

(2014) 04 AP CK 0017

In the Andhra Pradesh High Court

Case No : W.P. Nos. 33950 of 2011, 37353 and 38814 of 2013, 972, 975, 1153, 1213, 1334, 1499, 1502, 1506, 1509, 1510, 1513, 1515, 1517, 1833, 1834, 1835, 1836, 1837, 1839, 1840, 1841, 1842, 1844, 1845, 1858, 2245 and 2247, 2248, 2249, 2250, 2251, 2252 and 2253 of 201

Siddabloina Laxminarayana

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 2(43), 78, 79, 92(2)

Andhra Pradesh Panchayat Raj Act, 1994 — Section 169, 195, 268

Andhra Pradesh School Education (Community Participation) Act, 1998 — Section 2(5)

Constitution of India, 1950 — Article 14, 16, 16(4), 16(4A), 162

Citation : (2014) 5 ALD 114 : (2015) 1 ALT 607

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

Bench : Division Bench

Advocate : P.V. Ramana and Addl. Advocate General, Advocate for the Appellant; V. Ravichandran, Y. Ashok Raj, G.V.L. Murthy, K. Narayana, D. Lalitha Prasad, Additional Advocate General and D. Bala Kishan Rao, Advocate for the Respondent

Judgement

K.C. Bhanu, J.—These writ petitions under Article 226 of the Constitution of India are filed challenging the order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal") in O.A. No. 283 of 2010 and batch, dated 28-11-2011, whereunder and whereby the Tribunal gave the following findings:

1. The respondents are not entitled to apply 100% reservation to the local tribals in promotion and G.O.Ms. No. 3, Social Welfare (T.W., Edn.II) Department, dated 10-01-2000 is applicable only for direct recruitment.
2. G.O.Ms. No. 3, Social Welfare (T.W., Edn.II) Department, dated 10-01-2000 is having prospective effect only and it has no retrospective effect.
3. The impugned Memo No. 9200/T.W./Ser.III/A1/2009, dated 19-12-2009

issued by the 1st respondent and the connected Memo in Rc. No. K2/9203/2009, dated 01-01-2010 issued by the 2nd respondent are illegal, therefore, they are set aside.

4. The applicants are entitled for protection of their seniority from the date of appointment and they are also entitled to get the posts held by them, are protected since there are Tribal Welfare Ashram Schools not only in scheduled areas but also in non-scheduled areas.

5. The applicants and other non tribal teachers appointed from 1986 to 2000 and are working in the scheduled areas since a long time are entitled to be considered for promotion as per their seniority along with local Schedule Tribe candidates after applying rule of reservation for effecting promotions.

6. If the Government is intending to accommodate the local tribal candidates in schedule areas, it can be done after protecting the seniority and the posts held by the respective candidates among non-tribals and they cannot be denied the rights accrued to them due to long silence on the part of the respondents in replacing such non-tribal candidates. The Government may formulate a scheme to protect the interests of the non-tribals in the event of replacing them with the tribal candidates according to merit and seniority.

O.A. No. 5049 of 2011 and batch were disposed of by the Tribunal with the following directions:

The impugned proceedings in Rc. No. 418/2011/H (T.W.), dated 09-06-2011 issued by the 2nd respondent are not liable to be set aside. However, the official respondents are directed to consider the cases of the applicants in posting them in the vacancies available in scheduled areas irrespective of the fact whether they are non-tribals working in scheduled areas or Ashram schools in non-scheduled areas depending on the necessity and availability of vacancies, if sufficient number of suitable teachers from the local tribals are not available.

2. Two sets of Original Applications (for short "O.As.") were filed. The first set of O.As. are 282, 101,293 of 2010, 8756 to 8761 of 2010, 8764, 8765, 8770, 8897 of 2010, 8981 to 8990 of 2010, 8658, 8660, 8661, 8664, 8665, 8666, 8680, 8681, 8690 of 2010, 8871 to 8875 of 2010, 8733, 8750, 8811, 8812, 8813, 8815 and 8816 of 2010 and 1065 of 2011. The second set of O.As. are 5049, 5051, 5054, 5069, 5057, 5058, 5071, 5077, 5088 and 5222 of 2011.

3. In the first set of O.As. Memo No. 9200/T.W./Set.III/Al,2009, dated 19-12-2009 was challenged, whereunder the Government clarified that the posts of teachers including Head Masters in schools in the scheduled areas, which was issued by the Principal Secretary to Government, Tribal Welfare Department, Hyderabad and also the Memo in Rc. No. K2/9203/09, dated 01-01-2010 issued by the Commissioner of Tribal Welfare, Hyderabad, whereunder the Government clarified the orders in G.O.Ms. No. 3, Social Welfare (T.W., Edn.II) Department, dated 10-01-2000 are not only applicable for direct recruitment but also to

promotion.

