

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**WRIT PETITION Nos.19141, 19331, 19598, 19652, 19764, 19829,
19851, 19974, 20287 and 20336 of 2018**

Between:

WRIT PETITION NO.19141 OF 2018 :

Chidurala Sudakar and others

.... Petitioners

and

The State of Telangana and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 02.07.2018.

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE CHIEF JUSTICE SRI RAMESH RANGANATHAN**
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

+ **WRIT PETITION Nos.19141, 19331, 19598, 19652, 19764, 19829, 19851, 19974, 20287 and 20336 of 2018**

% 02.07.2018

Chidurala Sudakar and others

.. Petitioners

Vs.

\$ The State of Telangana and others.

.. Respondents

! Counsel for the petitioners: Sri S. Ramachandra Rao and Sri M. Surender Rao, Learned Senior Counsel and Sri Srinivas Bobbili, Sri Srinivasa Rao Madiraju, Sri P. Krishna Reddy, Sri M. Ramgopal Rao, Sri P. Ashok Kumar and Sri C.Rajasekhar Reddy, Learned Counsel.

^ Counsel for the respondents: The Learned Additional Advocate-General

< Gist:

> Head Note:

? CITATIONS:

- 1) 2003 (6) ALD 522 (DB)
- 2) 2007 (3) ALT 287 (DB) = 2007 (4) ALD 209 (DB)
- 3) (2004) 12 SCC 299
- 4) (2005) 7 SCC 227
- 5) (2004) 4 SCC 245
- 6) (2001) 8 SCC 574
- 7) (1995) 2 SCC 532
- 8) (1993) 4 SCC 357
- 9) 1995 Supp (4) SCC 169
- 10) (2004) 3 SCC 172
- 11) (1993) 1 SCC 148
- 12) (2004) 11 SCC 402
- 13) 1991 Supp (2) SCC 659
- 14) (2003) 4 SCC 104
- 15) (2009) 11 SCC 678
- 16) (1989) 2 SCC 602
- 17) (2009) 3 SCC 124
- 18) (2001) 5 SCC 508
- 19) (2004) 4 SCC 245
- 20) (1995) 6 SCC 749
- 21) (1992) 3 SCC 1
- 22) (2011) 5 SCC 305 : (2011) 2 SCC (L&S) 73
- 23) (2002) 1 SCC 367
- 24) (1976) 2 All ER 721
- 25) (1985) 3 SCC 398 : 1985 SCC (L&S) 672
- 26) 2018 (1) ALD 760 (DB)
- 27) Judgment in W.P. No. 26072 of 2006 & batch dated 28.06.2006 (DB)
- 28) (1983) 2 SCC 402
- 29) (1972) 2 SCC 744
- 30) (2002) 3 SCC 302
- 31) (2013) 8 SCC 519

- 32) (1959) SCR 279
- 33) (2003) 9 SCC 358
- 34) (1990) 4 SCC 366
- 35) (2002) 4 SCC 539
- 36) (2014) 8 SCC 390
- 37) (1974) 4 SCC 428
- 38) 1989 Suppl. (1) SCC 116
- 39) (1994) 3 SCC 569
- 40) (2004) 3 SCC 609
- 41) (2003) 7 SCC 83
- 42) (2010) 3 SCC 314
- 43) (2011) 2 SCC 575
- 44) (2013) 8 SCC 154
- 45) AIR 1974 SC 1631
- 46) (1950) SCR 869
- 47) (1951) SCR 682
- 48) AIR 1959 SC 942
- 49) (1960) 2 SCR 671 : AIR 1960 SC 554 : 1960 Cri LJ 735
- 50) (1974) 1 SCC 19
- 51) AIR 1967 SC 839
- 52) (1990) 3 SCC 223
- 53) 320 US 591, 602 (1944)
- 54) (1994) 6 SCC 349
- 55) (2009) 7 SCC 561
- 56) 1980 Supp SCC 524 : 1981 SCC (L&S) 343
- 57) (1968) 3 SCR 575 : AIR 1969 SC 118 : (1970) 1 LLJ 499
- 58) (2011) 11 SCC 136
- 59) 1992 Supp (2) SCC 318
- 60) (1993) 2 SCC 340
- 61) (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414
- 62) (2000) 8 SCC 655
- 63) AIR 1972 SC 121
- 64) AIR 1966 SC 385
- 65) AIR 1960 SC 430
- 66) (2012) 4 SCC 578
- 67) (1972) 2 SCC 601
- 68) (2007) 13 SCC 116
- 69) (2003) 2 SCC 721
- 70) (2003) 12 SCC 738
- 71) (2001) 6 SCC 307
- 72) 1954 SCR 1
- 73) (1965) 1 SCR 614 : AIR 1965 SC 1017
- 74) 1959 Suppl. (1) SCR 319
- 75) AIR 1998 SC 1050
- 76) AIR 2002 SC 2322
- 77) 1993 (6) SLR 1
- 78) AIR 1989 SC 1933
- 79) AIR 1974 SC 1596
- 80) AIR 1954 SC 84
- 81) 1993 Suppl. (1) SCC 568
- 82) 2006 (6) ALD 1 (FB) = 2006 (5) ALT 767
- 83) AIR 1992 SC 990 = (1992) 2 SCC 13
- 84) AIR 1997 SC 412
- 85) AIR 2001 SC 1668
- 86) AIR 2007 SC 232
- 87) (1965) 1 SCR 323 : AIR 1965 SC 932
- 88) (1916) 1 KB 688
- 89) (1989) 4 SCC 318
- 90) (2003) 3 SCC 321
- 91) AIR 1962 SC 386
- 92) AIR 1967 SC 1910



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

**WRIT PETITION Nos.19141, 19331, 19598, 19652, 19764, 19829,
19851, 19974, 20287 and 20336 of 2018**

COMMON ORDER: (per Hon'ble the Acting Chief Justice Sri Ramesh Ranganathan)

The validity of the Telangana Teachers (Regulation of Teachers) Rules, 2018, notified in G.O.Ms. No.16, School Education (Service II) Department dated 06.06.2018 (the "2018 Rules" for short), is questioned in these Writ Petitions as being arbitrary, illegal, unjust, in violation of Articles 14, 16, 21, 243G and 371D of the Constitution of India, and contrary to the provisions of the Telangana Districts (Formation) Act, 1974 read with the A.P. Public Employment (Organisation of Local Cadres and Regulation Direct Recruitment) Order, 1975, apart from being contrary to the judgments in **M. Kesavulu v. State of Andhra Pradesh**¹ and **Government of A.P. v. P. Vema Reddy**², and the interim order of *status quo* passed in W.P. No.23267 of 2017 and W.P. No.23274 of 2017 dated 31.07.2017. A consequential direction is sought to strike down the Rules notified in G.O.Ms. No.16 dated 06.06.2018.

The petitioners herein are either teachers working in Government schools, or teachers hitherto working in Government schools who are presently working in schools under the control of local bodies, or teachers appointed to and working in schools run by local bodies. They are aggrieved by the action of the State Government in effecting transfers, and in prescribing the Rules, notified in G.O.Ms. No.16 dated 06.06.2018, for effecting transfers of Headmasters, teachers etc in Government schools and schools

¹ 2003 (6) ALD 522 (DB)

² 2007 (3) ALT 287 (DB) = 2007 (4) ALD 209 (DB)

under the management of local authorities throughout the State of Telangana. As the validity of the 2018 Rules, which provides for transfer, has been questioned on various grounds, it is necessary in the first instance to examine the scope of Judicial review, under Article 226 of the Constitution of India, in matters relating to transfers.

The scope of interference by Courts, with orders of transfer of a Government servant or an employee of a public sector undertaking or a local body, is extremely limited. Transfer of an employee, appointed to a class or category of transferable posts, from one place to another, is an incident of service necessary in public interest and efficiency in public administration. No government servant or an employee or a local authority has a legal right to be posted forever at any one particular place or at a place of his choice. (**Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey**³; **Major General J.K. Bansal v. Union of India**⁴; **Union of India v. Janardhan Debanath**⁵; **National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan**⁶). Transfer of a public servant, on administrative grounds or in public interest, should not be interfered with unless there are strong and compelling grounds rendering the transfer order improper and unjustifiable. (**Chief General Manager, (Telecom) N.E. Telecom Circle v. Rajendra Ch. Bhattacharjee**⁷). Who should be transferred, and posted where, is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any operative guidelines or Rules, Courts

³ (2004) 12 SCC 299

⁴ (2005) 7 SCC 227

⁵ (2004) 4 SCC 245

⁶ (2001) 8 SCC 574

⁷ (1995) 2 SCC 532

should not, ordinarily, interfere with it. (**Kendriya Vidyalaya Sangathan**³; **Union of India v. S.L. Abbas**⁸; **Major General J.K. Bansal**⁴; **Abani Kanta Ray v. State of Orissa**⁹).

A government servant, or an employee of a local body, has no legal right to insist on being posted at any particular place. A person holding a transferable post, unless specifically provided in his service conditions, has no choice in the matter of posting. (**Rajendra Ch. Bhattacharjee**⁷). Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of service. (**Pearlite Liners (P) Ltd. v. Manorama Sirsi**¹⁰). In a transferable post, an order of transfer is a normal consequence, and personal difficulties are matters for consideration of the department and not the Court. (**Rajendra Roy v. Union of India**¹¹). Unless the order of transfer is shown to be an outcome of a malafide exercise of power or as violative of any statutory provision (an Act or Rule) or is passed by an authority not competent to do so, an order of transfer cannot be interfered with as a matter of course or for every type of grievance sought to be made. (**State of U.P. v. Gobardhan Lal**¹²).

Courts should not, ordinarily, interfere with a transfer order made in public interest and for administrative reasons. An employee, holding a transferable post, has no vested right to remain posted at one place, and is liable to be transferred from one place to the other. Transfer orders, issued by the competent authority, do not violate any of his legal rights. (**Shilpi Bose v.**

⁸ (1993) 4 SCC 357

⁹ 1995 Supp (4) SCC 169

¹⁰ (2004) 3 SCC 172

¹¹ (1993) 1 SCC 148

¹² (2004) 11 SCC 402

State of Bihar¹³; **Major General J.K. Bansal**¹⁴). Transfer is an incident of service and is made in administrative exigencies, and such orders should not be interfered with except where the transfer has been made in a vindictive manner. (**Public Services Tribunal Bar Assn. v. State of U.P.**,¹⁴; **Tushar D. Bhatt v. State of Gujarat**¹⁵).

Whenever a public servant is transferred, he must comply with the order. If, however, there be any genuine difficulty in proceeding on transfer, it is open to him to make a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the public servant concerned must carry out the order of transfer. He would not be justified in avoiding or evading the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to comply with the transfer order, he would expose himself to disciplinary action under the relevant Rules. (**Gujarat Electricity Board v. Atmaram Sungomal Poshani**¹⁶; **Tushar D. Bhatt**¹⁵). When an employee does not join at his transferred place, he commits a misconduct. (**Novartis India Ltd. v. State of W.B.**,¹⁷). Non-compliance with the transfer order amounts to refusal to obey the orders passed by superiors for which the employer can reasonably be expected to take appropriate action against the employee concerned. (**Pearlite Liners (P) Ltd.**¹⁰).

Orders of transfer should not be interfered with lightly by a Court of law in the exercise of its discretionary jurisdiction, unless

¹³ 1991 Supp (2) SCC 659

¹⁴ (2003) 4 SCC 104

¹⁵ (2009) 11 SCC 678

¹⁶ (1989) 2 SCC 602

¹⁷ (2009) 3 SCC 124

the Court finds that either the order is malafide or that the Service Rules prohibit such transfer or that the authority, who issued the order, had not the competence to pass the order. (**State Bank of India v. Anjan Sanyal**¹⁸). A challenge to an order of transfer should, normally, not be countenanced by Courts as though they are appellate authorities over such orders. Courts would not substitute their own decisions, in the matter of transfer, for that of the competent authorities. (**Gobardhan Lal**¹²; **Kendriya Vidyalaya Sangathan**³; **Union of India v. Janardhan Debanath**¹⁹; **S.L. Abbas**⁸; **B.C. Chaturvedi v. Union of India**²⁰; **Shri Bhagwan**⁶; **Major General J.K. Bansal**⁴).

