

(2004) 06 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No's. 1907 of 2003 etc.

Sri M.V. Dixit and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 309
Karnataka Civil Services Act, 1978 — Section 3, 3 (2)

Citation : (2004) ILR (Kar) 3802 : (2004) 6 KarLJ 69 : (2004) 4 KCCR 432 SN

Hon'ble Judges : R.V. Raveendran, J;H. Billappa, J

Bench : Division Bench

Advocate : K. Sreedhar, Vagdevi Associates, Javid Hussain, Rana Javid, M. Narayanaswamy, H.R.S. Rao, Ranganatha S. Jois and Shantesh Gureddi, for the Appellant; M.B. Prabhakar, AGA for R1 to R8 and R 10, Subba Rao and Co. for R9, M.B. Prabhakar, AGA for R1 to R10, B.B. Bajantri, for R11 to R13, M.B. Prabhakar, AGA for R1 to R7, R10, R11, R13 and R14, Subba Rao and Co. for R8, R9, R12, B.B. Bajantri, for R15, M.B. Prabhakar, AGA for R1 to R5, S. Victor Manoharan, for R6 B.B. Bajantri, for R7 and R8, M.B. Prabhakar, AGA for R1 to R6, S. Victor Manoharan, for R7, R8, S. Victor Manoharan, for R1 and M.B. Prabhakar, AGA for R2 to R7, for the Respondent

Judgement

R.V. Raveendran, J.—The petitioners belong to the cadre of "Superintendents" in the State Accounts Department ("SAD" for short) and are on deputation to Public Works/Irrigation Departments, working as "Account Superintendents". There are 253 posts of Accounts Superintendents in the Department of Public Works/Irrigation, It is stated that all officers in the cadre of Superintendents in the State Account Department, are working on deputation in various borrowing departments.

2. The Karnataka Public Works Engineering Department Services (Recruitment) Rules, 1988 and the Karnataka Public Works (Irrigation Services) (Recruitment) Rules, 1988 (for short "PWE Recruitment Rules" and "Irrigation Recruitment Rules" respectively) govern the recruitment to posts in Public Works Department

an Irrigation Department. The method of recruitment prescribed under the said Rules, for the posts of Accounts Superintendents in the said Department, is only by deputation of officers in the cadre of Superintendents from the State Accounts Department. The Karnataka State Accounts Service (Recruitment) Rules, 1959 (for short "the SAS Recruitment Rules") as amended by the Karnataka State Accounts Services (Recruitment) (Amendment) Rules, 1993 provides that the recruitment to the cadre of Superintendent in the State Accounts Department is by promotion from the cadre of First Division Assistants and Stenographers in the State accounts Department in the ratio of 99:1. The qualification prescribed is five years service in the respective feeder cadres.

3. The Public Works and Irrigation Departments have, in addition to the cadre of "Account Superintendents" two equivalent cadres of "Superintendents" and Stores Superintendents which are to be filled by promotion from the cadres of First Division Assistants and Stenographers (for Superintendents) and First Division Store Keepers (for Stores Superintendents). On the ground that the First Division Assistants and Storekeepers in the Public Works and Irrigation Departments were stagnating for want of adequate promotional opportunities, the State Government issued an order dated 18.6.1999 downgrading 5% of the posts of 253 posts of Account Superintendents (that is 13 posts) to a lower grade, that is from the pay scale of Rs. 1900-3700 (revised: Rs. 5575-10620) of the pay scale of Rs. 1720-3300 (revised: Rs. 5200-9580) and directed that those downgraded posts should be filled by promoting eligible First Division Assistants/Storekeepers in the Departments of Public Works/Irrigation. The remaining 240 posts of Accounts Superintendents were continued in the pay scale of Rs. 1900-3700 (revised: Rs. 5575-10620). The said order dated 18.6.1999 also prescribed the qualifications to be possessed for being promoted to the post of Account Superintendents (lower grade) and the mode of filling up those 13 downgraded posts. By subsequent order date 26.7.1999, the Government provided the method of recruitment and classification in regard to the posts of Accounts Superintendents (lower grade) by promotion from the cadre of First Division Assistants/Storekeepers in the Public Works Department/Irrigation Department.

4. Feeling aggrieved, the Karnataka State Accounts Department Employees Association and others filed WP Nos. 29965-29966 and 326 of 1999 for quashing the order dated 18.6.1999 and for a direction restraining the State Government from making appointments to the post of Accounts Superintendents contrary to the Rules and a further direction to the State Government to follow the cadre and Recruitment Rules strictly and consider only the cases of eligible First Division Assistants of State Accounts Department for promotion and posting as Accounts Superintendents in the Department of Public Works and Irrigation. A learned Single Judge of this Court, by order dated 7.7.2000 dismissed those petitions. He held that the effect of the order dated 18.6.1999 was to create 13 new posts of Accounts Superintendents in a lower grade in the pay scale of Rs. 1720-3300 (revised: Rs. 5200-9580) by abolishing 13 corresponding posts of Account

Superintendents in the grade of Rs. 1900-3700 (revised Rs. 5575-10620) and it did not violate the provisions of the Karnataka State Accounts Department (Recruitment) Rules 1959 as amended by the Amendment Rules of 1993. The learned Single Judge has also held that if the State Government took a policy decision to downgrade a small percentage of posts in the cadre of Accounts Superintendents and create a new cadre by retaining the same nomenclature but with a lower pay scale, Courts will not examine the need for such action. The learned Single Judge also expressed the view that through the officials belonging to the State Accounts Department were all equipped to discharge the duties as Accounts Superintendents in PW and Irrigation Department, the First Division Assistants/Store Keepers in those Departments who had put in service of not less than 5 years in the cadre and who also possessed the requisite qualifications by having passed the State Accounts Services Examinations (part 1, 2 and 3) cannot be said to be unsuitable for being promoted to the cadre of Accounts Superintendents. The learned Single Judge rejected the contention that as the Account Superintendents will have to supervise and scrutinize the accounts of Public Works and Irrigation Department and point out irregularities, if any, they should preferably be from outside the said department. He held that even First Division Assistants/Store Keepers of Public Works and Irrigation Departments, possessing requisite qualification, if promoted as Accounts Superintendents, will be able to discharge the functions and duties of Account Superintendents.