4. In the second set of O.As", the applicants are seeking to declare that they are entitled for transfer and posting in the existing vacancies in scheduled areas with all consequential benefits by holding that the action of the respondents in not permitting the applicants to opt the vacancies available in the scheduled areas in the transfer counseling on the ground that transfer is not permissible from scheduled areas to non-scheduled areas as illegal and arbitrary.

5. The applicants are working as School Assistants or Special Grade Teachers and they are non-tribals. The implead applications were filed by the teachers belonging to the tribal area to allow them to come on record to oppose the applications. Those applications was ordered. In terms of G.O.Ms. No. 3, dated 10-01-2000, all the vacancies in the Educational Institutions within the scheduled areas are reserved in favour of local Scheduled Tribes, which reads as follows:

Whereas, under sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India, the Governor of Andhra Pradesh may by public notification direct that any particular act of Parliament or of Legislature of the State shall not apply to the Scheduled Areas or any part thereof in the State or shall apply to a schedule area or any part thereof subject to specified exceptions and modifications:

2. And Whereas, in G.O.Ms. No. 275, Social Welfare Department dated 5.11.1999, a notification has been issued exercising the powers conferred under sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India directing that the posts of teachers in the Educational Institutions in the Scheduled Areas of State shall be filled in only by the local members of the Scheduled Tribes:

3. AND Whereas, the Andhra Pradesh Administrative Tribunal in its order dated 25.8.1989 in R.P. Nos. 6377 and 6379 of 1988 quashed the orders issued in G.O.Ms. No. 275, Social Welfare Department dated 5-11-1986 on the ground that the notification issued under sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India does not reflect the existence of either a State or a Central Legislature referable for issuing such notification:

4. AND Whereas, the division Bench of the High Court of Andhra Pradesh in the judgment dated 20-8-1997 in Writ Appeal No. 874 of 1997 filed by the Project Officer, I.T.D.A., Rampachodavaram, East Godavari District, directed to continue the petitioners respondents in their respective posts of teachers without any break as temporary employees until replaced by the qualified local tribals as and when such tribals are available to fill up those posts;

5. AND Whereas, the Andhra Pradesh Administrative Tribunal subsequently while disposing of O.A. No. 4593/97 in its order dt. 22.9.1997 directed the respondents to follow the statutory rules while making recruitment to the posts of Secondary Grade Teachers and also Telugu Pandits, Grade. I in Agency Areas

without taking into consideration of the orders issued in G. O. Ms. No. 275, Social Welfare Department, dated 5.11.1986.

6. AND Whereas, the Supreme Court of India while allowing Civil Appeal No. 6437/98 in its order dated 18th December, 1998, set aside the orders of the Andhra Pradesh Administrative Tribunal on the ground that the State withdraw the appeals arising out of the SLP Nos. 14562-63 of 1989:

7. AND Whereas, the Government considers that rule 4 (b) of the Andhra Pradesh School Education subordinate Service Rules, 1992 and rule 22A of the Andhra Pradesh State and Subordinate Service Rules, 1996 shall be modified to the extent that only Scheduled Tribe Women shall be appointed in Scheduled Areas against the 33 1/3 % reservation in respect of direct recruitment;

8. AND Whereas, the consultation of the Tribes Advisory Council has been made as required under sub-paragraph (5) of paragraph 5 of the Fifth Schedule to the constitution of India 9. AND Whereas, the Government of Andhra Pradesh in order to strengthen the educational infrastructure in the Scheduled Areas, to promote educational development of Tribals, to solve the phenomenal absenteeism of Teachers in the Schools situated in Scheduled Areas and with a view to protect the interests of local tribals have decided to reserve the posts of teachers in favour of local Scheduled Tribe candidates:

10. AND Whereas, the Government considered to re-issue the said orders retrospectively from 5.11.1986 keeping in view the provisions of sub-paragraph (1) of paragraph 5 of Fifth Schedule to the Constitution:

11. The following notification will be published in part - IV-B Extraordinary issue of the Andhra Pradesh Gazette, dated 10-01-2000.

NOTIFICATION

In exercise of the powers conferred by subparagraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India and in pursuance of the notification issued in G.O.Ms. No. 275, Social Welfare Department, dated the 5th November, 1986, as subsequently amended in G.O.Ms. No. 73, Social Welfare Department, dated 25th April, 1988, the Governor of Andhra Pradesh hereby directs that sections 78 and 79 of the Andhra Pradesh Education Act, 1982 (Act 1 of 1982) and Section 169, 195 and 268 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994) and rule 4(a) of the Andhra Pradesh School Educational Subordinate Service Rules issued in G.O.Ms. No. 538 Education (Ser. II) Department, dated the 20th November, 1988 and rule 22 and 22A of the Andhra Pradesh State and subordinate Service Rules, 1996 and the appointment of posts of teachers in schools situated in the Scheduled Areas in the State Subject to the notification that all the posts of teachers in the School situated in Scheduled Areas in the State of Andhra Pradesh shall be filled in by the local Scheduled Tribe Candidates only out of whom 33 1/3 % shall be women:

EXPLANATION: For the purpose of this notification, the "Local Scheduled Tribe

Candidate" means, the candidate belonging to the Scheduled Tribes notified as such under article 342 of the Constitution of India and the candidates themselves or their parents have been continuously residing in the scheduled areas of the Districts in which they are residents till to date since the 26th January, 1950.