Since the validity of the 2018 Rules are under challenge in these Writ Petitions, it is necessary, before examining the rival contentions urged by Learned Senior Counsel and Learned Counsel on either side, to briefly refer to what these Rules provide. Rule 1(2) of the 2018 Rules stipulates that these Rules are applicable to Head Masters/Head Mistresses Grade-II (Gazetted), School Assistants/SGTs, and other equivalent categories working in Government/Zilla Parishad/MPP Schools in the State of Telangana. Rule 1(3) provides that these Rules shall come into force with immediate effect ie on 06.06.2018. Rule 2 provides that all transfers shall be made by way of online web counseling for each erstwhile district/existing zone. Rule 3 relates to the schedule of transfers, and requires the Commissioner and Director of School Education, Telangana, Hyderabad to communicate the procedural guidelines and schedule, for online/web counseling, to

¹⁸ (2001) 5 SCC 508

¹⁹ (2004) 4 SCC 245

²⁰ (1995) 6 SCC 749

the competent authorities. Rule 4 prescribes the competent authority for issue of transfer and posting orders and, thereunder, the District Educational Officer (DEO) of the erstwhile Revenue District is the competent authority for School Assistants/SGTs and equivalent cadres. The District Educational Officer of the erstwhile Revenue District is required to consult the District Educational Officers of the newly formed 31 districts. Rule 4(ii) stipulates that the Regional Joint Director of School Education concerned shall be the competent authority for Head Masters/Head Mistresses Grade-II (Gazetted). Rule 5 prescribes the criteria for transfers in the categories of Head Masters/Head Mistresses, Grade-II (Gazetted)/Teachers in the Government/ZPP/ MPP schools regarding their transfer. Rule 5(5) stipulates that all transfers shall be effected within the present management, agency area to agency area and plain area to plain area.

Rule 9 of the 2018 Rules relates to online applications, and Rule 10 relates to notification of vacancies. Rule 11 relates to the notification of seniority list etc. Rule 12 relates to receipt and disposal of objections. Rule 13 prescribes the committee for approving the transfers and, thereunder, the applicants shall exercise options online in the counseling website for the vacancies mentioned in Rule 10, and based on the seniority as per the entitlement points, and the options exercised for the vacancies mentioned at Rule 10, and also the resultant vacancies that would arise during the web counseling. The Rule provides that the web counseling software would generate the transfer posting lists. Different committees are required to be constituted for the purpose of approving the transfer posting lists. Rule 13(ii) stipulates that

the committees, for approving transfer of Head Masters/Head Mistresses, Grade-II (Gazetted) in Zilla Parishad High Schools, shall be (a) Chairman, Z.P. as the Chairperson; (b) Collector as Vice-Chairman; (c) Joint Collector as a Member; (d) Chief Executive Officer, Z.P. as member, and (e) the Regional Joint Director, School Education or his nominee as the Member-Secretary. Note-I thereunder stipulates that the Committee shall approve the transfer posting list of all Head Masters/Head Mistresses, Grade-II (Gazetted) in the ZP High Schools in the district as generated by the web counseling software. Note-II provides that the Regional Joint Director of School Education concerned shall be the competent authority to issue transfer and posting orders of Head Masters/Head Mistresses, Grade-II (Gazetted) working in ZP High Schools, after the approval of the Committee. Rule 13(iv) stipulates that the committee, for approving the transfer of teachers in Zilla Parishad/MPP Schools, shall be (a) Chairman, ZP as the Chairperson; (b) Collector as the Vice-Chairperson; (c) Joint Collector as member; (d) Chief Executive Officer, Z.P, as Member and (e) District Educational Officer as the Member-Secretary. The note, thereunder, stipulates that the District Educational Officer, as per Rule 4, shall be the competent authority to issue transfer posting orders to all teachers, working in Government Schools and ZPP/MPP Schools, after approval of Committees III and IV respectively. Rule 16 provides for an appeal against the order of the District Educational Officer to the Regional Joint Director of School Education concerned, and for an appeal against the orders of the Regional Joint Director of School Education to the Commissioner and Director of School Education. The Appeal is

required to be made within 10 days of receipt of the transfer orders.

Elaborate oral and written submissions were made on behalf of the petitioners by Sri S. Ramachandra Rao and Sri M. Surender Rao, Learned Senior Counsel and Sri Srinivas Bobbili, Sri Srinivasa Rao Madiraju, Sri P. Krishna Reddy, Sri M. Ramgopal Rao, Sri P. Ashok Kumar and Sri C.Rajasekhar Reddy, Learned Counsel. The Learned Additional Advocate-General, besides putting forth oral submissions, also submitted his written arguments. As Learned Senior Counsel and Learned Counsel on behalf of the petitioners and the Learned Additional Advocate-General have agreed that these Writ Petitions be heard and finally decided on the basis of their submissions, these Writ Petitions are finally disposed of by this common order. It is convenient to examine the rival submissions, made by Learned Senior Counsel and Learned Counsel, under different heads.

I. HAS THE STATE GOVERNMENT VIOLATED THE ORDER OF STATUS-QUO PASSED BY THIS COURT IN MAKING THE 2018 RULES?

It is contended, on behalf of the petitioners, that the impugned Rules are contrary to the subsisting interim order passed in W.P. No.23267 of 2017 dated 31.07.2017 whereby this Court, while dealing with the amended Presidential Order date 23.06.2017, which sought to integrate services of Panchayat School teachers and Government school teachers, had directed maintenance of *status quo* with regards services of both panchayats and government teachers.

On the other hand the Learned Additional Advocate General, appearing on behalf of the respondents, would submit that the

complaint in W.P. No.23267 and 23274 of 2017 was that, if the Presidential order is allowed to stand, the respondents would give effect to the integrated seniority list that was prepared from 1998 onwards, and they would effect promotions basing on the said integrated seniority list of teachers working in local bodies and Government Schools; this Court had directed the respondents to maintain status quo only in respect of promotions and seniority, and not in respect of transfers; the respondent State is at liberty to effect transfers, in the same management, duly maintaining status-quo in all other respects; and as this Court, in W.P.Nos.23267 and 23274 of 2017, had directed the respondents to maintain status quo, the respondents cannot revise any seniority list that has been prepared prior to the amendment to the Presidential Order, and effect promotions; the Presidential Order was amended vide Notification issued in GSR No.637(E) and 639(E) dated 23.6.2017 w.e.f. 20.11.1998; the services of teachers, working in local bodies and Government Schools, have been integrated by the amendment to the Presidential Order; when a challenge was made to the said amendment, this Court did not suspend/stay the said amendment made to the Presidential Order; this Court only directed the respondents to maintain status quo; therefore the amended Presidential Order is in force; as such, the State Government is entitled to effect transfers management wise, without integrating them, and without disturbing their seniority and effecting further promotions, as per the status quo orders issued by this Court; and as such G.O.Ms.No.16, dated 6.6.2018 is just and proper.

The interim order of status-quo, in W.P.No.23267 of 2017 and W.P.No.23274 of 2017, was passed by us on 31.07.2017. The relief sought in W.P.No.23267 of 2017, filed by the Government Teachers Association, was for a mandamus to declare Para (2A) of the A P Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 inserted by the A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 2017 as notified in G.S.R. 639E dated 23.06.2017 and published in the Gazette of India on 23.06.2017 integrating teachers working in local bodies i.e Mandal Parishads and Zilla Parishads with teachers working in Government Schools in the State of Telangana, and in organizing both these separate and distinct categories into an integrated cadre with effect from 20.11.1998, as illegal, unjust, arbitrary, discriminatory, violative of Articles 14, 16, 21, 243G, 309, 311 and 371D of the Constitution of India; and as contrary to the A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975. A consequential direction was sought to strike down Para (2A) of the A. P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 with all consequential benefits.

The relief sought in W.P.No.23274 of 2017 is for a mandamus to declare Entries 23A, 26A and 26B in the Third Schedule to the A.P. Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975, inserted by issuing the A.P. Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 2017 notified in G.S.R. 637E dated 23.06.2017 published in the Gazette

of India on 23.06.2017, integrating Gazetted teachers working in local bodies, Mandal Parishads and Zilla Parishads with Gazetted teachers working in Government Schools of the State of Telangana, and organizing both these separate and distinct categories into an integrated cadre with effect from 16.11.1998, as illegal and arbitrary.

In the aforesaid interim order we had observed that the scope and ambit of the words “*public employment*”, in Clause (1) of Article 371-D, necessitated examination; the earlier efforts of the State Government to frame Rules, and enact laws, was faulted in **M. Kesavulu**¹ and **P.Vema Reddy**²; both these judgments were affirmed by the Supreme Court in Civil Appeal Nos.4886-4901 of 2009 and 4878-4885 of 2009, granting liberty to the State Government to send a proposal to the Union of India, for obtaining approval of the President to integrate teachers of Panchayat Samitis and Zilla Parishads, who were also Government servants, with the existing local cadres of teachers, and as and when such proposal was sent to the Union of India, the same was required to be considered at an early date; while noting that the order of the Supreme Court enabled the State Government to submit its proposal to the Union of India for integration of teachers in local bodies with teachers in Government Schools, to form one local cadre, we had opined that the question which necessitated examination was whether or not the amendment to the Presidential Orders, impugned in the two Writ Petitions, were ultra-vires Article 371-D(1) of the Constitution of India, for it is only if the words “public employment” were held to bring within its ambit,

employees of local bodies also, could the President be held to have the power to make the aforesaid Presidential Order.

We had, thereafter, observed that, as this issue has a bearing on the career prospects of all teachers in Government schools who, as a result of the insertion of Clause 2(A) to Paragraph-3 of the Presidential Order, now find themselves integrated with teachers in schools administered by local bodies, and as this issue has been under challenge before this Court for the past more than 15 years, (ever since the judgment in **M. Kesavulu**¹), it was appropriate to hear the matter early. Taking note of the fact that the State Government had already taken certain steps, in appointing teachers in local bodies to higher posts in terms of Clause 2(A) of Paragraph-3 of the Presidential Order, we had, while granting time to the State Government to file their counter-affidavit, directed the respondents to maintain status-quo as on the date of that order. The interim order of status-quo is still in force as on date.

The status-quo order passed by us was in the context of Clause 2(A) of Paragraph-3 of the 1975 Presidential Order. Clause 2(A), inserted after Paragraph-3(2) to the 1975 Presidential Order, prescribes that *“the posts, belonging to each Non-Gazette category of teachers in Mandal Parishad, Zilla Parishad and Government School in each District, shall be organized into a separate integrated cadre.”* While teachers in local body schools are a distinct cadre, different from that of teachers in Government schools (which alone were organized as a local cadre under Para 3 of the 1975 Presidential Order), the effect of Para 3 (2A) of the Presidential Order is to integrate both of them into one common cadre in each District.

The effect of the order of status-quo passed by us is to disable the State Government from integrating teachers in Government Schools and teachers working in local body schools, and in treating them as one common district cadre. Consequently teachers presently working in local body schools cannot be transferred to Government Schools and vice-versa, as long as the order of status quo continues to remain in force, since such transfers can only be effected if an integrated cadre of teachers, in Government Schools and local body schools, in each district is organized in terms of Para 3(2A) of the Presidential Order.