5. As against the 13 downgraded posts sanctioned by down grading 13 posts of Accounts Superintendents in the regular grade, as per order dated 18.6.1999, it is stated that only seven posts were downgraded and filled up. The remaining six posts to be downgraded were neither identified nor filled up. As a result, 246 out of 253 posts of Account Superintendents continued with the regular pay scale of Rs. 1900-3700 (revised: Rs. 5575-10620). Out of them 17 posts were in the Minor Irrigation Department and 229 posts were in Public Works/ Major Irrigation Departments. By Government order dated 2.6.2000, 229 posts of Accounts Superintendents in the Public Works and Irrigation Departments (that is 253 posts less 7 posts downgraded and filled, in pursuance of order dated 18.6.1999, and 17 posts in the minor irrigation department) were upgraded as Audit Officers in the pay scale of Rs. 6000-11200. The result was 17 posts of Accounts Superintendents in the Minor Irrigation Department (including six out of thirteen post downgraded as per Government Order dated 18.6.1999 but not identified and filled) were continued in the pay scale of Rs. 5575-10620. By a subsequent order dated 5.12.2001, the said 17 posts of Account Superintendents were downgraded with a pay scale of Rs. 5200-9580 with a direction that they should be filled by promoting the eligible First Division Assistants and First Division Store Keepers in the Public Works and Irrigation Departments. The Chief Engineer (C&B) was directed to initiate necessary action to fill up the said posts.

6. In pursuance of the said order, the Chief Engineer (C&B), by order dated 15.12.2001, promoted eleven First Division Assistants as Accounts Superintendents and gave posting to four of them in the Public Works

Department and placed the services of seven others at the disposal of the Irrigation Department. By a subsequent order dated 18.12.2001, Chief Engineer (Water Resources Development Organisation) gave postings to the said seven officers.

7. The order dated 5.12.2001 and the consequential orders dated 15.12.2001 and 18.12.2001, were challenged by the SAD Accounts Superintendents, who were displaced by the promoted candidates, in Application Nos. 61-63 of 2002, 10616-17 of 2001, 10621-22 of 2001 and 10623-25 of 2001. By a common order dated 18.12.2001, the Karnataka Administrative Tribunal, dismissed those Applications. The said order of the Tribunal is under challenge in W.P. Nos. 1907 of 2001 (against the order in Application No. 63 of 2002), WP No. 4081 of 2003 (against the order in Application No. 10623 of 2001) and WP No. 7367-70 of 2003 (against the order in Application No. 10616, 10617, 10622 and 10624 of 2001). The said common order of the Tribunal was also challenged in WP No. 4871-72 and 8825 of 2003 by two other Accounts Superintendents (HB Ramachandra and Dayanand Yadunarayan) though they were not parties before the Tribunal, on the ground that the said order of the Tribunal will affect adversely all the SAD Account Superintendents.

8. One Mohammed Nawaz Khan, who was working as Superintendent and one S.M. Doddamani, who was working as Store Superintendent in the Irrigation Department, were permitted to change their cadre to that of Accounts Superintendents, as per order dated 16.7.2003. Three First Division Assistants in Public Works Department (C.J. Prabhakar, N. Chandrashekar and R.H. Murigappa) were promoted as Accounts Superintendents by order dated 15.7.2003. Thereafter, by Official Memorandum dated 19.7.2003, the Chief Engineer (Water Resources Development Organisation) posted six persons (that is C.J. Prabhakar, N. Chandrashekar, R.H. Murigappa, Mohammed Nawaz Khan, S.M. Doddamani and one Leelavathi) to the posts held by SAD Account Superintendents (namely L. Shanmukha, Y. Bheema Reddy, H.B. Ramachandra, Srinivasa and M.V. Dixit and R. Kamalakar). The SAD Accounts Superintendents who were holding the posts were repatriated to the State Accounts Department for being given postings. The said order dated 19.7.2003 was challenged by the affected Accounts Superintendents from the State Accounts Department, in Application Nos. 5243 of 2003, 5258 & 5259 of 2003, and 5317 & 5318/2003. Those applications were also dismissed by a common order dated 19.8.2003 by the Tribunal.

9. One S.M. Doddamani, who was earlier a Stores Superintendents in Irrigation Department and who was permitted to change his cadre as a Accounts Superintendent, filed Ap.No. 6762 of 2003 before the Tribunal seeking a direction to permit him to report to duty as per Official Memorandum dated 19.7.2003. The said application was allowed by the Tribunal by a separate order dated 30.10.2003. The affected Accounts Superintendents have, filed WP No. 38230-231 of 2003 (against the order in Ap. No. 5317-5318 of 2003), WP No.

40165 of 2003 (against the order in Ap. No. 5243 of 2003), WP No 40230 of 2003 (against the order in Ap. 5259 of 2003) and WP No. 47608 of 2003 (against the order in Ap. No. 6762 of 2003).

10. The Tribunal rejected the Applications on the following grounds:

(i) The State Government had created certain cadres (including that of Account Superintendents) in the Public Works Engineering Department and Irrigation Department by two Executive orders, vide Notifications No. PWD 61 SPP 86(1) dated 5.7.1989 and No. PWD 167 SPP 86(1) dated 5.7.1989 respectively. The PWE Recruitment Rules and Irrigation Recruitment Rules made in exercise of power under Article 309 of the Constitution and published under Notifications No. PWD 61 SPP 86 (II) dated 5.7.1989 and PWD 167 SPP 86 (II) dated 5.7.1989 provide the method of Recruitment and minimum qualifications for the posts in the cadres so created by Executive orders dated 5.7.1989. Therefore, the said Recruitment Rules, which requires that the posts of Accounts Superintendents should be filled only by deputation from SA Department will apply only to the cadre of Accounts Superintendents created by Notifications dated 5.7.1989. The Government has power to create or abolish posts or to bifurcate a cadre. The act of downgrading certain posts by orders dated 18.6.1999 and 5.12.2001 amounts to bifurcation of the existing cadre of Account Superintendents (pay scale: 5575-10620) in to the following two cadres:

(i) Account Superintendents in the grade of Rs. 5575-10620;

(ii) Account Superintendents in the lower grade of Rs. 5200-9580.