6. The above said G.O. was challenged before the Tribunal on earlier occasion in O.A. No. 2138 of 2003. The Tribunal by its order, dated 19-09-2000 quashed the said G.O. Challenging the same, writ petition was filed before this Court. This Court by majority judgment allowed the writ petition setting aside the judgment of the Tribunal, which was reported in Pulusam Krishna Murthy Vs. T. Sujan Kumar and Others, . Unsuccessful writ petitioners filed Civil Appeal No. 3609 of 2002 before the Hon'ble Supreme Court and the same is pending. The substantial questions of law for constitutional interpretation before the Hon'ble Supreme Court are:

1. What is the scope of paragraph 5(1), Schedule V to the Constitution of India.
 - a) Can the exercise of power conferred therein override fundamental rights guaranteed under part III?
 - b) Does the exercise of such power override any parallel exercise of power by the President under Article 37 ID?
 - c) Does the power extend to subordinate legislation?
 - c) Does the provisions empower the Governor to make new law?
2. Whether 100% reservation is permissible under the Constitution?
3. Whether the notification merely contemplates a classification under Article 16(1) and not reservation under Article 16(4)?
4. Whether the conditions of eligibility (i.e., origin and cut-off date) to avail the benefit reservation in the notification are reasonable?

On these questions, the matter is pending in Constitution Larger Bench. Admittedly, no stay was granted. Therefore, there is no impediment for disposal of the present writ petitions. Even otherwise, the legality or otherwise of G.O.Ms. No. 3, dated 10-01-2000 is not an issue before this Court.

7. Mr. P.V. Ramana, learned counsel appearing for the writ petitioners contended that two proceedings which are impugned in the O.As are only clarificatory in nature and they do not override or contrary to G.O.Ms. No. 3, dated 10-01-2000, that object of providing 100% reservation to the tribals is to preserve the tribal autonomy, its culture and economic empowerment ensure socio-economic political justice for preservation of peace and good governance in the Scheduled Areas and it is the responsibility of the State to see the upliftment of the tribals within the Scheduled Areas, that G.O.Ms. No. 3, dated 10-01-2000 specifically provides appointment of teaches in the schools in the scheduled areas by 100% reservation in favour of Scheduled Tribes of scheduled areas of the State and

appointment of teachers includes the Head Masters also as the term appointment postulates initial appointment and promotion also. He also contended that though the post of Head Master is a promotional test, but teacher includes Head Master and that unless one becomes a teacher, he could not be appointed as a Head Master. He further contended that notification in G.O.Ms. No. 3, dated 10-01-2000 has a overriding effect over all or any other service rules and therefore, the appointment of posts of teachers including Head Masters in the schools situated in scheduled areas in the State of Andhra Pradesh shall be filled in by local tribal candidates only out of whom 33 1/3% shall be women.

8. On the other hand, Mr. Suresh Reddy, learned counsel appearing for some of the respondents contended that G.O.Ms. No. 3, dated 10-01-2000 has no retrospective operation and the teachers are governed by the A.P. State Educational Subordinate Service Rules, that G.O.Ms. No. 3 is only applicable to the initial recruitment of teachers prospectively, that the memos issued by the Principal Secretary to Government, Tribal Welfare and Commissioner of Tribal Welfare, Hyderabad are without jurisdiction, that the Head Master cadre is separate and distinct, that all the non tribals/applicants were appointed prior to G.O.Ms. No. 3 came into force, that in view of these memos, they are being effected in the case of promotion, that in the notification, there was no mention that G.O.Ms. No. 3 has retrospective effect, that in the said G.O., the fate of the non-tribals have not been taken care and it causes undue hardship and hence, he prays to dismiss the writ petitions.

9. One of the counsel appearing for the non-tribals contended that paragraph 5(1) of the V schedule is subject to Article 371-D(10) and that Article 371-D(10) will prevail over any other Articles or schedule in the Constitution because the said clause start with non-obstente clause and that this issue has not been decided by full bench of this Court in Krishna Murthy's case (supra) and hence, he prays to dismiss the writ petitions.