Rule 5(5) of the 2018 Rules stipulates that all transfers shall be effected within the present management. Consequently, teachers working in local body schools can only be transferred to the management of local body schools and not to Government Schools, and vice-versa. The aforesaid stipulation in Rule 5(5) of the 2018 Rules has ensured compliance with the order of status-quo, as it has avoided integration of teachers into a common cadre as stipulated in Para 3(2A) of the 1975 Presidential Order. The order of status-quo, which disabled the State Government from treating teachers working in local body schools and teachers working in Government schools within the same district as one integrated cadre, has not been violated by the 2018 Rules as the distinction between local body schools and Government schools is maintained, in effecting transfers, under Rule 5(5) of the 2018 Rules. The mere fact that the 2018 Rules is applicable both to teachers in Government Schools and local body schools matters little, as transfer of teachers presently working in local body schools is being effected only to other local body schools and

transfer of teachers presently working in Government schools is being effected only to other Government schools. The contention that the 2018 Rules violates the status-quo order, passed by us in W.P.No.23217 and W.P.No.23274 of 2017 dated 31.07.2017, is therefore not tenable.

It is contended, on behalf of the petitioners, that teachers, who were hitherto working in Government schools and who were transferred, in terms of the Rules notified in G.O.Ms.No.505 dated 16.11.1998 and G.O.Ms.No.538 dated 20.11.1998 to local body schools, cannot be transferred to other local body schools since, in terms of the judgments of the Division Benches in **M. Kesavulu**¹ and **P. Vema Reddy**², they are still required to be treated as teachers working in Government Schools.

As noted hereinabove some teachers, hitherto working in Government Schools, were transferred to local body schools and vice-versa in terms of the Rules notified in G.O.Ms.No.505 dated 16.11.1998 and G.O.Ms.No.538 dated 20.11.1998. Ever since then, they are working under the management of schools to which they were transferred (i.e. if they were transferred from Government Schools to local body schools, they are presently working in the schools managed by local bodies; and if they had been transferred in 1998 from local body schools to Government Schools, they are presently working in Government Schools. This unforeseen situation, these teachers find themselves in, is because of the interim orders passed from time to time. After both the aforesaid G.Os were set aside by a Division Bench of this Court in **M. Kesavulu**¹, the said order of the Division Bench was carried in

Appeal, and the Supreme Court stayed the contempt proceedings initiated for non-compliance of the order of the Division Bench.

Thereafter, the State Legislature enacted the A.P. School Education Teachers and other Employees (Abolition of existing service cadres and regulation of recruitment and conditions of service) Act, 2005, and made Rules which were notified in G.O.Ms.Nos.95 and 96 dated 25.07.2005, in terms of which teachers in local body schools and teachers in government schools were sought to be integrated into a local cadre. It is only in terms of the judgment of a Division Bench of this Court in **P. Vema Reddy**², whereby the 2005 Act and the 2005 Rules were struck down, did the integrated common cadre cease to remain in force. After the order of the Division Bench in **P. Vema Reddy**², the Government again approached the Supreme Court in Civil Appeal Nos.4878-4885 and 4886-4901 of 2009 and SLP (Civil) No.35880 of 2011. After the order of the Supreme Court, in the aforesaid Appeals, on 30.09.2015, the Presidential Order was amended, and Clause 2(A) was inserted to Para 3 of the 1975 Presidential Order vide G.S.R. 639E dated 23.06.2017. In view of the interim order passed by us in W.P.No.23267 of 2017 and W.P.No.23274 of 2017 dated 31.07.2017, directing maintenance of status-quo, these teachers continue to work in the school management (to which they were transferred in 1998) even as on date. Consequently they are now being transferred from one school to another under the same management i.e. the erstwhile Government school teachers, who have been working in local body schools for the past two decades ever since 1998, are being transferred only to other local body schools; and teachers who were working in local body

schools, who were transferred to Government Schools in 1998, and have been working in such Schools for the past twenty years, are being transferred to other schools under the same management i.e to other Government Schools. Since the order of status-quo disables both teachers working in local body schools and teachers working in Government Schools to be treated as an integrated cadre, it is only if teachers presently working in local body schools are transferred to Government Schools and vice-versa, can the order of status-quo be said to have been violated. Admittedly, no such action has been taken by the State Government. This contention, urged on behalf of the petitioners, does not therefore merit acceptance.

II. HAS THE AMENDMENT TO THE PRESIDENTIAL ORDER CEASED TO REMAIN IN FORCE CONSEQUENT TO THE ORDER OF STATUS-QUO PASSED BY THIS COURT?

It is contended, on behalf of the petitioners, that as local cadres have not yet been organized, in terms of the amendment to the Presidential Orders dated 21-7-2017, the law, as it stood prior to 21-7-2017, continues to remain in force; and a construction, which will introduce uncertainty, friction and confusion into a working of system, should be rejected.

The order of status quo, passed by this Court, would only mean that the existing state of affairs, prevailing on the date on which the said order of status-quo was passed, would continue until further orders from the Court. That does not either eclipse the amendment made to the Presidential Order, or render the said 2017 amendment illegal. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an

order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order, and it does not mean that the said order has been wiped out from existence. (**Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn.**²¹). Even when an order is suspended, it still exists and has operation in other respects except wherein it has been suspended. A suspension holds the law in abeyance and does not put an end to the Law. (**State of U.P. v. Hirendra Pal Singh**²²). The order of status quo passed by us would not result in wiping, the 2017 amendment to the Presidential Order, from existence. It would only result in the respondents being disabled from giving effect to it, after the date on which the said order of status quo was passed. The order of status quo dated 31.07.2017 only disables the Government from implementing the amended Presidential Order, and in organizing an integrated local cadre, as long as the status quo order is in force. Any steps which the Government may take to facilitate implementation of the amended Presidential Order at a later date, would not, by itself, fall foul of Part III of the Constitution or of the status quo order passed by this Court.

It is no doubt true that a construction is to be rejected which will introduce uncertainty, friction or confusion into the working of the system. (**Central Bank of India v. Ravindra**²³; **Principles of Statutory Interpretation, Justice G.P. Singh, 7th Edn. 1999, p. 113**; and the Court, having accepted the invitation to embark upon an interpretative expedition, shall identify on its radar the

²¹ (1992) 3 SCC 1

²² (2011) 5 SCC 305 : (2011) 2 SCC (L&S) 73

²³ (2002) 1 SCC 367

contextual use of the word or expression, and then determine its direction avoiding collision with icebergs of inconsistency and repugnancy. (**Ravindra**²³; **Farrell v. Alexander**²⁴).

The uncertainty, with respect to teachers in local body/ Government schools, has resulted since the 1975 Presidential Order still refers to the erstwhile 10 districts of the State of Telangana, though 31 new districts have been formed, under the Telangana District Formation Act, from 11.10.2016 onwards. Since the State Government lacks the power to amend the Presidential Order, this uncertainty would continue till the Presidential Order is suitably amended by the President recognizing the newly formed 31 districts as local areas under the 1975 Presidential Order, or the 2017 amendment to the 1975 Presidential Order is held valid, in which event teachers in local body schools and Government schools can be integrated into one common local cadre; and thereafter the local cadre for both these categories of teachers would be the erstwhile ten districts referred to in the Presidential Order in all respects.

While construing the 2018 Rules, a construction, which would result in preserving the Constitutionality of the 2018 Rules, should be adopted for it is a well-settled rule of construction of statutes that where two interpretations are possible, one of which would preserve and save the constitutionality of the particular statutory provision while the other would render it unconstitutional and void, the one which saves and preserves its constitutionality should be adopted and the other rejected. (**Union**

²⁴ (1976) 2 All ER 721

of India v. Tulsiram Patel²⁵). The incongruity, as aforementioned, notwithstanding, the 2018 Rules cannot be said to be illegal on the ground that it refers to the erstwhile 10 districts of the State of Telangana. Suffice it to hold that the status-quo order has not obliterated the 2017 amendment to the Presidential Order, and has only rendered it inoperative for the present.

III. DOES TRANSFER OF TEACHERS WORKING IN LOCAL BODY SCHOOLS FALL WITHIN THE AMBIT OF THE PRESIDENTIAL ORDER?

It is contended, on behalf of the petitioners, that in order to meet a possible opposition, to a challenge to the rules, a reference is made by the respondents to the Presidential Order; teachers, working in the Zilla Parishad Schools, are not subject to the rigor of the Presidential Order; posts in local body schools are partly governed by the Presidential Order, and partly not; in view of Para 6(1) of the Presidential Order, direct recruitment in schools, under the control of local bodies, is governed by the Presidential Order; Para 5(1), which prescribes a local cadre as a unit for transfer, has no application to teachers in non-government schools; the Presidential Order applies only to direct recruitment in local body schools, and not to transfers; consequently, the petitioners can only be transferred within the newly constituted 31 districts; even assuming that there is an amendment to the Presidential Order, the posts of teachers working in Government schools and Zilla Parishad schools have not, accordingly, been organized into local cadres (in terms of the amendment); and Zilla Parishad teachers would therefore be governed by the Rules issued by the State either under the Panchayat Raj Act or under the A.P. Education

²⁵ (1985) 3 SCC 398 : 1985 SCC (L&S) 672

Act or, if the law permits, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India.

On the other hand, the Learned Additional Advocate-General, appearing on behalf of the respondents, would submit that Para 2(3) of the Presidential Order, 1975 defines a local cadre to mean any local cadre of posts under the State Government organized in pursuance of Para.3 or constituted otherwise for any part of the State; Para 6(1) of the Presidential Order says that each district shall be regarded as a local area; further the Table, given after para.8 of the Presidential Order, specifies the districts for the purpose of a local area and the zone; unless the table in the Presidential Order, 1975 is amended, suitably inserting the present 31 districts in State of Telangana, these 31 districts cannot be regarded as Revenue districts for the purpose of implementing the Presidential Order along with its amendment; and this Court in **G. Arun Kumar v. Union of India**²⁶ held that reorganization of the erstwhile 10 districts of the State of Telangana into 31 districts under the Telangana Districts (Formation) Act, 1974 is for administrative convenience, and not to provide local area reservation under the Presidential Order.

Article 371D(1) of the Constitution of India enables the President, by order made with respect to the State, to provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and enables different provisions to be made for various parts of the State. Article 371-D(2)(a) enables

²⁶ 2018 (1) ALD 760 (DB)

the order made under clause (1), in particular, to require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot, in accordance with such principles and procedures as may be specified in the order, the persons holding such post to the local cadres so organised. Article 371D(2)(a) enables the President to direct the State Government to organise posts in the civil service or civil posts under the State into different local cadres for different parts of the State. Once such local cadres are organised, the said Article enables the State, in accordance with the principles and procedures specified in the Presidential Order, to allot persons holding civil posts under the State, or employed in posts of a civil service, to the local cadres organised in terms of the Presidential Order.

Article 371D(10) stipulates that the provisions of Article 371D, and of any order made by the President thereunder (i.e the 1975 Presidential Order), shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force. Since both Article 371D, and the Presidential Order made thereunder, have been given overriding effect over any of the provisions of the Constitution of India, and over any other law in force, the Presidential Order would apply notwithstanding anything contrary thereto in any other provision of the Constitution of India, including Part III thereof. It is only because such overriding effect has been given that organisation of local cadres, in terms of the Presidential Order, is valid notwithstanding Article 16(2) in Part III of the Constitution of India

which disables the State from rendering any citizen ineligible for any employment or office under the State on grounds of residence etc.

Para 3 of the 1975 Presidential Order relates to organization of local cadres. Para 3(1) requires the State Government, within a period of 18 months from the commencement of the Order, to organise classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State in the manner provided. Para 3(2) requires posts, belonging to the category of Junior Assistant, and to each of the other categories equivalent to, or lower than that of a Junior Assistant in each department in each district, to be organized into a separate cadre. The Presidential Order does not require all classes of posts in the Civil Services of the State, or all classes of civil posts under the State, to be organized into different local cadres for different parts of the State, and it is only to the "extent" and in the "manner" provided in the Presidential Order are such posts required to be organized into different local cadres. (**P. Vema Reddy**²). Panchayats, Mandal Parishads and Zilla Parishads are local authorities both under Part IX of the Constitution and under the provisions of the A.P. Panchayat Raj Act, 1994. While the local cadres, organized in the department of school education in G.O.Ms. No. 529 dated 14-5-1976, included the posts of teachers in government schools, it did not extend to the posts of teachers under local authorities. Posts of teachers under local authorities were, hitherto, not organized into local cadres. (**P. Vema Reddy**²).