The Recruitment Rules of 1989 do not apply to the downgraded Posts of Accounts Superintendents and therefore there was no obligation on the part of State Government to fill those down graded posts by deputation as required by the Recruitment Rules. As the Recruitment Rules do not apply to the newly created cadre of Account Superintendents (lower grade: Rs. 5200-9580), the Government can by executive order prescribe the mode of recruitment for such new posts. Therefore, the decision of the Government to fill up those down graded posts, by promoting/transferring Officers belonging to the Public Works and Irrigation Departments is not open to challenge.

(iii) The petitioner's belonging to the cadre of Accounts Superintendents in the State Accounts Department deputed to Public Works and Irrigation Departments, cannot be said to be persons aggrieved by the order bifurcating the cadres existing in Public Works and Irrigation Department and downgrading of 24 posts. The SAD Account Superintendents will revert to their parent department as a consequence of downgrading of the posts held by them and they can approach the Controller of State Accounts to give them fresh posting elsewhere. Their service conditions are not affected by the impugned order dated 18.6.1999 and 5.12.2001.

The Tribunal relied on a decision of the learned Single Judge of this Court in THE

KARNATAKA STATE ACCOUNTS DEPARTMENT EMPLOYEES ASSOCIATION v. STATE OF KARNATAKA, W.P. No. 29965-66/99, dd on 7.7.2000 referred to above.

11. The petitioners have put forth the following contentions:

(a) The posts of Accounts Superintendents in the Public Works and Irrigation Department are encadred posts to be filled only by deputation from the State Accounts Department. The said mode of recruitment was provided both in the old Recruitment Rules of 1960 as also the new Recruitment Rules of 1989 in pursuance of a policy decision taken by the government on 30.4.1959 that the posts of Account Superintendents will be under the control of SA Department and not Public Works Department and the said policy decision was taken by the State Government after considering the recommendations contained in the Report of the Mysore Public Works Department reorganization Committee, Such a policy cannot be changed unilaterally by the Public Works/Irrigation Departments, in the absence of a change in Policy by the State Government,

(b) Karnataka State Civil Services Act, 1978 enacted by the State Legislature came into force on 4.3.1992. The said act was enacted to regulate the recruitment and conditions of service of persons appointed to the civil service of the State of Karnataka and posts in connection with the affairs of State of Karnataka. The said Act was enacted by virtue of the enabling provisions in Article 187(2), 229(2) and 309 and Entries 3 and 41 of List II of Seventh Schedule to the Constitution. Section 3 of the said Act provides for regulation of recruitment and conditions of service. Regulation of recruitment and conditions of service is thus a field occupied by the Statute made by the State Legislature. After such enactment (which came into force in 4.3.1992), it is not permissible to regulate or provide for the matters covered by the Act, in executive orders issued under Article 162 of the Constitution of India. After 4.3.1992, the State cannot, by executive order, bifurcate any cadre or create a new cadre by downgrading certain posts in an existing cadre or provide for filling up of such downgraded posts, in a manner contrary to the provisions of the said Act.

(c) The State Accounts Department is a service department, which only lends its officers to other department. The SA Department has no work of it own. The officers of the SA Department are all sent on deputation to various other departments to maintain the accounts of such other departments. The petitioners belong to the cadre of Superintendents in the State Accounts Department, and they have been working on deputation to Public Works and Irrigation Departments, as Accounts Superintendents. As the posts of Accounts Superintendents in which they are working are encadred posts, if the Public Works/Irrigation Departments unilaterally take a decision to downgrade certain encadred posts of Account Superintendents contrary to the provisions of the Civil Services Act, and deny them such posts and make them available to first division assistants/store keepers of their own departments, SAD Superintendents on deputation are persons aggrieved and they can challenge the orders providing for downgrading of posts or filling up of such downgraded posts by promotions from

the cadres of public works and irrigation department.

12. The petitions are resisted by the promotes/transferees to the downgraded posts, contending that they have been transferred/promoted to the downgraded posts of Accounts Superintendents, in the manner provided in the Government Orders dated 18.6.1999, 26.7.1999 and 5.12.1999 and the downgraded posts are not governed by the Karnataka Public Works (Irrigation Services) (Recruitment) Rules, 1988 or Karnataka Public Works Engineering Department Services (Recruitment) Rules, 1988. They also support the reasoning of the Tribunal.

13. On the contentions raised, the following points arise for consideration:

i) Whether the order dated 5.12.2001, downgrading certain posts of Accounts Superintendents and directing that those downgraded posts be filled up by promotion from the cadre of First Division Assistants or First Division Store Keepers in the Public Works/Irrigation Departments, violate the provisions of Section 3 of the Karnataka Civil Services Act, 1978 and therefore invalid?

ii) Whether the policy of the State Government is to have the Account Staff of the Public Works/Irrigation Departments, under the independent control of State Accounts Department, and whether the order dated 5.12.2001 violates such policy.

iii) Whether the petitioners have no locus standi to challenge the order dated 5.12.2001 or the consequential orders?

Re: Point No. (i):

14. The recruitment to the posts in the Public Works Department is regulated by the Karnataka Public Works Engineering Department Service (Recruitment) Rules, 1988, made by the Governor of Karnataka in exercise of power under Article 309 of the Constitution of India, in super session of the Karnataka Public Works Engineering Department Service (Recruitment) Rules, 1960. Rule 2 provides that in respect of each category of posts, specified in column (2) of the schedule to the Rules, the method of recruitment shall be as specified in the corresponding entry in column (3). Item No. 15 in the schedule to the said Rules relates to the posts of Accounts Superintendents. The method of recruitment prescribed for the said post is as follows:

"By deputation of an officer in the cadre of Accounts Superintendents from the Department of State Accounts."

The recruitment to posts in the Irrigation Department is governed by the Karnataka Public Works (Irrigation Services) (Recruitment) Rules, 1988, made by the Governor of Karnataka in exercise of power under Article 309 of the Constitution of India. Rule 2 of said Rules provides that in respect to each category of posts, specified in column (2) of the schedule to the Rules, the method recruitment shall be as stated in column (3). Item No. 21 in the schedule

to the said Rules relates to the posts of Accounts Superintendents. The method of recruitment prescribed for the said post is as follows:

"By deputation of an officer in an equivalent cadre from the State Accounts Department."