10. Learned Government Pleader representing learned Additional Advocate General contended that appointment of teachers that would be made in the vacant posts in the schools in the Scheduled Areas can be by way of direct recruitment or promotion as provided under Rule 4 of the A.P. State and Subordinate Services Rules, 1996, that the policy of the Government is to reserve all the posts of teachers in favour of local Scheduled Tribe candidates in order to strengthen the educational infrastructure in the Scheduled Areas to promote the education development of the tribals to solve the phenomenal absenteeism of teachers in the schools situated in Scheduled Areas and with a view to protect the interests of tribals, that the Government is competent to issue administrative orders in the field where the same is not covered by statute or statutory rules, that the Tribunal has not appreciated the relevant material in a right perspective and came to a wrong conclusion in quashing the two memos issued by the Government and hence, he prays to set aside the impugned order.

11. Sub-clause (1) of Article 371-D of the Constitution of India reads that the

provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provisions of this Constitution or in any other law for the time being in force. This issue need not be resolved for two reasons. One is, the issue is pending before the Supreme Court and second is, the effect of Article 371-D of the Constitution of India need not go into as there is no pleading before the Tribunal. Similarly, the Tribunal has not formulated any point to decide this issue. The point that falls for consideration before the Tribunal was whether the two memos issued by the Government in pursuance of G.O.Ms. No. 3, dated 10-01-2000 is permissible and valid. Therefore, we are not expressing any opinion with regard to overriding effect of Article 371-D of the Constitution of India over V schedule because this is not the issue fell for consideration before the Tribunal.

12. Now the points that arise for consideration in these writ petitions are:

1. Whether the Principal Secretary to Government and the Commissioner of Tribal Welfare, Hyderabad have powers to issue the two memos, which were under challenge before the Tribunal?

2. Whether the teachers include Head Masters?

3. Whether G.O.Ms. No. 3, dated 10-01-2000 is applicable for promotions from the cadre of Secondary Grade Teachers to School Assistants and from School Assistants to Head Masters?

13. The Tribals are one of the main communities, which live inside and on the fringes of the forest areas. Importance of education as one of the most powerful means of bringing socio-economic development of Scheduled Tribes cannot be over-emphasized. Education is a stepping stone to social and economic development and it is effective instrument for empowering the tribals. The framers of Constitution took note of the fact that certain communities in the country were suffering from extreme social, educational economic backwardness arising out of age-old practice of untouchability and geographical isolation and certain others on account of primitive practices, lack of infrastructure facilities and who need special consideration for safeguarding their interests and for their accelerated socio-economic development.

14. There is a general reluctance on the part of the non-tribal teachers for posting in scheduled areas/Tribal Areas on account of lack of housing, medical and educational facilities. What is". needed is effective strengthening of education in Tribal Areas. Government should formulate specific regulations in respect of scheduled areas in the interests of tribes so as to remedy this particular problem with an intention to create a dedicated cadre recruited from among the local tribes who are generally rooted to this place of origin. May be for the reason to adopt for effective strengthening of pre metric education system insofar as it relates to the tribal students, G.O.Ms. No. 3, dated 10-01-2000 was issued. The proceedings of the Principal Secretary to Government, Tribal Welfare Department, dated 19-12-2009 reads thus:

The attention of the Commissioner of Tribal Welfare, Hyderabad is invited to the reference cited and he is informed that as per the orders issued in the GO first cited, all the posts of teachers in schools situated in scheduled areas in the State shall be filled in by local Scheduled Tribe candidates only out of whom 33 1/3% shall be women. The orders in the GO first cited are prospective in operation and as per these orders, the posts of Teachers including Head Masters in schools in scheduled areas w.e.f. 10-01-2000 shall be filled with local scheduled tribe candidates by following gender reservations in favour of women. These orders are applicable not only for direct recruitment but also to promotion. The Commissioner of Tribal Welfare, Hyderabad is requested to take necessary action accordingly.

In pursuance of the memo issued by the Government, the Commissioner of Tribal Welfare, Hyderabad issued memo on 01-01-2010, which reads thus:

Attention of Project Officers, Deputy Directors (T.W.) of I.T.D.As. and D.T.W.Os. of Non-I.T.D.As. are invited to the reference 2nd cited (copy enclosed), wherein the Government has issued clarification that the orders issued in the G.O. 1st cited are prospective in operation and as per these orders, the posts of Teachers including Head Masters in schools located in scheduled areas w.e.f. 10-01-2000 shall be filled with local Scheduled Tribe Candidates only by following reservation in favour of women. Further, the Government has also clarified that these orders are applicable not only for direct recruitment but also to promotion.

The above two memos were under challenge before the Tribunal.

