zonal cadre of Zone VI viz Hyderabad, Nizamabad, Mahabubnagar, Medak and Nalgonda Districts, as the case may be, depending upon the rank they hold, whether it is a District cadre post or a Zonal cadre post.

The post of an Inspector of Police in the Police department having been specified as item 51 of the 3rd Schedule and being a specified gazetted category in terms of para 2(1)(j) read with 3(4) of the Presidential Order and being required therefore, to be organized into a zonal cadre of Inspector of Police including those working for the since as part of the Hyderabad city police, have to be considered as members of Zone VI which includes the District of Hyderabad. They do not fall within the provisions of para 14 of the Presidential Order. The transfers from and to the establishments and units of Hyderabad City Police therefore fall within the parameters of para 5(2)(c) to (d). A person once allotted to one zone and attached to his post must be said to be belonging to the same zone and he has no right to come to any other cadre, which is not organized one.

We may notice that no separate organization has come into being in terms of para 3(1) of the Presidential Order. Para 3(3) of the said order refers to the zonal posts. Para 3(5) apply to both gazetted and non-gazetted posts. Although a power has been conferred in Para 3(6) to create a separate cadre of posts which has to be organized for the city of Hyderabad, no such cadre has come into being. Further, in terms of notification for the purpose of organization of a separate cadre for the city of Hyderabad. Para 3(5) will have application only in relation to the said local cadres, which have been organized in respect of any category of posts. Such local cadre would be a separate unit inter alia for the purposes of recruitment, appointment, discharge, seniority, promotion and transfer....

In terms of the II Schedule there are only six zones. The city of Hyderabad comes within the purview of Zone VI. The city of Hyderabad, although loosely treated as a separate zone, but no such separate zone has been created. The city of Hyderabad therefore comes within the purview of Zone VI only.

25. The Full Bench then recorded 13 conclusions including the following, which are under challenge in these appeals:

(b) No separate cadre has been organised for the City of Hyderabad within the meaning of para 3(6) of the Presidential Order.

(c) No recruitment to the post of a police officer as defined in Section 3(b) of Hyderabad City Police Act 1348 Fasli has been made and there is thus factually no incumbent of the post of police officer under para 14(f) of the Presidential Order.

(d) Inspectors of Police working in the Hyderabad City Police establishments either on promotion to that post or by direct recruitment, must be considered as

belonging to Zone VI in the zonal cadre.

26. Shri L. Nageshwar Rao, learned senior counsel appearing for the appellants referred to Clause (10) of Article 371D, paragraph 11 of the Presidential Order and order passed by the Division Bench of the High Court in Writ Appeal No. 890/1975 and argued that when the Parliament has unequivocally recognized the primacy of the provisions contained in the Presidential Order, exclusion clause contained in paragraph 14(f) thereof is required to be given full effect and the Full Bench committed serious error by indirectly bringing the post of Police Officer as defined in Section 3(b) of the Hyderabad Act in the scheme of localization/zonalisation of cadres. Learned senior counsel emphasized that the appellants were recruited as Sub-Inspectors for Hyderabad City Police which does not fall in any of the zones carved out for localization of different cadres and argued that the Full Bench erred in holding that no separate cadre was constituted for Hyderabad City Police. Shri Nageshwar Rao made a pointed reference to G.O. Ms. No. 795 dated 30.6.1976 to show that in the scheme of organization of local cadres for non-gazetted posts of the police department, it was specifically mentioned that any post of Police Officer as defined in Section 3(b) of the Hyderabad Act is outside the purview of the Presidential Order and the same shall apply to remaining offices of the police department mentioned in paragraph 4. Learned Counsel then submitted that even while forming new police ranges vide G.O. Ms. No. 1697 Home dated 10.12.1975, a separate range i.e., City Range was carved out for Hyderabad, Secunderabad and other areas mentioned in First Schedule to the Presidential Order and argued that by declaring that members of police force allotted or recruited to Hyderabad must be construed as having been so allotted or recruited to either the district cadre of Hyderabad or zonal cadre of Zone VI i.e., Hyderabad, Nizamabada, Mahabubnagar, Medak and Nalgonda districts, the Full Bench has virtually negated the exclusion clause contained in paragraph 14(f) of the Presidential Order and, at the same time, made the creation of City Range redundant. Learned senior counsel argued that in view of the exclusion clause contained in paragraph 14(f) of the Presidential Order, the posts of Constable, Head Constable, Sub-Inspector and Inspector of Hyderabad City Police are not covered by the scheme of localization/zonalisation and the same cannot be treated as part of Zone VI as has been done by the Full Bench of the High Court. Shri Nageshwar Rao submitted that not only the post of Police Officer as defined in Section 3(b) of the Hyderabad Act but various other posts in the Secretariat of the State Government, in the offices of Heads of Department, Special Office or Establishment etc. are excluded from the purview of the Presidential Order and till the pronouncement of the Full Bench, recruitment to all the posts enumerated in paragraph 14(f) of the Presidential Order was being made without any preference being given to local candidates. He also referred to the counter affidavits filed on behalf of the State Government and Commissioner of Police in the O.As. filed by the private respondents to show that it has been the consistent stand of the official respondents that Hyderabad City Police has been treated as free zone and the vacancies in respect of posts of

Hyderabad City Police are notified separately and selection to various cadres are being conducted for appointment for Hyderabad City Police only.