15. The recruitment to the posts in the State Accounts Department is governed by the Mysore State Accounts Services (Recruitment) Rules, 1959 (for short, SAS Recruitment Rules), made in exercise of power conferred under proviso to Article 309 of the Constitution. Rule 2 thereof provided that in respect of each category of posts specified in column (1) of the schedule, the method of recruitment shall be as specified in the corresponding entries in column (2). The schedule to the Rules, earlier provided the method of recruitment to the post of Superintendents as one-third by direct recruitment and two-third by promotion from the cadre of First Division Clerks ("FDCs" for short) in the State Accounts Department. The SAS Recruitment Rules were subsequently amended by providing that all the posts of Superintendents in the State Accounts Department should be filled by promotion from the cadre of FDCS in the State Accounts Department. The said Rules were amended with effect from 3.8.1978 altering the method of recruitment for the posts of Superintendents as 99% by promotion from the cadre of FDCS and 1% by promotion from the cadre of stenographers. The SAS Recruitment Rules were again amended by the Karnataka State Accounts Department (Recruitment) (Amendment) Rules, 1993, in exercise of power conferred u/s 3(1) read with Section 8 of the Karnataka State Civil Services Act, 1978. By the said amendment, the schedule was amended to introduce a column relating to "the number of posts" at column (2), and to add "scales of pay" in column (1) relating to category of posts. The method of recruitment was provided in column (3) and minimum qualification was provided in column (4). By the said amendment, the scale of pay of Superintendents was fixed as Rs. 1720-3170 and the number of posts were shown as 185 (permanent) plus 369 (temporary). Before the 1993 amendment, the strength of the cadre (number & character of posts) and the scale of pay were fixed by a Notification issue in exercise of executive power under Article 162 of the Constitution.

16. In so far as the Public Works and Irrigation Departments, PWE Recruitment Rules 1988 and Irrigation Recruitment Rules 1988, do not specify or stipulated the cadre strength (number of posts) or scales of pay for each category. The earlier executive orders issued in exercise of Article 162 of the Constitution of India fixing the cadre strength and scales of pay, continue to hold good.

17. Prior to the enactment of the Civil Services Act, the Rules relating to the method of recruitment and minimum qualifications were governed by Rules made in exercise of powers under the proviso to Article 309 of the Constitution, whereas creation of cadres, fixing of cadre strength and prescribing pay scales, were done by separate executive orders issued under Article 162. This is on the ground that the power conferred under the proviso to Article 309 can be exercised only for regulating the recruitment and conditions of service and not

for creation or abolition of posts, which power vested in the State under Entry No. 41 of List II of the Eighth Schedule to the Constitution.

18. Article 162 of the Constitution defines the extent of executive power of the State. It provides that subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the legislature of the State has the power to make laws. The proviso to Article 162 provides that in any matter, with respect to which the legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to and limited by, the executive power expressly conferred by the Constitution or by any law made by the Parliament upon Union or authorities thereof.

19. The scope of the Article 162 and corresponding Article 73 with reference to the executive power of the Union, was considered by a Constitution Bench of the Supreme Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, . The Supreme Court held thus:

Neither of these Articles (Articles 162 and 73) contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr. Pathak seems to suggest, that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be can proceed to function in respect to them. On the other hand, the Language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already.

Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away..... The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature..... The executive Government, however, can never go against the provisions of the Constitution or any law. This is clear from the provisions of Article 154 of the Constitution but as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.

(emphasis supplied)

The said principle has been reiterated by the Supreme Court in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, . In *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, the Supreme Court held:

"Existence of statutory Rules is not a condition precedent to appoint an eligible

and fit person to a post. The executive power is co-extensive with legislative power of the State and under Article 162, the State can create civil posts and fill them up according to executive instructions consistent with Articles 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but would only supplement the law."

In *Rev. Fr. Joseph Valamangalam and Others Vs. State of Kerala*, while upholding the validity of an executive order embodying the provisions of the Kerala Education Bill awaiting the assent of President, the Kerala High Court observed thus:

"The executive power of the State therefore still extends to the whole subject of education, even to matters covered by the Education Bill, and until the Bill becomes law unaffected by it. Of course, once the Bill becomes Law, the power can be exercised only in accordance with its provisions, for the executive power of a State can be exercised only in accordance with and in obedience to the law."

(emphasis supplied)

In *V.R. SHAMBULINGA v. STATE OF KARNATAKA*, 1980(1) KAR L.J. P. 394a learned Single Judge of this Court stated the position of law clearly:

"The power to legislate on all matters relating to State Public Services is included in Entry 41 of List II of the VII Schedule (State List) read with Article 246 of the Constitution. Special provision has however been made in respect of two specific matters, viz., recruitment and conditions of service under Article 309 of the Constitution. Under the proviso to that Article, the power to frame rules regulating recruitment, and conditions of service of persons appointed to public services and posts under the Union or of any State is conferred on the President or the Governor, as the case may be, until provision is made in that behalf by Acts of appropriate Legislatures. The power under Article 309 to regulate recruitment and conditions of services could be exercised in respect of cadres or posts created until they are abolished. But, the power to create or abolish the posts is not a power which falls under Article 309 of the Constitution. The said power is included in Entry 41 of the State List. Therefore under Entry 41, the State Legislature has the power to make law regulating the creating and abolition of posts and all other matters relating to public services and posts which also includes matters relating to recruitment and conditions of service. The executive power of the State is coextensive with that of the Legislature in view of Article 162 of the Constitution. Therefore, in the absence of any law made by the Legislature, the executive has the power to create or abolish any post or posts. In fact, notification sanctioning the cadre strength of each category of posts in any service of the State is always issued by the State in exercise of its executive power. Provisions for regulating recruitment are only incorporated in the rules made under the proviso to Article 309 of the Constitution."

20. Thus, it is clear that as the executive power of the State is co-extensive with that of the State Legislature, the State executive may make rules relating to any matter within the competence of State Legislature. But, once the Legislature enacts a law regulating the matter, the executive power can be exercised only in accordance with such law and not otherwise. Therefore, when the State Legislature has enacted the Karnataka State Civil Services Act, 1978 regulating creation and abolition of posts, and recruitment and conditions of service, and such law made by the State legislature occupies the field, it follows that the executive power of the State under Article 162 cannot extend to regulating or providing for the very same matters. It can only make Rules or Regulations in accordance with the law made by the State Legislature.