Para 3(2) of the Presidential Order requires categories of posts of lower division clerks and below, in each "**department**" in

each District, to be organized into a separate local cadre. Para 3(3) requires the posts belonging to each non-gazetted category, other than those referred to in sub-paragraph (2), in each department in each zone, to be organized into a separate cadre. Para 4 relates to allotment of persons, and Para 4(1) requires persons, holding posts required to be organized into local cadres, to be allotted to such cadres by the State Government or any officer or authority authorized by it in this behalf in accordance with the specified principles and procedure. Para 5 relates to local cadres and transfer of persons, and Para 5(1) stipulates that each part of the State, for which a local cadre has been organized in respect of any category of posts, shall be a separate unit for the purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters as may be specified by the State Government, in respect of that category of posts.

The distinction between posts in "*departments*" of the State Government and posts under any "*local authority*" is clear from Paras 6 and 8 of the Order. While the words "*local cadre*" have been used in relation to posts in departments of the State Government in Clause (i) of Para 6(1), when it comes to posts under a local authority, the words used in Clause (ii) of Para 6(1) is "*cadre*" and not "*local cadre*". A similar distinction is made between Clauses (i) and (ii) in sub-paras (2) and (3) of Para 6 also. Similarly under Clause (a) of Para 8(1), while the words "*local cadre*" are used in relation to the State Government, in Clause (b) for posts under a local authority, the words used are "*cadre*" and not "*local cadre*". This distinction is also maintained in Clauses C(1) and C(2) of Para 8(1) and Clauses (a) & (b) of Para 8(2).

If local authorities were to be construed as departments of the State Government, Clause (ii) of sub-paras (1), (2) and (3) of Para 6 and Clause (b) and C(ii) of Para 8(1) and Clause (b) of Para 8(2) would be rendered inapposite surplusage. It is only in respect of classes of civil posts, in departments of the State Government, does the Presidential Order require a local cadre to be organized, and not in respect of posts under a local authority. It is for this reason that, while cadres/posts of teachers in government schools were organised into different local cadres, for different parts of the State, in G.O.Ms. No. 529 dated 14.05.1976, cadres/posts of teachers in schools under local authorities was not. **(P. Vema Reddy²)**.

Though teachers, working in Panchayat Raj institutions, were not organized into a local cadre, teachers in Government Schools were organized as such in each district. Consequently, in terms of Para 5(1) of the 1975 Presidential Order, each District is a separate unit for the purposes of recruitment, appointment, discharge, seniority, promotion and transfer of teachers in Government Schools. It is in terms of Para 5(1) of the 1975 Presidential Order that Rule 9 of G.O.Ms.No.11 dated 23.01.2009, which relates to teachers in Government schools, stipulates that, for the purposes of recruitment, appointment, seniority, discharge for want of vacancy, promotion, transfer and reappointment, the unit of appointment shall be the Revenue District. Reading the words "Revenue District" in the adhoc Rules notified in G.O.Ms.No.9 dated 23.01.2009 as the existing 31 districts, would render Rule 9 thereof ultravires the Presidential Order which recognizes only the erstwhile 10 districts as the districts within

which alone should local cadres be organized and be treated as a unit.

As teachers working in Government schools were organised as a local cadre in each District, in terms of the 1975 Presidential Order, appointment, promotion, seniority, transfer etc of all teachers in Government Schools can only be made within the District and not beyond. Teachers working in Government schools can, therefore, only be transferred within one of the erstwhile 10 Districts and not outside. The 1975 Presidential Order recognises only the 10 Districts in the present State of Telangana as the District within which a local cadre is required to be organised. Creation of 31 Districts, with effect from 11.10.2016, has no bearing on local area reservation to be provided in terms of the Presidential Order. The 10 districts, notified in terms of the Presidential Order, would continue to be regarded as a local area, unless and until otherwise amended on the directions of the President. (G. Arun Kumar²⁶). Since neither the State legislature nor the State Government has the power to amend the Presidential Order, they are precluded, as long as the 1975 Presidential Order is not suitably amended, from prescribing the newly constituted 31 Districts as a unit to effect transfer of teachers in Government schools. Teachers, in Government schools, can, therefore, only be transferred within the 10 districts referred to in the Presidential Order, and not within the newly constituted 31 Districts in the State of Telangana.

As the 1975 Presidential Order continues to govern teachers working in Government schools, their unit of appointment, transfer, promotion, seniority etc would continue to remain the

erstwhile ten Districts of the State of Telangana, notwithstanding creation of 31 new Districts, since the Presidential Order has not yet been amended to provide for the new 31 Districts as a local cadre, and it is within the erstwhile 10 districts alone, (each of which is a unit for which a local cadre is organised), are appointment, promotion, seniority, transfer etc required to be made.

While Paras 3, 4 and 5 of the 1975 Presidential Order do not apply to teachers in local body schools, since such schools were not organized as a local cadre under the Presidential Order, Para 6(1)(iv) of the 1975 Presidential Order stipulates that each district shall be regarded as a local area for direct recruitment to all posts of teachers under a local authority, carrying a scale of pay equal to that of the posts in the Andhra Pradesh School Education Subordinate Services. The provisions contained in para 6 and 8 of the Presidential Order, relating to local areas and reservation in favour of local candidates in the matter of direct recruitment to posts, are applicable to posts borne on the establishment of a local authority. In para-3, 4 and 5 of the Presidential Order, there is no mention about the posts borne on the establishment of a local authority, whereas para-6 and 8 refer to posts borne on the establishment of a local authority. This clearly shows that Paras-3,4 and 5 of the Presidential Order has no application to posts borne on the establishment of a local authority. **(M.P. Ananthanarayana v. State of A.P.²⁷; P. Vema Reddy²)**. As the Presidential Order requires direct recruitment to the posts of teachers in local body schools to be confined within a local area,

²⁷ Judgment in W.P. No. 26072 of 2006 & batch dated 28.06.2006 (DB)

which is again a District, recruitment of teachers in local body schools can only be made within the erstwhile ten Districts of the present State of Telangana.

It is only because Para 6(1)(iv) of the 1975 Presidential Order required each district to be regarded as a local area for direct recruitment to all posts of teachers under a local authority, did Rule 9 of the Rules notified in G.O.Ms.No.12 dated 23.01.2009, prescribed a “Revenue District” as a unit for recruitment of teachers. As it then stood, the Districts referred to in the Presidential Order, and the Revenue Districts referred to in Rule 9 of G.O.Ms.No.12 dated 23.01.2009, were the same i.e the erstwhile 10 districts in the State of Telangana.

Para 7 of the 1975 Presidential Order relates to local candidates, and under sub-para (1) thereof, a candidate for direct recruitment to any post shall be regarded as a local candidate in relation to a local area, if he fulfills the conditions stipulated thereunder. A local candidate is determined in relation to a local area, and in terms of Para 6(1)(iv) of the Presidential Order the local area, for direct recruitment to the posts of teachers, is each district which, in the Table below Para 8 of the Presidential Order, are the erstwhile 10 Districts of the State of Telangana. Consequently, direct recruitment of teachers in local body schools can only be made within these 10 Districts, notwithstanding that the erstwhile 10 revenue districts have now been altered, and in its place 31 new districts have been constituted.

In view of the 1975 Presidential Order, which requires only the erstwhile ten Districts to be treated as a unit even for recruitment to local body teachers, the effect of the 2018 Rules

would now be that, while the erstwhile ten Districts would be the unit for recruitment and transfer of teachers in local body schools, the 31 Revenue Districts would be the unit for seniority, promotion etc. While a problem would, undoubtedly, arise when promotions are sought be made, and seniority is to be fixed in terms of the existing Rules notified in G.O.Ms.Nos.10 and 12 dated 23.01.2009, we are not required, in the present Writ Petitions, to examine the issue of seniority and promotions, as the dispute relates only to transfer of teachers, mainly working in local body schools. Suffice it to observe that the State Government, before initiating steps to effect promotions and fix seniority of teachers in local body schools, shall bear in mind these aspects and take necessary remedial measures in this regard. As transfer of teachers working in local body schools to other schools under the same management, in terms of the 2018 Rules, does not fall within the ambit of the Presidential Order, the contention to the contrary, urged on behalf of the petitioners, does not merit acceptance.

IV. DOES THE 2018 RULES FALL FOUL OF THE LAW DECLARED IN THE DIVISION BENCH JUDGMENTS OF THIS COURT IN M.KESAVULU AND P.VEMA REDDY?

It is contended, on behalf of the petitioners, that the 2018 Rules fall foul of the law declared by the Division Benches of this Court in **M. Kesavulu**¹ and **P.Vemareddy**², which were confirmed by the Supreme Court in Civil Appeal No.4886-4901 and 4878-4885 of 2009 dated 30.09.2015; in exercise of the powers conferred by Section 3 of the District (Formation) Act, 1974, the erstwhile 10 Districts were replaced by the newly formed 31 Districts with effect from 11.10.2016; when there is a change in the law i.e., on the formation of 31 districts, under the District

Formation Act and the District Formation Amendment Act, the geographical spread of each revenue district changes; the unit of appointment, for the purpose of service conditions, can only be the present Revenue District; this would be in tune with the fields of Legislation both in respect of formation of districts, and with reference to the law on public services; though the erstwhile ten districts are no longer in existence from 11.10.2016 onwards, strangely Rule 2 of the 2018 Rules stipulates that all transfers shall be made within the erstwhile 10 districts which are not in existence, consequent on formation of 31 Districts with effect from 11.10.2016; neither the unit of appointment nor the unit for any other purpose has been defined in the 2018 rules; when the erstwhile district has been disintegrated (bifurcated or trifurcated), and as new districts have come into existence, the question of transfers being made for each erstwhile revenue district, which is not in existence, does not arise; in view of the law laid down, in **M. Kesavulu**¹ and **P. Vemareddy**², the Presidential Order has no application to Panchayat school teachers except with respect to direct recruitment; hence, there is no embargo for effecting transfers of Panchayat school teachers among the 31 districts; strangely the State, alleging compliance with the Presidential Order, has decided to effect transfers under the 2018 Rules to the non-existent 10 districts; even if it is presumed that the Presidential Order is applicable to Panchayat school teachers, even then, as per para 5 of the Presidential Order read with Section 3 of the Telangana Districts (Formation) Act, the respondents should effect transfers within the existing 31 Districts, and not within the 10 Districts which are not in existence; ever since 11.10.2016 i.e.,

from the date when the 31 Districts were formed, and had replaced the earlier 10 Districts, the respondents have been effecting inter-district transfers among the 31 Districts; and, while effecting general transfers, the respondents are reverting to the erstwhile 10 Districts which are not in existence.

The law declared by the Division Benches of this Court, in **M. Kesavulu**¹ and **P. Vemareddy**², disabled the State Government and the State Legislature from integrating teachers working in Government schools and teachers working in local body schools into one local cadre on the ground that, while the Presidential Order had organised teachers working in Government schools into a local cadre, it had not organised teachers working in Zilla Parishad and Mandal Praja Parishad schools as such; and since the power to organise local cadres is conferred only in terms of the Presidential Order, the State Government is disabled from organising an integrated local cadre of teachers working in Government schools and teachers working in local body schools. As a result of the judgments of both the Division benches in **M. Kesavulu**¹ and **P. Vemareddy**², which has been affirmed by the Supreme Court in Civil Appeal No.4886-4901 and 4878-4885 of 2009 dated 30.09.2015, teachers in local body schools have not been organised into a local cadre.