15. The main contention on behalf of non-tribals is that these two memos are per se arbitrary and illegal and contrary to G.O.Ms. No. 3, dated 10-01-2000, which provide that all posts of teachers in the schools situated in scheduled areas in the State of Andhra Pradesh shall be filled in by local Scheduled Tribe candidates only. There cannot be any dispute that executive instructions or Government orders cannot override the statutory rules. Executive or administrative instructions usually comprise directions or policy matters issued by the State in exercise of its executive power. Article 162 of the Constitution lays down what is the extent of the executive power of the State.

16. Learned counsel for the respondents relied on a decision reported in State of Uttaranchal Vs. Alok Sharma and Others, , wherein it was observed that statutory rule cannot be modified or altered by reason of an executive instructions far less by way of a circular letter. In State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, , it is held thus:

The second ground on which the Full Bench has sought to invoke the instructions is also not correct. Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect.

From the above definition, it is clear that executive instructions may supplement

but not supplant statutory rules. In *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, , it is held thus:

Apart from repelling the contention that regularisation connotes permanence, these observations furnish the second reason for rejection of the argument advanced on behalf of the promotees and that reason is that when rules framed under Art. 309 of the Constitution of India are in force, no regularisation is permissible in exercise of the executive powers of the Government under Art 162 thereof in contravention of the rules. THE regularisation order was made long after the Probation Rules, the Seniority Rules and the Recruitment Rules were promulgated and could not therefore direct something which would do violence to any of the provisions thereof. Regularisation in the present case, if it meant permanence operative from the 1st of Nov. 1956, would have the effect of giving seniority to promotees over the direct recruits who, in the absence of such regularisation, would rank senior to the former because of the Seniority Rules read with the Probation Rules and may in consequence also confer on the promotes a right of priority in the matter of sharing the quota under the Recruitment Rules. In other words, the regularisation order, in colouring the appointments of promotees as Assistant Engineers with permanence would run counter to the rules framed under Art. 309 of the Constitution of India. What could not be done under the three sets of Rules as they stood, would thus be achieved by an executive fiat. And such a course is not permissible because an act done in the exercise of the executive power of the Government, as already stated, cannot override rules framed under Art. 309 of the Constitution.

From the above, it is clear that executive instructions cannot override or contradict statutory rules. Where the rules are silent, administrative instructions can be relied upon. The administrative instructions operate when there are gaps in the rules and they are meant for supplementing the rules or legislation.

17. Now it has to be seen whether the two memos issued by the Principal Secretary to Government and Commissioner of Tribal Welfare override the legislation made in G.O.Ms. No. 3, dated 10-01-2000. Executive Instructions can supplement a statutory rule or cover areas to which the rule does not extend but cannot run contrary to statutory provisions or whittle down their effect. "Supplement" means supplying by addition of what is wanting. In other words it supplies a deficiency or makes an addition to something already organized. The principle that such instructions cannot supplant statutory rules is fundamental in a polity governed by the rule of law. In other words they cannot override statutory rules. As seen from these two memos, the second memo issued by the Commissioner, Tribal Welfare is consequential one. Whether the first memo issued by the Principal Secretary to Government, Tribal Welfare Department is contradictory or runs contra to the legislation made in G.O.Ms. No. 3, dated 10-01-2000. The language employed in G.O.Ms. No. 3 is with regard to appointment to the posts of teachers and posts of teachers in the schools situated in the scheduled areas in the State of Andhra Pradesh shall be filled in

by the local Scheduled Tribe candidates only out of whom 33 1/3% shall be women. It is 100% reservation in favour of tribals for appointment of teachers in the schools situated in the scheduled areas.

18. The memo issued by the Principal Secretary to Government, Tribal Welfare Department, dated 19-12-2009 is in the nature of clarification to the effect that the posts of teachers include Head Masters and that G.O.Ms. No. 3, dated 10-01-2000 is prospective. It is further clarified that those orders are applicable not only for direct recruitment but also to promotion. A perusal of memo, dated 19-12-2009 would go to show that it does not override the legislation made in G.O.Ms. No. 3, dated 10-01-2000. It is only clarificatory or explicate in nature i.e., supplying by addition of what is wanting. It is nothing but making an addition to something already stated. Therefore, it does not override the main legislation made in G.O.Ms. No. 3, dated 10-01-2000. It is explanatory or clarificatory in nature and it is in consonance with the main legislation. The competency of Principal Secretary to Government in issuing the memo is not under challenge. There is no factual foundation in this regard.

19. The contention of the learned counsel for the respondents herein is that teachers are governed by the A. P. State Educational Subordinate Service Rules, A. P. Educational Service Rules and A.P. Tribal Welfare Subordinate Services Rules, whereas the Head Master is a separate cadre. In view of the same, the word "teacher" does not include Head Master. It may be a fact that cadre is different. It is not in dispute that from School Assistant, Head Master is a promotional post. There is no direct recruitment to the post of Head Master.