21. A faint attempt was made by some of the private respondents to contend that the Civil Services Act only regulates method of recruitment and conditions of service, and not creation or abolition of posts. We find no merit in the submission. Section 3 of the said Act relates to regulation of recruitment and conditions of service. The relevant portions of Sub-section (1) and (2) thereof is extracted below:

(1) Subject to the provision of this Act, the State Government may, by notification, make rules.-

(a) specifying the different categories of posts in the different branches of public services of the State, the total number and nature of posts in each such category and the scale of pay admissible to each category:

(b) for the regulation of the recruitment and conditions of service of persons appointed to public services;

xxxx xxxx xxxx

(2) The power to make rules conferred by Sub-section (1) shall be subject to the following conditions, namely.-

(a) The rules shall be made after previous publication for a period not less than thirty days;

(b) Where the proposed rules relate to the methods of recruitment to civil services of civil posts in respect of which the Karnataka Public Service Commission has to be consulted under Clause (3) of Article 320 of the Constitution of India and in the case of officers and servants of the High Court under the proviso to Clause (1) of Article 229 of the Constitution of India, a copy of the draft rules as published under Clause (a) shall be forwarded to the Secretary of the Karnataka Public Service Commission for communicating the views of the Commission on the proposed rules within the period specified under the said clause;

(c) The State Government or the Chief Justice of the High Court or the Special Board shall consider the views of the Karnataka Public Service Commission and

any objection or suggestion from any person likely to be affected by the said rules received before the expiry of the period specified under Clause (a) and make the rules with such modifications as it or he may deem fit.

XXXX XXXX XXXX XXXX

Provided that nothing in this section shall apply to rules regulating the pay and other emoluments of persons appointed to public services.

It is evident from Sub-section (1) that the term "recruitment" used in the said Section not only refers to method of recruitment or qualification for recruitment but also refers to specifying different categories of posts in different branches of public service of the State, the total number and nature of posts in each category and the scale of pay admissible to each category. In other words, the word "recruitment" is used in Section 3 as including creation and abolition of posts also.

22. After the coming into force of the Civil Services Act, creation and abolition of posts (i.e. specifying different categories of posts in different branches of Public Service, specifying the total number of posts and nature of posts in each category and the scales of pay admissible to each category) can only be by way of Rules made in the manner prescribed in Section 3(2) of the said Act and not by any executive order issued under Article 162 of the Constitution. The field of Regulation of creation and abolition of posts, method of recruitment and conditions of service is now occupied by an enactment of State Legislature. Therefore, exercise of the power in regard to regulation of the matters falling in the occupied field can only be in accordance with the said Act and not otherwise by an executive order.

23. It is contended by the promotes/Transferees belonging to Public Works/Irrigation Department that Section 3(1) merely provides that the State Government may, by notification, make rules relating to recruitment and conditions of service, and specify the different categories of posts, number of posts, nature of posts and scale of pay; and that Section 3(1) is only an enabling provision permitting the State to make Rules in the manner stipulated and until Rules are made under 3(1), the executive power is not taken away in regard to matters specified in Section 3(1). It is submitted that as no Rule as contemplated in Section 3(1) has been made prescribing the cadre strength of the Accounts Superintendents or their number and nature of posts in each category in respect of Public Works or Irrigation Department, the executive power of State to create or abolition of posts is not taken away; and as a consequence, the State can by executive order, bifurcate any cadre or create a cadre by reducing the strength of an existing cadre and at the same time, create new cadre consisting of the downgraded posts. A combined reading of Article 162 of the Constitution and Section 3 of the Civil Services Act, shows that the said contention is not tenable. As noticed above, executive power in regard to a subject comes to an end when a law is made in regard to such subject by the State Legislature and such law

occupies the field. Prior to the enactment of Karnataka State Civil Services Act, the recruitment and conditions of services were not regulated by any law made by the Legislature. In those circumstances, the manner of recruitment and the minimum qualifications therefore were regulated by Rules made under Article 309; and the creation and abolition of posts with prescription of cadre strength and pay scales were regulated by executive orders under Article 162. Once the Karnataka Civil Services Act, 1978 enacted and came into force on 4.3.1992, the field relating to recruitment and conditions of service (including creation of abolition of posts, fixing the number and nature of posts) became a field occupied by law made by the State Legislature. The law is made in regard to "recruitment" in a wider sense which includes not only the method of Recruitment, but also creation and abolition of posts by specifying different categories of posts in different branches of public service specifying total number of posts, nature of such posts and scales of pay admissible to such posts. As the field relating to creation and abolition of posts is occupied by an enactment of the State Legislature, regulating the entire field of recruitment, the State can abolish or create posts only by making rules as contemplated in Section 3(2) of the Karnataka Civil Services Act and not by an executive order under Article 162. We are therefore of the view that the cadre strength of I Accounts Superintendents in public works and Irrigation departments could not have been altered by government by issuing an executive order under Article 162 on 5.12.2001.

24. Sub-section (3) of Section 3 provides that all rules relating to matters referred to in Sub-section (1) and in force on the date of commencement of the Civil Services Act shall be deemed to be the rules made under Sub-section (1) of Section 3 and shall continue in force until they are modified or replaced by rules made under the said Act. Four types of Rules are mentioned in Sub-section (3) of Section 3 one of which is rules made by the Government under any law for the time being in force. When the State Government issues a notification sanctioning the establishment of any particular cadre, or creating or abolishing any post or determining the strength of each cadre and character of the post therein, such a notification issued in exercise of executive power under Article 162 will have to be considered as "Rules made by the Government under any law for the time being in force". In fact, it is of some interest to note that whenever the State establishes service cadres for any Department, the notification is issued in two parts, normally on the same day. All cadre and recruitment rules made by the State Government prior to the coming into force of the Civil Services Act in the year 1992, consisted of two parts, the first part of the Notification containing an executive order under Article 162 relating to establishment of State services cadre, specifying the strength of the cadre, number and character of the posts and the scales of pay; and the second part of the notification containing the rules made in exercise of power under the proviso to Article 309 of the Constitution regulating the method of recruitment and prescribing the minimum qualification. Both parts of the notification are together referred to as the "cadre and

recruitment rules". The cadre and Recruitment Rules (Vol I) compiled by the General Administration Department has more 30 of such cadre and recruitment rules made between 1959 and 1961. We may refer to some of them by way of illustrations.

(i) The Mysore Public Works Department Engineering Services Cadre and Recruitment Rules issued as per notification No. GAD/8/GRR/57 dated 3.12.1960 made up of the first part issued under Article 162 relating to establishment of the services cadres and second part under Article 309 of the Constitution relating to regulating the recruitment. Rules 1959 of issued as per notification.