Except for direct recruitment, the pre-amended 1975 Presidential Order had no application to teachers in local body schools. In furtherance of their efforts to integrate teachers in Government schools and local body schools, the approval of the President was sought by the State Government, and as a result Clause (2A) was inserted into Paragraph 3 of the 1975 Presidential

Order vide GSR No.639E dated 23.06.2017 which could also not be given effect to in the light of the *status quo* order passed by us on 31.07.2017. As long as the status-quo order is in force, teachers working in Government Schools and local body schools cannot be integrated into a unified local cadre in terms of Para 3(2A) of the Presidential Order. Except for direct recruitment in local body schools, which alone is governed by the pre-amended Presidential Order, the unit of promotion, transfer etc need not be the erstwhile 10 districts. The question whether the State Government would, therefore, be disabled from prescribing the erstwhile 10 districts as a unit of transfer is a different matter, which we shall examine later in this order.

The 1975 Presidential Order, to the extent of direct recruitment of teachers in local body schools, has prescribed the erstwhile ten Districts as a local area. As a result, even after formation of the 31 districts w.e.f. 11.10.2016, recruitment of teachers to Government Schools and local body schools is still required to be made treating the erstwhile 10 districts as a local cadre/local area respectively under the 1975 Presidential Order. It is not in dispute that all the petitioners herein were recruited as teachers in local body schools when the erstwhile ten Districts were treated as a unit for direct recruitment. But for the re-organisation of the erstwhile ten Districts into 31 Districts by the State Government, in the exercise of its powers under the Telangana District Formation Act, even in terms of the Rules notified in G.O.Ms.Nos.10 and 12 dated 23.01.2009, the unit of appointment, transfer, seniority, promotion etc of teachers in local body schools would have continued to be the erstwhile ten

Districts in the State of Telangana, as they were the Revenue Districts referred to in the said Rules when they were made and notified in G.O.Ms.Nos.10 and 12 dated 23.01.2009.

As the Presidential Order still governs direct recruitment of teachers in local body schools, and prescribes the erstwhile ten Districts as the local area within the confines of which alone is direct recruitment to be made, the State Government, in its wisdom, has chosen to prescribe the erstwhile ten Districts as a unit for transfer also. As the 1975 Presidential Order still governs direct recruitment of teachers in local body schools, and obligates the State Government to recruit teachers only within the local area i.e within one of the erstwhile ten Districts, and not within the newly constituted 31 Districts, and as the endeavour of the State Government, in terms of Para 3(2A) of the Presidential Order, is to integrate local body school teachers and teachers in Government Schools into one common local cadre, in case the *status quo* order passed by this Court were to be vacated later, it cannot be said that prescription of the erstwhile 10 Districts, as a unit of transfer, is so irrational as to violate Articles 14 and 16 of the Constitution of India.

The contention that transfers are affected to non-existent Districts, while attractive at first blush, does not, on a detailed scrutiny, merit acceptance. The apparent incongruity in recruitment and transfers being made within the erstwhile 10 districts, and seniority and promotions required to be made within the newly formed 31 districts, is because the 1975 Presidential Order continues to recognise only the erstwhile ten Districts of the State of Telangana, despite these ten Districts being reorganised

into 31 Districts from 11.10.2016. The Rules notified in G.O.Ms.Nos.10 and 12 dated 23.01.2009, which refer to the Revenue Districts as the unit of promotion, seniority etc were made when the “Revenue Districts” were the ten districts, and not the 31 districts which were formed on 11.10.2016, seven years, after the Rules notified in G.O.Ms.Nos.10 and 12 were made on 23.01.2009.

The mere fact that the 1975 Presidential Order is not applicable to matters, other than direct recruitment in local body schools, does not mean that the State Government cannot make Rules, in the exercise of its powers under the proviso to Article 309 of the Constitution of India, to provide for the erstwhile ten Districts as a unit for effecting transfers as long as these Rules do not violate Articles 14 and 16 of the Constitution of India. The contention that the 2018 Rules fall foul of the Division Bench judgments of this Court, in **M. Kesavulu**¹ and **P. Vemareddy**², is without merit.

V. IS THE 2018 RULES, WHICH PRESCRIBES THE ERSTWHILE 10 DISTRICTS AS UNITS OF TRANSFER SO IRRATIONAL AS TO VIOLATE ARTICLES 14 AND 16 OF THE CONSTITUTION OF INDIA?

It is contended, on behalf of the petitioners, that, since the erstwhile ten Districts are no longer in existence consequent on the formation of the 31 Revenue Districts by the State Government w.e.f. 11.10.2016, the State Government had acted irrationally in making the 2018 Rules providing for transfer of teachers in local body schools to the non-existent 10 Districts. As the adhoc Rules in G.O.Ms.Nos.10 and 12 dated 23.01.2009 prescribe a “Revenue District” as a unit for promotion, seniority etc, it would be incongruous that, while seniority and promotion of teachers in

local body schools must be confined within the newly formed 31 districts, they can be transferred beyond the present district to a neighbouring district, on the ground that these transfers are being made within the erstwhile 10 districts; it would be incongruous for teachers working in local body schools, to be transferred outside the present 31 Districts, (which is the unit for promotion and seniority), and still effect promotion and seniority only within the 31 Districts, even though he is no longer working in the said District on his transfer outside the district; the impugned Rules are irrational, arbitrary and in violation of Articles 14 and 16 of the Constitution of India; and the respondents have thereby violated Articles 14 and 16 of the Constitution of India.

Since the 1975 Presidential Order has no application to teachers working in local body schools in all aspects, other than direct recruitment, the State Government is not obligated to effect transfers of teachers, working in local body schools, only within the erstwhile ten Districts. The State Government has, however, chosen to stipulate, in Rule 2 of the 2018 Rules, that all transfers shall be made for each erstwhile District i.e., the erstwhile ten Districts of the State of Telangana. While the State Government was not obligated to do so, since there is no such requirement, with respect to teachers working in local body schools under the Presidential Order, the question is whether Rule 2 of the 2018 Rules is liable to be struck down on that ground.

As the 2018 Rules were made under the proviso to Article 309 of the Constitution of India, such Rules are Legislative in character and can only be struck down if they are ultravires Part III or any of the provisions of the Constitution of India. Even if the

source of power to make the 2018 Rules is traced to Sections 78 and 99 of the A.P. Education Act, conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. (**State of Karnataka v. H. Ganesh Kamath**²⁸), and a protection given by the statute cannot be nullified by Rules authorised by the Statute. (**Management, D.T.U. v. B.B.L. Hajelay**²⁹). Even if the 2018 Rules are held to be subordinate legislation, as they were made under Sections 78 and 99 of the A.P. Education Act, such Rules can be impeached only if it is *ultravires* the Parent Act (i.e the A.P. Education Act) or any other law in force or in violation of any of the provisions of the Constitution. It is not even contended that the 2018 Rules fall foul of any law made either by Parliament or the State Legislature. The only question is whether Rule 2 of the 2018 Rules contravenes Articles 14 and 16 of the Constitution of India?

It is only if the petitioners are held to have established that Rule 2 of the 2018 Rules violates Articles 14 and 16 of the Constitution, would we be justified in striking it down as *ultravires* Part III of the Constitution. A complaint, of violation of Article 14 of the Constitution, cannot be judged by adopting a doctrinaire approach. It is not prudent or pragmatic to insist on mathematical accuracy in view of the inherent complexities involved. (**State of Karnataka v. Mangalore University Non-Teaching Employees Association**³⁰). There is no requirement of mathematical exactness for determining the validity, as long as it is not *palpably* arbitrary.

²⁸ (1983) 2 SCC 402

²⁹ (1972) 2 SCC 744

³⁰ (2002) 3 SCC 302

(**State of Maharashtra v. Indian Hotel & Restaurants Assn.**³¹; **Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar**³²; **Welfare Association, A.R.P. v. Ranjit P. Gohili**³³; **Shashikant Laxman Kale v. Union of India**³⁴). The Rule making authority enjoys considerable latitude, and exercises its power enriched by its experience and taking into consideration myriad circumstances. (**Ombalika Das v. Hulisa Shaw**³⁵). Precision and arithmetical accuracy will not exist in any categorisation, and such precision and accuracy is not what Article 14 contemplates. As long as the broad features of the categorisation are identifiable and distinguishable, and the categorisation is reasonably connected with the object targeted, Article 14 does not forbid such a course of action. (**Subramanian Swamy v. Raju**³⁶; **Murthy Match Works v. CCE**³⁷; **Roop Chand Adlakha v. DDA**³⁸; **Kartar Singh v. State of Punjab**³⁹; **Basheer v. State of Kerala**⁴⁰; **State of Madhya Pradesh v. Gopal D. Tirthani**⁴¹; **B. Manmad Reddy v. Chandra Prakash Reddy**⁴² and **Transport and Dock Workers Union v. Mumbai Port Trust**⁴³).

The test ought not to be what would be a 'better' basis for the categorization, for that would introduce subjectivity in the process. The test is whether categorization, on the basis adopted, results in hostile discrimination and adoption of the criteria has no reasonable nexus with the object sought to be achieved. (**Samaj**

³¹ (2013) 8 SCC 519

³² (1959) SCR 279

³³ (2003) 9 SCC 358

³⁴ (1990) 4 SCC 366

³⁵ (2002) 4 SCC 539

³⁶ (2014) 8 SCC 390

³⁷ (1974) 4 SCC 428

³⁸ 1989 Suppl. (1) SCC 116

³⁹ (1994) 3 SCC 569

⁴⁰ (2004) 3 SCC 609

⁴¹ (2003) 7 SCC 83

⁴² (2010) 3 SCC 314

⁴³ (2011) 2 SCC 575

Parivartana Samudaya v. State of Karnataka⁴⁴). It is only where the provision is shown to be irrational or as manifestly wrong, that the Court would reach out its lethal arm and strike down the provision. (**Mohd. Shujat Ali v. Union of India**⁴⁵).

The question whether Rule 2 of the 2018 Rules is rational or not must be examined in the context in which the Rules are made, and the object sought to be achieved thereby. In examining the constitutionality of a statute, it must be assumed that the legislature or the Rule making authority understands and appreciates the need of the people and the laws/Rules it enacts are directed to problems which are made manifest by experience and that the laws/Rules are enacted which are considered to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment or Rule. (**Charanjit Lal Chowdhuri v. Union of India**⁴⁶; **State of Bombay v. F.N. Bulsara**⁴⁷; **Mahant Moti Das v. S.P. Saki**⁴⁸; **Hamdard Dawakhana v. Union of India**⁴⁹). In order to sustain the presumption of constitutionality, the court may take into consideration matters of common knowledge, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. (**Hamdard Dawakhana**⁴⁹; **Shri Ram Krishna Dalmia**³²).

Prescription of the erstwhile 10 Districts, in the 2018 Rules, as a unit of transfers of teachers in local body schools on par with teachers in Government Schools, is in the context of the State's

⁴⁴ (2013) 8 SCC 154

⁴⁵ AIR 1974 SC 1631

⁴⁶ (1950) SCR 869

⁴⁷ (1951) SCR 682

⁴⁸ AIR 1959 SC 942

⁴⁹ (1960) 2 SCR 671 : AIR 1960 SC 554 : 1960 Cri LJ 735

endeavour to implement Para 3(2A) of the 1975 Presidential Order as amended by GSR No.639E dated 23.06.2017, and integrate teachers in Government schools and local body schools into one local cadre, if and after the constitutional validity of Para 3(2A) of the 1975 Presidential Order were to be upheld by this Court. They are, however, disabled from doing so as at present, in view of the order of *status quo* passed by a Division Bench of this Court. As detailed hereinabove, the incongruity, in the erstwhile 10 districts being treated as a unit of recruitment of teachers in local body schools while it is the Revenue District for determining their seniority, promotion etc, has arisen because the Presidential Order still recognises only the erstwhile 10 districts of the State of Telangana, though 31 districts have been formed on 11.10.2016. Prescription of the erstwhile ten districts, as the unit of transfer, is therefore not so irrational as to violate Articles 14 and 16 of the Constitution of India.