27. Shri Anoop G. Choudhari, learned senior counsel appearing for the State submitted that even though in terms of Section 7 of the Hyderabad Act, the power to appoint an Inspector, Sub-Inspector and other subordinate of the force vested in the Commissioner of Police, Hyderabad, after framing of Special Rules for Police Subordinate Service, the said power can be exercised by other designated authorities and, therefore, those appointed on subordinate posts in Hyderabad City Police cannot be treated as part of separate cadre. Shri Choudhari further submitted that the exclusion clause contained in paragraph 14(f) could operate only if a separate cadre had been carved out for Hyderabad City and submitted that in the absence of any recruitment having been made for Hyderabad City Police, the Full Bench rightly treated the Inspectors of Police working in Hyderabad City Police establishment as belonging to Zone VI in the zonal cadre

28. We have given serious thought to the entire matter. It is not in dispute that the Presidential Order was issued for providing equitable opportunities and facilities for the people belonging to different parts of the State in the matters of public employment and education and by virtue of Clause (10) of Article 371D, overriding effect has been given to the Presidential Order qua other constitutional and statutory provisions. For achieving the objective set out in Clause (1) of Article 371D, provisions have been made in the Presidential Order for localization/zonalization of cadres and giving preference to the candidates belonging to the particular local area. Paragraph 3 of the Presidential Order postulates organization of local cadres for different posts. Paragraph 5(1) thereof declares that each part of the State, for which a local cadre has been organized in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion, transfer and other matters, as may be specified by the Government in respect of that category of posts. Paragraph 5(2) empowers the State Government to make provision for transfer of employees in different contingencies. Paragraph 6(1) defines local areas. Paragraph 6(2) lays down that each zone shall be regarded as local area for specified purposes. However, two exceptions have been carved out in the Presidential Order in respect of certain categories of posts for the City of Hyderabad. One such exception is discernible from the language of paragraphs 3(6) and 6(3). In terms of sub-paragraph (6) of paragraph 3, the Central Government is empowered to notify the departments in which and categories of posts for which a separate cadre is required to be recognized for the City of Hyderabad. This sub-paragraph also lays down that on such notification being issued the post belonging to each such category and in each such department in the City of Hyderabad (other than those concerned with the administration of areas falling outside the said City) shall be organized into a separate cadre and the posts so organized shall be excluded from other cadres. In terms of paragraph 6 of the Presidential Order, each district and each zone is regarded as

local area but by virtue of sub-paragraph (3) thereof, the City of Hyderabad is regarded as a local area for direct recruitment to posts in any cadre under the State Government comprising all or any of the posts in the said city, in the departments and belonging to the categories notified under paragraph 3(6). The city is also excluded from the local area relatable to any other local cadre comprising posts in the departments belonging to the categories notified in terms of sub-paragraph (3) of paragraph 6. The other exception is in the form of exclusion clause contained in paragraph 14(f) which operates on its own and does not depend on the issue of notification by the Central Government. By virtue of that paragraph, the provisions contained in the Presidential Order have been made inapplicable to the specified posts, which include any post of Police Officer as defined in Clause (b) of Section 3 of the Hyderabad Act. This was made more explicit by paragraph 8 of G.O.P. No. 728 dated 1.11.1975 issued by the Government of India, paragraphs 5 and 21 of G.O. Ms. No. 729 dated 1.11.1975 and paragraph 2 of G.O. Ms. No. 730 of the same date (both issued by the Government of Andhra Pradesh). When G.O. Ms. No. 795 dated 30.6.1976 was issued incorporating therein the scheme for organization of local cadres for non-gazetted categories of posts (both Executive and Ministerial) and other posts equivalent to or lower than Lower Division Clerk, the post of Police Officer as defined in Clause (b) of Section 3 of the Hyderabad Act was specifically excluded. In paragraph 16 of G.O. Ms. No. 795, it was made clear that as no separate cadre for the City of Hyderabad needs to be organized for the police department and only ministerial staff of the office of Commissioner of Police will be included in Zone VI. The posts of the Police Officers of Hyderabad City were not shown in the cadre strength of the localized cadres contained in Annexures IV, V, XII and XIII appended to G.O. Ms. No. 795. This was so because there was no localization of Hyderabad City Police cadres. This was also the reason why a separate range i.e., City Range was created for Hyderabad, Secunderabad and other areas mentioned in First Schedule to the Presidential Order.