(ii) The Mysore State Accounts Services Cadre and Recruitment No. GAD 13 GRR 57 dated 26.5.1959 made up of the first part issued under Article 162 establishing the several cadres under the Mysore State Accounts service and the second part issued under Article 309, regulating recruitment.

Therefore a notification issued under Article 162 sanctioning the establishment of the State service cadres and indicating the strength and nature of each cadre and the scale of pay of such cadre have all along been treated as "Rules" made by the government under the law for the time being in force. They will therefore be rules, which will be deemed to be the rules made under Sub-section (1) of Section 3 and will therefore continue in force until they are modified or replaced by the Rules made under the Act. In view of the categorical provision in Sub-section (3) of Section 3, after the State Civil Services Act, 1978 came into force, the State can modify or replace any notification or Government control relating to establishment of cadres or fixing the strength of the cadre or number and character of the posts only by the rules made in terms of Section 3(2) of the Civil Services Act and not by any Executive order under Article 162.

25. It is stated that exercise of executive power under order dated 5.12.2001 was nothing but a repetition of exercise of such power under order dated 18.6.1999 and that order was upheld by a learned Single Judge of this Court in KARNATAKA STATE ACCOUNTS DEPARTMENT EMPLOYEES' ASSOCIATION v. STATE OF KARNATAKA AND ORS. As that decision has attained finality, it is contended by the promotes/transferees that the subsequent order dated 5.12.2001 on the very same lines is not open to challenge.

26. It is no doubt true that the learned Single Judge held that the earlier order dated 18.6.1999 was only in the nature of creation of 13 new posts of Accounts Superintendents in a lower grade. The learned Single Judge proceeded on the basis that such creation of posts by executive order made under Article 162 of the Constitution, is valid. No contention was urged based on either Section 3(1) or 3(3) of the Karnataka Civil Services Act, 1978 and the learned Single Judge had no occasion therefore to consider whether the posts could be created or abolished in exercise of executive power, after the Karnataka Civil Services Act 1978 came into force. The said decision having become final, may, therefore, protect the validity of any downgrading of posts and filling up of such posts in

pursuance of the order dated 18.6.1999. But the said decision will not be of any assistance to decide the validity of the subsequent order dated 5.12.2001. Neither the principles of resjudicata or estoppel will apply.

27. Therefore it has to be held that notifications dated 18.6.1999 and 5.12.1999 downgrading certain posts of accounts Superintendents to a lower scale are invalid being contrary to Section 3(1) and 3(3) of the Karnataka State Civil Services Act, 1978. However, as we are informed that the decision of a learned Single Judge of this Court by order dated 7.7.2000 in W.P. Nos. 29965-66/1999 upholding the validity of the notification dated 18.6.1999, has attained finality, this decision will not affect the 7 posts which were downgraded and filled by promotees from the cadre of First Division Assistants/Store Keepers in the PW/ Irrigation department.

Re: Point No. (ii):-

28. The State Government appointed a committee known as Mysore Public Works Department reorganization Committee to study and make recommendations for re-organizing the PW department. The said committee submitted a report in the year 1956. Chapter V thereof related to measures for securing prompt and correct accounting of transactions of the PW department at various levels. The Committee after considering the matter exhaustively, reached the conclusion that the entire accounting staff of PW Department should be independent of the control of Head/s of the said Department. It made the following recommendations:

"After careful consideration, we recommend that the entire accounts section of the (Public Works) Department may be transferred to the Controller of State Accounts. The Chief Accounts Officer, who deals entirely with the Public Works Department accounts will then work in the office of the Controller of State Accounts..... As the compiled accounts have to be sent to the Accountant General, government may, after due consultation with the concerned authorities, define the relations between the controller of State Accounts, the Executive and the Accountant General, for the submission of the accounts, returns, etc., The Accountant should attend only to the accounts and the insistence of the necessary returns from the Executive Officers for the compilation of accounts and returns....."

Having considered the said report, Government of Mysore by proceedings dated 30.4.1959 broadly accepted the recommendations and made the following order:

"As one of the measures for securing prompt and correct accounting of transactions of the public works department at various levels, the Mysore Public Works Department reorganization Committee recommended transfer of the entire Accounts Section of the Public Works Department to the controller, State Accounts. The recommendations of the Committee were carefully examined by the Government in consultation with the concerned Heads of Departments. After considering all aspects of the recommendations, Government is pleased to order

as follows:-

1. The Chief Accounts Officer, Public Works Department will be in direct charge of the Administration of the Staff included in the Public Works Accounts Cadre, under the General control of the controller, State Accounts Department. He will continue to work in the Chief Engineer's (Public Works Department) Office, as at present. This arrangement does not relieve the administrative and supervisory officers of the Public Works Department of their existing responsibility for the control over expenditure and financial administration.

2. The entire Accounts branch of Public Works Department (Divisional Accountants, First Division and Second Division Clerks) will be brought under the Control of the controller, State Accounts Department instead of under the Chief Engineer, as hitherto.

29. Though by the said order PW Accounts cadre was kept as a separate unit with effect from 15.5.1959, hardly 11 days thereafter Mysore State Accounts Cadre and Recruitment Rules, 1959 were made on 26.5.1959 under which the PW Accounts cadre became completely merged with the State Accounts Department. Corresponding provisions were made in the Mysore Public Works Department Engineering Services Cadre and Recruitment Rules, which were made on 3.12.1960 providing that all Accounting Staff (Chief Accounts Officer, Assistant Accounts Officer, Account Superintendent) should be taken on deputation from the State Accounts Department. When the PW Recruitment Rules of 1960 were superseded and new Rules were made in 1988 that is PWE Recruitment Rules, 1988 and Irrigation Recruitment Rules, 1988, care was taken to ensure that the entire accounting staff were to be taken on deputation from State Accounts Department. Ever since 1959 the entire accounts Staff Accounts Officers, Accounts Superintendents, First Division Accounts Assistants and Second Division Accounts Assistants of PW department (and irrigation department) are on deputation from the State Accounts Department. Thus the clear cut policy of the State Government is to exclude accounts section from the control of the Head/s of PW Engineering department. The said decision was consciously made so as to ensure that accounts staff of the PW department will be independent of any control of the respective heads of the divisions of the PW department. The said policy had continued from 1959 without any change. The reason for such policy is evident from two orders of the Finance Department. We extract below relevant portions of the said order:

Government Order No. FD 142 PSA 61, dated 27.11.1961

"Such officers deputed to Government Departments and Government commercial Undertakings are charged with responsibility of ensuring in so far as it lies within their power that the prescribed financial rules and orders are strictly observed by all concerned and that all deviations are covered by competent sanction.