Where a party seeks to impeach the validity of a categorization on the ground that it is so unreasonable as to offend Articles 14 and 16 of the Constitution, the burden is on him to plead and prove the infirmity, to set out facts necessary to sustain the plea of irrationality, and to adduce “cogent and convincing evidence” to prove those facts, for there is a presumption that every factor which is relevant or material has been taken into account. Unless it is unjust on the face of it, the onus lies upon the party attacking the categorization to show, by pleading and placing the necessary material before the Court, that it is so unreasonable as to violate Article 14 of the Constitution. **(State of Jammu and**

Kashmir v. Triloki Nath Khosa⁵⁰; **G.D. Kelkar v. Chief Controller of Imports and Exports**⁵¹). The person assailing the categorization or prescription "carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences, (**Shri Sitaram Sugar Co. Ltd. v. Union of India**⁵²; **Federal Power Commission v. Hope Gas Co.**⁵³), or that there has been a clear transgression of the constitutional principles. (**Ram Krishna Dalmia**³²; **Gauri Shanker v. Union of India**⁵⁴).

It is no part of the respondent's burden to establish its constitutionality. (**Triloki Nath Khosa**⁵⁰). There is a presumption that the governmental action is reasonable and in public interest, and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one, and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations which necessarily weigh with the authorities in taking action. (**Villianur Iyarkkai Padukappu Maiyam v. Union of India**⁵⁵). The onus to establish that statutory Rules, or Rules made under Article 309, violate Articles 14 and 16 of the Constitution of India lies heavily on the petitioners which burden they have failed to discharge. The contention that Rule 2 of the 2018 Rules is so irrational as to

⁵⁰ (1974) 1 SCC 19

⁵¹ AIR 1967 SC 839

⁵² (1990) 3 SCC 223

⁵³ 320 US 591, 602 (1944)

⁵⁴ (1994) 6 SCC 349

⁵⁵ (2009) 7 SCC 561

violate Articles 14 and 16 of the Constitution of India necessitates rejection.

VI. REQUIREMENT OF LAYING THE RULES BEFORE BOTH HOUSES OF THE LEGISLATURE?

It is contended, on behalf of the petitioners, that the 2018 Rules are made in the exercise of the powers conferred by Section 78 and 99 of the A.P. Education Act, and under Article 309 of the Constitution of India; quoting the source of power cannot be taken lightly; the Rule making authority must be taken to have the said power in mind as the source for making the rules; since power has been exercised by the Government under Sections 78 and 99 of the A.P. Education Act, it cannot exercise power, under the proviso to Article 309 of the Constitution of India, to make the 2018 Rules; and the Rules made under the A.P. Education Act would not become Rules unless they are laid before each house of the State Legislature in terms of Section 99(3) of the A.P. Education Act.

Learned Additional Advocate-General, appearing on behalf of the respondents, would submit that a reading of G.O.Ms.No.16, dated 6.6.2018 makes it clear that it has been issued in the exercise of the powers conferred under Sections 78 and 99 of Telangana Education Act, and under Article 309 of Constitution of India; any Rule that has been issued under Article 309 of the Constitution of India need not be placed before either of the House; it is true that, if Rules are made under Sections 78 and 99, there is a requirement of placing the Rules before the House; and since the State of Telangana has lifted the ban on transfers vide G.O.Ms.No.61, dated 24.5.2018 only upto 15.6.2018, the Rules have been issued under Article 309 of Constitution of India, as the time granted is limited and since the House is not in Session.

Part XIV of the Constitution of India relates to services under the Union and the States, and Chapter-I thereunder relates to services. Article 309 relates to recruitment and conditions of service of persons serving the State and thereunder, subject to the provisions of the Constitution, Acts of the Legislature may regulate the recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of the State. Under the proviso to Article 309 of the Constitution of India, it shall be competent for the Governor of a State, in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed to such services and posts, until provision in that behalf is made by or under an Act of the Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act.

The power to make law is vested by Article 309 in the legislature, and until it acts, in the Governor. Whether it is the legislature which passes an Act or the Governor who makes rules, the end product is “law”. The legislature not having passed an Act, the Governor of the State has the power to frame rules under the proviso to Article 309 of the Constitution. Such Rules are subject to the provisions of the Constitution and to the provisions of any Act which the appropriate legislature may pass on the subject. **(B.S. Yadav v. State of Haryana⁵⁶)**. Article 309 merely confers upon the appropriate Legislature, or the Executive, the power to make laws and frame rules. **(Tulsiram Patel²⁵)**. Rules made under the proviso to Article 309 or under Acts referable to that

⁵⁶ 1980 Supp SCC 524 : 1981 SCC (L&S) 343

Article, must, therefore, be made subject to the provisions of the Constitution if they are to be valid. (**Tulsiram Patel**⁵⁷).

In case there is no Act of the Legislature, regulating recruitment and conditions of service, the main part of Article 309 is not attracted. Under the Proviso therein, the President (or the Governor) has full power to make rules regulating the recruitment, and conditions of service. The Rules so made, either by the President (or the Governor), will have currency until provision, in that behalf, is made by or under an Act, of the appropriate Legislature, under Article 309. The proviso to Article 309 clearly lays down that 'any rules so made shall have effect, subject to the provisions of any such Act'. If the appropriate legislature has passed an Act under Article 309, the rules, framed under the proviso, will have effect-subject to that Act. In the absence of any Act, of the appropriate legislature, on the matter, the rules, made by the President (or the Governor), are to have full effect both prospectively, and retrospectively. (**B.S. Vadera v. Union of India**⁵⁷). The Rules framed under Article 309 of the Constitution can be amended only by a rule duly made under Article 309, and not otherwise. (**Ajaya Kumar Das v. State of Orissa**⁵⁸). While the Rules made under the proviso to Article 309 of the Constitution of India shall have effect subject to the provisions of any Act of the State Legislature made under Article 309, the A.P. Education Act, 1982 is not one such.

Even otherwise the Rules made, under the proviso to Article 309 of the Constitution, are legislative in character, and cannot be struck down merely because the Court thinks that they are

⁵⁷ (1968) 3 SCR 575 : AIR 1969 SC 118 : (1970) 1 LLJ 499

⁵⁸ (2011) 11 SCC 136

unreasonable. They can be struck down only on the grounds upon which a legislative measure can be struck down. (**B.S. Vadera**⁵⁷; **B.S. Yadav**⁵⁶; **R.L. Bansal v. Union of India**⁵⁹; **P. Murugesan v. State of T.N.**,⁶⁰). The rules, unless they can be impeached on grounds such as breach of Part III, or any other Constitutional provision, must be enforced, if made by the appropriate authority. (**B.S. Vadera**⁵⁷). The test is whether any restriction is permissible vis-a-vis the legislature. If not, it is equally impermissible in the case of the rule-making authority under the proviso to Article 309. The only test that such a rule has to pass is that of Articles 14 and 16. (**P. Murugesan**⁶⁰). It is only if the 2018 Rules are held ultravires Part III or any other provisions of the Constitution can they be struck down.

It is contended, on behalf of the petitioners, that once power is exercised to make Rules under any enactment (in this case under Sections 78 and 99 of the A.P. Education Act, 1982), the rule making power under the proviso to Article 309 of the Constitution of India, is not available to the State; and non-compliance with the procedural requirements of Section 99(3) of the A.P. Education Act would render the 2018 Rules illegal, and liable to be struck-down.

Even if we were to proceed on such a premise, (which we make it clear we find it difficult to agree with), the 2018 Rules notified in G.O.Ms.No.16 dated 06.06.2018 traces the source of its power to make Rules to Sections 78 and 99 of the A.P. Education Act, besides the proviso to Article 309 of the Constitution of India. Section 78 of the A.P. Education Act relates to the constitution of

⁵⁹ 1992 Supp (2) SCC 318

⁶⁰ (1993) 2 SCC 340

an educational service and under sub-section (1) thereof, notwithstanding anything in the A.P. Education Act or the Rules made thereunder, the Government may, by notification, constitute any officer or class of officers or any teacher or class of teachers, appointed or deemed to be appointed under the A.P. Education Act, into an educational service for the State. Section 2(31) of the said Act defines 'notification' to mean a notification published in the State Gazette, and the word 'notified' to be construed accordingly. Section 99 is the Rule making power of the State. Section 99(1)(a) stipulates that the Government may, by notification, make rules to carry out all or any of the purposes of the A.P. Education Act.

Section 99(3) of the A.P. Education Act requires every Rule made under the A.P. Education Act, immediately after it is made, to be laid before each House of the State Legislature if it is in Session, and, if it is not in Session, in the Session immediately following, for a total period of 14 days which may be comprised in one Session or in two successive Sessions; and if, before expiration of the Session in which it is so laid, or the Session immediately following, both Houses agree in making any modification in the Rule, or in the annulment of the Rule, the Rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be; however, any such modification or annulment, shall be without prejudice to the validity of anything previously done under that Rule.

Section 99(3) is applicable to the 2018 Rules also and, as a result, these Rules should, immediately after it is issued, be laid

before each House of the State Legislature if it is in Session. The earlier session of the Telangana State Legislature concluded on 24.03.2018 when the House was adjourned sine-die. Thereafter no session of the Telangana State Legislature has been convened so far. The 2018 Rules were made and notified in G.O.Ms. No.16 on 06.06.2018, and was published in the Telangana State Gazette on 14.06.2018. After the Rules were made on 06.06.2018, no Session of either House of the Telangana State Legislature has been convened till date. As the State Legislature is not in Session, the requirement of Section 99(3) of the A.P. Education Act, for the rules to be laid before each House of the State Legislature, is incapable of compliance till the next Session of each House of the Telangana State Legislature is convened.

As is evident, from Section 99(1)(a) of the A.P. Education Act, the Rules made thereunder would come into force from the date of its publication in the State Gazette. Since the 2018 Rules were published in the Telangana State Gazette on 14.06.2018, they came into force from that day. The Rules are valid from the date on which they are made. Non-compliance with the laying clause, in Section 99(3) of the A.P. Education Act, does not affect the validity of the Rule or make it void, as it cannot be regarded as mandatory. (**K.T. Plantation (P) Ltd. v. State of Karnataka**⁶¹). When a statute requires the Rules to be placed before the State Legislature, it is the obligation of the State to place the same before the House at the earliest. However, the omission to comply with it would not affect the validity of the Rules and their coming into force. (**K.T. Plantation (P) Ltd.**⁶¹; **Quarry Owners' Assn. v. State**

⁶¹ (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414

of Bihar⁶²). The legislature never intended that non-compliance with the requirement of laying, as envisaged by Section 99(3), should render the Rules void. Consequently non-laying of the Rules before the House, or both Houses of the Legislature, cannot result in nullification of the Rules. (**Atlas Cycle Industries Ltd. v. State of Haryana**⁶³; **Craies on Statute Law**; **Jan Mohammad Noor Mohammad Bagban v. State of Gujarat**⁶⁴; **Narendra Kumar v. Union of India**⁶⁵). The answer to the question, whether laying of the Rules before the Legislature is mandatory or directory, or whether laying is a condition precedent to their operation, or can be neglected without prejudice to the effect of the Rules, would depend on the facts and circumstances of each case, or the wording of the Statute under which the Rules are made. (**State of M.P. v. S.K. Dubey**⁶⁶).