20. As per G.O.Ms. No. 23, dated 01-04-2011, Rule 2 reads that the posts of Head Masters Grade-II (Gazetted) in Government Tribal Welfare Ashram High Schools is a district category in the Andhra Pradesh Tribal Welfare Educational Service Rules and method of recruitment is by transfer from class C of A.P. Tribal Welfare Subordinate Service Rules.

21. There is no dispute that under the rules, Head Master is a separate cadre. Rules governing the service conditions of Head Master and teacher are different and distinct.

22. Now, it has to be seen whether appointment to any post includes promotion. Rule 4 of A.P. State and Subordinate Service Rules reads thus:

Method of appointment:- (a) Appointment to any service, class or category shall be by one or more of the methods indicated below as may be specified in the Special Rules applicable to the relevant post:-

1. Direct recruitment,
2. Recruitment/appointment by transfer,
3. Promotion, or
4. Contract/Agreement/Re-employment.

23. Therefore, from the above rule, it is clear that appointment can be by way of direct recruitment or by promotion. On this aspect, learned counsel for the petitioners relied upon a decision reported in K. Narayanan and others Vs. State of Karnataka and others, wherein it is held thus:

Art. 309 of the Constitution empowers appropriate legislature to frame rules to regulate recruitment to public services and the post. "Recruitment" according to dictionary means "enlist. It is comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well known methods of recruitment. Even appointment by transfer is not unknown. But any rule framed is subject to other provisions of the Constitution. Therefore it has to be tested on rule of equality. Transfer is normally resorted in same cadre. But when it is made in a different and higher cadre it must not be violative of constitutional guarantee and the rule of fairness. Providing for appointment of a diploma holder from the cadre of Junior Engineer to Assistant Engineer from back date without any test or selection on eligibility only does not sound reasonable and fair.

The word "appointment" means actual act of posting a person to a particular office. In other words it is to designate person to discharge the duties of an office. Appointment to service may be by direct recruitment or by promotion or by transfer or by deputation. The appointment cannot mean only initial appointment. It means appointment both by promotion and by direct recruitment. That is why the word "appointment" is used in that sense once in relation to initial appointment and again in relation to promotion. It is fully within the competence of Government to explicate as a matter of policy, the sources from which the personnel required for manning the services are to be drawn. Therefore, the explanation given by the Principal Secretary to Government that appointment of teachers would not only applicable for initial recruitment, but also to the promotion posts can be accepted. There is no conflict between executive instructions and the legislation made in G.O.Ms. No. 3, dated 10-01-2000.

24. Coming to the aspect of teachers include Head Master is concerned, learned counsel for the petitioners relied upon a definition defined in Law Lexicon, written by Ramnath Iyer. Teachers" means a salaried professor, reader, lecturer or tutor who imparts instruction in a Faculty of, or in a college maintained by the University. A teacher can be defined as an individual that teaches students and pupil in school. It is an individual whose occupation is to educate, instruct or train the students. A teacher can also be referred to as an instructor, tutor, coach, or professor or Head Master. Head Master is a most senior teacher, leader and manager of a school. Apart from teaching responsibility, the Head Master is having a managerial duties with regard to school governance. He is having ultimate responsibility for the school as a whole. In other words he is a man who head teacher in a school. Similarly, teacher is defined u/s 2(43) of the A.P. Education Act, 1982, which reads Teacher" means any member of the teaching staff in an educational institution appointed to give instruction in that institution.

Similarly, Head Master is defined in Section 2(5) of the A.P. School Education (Community Participation) Rules, 1998, which reads "Head Master" means head functionary of any educational institution which may include the Head Master of a Formal School or any other officer nominated by the concerned District Officer/ Head of Department to carryout the duties of the Head Master in an educational institution. Therefore, from the definitions of Teacher and Head Master, it is clear that both are separate cadres, but the basic duties of both is to educate, instruct and train the students. Similarly, cadre is defined under Fundamental Rule 9 (4), which means strength of service or a part of service sanctioned as separate unit.

25. In view of the above rules, it can be said that the Head Master can be a teacher, but a teacher cannot be a Head Master. Apart from management of the school, the Head Master has to instruct and teach the students imparting instructions in the department of the school maintained by the State. So, this explanation of teacher includes Head Master issued by the Principal Secretary to Government, Tribal Welfare cannot be said to be runs contra to G.O.Ms. No. 3, dated 10-01-2000. He only gave a clarification or in the nature of explication. Therefore, u/s 92(2) of the A.P. Education Act, 1982, the Government may give instructions to any educational institution or tutorial institution as to the giving effect to any of the provisions contained in this Act or of any rules or orders made thereunder and the manager or owner, as the case may be, of such institution shall comply with every such direction. Any arbitrary action on the part of Government in issuing executive instructions without any rational and justifiable ground would fall within the mischief of Articles 14 and 16 of Constitution. At the cost of repetition, we may say that the impugned memo before the Tribunal is only clarification. That clarification cannot be said to be unreasonable and unjustified. Article 16 of the Constitution does not debar a reasonable classification of the employees in the matter of appointment or promotion, provided the classification is made with reference to the objective sought to be achieved. The object in this case is to protect the interest of tribal students residing in scheduled areas by creating a dedicated cadre among the tribals to strengthen the education. Therefore, in our considered opinion, the memo issued by the Principal Secretary to Government, Tribal Welfare cannot be said to be violative of Articles 14 or 16 of the Constitution of India as contended by the learned counsel for the respondents and it is perfectly legal and correct.