If the Accounts Officers considers that any transactions or proceedings of the administrative officer or his subordinates affecting the finance is opposed to rules

or orders, he should bring the fact to the notice of the administrative officers with a statement detailing the reasons and obtain his orders. If he is overruled, he should immediately make a brief note of the case in a Register or such objections and lay the Register before the Administrative Officer so that the latter may have an opportunity either of accepting the accounts officer's advice on reconsideration and ordering action accordingly or of recording in the Register for the information of Government his reasons for disregarding that advice. In the latter it will be the Accounts Officer's duty to comply with the orders.....

Cases involving avoidable heavy expenditure or serious losses should be reported to Government direct by the Account Officers as and when they come to the notice without waiting for the transmission of the half-yearly extract.

Official Memorandum No. FD 8 TFC 82. dated 24.1.1983

"The Accounts Officers/Personnel deputed from State Accounts Department are functioning in different capacities as financial Advisers/Chief Accounts Officers/Accounts Assistants/Accounts Superintendents under the direct control of the Heads of the departments to which they have been deputed and they are held responsible for up-to-date maintenance of accounts especially Stores Accounts and for effective supervision over the accounts staff with a view to ensure that no scope is given for defalcation of Government money or losses of stores by manipulation of accounts and adverse comments of Public Accounts Committee regarding irregular maintenance of accounts of Government money, etc.

.....All Accounts Officers/Officials who are now on deputation to other Government Departments/Local bodies/ Autonomous bodies/Co-operative Institutions/Banks etc., from State Accounts Department are requested to follow the instructions issued in the above Government Order (dated 27.11.1961) and see that the accounts of their offices are maintained in a more efficient manner."

No change in such wholesome and healthy policy of the State Government is brought to our notice. The learned Counsel for the State did not dispute the position that a policy of the Government can be changed only by taking recourse to the Karnataka Government (Transaction of Business) Rules 1977. Rule 20 thereof provides that cases specified in the First Schedule to the Rules shall be brought before the cabinet after submission to the Minister-in-Charge of the Department. Entry 16(17) of First Schedule requires the proposals for making or amending the Rules regulating the recruitment and conditions of service of persons serving in connection with the affairs of the State (except where the proposals are of minor importance) should be brought up before the cabinet. The proposal to change the policy relating to accounting staff was not brought before the cabinet nor approved by the cabinet.

30. Neither the order dated 18.6.1999 nor the order dated 5.12.2001 spell out any policy change. The order dated 18.6.1999 as also the order dated 5.12.2001 were issued by the PW department (with the concurrence of the Finance Department), even though there was no change in the policy of the Government.

This is evident from the proceedings of the meeting held on 24.9.1999 under the Chairmanship of the Principal Secretary to Government attended by the Officers of the State Accounts department and the PW department/ Irrigation department and Finance Department. Relevant portion thereof is extracted below:

1. It was informed that the Public Works Department in the past, after obtaining the opinion of Finance Department had decided to fill up 5% posts of this Divisional Accounts from the cadre of First Division Assistant who have passed S.A.S. Examination, by issuing an executive order and the department has so far filled 7 posts by promotion.

2. This issue has been re-examined by the Finance Department. Creation of Accounts Superintendent post separately by Public Works Department to promote the First Division Assistants borne on that department amounts to existence of two types of Accounts Superintendent posts in Public Works Department, one belonging to Group-C to be filled by promotion of Public Works Department staff and the other belonging to Group-B, to be filled by deputation from State Accounts Department, adversely affects the efficiency in administration. Since State Accounts Department staff who are deputed to Public Works Department staff who are professionals in handling Accounts matter, they can discharge the duties efficiently without any hesitation.

(emphasis supplied)

Therefore it was decided to reject the proposal of the public works department to amend its cadre and recruitment rules, providing for promotion of First Public Works Department (Accounts Section), Irrigation Department excluding Minor Irrigation. It was also decided to upgrade 229 Divisional Accountants posts in public works and Irrigation Department which are encadred posts of State Accounts Department (excluding the 17 posts in Minor Irrigation and the 7 posts for which public works Department has already given promotion for public works department employees who had passed S.A.S. Examination) to that of Accounts Officers. This was given effect by order dated 2.6.2000. There was another meeting presided over by the Addl. Chief Secretary on 6.12.2000 attended by the Secretary of DPAR, representatives of the PW department wherein it was observed as follows:

"A provision has been made by amending the cadre and recruitment rules through an executive order for the promotion of the First Division Assistants, who have passed S.A.S. to the cadre of Accounts Superintendents. The additional Chief Secretary opined that it would be proper to fill the posts related to accounts by deputation of the officials from the State Accounts Department. Further, the fact that the High Court (in W.P. Nos. 29965-66/99) has upheld the said promotions was noted. It was decided that the said executive order should not be further implemented in future and the Public Works Department should send a proposal to D.P.A.R. (Service Rules) for withdrawing the same."

The matter again came up before the Committee at the meeting held on

8.3.2002 presided by the Addl. Chief Secretary which was attended by the Principal Secretary, PW Department, Secretary, Finance Department, Secretary PW Department, Secretary, Irrigation Department and other officers wherein the following decision was taken:

(1) As a rule these posts of Accounts Superintendents/Audit Officers should be filled by deputation of officers from the State Accounts Department. However, 5% of the posts may be filled by promotion of FDAS/FDSKS of the Public Works Department.

(2) This representation of the concerned Departments including PWD will presently be frozen to 24 in order to maintain a status quo. The representation will be progressively reduced to 5%.

(3) Out of 265 posts, not more than 50% can be upgraded to Audit Officers. Present number should be reduced progressively to bring it down to 50%.

(4) Hereafter any FDAS/Superintendents desirous of joining the Accounts Section should join the State Accounts Department on absorption basis after passing S.A.S.

(5) Hereafter, unless the C. and R. Rules and Codal Rules in Public Works Department are amended, no unilateral action shall be taken by any individual Deptt. To Fill up/upgrade/downgrade any vacancies (including FDAs) in violation of C. and R. Rules."