Craies on Statute Law refers to three kinds of laying — (i) **laying without further procedure**; (ii) **laying subject to negative resolution**; and (iii) **laying subject to affirmative resolution**. The laying referred to in sub-section (3) of Section 99 is of the second category because it contemplates that the Rule would have effect unless modified or annulled by the House of legislature. (**Hukam Chand v. Union of India**⁶⁷; **S.K. Dubey**⁶⁶). Even if Section 99(3), by reason of the failure to place the Rules before the Legislature, is presumed to have been violated, the said provision, having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. (**Jan Mohammed Noor**

⁶² (2000) 8 SCC 655

⁶³ AIR 1972 SC 121

⁶⁴ AIR 1966 SC 385

⁶⁵ AIR 1960 SC 430

⁶⁶ (2012) 4 SCC 578

⁶⁷ (1972) 2 SCC 601

Mohammed Bagban⁶⁴). The laying of the Rules before the legislature, under Section 99(3), is merely directory, and not mandatory. Even if the Rules are not laid before the House at all, even then non-compliance with the requirement of laying the Rules before the legislature, would not be a ground to declare the Rules, framed under the Statute, ultra vires and invalid. (**Veneet Agrawal v. Union of India**⁶⁸; **Jan Mohammad Noor Mohammad Bagban**⁶⁴; **Atlas Cycle Industries Ltd.**⁶³; **Hukam Chand**⁶⁷; **Bank of India v. O.P. Swarnakar**⁶⁹; and **Prohibition & Excise Suptd., A.P. v. Toddy Tappers Coop. Society**⁷⁰). Where a statutory provision is directory, Courts would not interfere to compel the performance or punish breach of the duty created by such provision, and disobedience of such a provision would not entail any invalidity (**Craies on Statute Law, Seventh Edn., at p. 229; Tulsiram Patel**²⁵).

The contention that the 2018 Rules require approval of the State Legislature, before it would come into force, is not supported by the plain language of Section 99(3) of the A.P. Education Act. As noted hereinabove, the requirement of Section 99(3) is for the Rules to be laid before both the Houses of the State Legislature for a total period of 14 days in the session immediately following the date on which the Rules were notified. The State Legislature has the power either to annul or to modify the Rules laid before it. Such annulment or modification is required to be notified in the State Gazette and, on its being so notified, the Rules shall either cease to exist if they are annulled, or operate in its modified form if

⁶⁸ (2007) 13 SCC 116

⁶⁹ (2003) 2 SCC 721

⁷⁰ (2003) 12 SCC 738

they are modified. It is evident from Section 99(3) that laying of the Rules, before each House of the State Legislature, is not a pre-condition for the Rules to come into force, as even after the Rules are so placed, and are even annulled or modified, the modification or annulment (after it is notified in the State Gazette) would not invalidate anything previously done under the Rules. Consequently any action taken under the 2018 Rules, after its notification in the Telangana State Gazette on 14.06.2018, till it is modified or annulled by the State Legislature, would remain valid. It is evident, therefore, that the 2018 Rules, which came into force on its publication in the Telangana State Gazette on 14.06.2018, need not await the approval of the State Legislature, on its being laid before it, for it to come into force.

Reliance placed, on behalf of the petitioners, on **Union of India v. National Hydroelectric Power Corporation Ltd**⁷¹, is misplaced. Section 16 of the Water (Prevention and control of Pollution) Cess Act, 1977, which fell for consideration in **National Hydroelectric Power Corpn. Ltd.**⁷¹, read as follows:

“16. Power to amend Schedule I.—(1) The Central Government may, by notification in the Official Gazette, add to Schedule I any industry having regard to the consumption of water in the carrying on of such industry and the consequent discharge thereof resulting in pollution of any stream and thereupon Schedule I shall, subject to the provisions of sub-section (2), be deemed to be amended accordingly.

(2) Every such notification shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its reassembly and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People, and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.”

While Section 16 (1) gave power to the Central Government to add to Schedule I any industry, the procedure which was to be

⁷¹ (2001) 6 SCC 307

followed was provided by sub-section (2). It is in this context that the Supreme Court observed: -

“When a notification is issued with a view to making an addition to Schedule I, the same is required to be laid before each House of Parliament if it is sitting and if Parliament is not in session then a time-limit of seven days is prescribed from the reassembly of Parliament within which the notification must be so placed. **Sub-section (2) further requires that after the notification has been so placed, then within fifteen days of the placing of the notification, the Central Government has to seek approval of Parliament to the issuance of the notification. Mere perusal of sub-section (2) shows that there has to be a positive act of approval by Parliament to the issuance of the notification before it can be held that Schedule I has been amended. Merely laying the notification before each House of Parliament is not sufficient compliance within the provisions of Section 16(2). There is of course no time-limit within which the Houses of Parliament are required to pass a resolution once the Central Government has sought approval as contemplated by sub-section (2), but in the present case the pleadings disclose that no such approval was in fact sought for.**

During the hearing of the writ petitions before the Himachal Pradesh High Court, an affidavit dated 19-7-1999 was filed by one Dr Jag Ram, Additional Director in the Ministry of Environment and Forests, Government of India. In para 4 of the said affidavit, he states as follows:

That during the course of hearing on 5-7-1999/7-7-1999 before this Hon'ble Court reference was made to the averments made in para 5 of the aforementioned affidavit (dated 9-12-1998) by this respondent. In this connection, this respondent submits that the requisite records and bulletins of Parliament have been further examined. It was found that no resolution relating to the above notification dated 16-4-1993, had been moved.”

We see no reason to disbelieve the correctness of the averment so made in the said affidavit. The averment made is categorical and unequivocal, namely, that no resolution relating to the notification dated 16-4-1993 had been moved in Parliament. **If no resolution had been moved, the question of Parliament giving approval does not arise. Though the first step of placing the notification in each House of Parliament had been taken, subsequent steps leading to passing of the resolution were not even commenced with the moving of the resolution. It is not necessary for us to consider what is the effect of not moving the resolution within the time frame of 15 days as prescribed by sub-section (2) as the present case is not where there has been a delay in moving the resolution. There has been in fact a non-compliance with the said requirement. With resolution not having been moved at all, it cannot be held that there was a valid amendment of Schedule I to the Act.** The High Court, in our opinion, was, therefore, right in coming to the conclusion that this levy and the purported realisation of the cess was not in accordance with law.....” (emphasis supplied)

As noted hereinabove, there are three different kinds of requirements of laying. In **National Hydroelectric Power Corp'n. Ltd.**⁷¹, on which reliance is placed on behalf of the petitioners, the notification required approval of Parliament for it to come into force. It is in this context that the Supreme Court held that, since the Rules have not even been laid before the House, the question of

its according approval did not arise; and, consequently, no action could be taken thereunder.

Section 99(3) of the A.P. Education Act does not require prior approval of the State Legislature. It falls in the second category of laying before the House, and it is only if the State Legislature either annuls or modifies the Rules would the Rules, after the modification or annulment is published in the Telangana State Gazette, operate in its modified form, or cease to remain in force on its annulment. Unlike in the present case where the laying requirement, under Section 99(3) of the A.P. Education Act is laying subject to negative resolution, in **National Hydroelectric Power Corpn. Ltd.**⁷¹, the laying was of the third kind i.e laying subject to affirmation and, consequently, failure to lay the notification before Parliament was held to violate the laying requirement under Section 16(2) of the 1977 Cess Act.

As the next Session of either of the Houses of the Telangana State Legislature, after the 2018 Rules were notified in the Telangana State Gazette on 14.06.2018, has not even been convened till date, the question of the 2018 Rules being laid before either of the Houses, of the Telangana State Legislature, does not arise. The contention that the 2018 Rules are liable to be struck down, for procedural violation of Section 99(3) of the A.P. Education Act, 1982, is therefore not tenable.

VII. IS RULE 2 OF THE 2018 RULES A COLOURABLE LEGISLATION?

It is contended, on behalf of the petitioners, that the Learned Additional Advocate General, in all his fairness, had submitted that Rule 2 of the 2018 Rules was made keeping in mind their intention of integrating the services of government teachers and

Zilla Parishad Teachers; and this is, evidently, a colourable legislation.

It does appear that the intent, behind prescription of the erstwhile ten Districts as an unit of transfer, is to give effect to Para 3 (2A) of the Presidential Order; and to integrate teachers working in Government schools, and local body schools, into one common cadre, in terms of the 2017 amendment to the Presidential Order as notified on 23.06.2017 at a later date.

The doctrine of colourable legislation does not involve any question of bona fides or mala-fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power. (**Gajapati Narayan Deo v. State of Orissa**⁷²; **P. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition**⁷³). When a court says that a particular legislation is a colourable one, it means that the legislature has transgressed its legislative powers in a covert or indirect manner. It adopts a device to outstep the limits of its power. (**P. Vajravelu Mudaliar**⁷³).

Transgression by the legislature, of the limits of its constitutional power, may be patent, manifest or direct, but it may also be disguised, covert or indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied. (**Gajapati Narayan Deo**⁷²; **P. Vajravelu Mudaliar**⁷³). The

⁷² 1954 SCR 1

⁷³ (1965) 1 SCR 614 : AIR 1965 SC 1017

legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the Constitution. The legislature cannot overstep the field of its competency, directly or indirectly. The court will scrutinize the law to ascertain whether the legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant. (**Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation**⁷⁴; **P. Vajravelu Mudaliar**⁷³).

The contention, urged on behalf of the petitioners, is that, when power is exercised under Sections 78 and 99 of the A.P. Education Act to make Rules, the power, under the proviso to Article 309, cannot be exercised. It is not even contended, on behalf of the petitioners, that the Government lacks legislative competence to make Rules, under Sections 78 and 99 of the A.P. Education Act, providing for transfer of teachers.

The bonafides of the Government, in making the 2018 Rules, is irrelevant in examining whether or not the Rules so made is a colourable legislation. It is the competence of the Rule making authority to make the Rules which is relevant. As it is evident that the State Government has the power to make the 2018 Rules, the contention, that these rules are a colourable piece of legislation, necessitates rejection.

⁷⁴ 1959 Suppl. (1) SCR 319

VIII. HAS THE 2018 RULES SUPERSEDED THE EARLIER ADHOC RULES NOTIFIED IN G.O.MS.NOS.10 AND 12 DATED 23.01.2009?

It is contended, on behalf of the petitioners, that the petitioners are employees of local bodies; their conditions of service may not be capable of being governed by the Rules issued under the proviso to Article 309 of the Constitution of India; Rule 8 of the Rules, notified in G.O.Ms. No.10 dated 23.01.2009 which are applicable to Zilla Parishad schools, prescribes a Revenue District as a unit of transfer; likewise the Rules, notified in G.O.Ms. No.12 dated 23.01.2009, are applicable to local body schools only; Rule 2 of the 2018 Rules, which prescribes the erstwhile ten districts as a unit of transfer, falls foul of the earlier rules which are still in force; the 2018 Rules have only superseded the transfer rules notified in G.O.Ms. No.15 dated 26.01.2009, and not the rules notified in G.O.Ms. Nos.10 and 12 dated 23.01.2009; the rules, in G.O.Ms. Nos.10 and 12, relate to aspects other than transfer also; consequently, these Rules cannot be presumed to have been superseded; there cannot be different units in different sets of Rules, one for promotion and seniority, and the other for transfer; as the Rules, notified in G.O.Ms. Nos.10 and 12 dated 23.01.2009, prescribe the Revenue District as a Unit, the existing 31 Revenue Districts constitute a unit not only for promotion and seniority, but also for transfer; even if these rules, to the extent it provided for transfer, are presumed to have been superseded by the 2018 Rules, and as the impugned Rules do not provide for promotion and seniority, the rules in G.O.Ms. Nos.10 and 12 dated 23.01.2009 would continue to govern promotion and seniority of local body teachers; and the action of the respondents, in applying

the Presidential Order even for transfer of teachers in local body schools, is ultravires Article 371-D of the Constitution of India, and the Presidential Order.