29. From what we have noted above, it is evident that the post of Police Officer of Hyderabad City as defined in Section 3(b) was not included in the process of localization of cadres undertaken in terms of paragraphs 3 and 6 of the Presidential Order. The localization/zonalization of subordinate cadres in the police department was effected for six zones/ranges but the same was not applicable to Hyderabad City Police. If this was not so, there was no reason to exclude posts earmarked for Hyderabad City from the statement of cadre strength of localized cadres enumerated in various Annexures appended to G.O. Ms. No. 795 dated 30.6.1976. The object of exclusion of certain posts from the purview of the Presidential Order and consequently from the scheme of localization/zonalization required to be undertaken in terms of paragraphs 3 and 6 thereof was to make recruitment against such posts open for all without giving any preference to any local candidate. The reason why special status was given to the posts located in the specified departments of Hyderabad City, which is capital of the State, was that there should be no monopoly of candidates

belonging to any particular area of the State in the matter of recruitment etc. against those posts and all eligible candidates must get opportunity to compete for selection and appointment.

30. It is also significant to note that after promulgation of the Presidential Order, Hyderabad City has throughout been treated as an independent zone or free zone till the impugned judgment was pronounced and recruitment to the post of Police Officer as defined in Section 3(b) of the Hyderabad Act was made separately. This was the categorical stand taken by the official respondents before the Tribunal while contesting the O.A. of the private respondents. In reply to paragraph 6 of the O.A. filed by Sardar Harihar Singh, it was specifically averred on behalf of the State that vacancies in respect of posts of Hyderabad City Police are notified separately and selections/appointments to the posts of Sub-Inspectors of Police, Civil and Reserve Sub-Inspector, CAR and Police Constable of both Civil and CAR to the extent of vacancies are conducted separately and all six zones and Hyderabad City Police are separate zones for all service matters i.e., appointments, promotions, etc. and Hyderabad City Police is not part and parcel of Zone VI. The contra stand taken in the counter affidavits filed before this Court is inexplicable and is liable to be discarded.

31. We shall now consider whether conclusions (b), (c) and (d) recorded by the Full Bench of the High Court are legally correct and sustainable. The observations of the Full Bench that no separate cadre has been organized and no Police Officer has been appointed under the Hyderabad Act is based on the premise that in the advertisement issued for recruitment of Police Officers and appointment orders of the appellants and other similarly situated persons, reference has not been made to Hyderabad Act. While doing so, the Full Bench omitted to take note of the fact that in terms of Section 7 of the Hyderabad Act, powers to appoint and promote Inspector, Sub-Inspector and other subordinates of the police force vests in the Commissioner of City Police Hyderabad and the said Section finds specific mention in the preamble to the Special Rules framed in 1959. Rule 3 of those Rules clearly lays down that as far as Hyderabad City Police is concerned, the Commissioner of Police shall be the appointing authority of Sub-Inspectors of Police etc. and by virtue of that power, the Commissioner of Police, Hyderabad has been making appointments on various subordinate posts including those of Sub- Inspectors. In the advertisement of 1985 pursuant to which the appellants were appointed as Sub-Inspectors, 93 posts were separately earmarked for Hyderabad City which, for the sake of convenience, was described as Zone VII or free zone. Even in the subsequent advertisements issued in 1991 and 1994, the vacancies of Sub-Inspectors were separately earmarked for Hyderabad City Police Range. The orders of appointment of the appellants were issued by the Commissioner of Police. This shows that a separate cadre has been carved out for Hyderabad City Police and recruitment to the post of Police Officer as defined in Section 3(b) of the Hyderabad Act has been made by the designated competent authority in terms of Section 7 thereof. Therefore, the Full Bench was not justified in curtailing the width and scope of the exclusion clause contained in

paragraph 14(f) of the Presidential Order by holding that there is no separate cadre of Hyderabad City Police and there is no incumbent of the post of Police Officers as defined in Section 3(b) of the Hyderabad Act.

32. In view of the above discussion, we hold that the conclusions recorded by the Full Bench that no separate cadre has been organized for the City of Hyderabad within the meaning of paragraph 3(6) of the Presidential Order; that no recruitment to the post of Police Officer as defined in Section 3(b) of the Hyderabad Act has been made and there is factually no incumbent of the post of Police Officer under paragraph 14(f) of the Presidential Order and that the Inspectors of Police working in the Hyderabad City Police establishment either on promotion to that post or by direct recruitment must be considered as belonging to Zone VI in the zonal cadre cannot be sustained and are liable to be set aside.

33. In the result, the appeals are allowed and conclusions (b), (c) and (d) recorded in the impugned judgment are set aside. The parties are left to bear their own costs.