(emphasis supplied)

31. We have referred to the above proceedings to show that the decision of PW department to downgrade certain posts of Accounts Superintendents, so as to fill them by promoting the candidates from its own department was not in pursuance of any policy of the Government, but an unilateral decision. The policy decision taken in the year 1959 (on the recommendations of the Committee which examined the working of the PW Department) that PW Department should have independent Accounting Staff was given effect by making Cadre and Recruitment Rules providing for deputation of accounting staff from State Accounts Department and that has held the field for more than four decades. It cannot be modified by PW departmental on the pretext that some employees of its lower cadres are stagnating. It should be remembered that there are other promotional avenues for such cadres and if the department wanted to avoid stagnation, it could have initiated action for upgraded those posts or for introducing any other career advancing scheme or increasing the cadre strength of the higher cadres of Superintendents and stores Superintendents in the Department without disturbing the policy of the Government to have accounts staff outside the control of the Heads of PW/Irrigation department. The learned Single Judge, while deciding W.P. Nos. 29965-66/1999 had proceeded on the assumption that decision of the Government to downgrade certain posts is a policy decision and therefore it should not be interfered. But the facts clearly

disclose that there is no such policy decision at all and there is no decision to change the policy of having the accounts staff on deputation from State Accounts Department.

32. It is also seen that at the meetings held on 6.12.2000 and 8.3.2002 it was decided that the orders dated 18.6.1999 and 5.12.2001 should not be implemented and no unilateral decision should be taken by the PW/Irrigation departments to fill up, upgrade or downgrade any vacancies in violation of C and R Rules. The decision to progressively reduce such down grading to 5% of the posts and maintain such downgrading of 5% posts was not because it was found to be proper, but because the order dated 18.6.1999 had been upheld by a Learned Single Judge in W.P. 29965-66/1999. Surprisingly, in spite of the decisions taken at the meeting dated 6,12.2000 and 8.3.2002, PW Department proceeded to unilaterally implement the order dated 5.12.2001 by issuing further orders dated 5.12.2001, 18.12.2001 and 19.7.2003. The said orders cannot obviously be sustained.

33. We may at this juncture refer to another contention of the promotes/transferees in the PW/Irrigation Departments. It was submitted that the policy formulated five decades ago to have account staff exclusively from State Accounts department is no longer strictly followed. Reference was invited to the following recruitment Rules which provided for promotion to the posts of Accounts Superintendent by promotion from the cadre of PDAS within the respective departments or for deputations from State Accounts Department only if suitable candidates were not available in the department.

(i) Karnataka Education Department Services (Department of Public instruction) (Recruitment) Rules 1967. Entry 79 of the Schedule.

(ii) Karnataka Education Department (Directorate of National Cadet Corps) (Recruitment) Rules 1985.

(iii) Karnataka General Services (Directorate of Youth Services) (Recruitment) Rules 1975.

(iv) Karnataka General Services (Directorate of Kannada & Culture) (Recruitment) Rules 1984.

(v) Bangalore Development Authority Cadre and Recruitment and conditions of Service Regulations, 1995.

We find that the said Rules are of no relevance. Firstly a specific policy was taken in 1959 only in regard to Public Works Department and not other departments. Secondly each set of Rules reflect the policy of the Government in regard to respective department. Even now it is possible for the Government to make a rational policy in regard to recruitment of Accounting Staff in PW/Irrigation Department, different from the existing policy. Be that as it may.

Re: Point No. 3:-

34. The petitioners belong to the cadre of Superintendents in the State Accounts Department who have been deputed to PW/Irrigation Department to work as Accounts Superintendents against posts which are to be filled exclusively by deputation from State Accounts Department. If any order is passed by the Government in violation of the recruitment Rules, the SAD Account Superintendents who are denied those posts will be the persons aggrieved. As already noticed, State Accounts Department has no substantive work of its own and functions only as service provider by lending its officials to other departments so as to lend transparency and fiscal discipline in the borrower departments. Any attempt to undermine such independence, will lead to unhealthy results. That is the reason why particularly in so far as departments like PW/Irrigation Department which are expenditure oriented departments, a conscious decision was taken by the Government to have the accounts staff on deputation. If it is to be held that the petitioners do not have any locus standi, then the result will be that any illegal decision relating to such a matter by PW Department will not be open to question at all. The contention that petitioners have no locus standi to challenge the order dated 15.12.2001 or the consequential orders is untenable.

35. Therefore the orders of the Tribunal cannot be sustained. They have to be set aside. These petitions are therefore allowed as follows:

(i) The order dated 18.12.2002 of the Karnataka Administrative Tribunal in Application Nos. 63/2002, 10623/2001, 10616-617/ 2001, 10622/2001 and 10624/2001 is set aside.

(ii) The order dated 19.8.2003 of the Karnataka Administrative Tribunal in Application Nos. 5317-5318/2003, 5243/2003, 5259/ 2003 and the order dated 30.10.2003 in Application No. 6762/ 2003 of the Karnataka Administrative Tribunal is set aside.

(iii) The G.O. dated 5.12.2001 issued by Secretary, PW Department, Government of Karnataka (downgrading 17 posts of Accounts Superintendents to the lower scale of Rs. 5200-9580) is declared to be illegal and invalid;

(iv) The consequential order dated 15.12.2001 issued by the Chief Engineer, Communications and Buildings (South) and Official Memorandum dated 18.12.2001 issued by the Chief Engineer, (Water Resources Development Organisation) promoting and posting Kumuda, Y.P. Krishnamurthy, R.S. Kulkarni, V. Srinivasamurthy, C.J. Dalawai, G.T. Venkatarama Reddy, M.S. Somashekara as Accounts Superintendents in place of petitioners in W.P. Nos. 1907, 4081, 7367-70 of 2003) are quashed.

(v) The Official Memorandum dated 19.7.2003 issued by Chief Engineer (Water Resources Development Organisation) promoting and/or transferring S.M. Doddamani, R.H. Murigappa, Mohammed Nawaz Khan and S.N. Chandrashekar in place of petitioners in W.P. Nos. 38230-31/2003, 40165/ 2003 and 40230/2003 is quashed.

- (vi) The petitioners will be entitled to all consequential reliefs and benefits.
- (vii) Parties to bear their respective costs.