26. By reason of V schedule, the Governor alone is vested with the power to legislate in accordance with paragraph 5(1) or 5(2) in relation to administrative control of scheduled areas and Scheduled Tribes. Paragraph 5(1) of V schedule reads thus:

Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to the Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any

directions given under this sub-paragraph may be given so as to have retrospective effect.

Clause (1) gives the Governor the power of merely applying or modifying the applications of Acts made by Parliament or the State Legislature.

Sub-clause (2) reads that Governor may make regulations for the peace and good government of any area in a State which is for the time being a scheduled area. Clause (2) confers wide powers of independent legislation. He is given plenary power of legislation concerning these Areas, by framing regulations for the peace and good government of each area. He is the sole judge to decide whether the Regulation is required for the peace and good governance of the Area in question. So a reading of the above provision makes it clear that Governor under the present clause has a power of retrospective legislation just as the State Legislature possesses.

27. Learned counsel for the petitioners stated that while interpreting the regulation, purposive interpretation has to be adopted so as to secure justice to the disadvantageous tribals. He also contended that since it is a beneficial and social welfare legislation, it has to be liberally interpreted so as to advance the cause of justice. He placed relied on the decision reported in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, , wherein it is held thus:

THE rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. THE language employed in a statute is the determinative factor of legislative intent. THE first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. THE question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid." Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them." THE view was reiterated in *Union of India and others v. Filip Tiago De Gama of Vedem Vasco De Gama*.

28. He further relied on a decision reported in *Commissioner of Income Tax Vs. Suleman Khan and Mahaboob Khan Tobacco Exporters*, , wherein it was held thus:

It is now well-settled that for the purpose of interpretation of statute the entire statute is to be read in entirety. The purport and object of the Act must be given its full effect.

29. He further relied on a decision reported in *Deputy Director, ESI Corporation Vs. L.K. Krishnaiah and Others*, , wherein it was held thus:

In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended

to the owner of the offending vehicle. The logic of fake licence has to be considered differently in respect of third party and in respect of own damage claims.

30. He further relied on a decision reported in Union of India (UOI) and Another Vs. National Federation of the Blind and Others, , wherein it was held thus:

IT is settled law that while interpreting any provision of a statute the plain meaning has to be given effect and if language therein is simple and unambiguous, there is no need to traverse beyond the same. Likewise, if the language of the relevant section gives a simple meaning and message, it should be interpreted in such a way and there is no need to give any weightage to headings of those paragraphs. This aspect has been clarified in Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another, . Paragraph 13 of the said judgment is relevant which reads as under:

13. It is a well settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid ", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them ". (See *Lenigh Valley Coal Co. v. Yensavage*. The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama and Padma Sundara Rao v. State of T.N.*

31. He further relied on a decision reported in Welfare Asscn. A.R.P., Maharashtra and Another Vs. Ranjit P. Gohil and Others, , wherein it was held thus:

The fountain source of legislative power exercised by the Parliament or the State Legislatures is not Schedule-7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three Lists in Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power. The several entries mentioned in the three Lists are fields of legislation. The Constitution makers purposely used general and comprehensive words having a wide import without trying to particularize. Such construction should be placed on the entries in the Lists as makes them effective; any construction which will result in any of the entries being rendered futile or otiose must be avoided. That interpretation has invariably been countenanced by the constitutional jurists, which gives the words used in every entry the widest possible amplitude. Each general word employed in the entries has been held to carry an extended meaning so as to comprehend all ancillary and subsidiary matters within the meaning of the entry so long as it can be fairly accommodated subject to an overall limitation that the Courts

cannot extend the field of an entry to such an extent as to result in inclusion of such matters as the framers of the Constitution never intended to be included within the scope of the entry or so as to transgress into the field of another entry placed in another List.

IN every case where the legislative competence of a Legislature in regard to a particular enactment is challenged with reference to the entries in the various Lists, it is necessary to examine the pith and substance of the Act and to find out if the matter comes substantially within an item in the List. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of the legislation are to be focused at. It is a fundamental principle of Constitutional Law that everything necessary to the exercise of a power is included in the grant of the power (See the Constitution Bench decision in *Chaturbhai M. Patel Vs. Union of India (UOI) and Others*,).

32. What is the effect of social welfare legislation, the learned counsel relied on a decision reported in *Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others*, , wherein it was held thus:

IN this connection, we may usefully turn to the decision of this Court in *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation*, wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations: "The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. IN construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the colour, the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds* (1971 (3) All ER 237). IN the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. IN one of the cases cited before us, that is, *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, we had occasion to say. Semantic luxuries are misplaced in the interpretation of-"bread and butter" statutes, Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make in roads by making etymological excursions.

From the above decision, it is clear that when the words of statute are very clear, plain, unambiguous, they are reasonably susceptible only one meaning, the Courts are bound to give effect to it meaning irrespective of consequences. The

intention of the legislature has thus require two aspects, in one aspect, it carries a concept of meaning those what the words mean and other aspect it conveys the concept of purpose and object or the reason or spirit pervading through the statute. The process of construction therefore combines both liberal and purposive approaches.

33. As per the notification in G.O.Ms. No. 3, dated 10-01-2000, the Governor directs that Sections 78 and 79 of A.P. Education Act, 1969, 195 and 268 of A.P. Panchayat Raj Act, 1999, Rule 4 (a) of School Education and Subordinate Service Rules and Rules 22 and 22 (a) of A.P. State and Subordinate Service Rules, 1996 or any other rules made in this regard apply to the posts in the scheduled areas in the State. By applying the provisions of the Act and rules as mentioned above, the Governor direct that all the posts of teachers in the school situated in. the scheduled areas shall be filled in by the local Scheduled -Tribe candidates only subject to rule of reservation in favour of women. Full bench of this Court in Krishna Murthy's case (supra) held that by reason of notification, we may mention at the cost of repetition that all the schools in the scheduled areas have been treated as a class as distinguished from the schools in the non scheduled areas and while applying the rule of reservation of Rule 22 of General Rules as well as Rule 4 of Special Rules, the Governor modify the same to the effect that such posts of teachers in scheduled areas shall be filled in by local Scheduled Tribes only. Article 16(4) of the Constitution empowers the State to make provisions for reservation in appointments or posts in favour of any backward class of citizens, which in the opinion of State, is not adequately represented in the services under the State; Article 16(4A) of Constitution empowers the State to make provisions for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes, in the opinion of the State are not adequately represented in the services under the State; Article 46 of Constitution enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. This article merely declares the objective of the State and embodies the concept of "distributive justice" which connotes, inter alia, the removal of inequalities and rectifying the injustice resulting from transactions between unequals in society. Economic empowerment to the Tribals is one of the principles of economic justice envisaged under Article 46 of the Constitution. Recognizing the special needs of Scheduled Tribes, the Constitution of India made certain special safeguards to protect these communities from all the possible exploitation and they ensure social justice. The constitutional commitments, referred to above prompted the policy-makers, The Governor and the planners to accord high priority to the welfare and development of Scheduled Tribes right from the beginning of country's developmental planning, launched immediately after Constitution came into force. The Governor of Andhra Pradesh, exercising the powers under V schedule issued the G.O.Ms. No. 3, dated

10-01-2000 with a view to ensure the development programmes for Scheduled Tribes planned for, based on respect and understanding of their culture and traditions and with an appreciation of their social, psychological and economic problems. The special commitment of the State is to improve the educational status of Scheduled Tribes in respect of primary education to the Tribals who live in the far-flung remote areas and remain isolated. Emphasis was laid on the educational development of Scheduled Tribes. By issuing the G.O.Ms. No. 3, dated 10-01-2000, it can be said that it was issued on priority basis on the ground of socio-economic upliftment of Scheduled Tribes. Therefore to strengthen the educational institutions and infrastructure in the scheduled areas, the Governor issued G.O.Ms. No. 3. This was done to promote educational development of the tribals, to solve the phenomenal absenteeism of teachers in the schools situated in the scheduled areas and with a view to protect the interest of the tribals.

34. In view of the above discussion, we have no hesitation to hold that the Government is well within the competence to issue the impugned memo No. 9200/T.W., Ser.III.A1/2009, dated 9-12-2009 and the same is perfectly valid and legal. It is in the nature of explanation to the notification issued under G.O.Ms. No. 3, dated 10-01-2000. The memo issued by the Commissioner, Tribal Welfare, dated 01-01-2010 is only consequential proceedings. Though it is stated that G.O.Ms. No. 3 is prospective, which is contrary to the said G.O., which reads that the Government considered to re-issue the said orders retrospectively from 05-11-1996 keeping in view of the provisions of sub-paragraph (1) of paragraph 6 of V schedule to the Constitution. Therefore, the impugned order is liable to be set aside.

35. Accordingly, the writ petitions are allowed setting aside the impugned order. No order as to costs. Miscellaneous petitions, if any pending, in these writ petitions shall stand closed.