As reliance is placed on G.O.Ms.Nos.10 and 12 dated 23.01.2009, on behalf of the petitioners, it is necessary to refer to the said Rules to the extent they are relevant to the cases on hand. G.O.Ms.No.10 dated 23.01.2009 are the adhoc Rules applicable to the posts of Head Masters Grade-II (Gazetted) in Zilla Praja Parishad Schools. Rule 2 of these Rules prescribes the method of appointment as recruitment by transfer from Class I of the A.P. School Educational Subordinate Service of Zilla Praja Parishad Schools, and the appointing authority as the Regional Joint Director of School Education of the Zone concerned. Rule 8 prescribes the unit of appointment and thereunder, for the purpose of appointment, seniority, discharge for want of vacancy, transfer and reappointment, the unit shall be the Revenue District concerned, except Hyderabad.

G.O.Ms.No.12 dated 23.01.2009 are the adhoc Rules applicable to the posts of teachers in Mandal Praja Parishad and Zilla Praja Parishad Schools. Rule 2, thereunder, prescribes the method of appointment and the appointing authority. For the post of School Assistant, Secondary Grade Teacher, Elementary Grade Teacher/Higher Grade Teacher, Language Pandit etc the appointing authority is the District Educational Officer. Rule 9 of the said Rules relates to the unit of appointment and thereunder, for the purpose of recruitment, appointment, seniority, discharge for want of vacancy, promotion, transfer and reappointment, the

unit of appointment shall be the Revenue District concerned, except the city of Hyderabad.

It is necessary to note that the adhoc rules, notified in G.O.Ms. Nos.10 and 12 dated 23.01.2009, were made in the exercise of the powers conferred by Sections 78 and 99 of the Andhra Pradesh Education Act, 1982, and the proviso to Article 309 of the Constitution of India, and in supercession of the adhoc Rules issued in G.O.Ms.No.182 and 183 dated 30.12.2008. The 2018 Rules were also made in the exercise of the powers conferred by Sections 78 and 99 of the Telangana Education Act, 1982 and under Article 309 of the Constitution of India, and in supercession of all earlier Rules and Guidelines on transfer of teachers. As the 2018 Rules have superseded all the earlier rules and guidelines, and as these Rules relate only to transfers, the corresponding Rules relating to transfers, in the earlier adhoc Rules notified in G.O.Ms.Nos.10 and 12 dated 23.01.2009, have also been superseded. Reliance placed by the petitioners on the 2009 adhoc Rules is, therefore, misplaced.

We also find no merit in the submission, urged on behalf of the petitioners, that the 2018 Rules supersede only the Rules notified in G.O.Ms.No.15 dated 26.01.2009. The Rules notified in G.O.Ms.No.15 dated 26.01.2009 are titled as ***“the Andhra Pradesh Teachers (General Promotions and Regulation of Transfers) Rules, 2009”***, and relate to promotions and transfers in the categories of Head Masters Grade-II Gazetted, School Assistants and SGTs and their equivalent categories in the A.P. School Educational Service Rules, and the A.P. School Educational Subordinate Service Rules working in Government Schools, ZPP and MPP Schools in the

State. As the Rules, notified in G.O.Ms.No.15 dated 26.01.2009, relate both to promotion and transfer, the contention that they are applicable only to transfers and, consequently, it is only these rules which are superseded by the 2018 Rules, which are also applicable only to transfers, is not tenable. The 2018 Rules, notified in G.O.Ms.No.16 dated 06.06.2018, has, by the use of the words *“in supersession of all the earlier rules and guidelines on transfer of teachers”* made it clear that all the earlier Rules, on transfer of teachers, stand superseded by the 2018 Rules, be it the Rules notified in G.O.Ms.No.15 dated 26.01.2009 or the rules notified in G.O.Ms.Nos.10 and 12 dated 23.01.2009. In the absence of a specific reference only to G.O.Ms.No.15 dated 26.01.2009, in the 2018 Rules notified in G.O.Ms.No.16 dated 06.06.2018, the submission that the 2018 rules have superseded only the Rules notified in G.O.Ms.No.15 dated 26.01.2009 does not merit acceptance.

It is true that, consequent on the 2018 Rules being made and notified in G.O.Ms. No.16 dated 06.06.2018, and as it only supersedes all earlier rules relating to transfers, the Rules notified in G.O.Ms. Nos.10 and 12 both dated 23.01.2009, in so far as it relates to promotion and seniority, would still remain in force; and, since they prescribe the Revenue District as a unit for promotion and seniority, it does appear that the present 31 Districts would be the unit for promotion and seniority unless the State Government amends the Rules notified in G.O.Ms. Nos.10 and 12 dated 23.01.2009.

While Rule 8, of the Rules notified in G.O.Ms. No.10 dated 23.01.2009, stipulates that, for the purpose of appointment,

seniority, discharge, transfer and re-appointment, the unit of appointment shall be the Revenue District and Rule 9, of the Rules notified in G.O.Ms. No.12 dated 23.01.2009, stipulates that, for the purpose of recruitment, appointment, seniority, discharge, promotion, transfer and re-appointment, the unit of appointment shall be the Revenue District, it must be borne in mind that these Rules were made in January, 2009 nearly eight years prior to the formation of the 31 Districts on 11.10.2016. During the relevant time the Revenue Districts, and the Districts notified as a local cadre for certain posts and as a local area for certain other posts, were the same i.e., the erstwhile ten Districts of the present State of Telangana.

It is no doubt true that in the light of the 2018 Rules, which prescribes the erstwhile ten Districts as a unit of transfer, there would be an incongruity between the 2018 Rules and the Rules notified in G.O.Ms. Nos.10 and 12 dated 23.01.2009 since, in the absence of any amendment to the 2009 Rules, a Revenue District would be the unit for seniority, promotion etc. The fact, however, remains that, even if the 2018 Rules had not been made, there would still have been an incongruity, since the Presidential Order requires recruitment, even to local body schools, to be made within a local area which is within one of the ten Districts referred to in the Presidential Order. As the Presidential Order has overriding effect over all other laws in force, notwithstanding the Rules in G.O.Ms.Nos.10 and 12 dated 23.01.2009 as it now applies to the present 31 Districts, the erstwhile ten Districts are still required to be treated as the unit for recruitment; and consequently, while the erstwhile ten Districts would continue to remain the unit for

recruitment, the present 31 Revenue Districts would be the unit for seniority, promotion etc. It is not as if striking down the 2018 Rules would put an end to this incongruity which has arisen because the Presidential Order has not been so amended as to recognise the formation of the present 31 Districts in the State of Telangana.

IX. ARE THE RULES NOTIFIED IN G.O.MS.NO.278 DATED 20.06.1983, MADE UNDER THE 1959 ACT AND THE PROVISO TO ARTICLE 309, STILL IN FORCE, AND IS THE 2018 RULES CONTRARY THERETO?

It is contended, on behalf of the petitioners, that, in the light of the law declared by the Division Bench in **M. Kesavulu**¹, the Rules made in G.O.Ms.No.278 dated 20.06.1983 would continue to govern, notwithstanding anything to the contrary in the 2018 Rules made and notified in G.O.Ms.No.16 dated 06.06.2018, since the earlier Rules made under the A.P. Panchayat Raj Act have not been specifically superseded by the 2018 Rules. Rule 4 in Part II of the Rules notified in G.O.Ms.No.278 dated 20.06.1983 is in conflict with the 2018 Rules; the erstwhile District Development Officer is now the Chief Executive Officer in Zilla Praja Parishads; and since 31 districts have now come into existence, it is the Chief Executive Officer of the Zilla Praja Parishads, in each of the newly constituted 31 Districts, who, on a conjoint reading of Rule 4 and Rule 11, alone have the power to transfer teachers in MPP and ZPP Schools.

Learned Additional Advocate-General would submit that the contention that the Rules, notified vide G.O.Ms.No.278 dated 20.6.1983, would apply as, in **M. Kesavulu**¹, this Court had set aside G.O.Ms.No.505, dated 11.11.1998 and G.O.Ms.No.538, dated 26.11.1998 on the ground that the earlier rules in

G.O.Ms.No.278 would still prevail, is also without substance; subsequent to order passed in **M. Kesavulu**¹, the Supreme Court, in Civil Appeal Nos. 4886-4091/2009 and batch, after taking note of the fact that recruitment to local authorities, Panchayat Samithis and Zilla Parishads were undertaken in compliance with Para.8 of the Presidential Order, granted liberty to the State Government to send proposal to the Union of India for obtaining approval of the President to integrate teachers of Panchayat Samithis and Zilla Parishads, who are also Government Servants, with the existing local cadres of teachers; the erstwhile District Development Officer has been re-designated as the Chief Executive Officer, and he was the Appointing Authority and Disciplinary Authority in respect of local body teachers; the District Development Officer was functioning as the Appointing Authority and Disciplinary Authority upto 1998, and not thereafter; even after G.O.Ms.No.505 dated 11.11.1998 and G.O.Ms.No.538 dated 26.11.1998 were set aside, by this Court in **M. Kesavulu**¹, the District Educational Officers of the respective districts have been acting as the Appointing and Disciplinary Authorities; and all appointments right from 1998 onwards are made by the District Educational Officers in Schools which belong to local bodies.

In **M. Kesavulu**¹ the Division Bench, relying on the judgments of the Supreme Court in **A.B. Krishna v. State of Karnataka**⁷⁵ and **Chandra Prakash Tiwari v. Shakuntala Shukla**⁷⁶, observed that the Rules in G.O.Ms.No.278, made under the Panchayat Raj Act, cannot be said to have been superseded by the subsequent rules made under Article 309 of the Constitution of

⁷⁵ AIR 1998 SC 1050

⁷⁶ AIR 2002 SC 2322

India; the Government had been issuing orders, regulating service conditions of teachers from time to time, by virtue of the provisions contained in Sections 51 and 69 of A.P. Panchayat Samithis and Zilla Parishads Act, 1959 (for short the “1959 Act”), finally repealed by the A.P. Panchayat Raj Act, 1994; under the said rules, notified in G.O.Ms.No.278 dated 20.06.1983, part “II” was specifically framed in respect of employees including teachers in Panchayat Samithis and Zilla Parishads, and Part I specifically dealt with teachers and teaching staff working in Government schools; as the Government had already framed Rules, for teachers working in Panchayat Raj Institutions, the question that arose for consideration was whether the Government could issue G.O. Ms. No.538 by virtue of the power conferred under Sections 78 and 99 of A.P. Education Act, and by virtue of the proviso to Article 309 of the Constitution of India in respect of the same service; and in effect the submission was when Rules were framed under the Panchayat Raj Act, the said Rules occupy the field, and the Rules framed under the proviso to Article 309 cannot be said to override the earlier Rules unless they are specifically repealed.

The Division bench, in **M. Kesavulu**¹, expressed its inability to disagree with this submission in view of the decisions of the Supreme Court in **A.B. Krishna**⁷⁵ and **Chandra Prakash Tiwari**⁷⁶, and accordingly held that it was incompetent for the Government to issue the Rules in G.O. Ms. No.538. The Division bench observed that the finding recorded by the Tribunal, that the rules in G.O. Ms. No.278, dated 2.6.1983 treating teachers in Government Schools as one unit and teachers working in Panchayat Raj bodies as a separate unit, did not conform to the

scheme of localisation in G.O. Ms. No.529 dated 14.5.1976, was unwarranted; in the O.As. the challenge was not to G.O. Ms. No.278 but to G.O. Ms. Nos.538 and 505 only; and, hence, the said finding was being set aside.

The law declared by the Supreme Court, in **A.B. Krishna**⁷⁵ and **Chandra Prakash Tiwari**⁷⁶, is that the rule-making authority, under the proviso to Article 309 of the Constitution and an Act is the same, namely, the Government (to be precise, the Governor under Article 309, and the Government under the relevant statutory provision), but the two jurisdictions are different; the power under Article 309 cannot be exercised by the Governor, if the Legislature has already made a law, and the field is occupied; in that situation, Rules can be made under the law so made by the Legislature, and not under Article 309 of the Constitution; the Rules, made in exercise of the rule-making power given under an Act, constitute delegated or subordinate legislation; but the rules under Article 309 cannot be treated to fall in that category; and therefore, on the principle of "occupied field", the Rules under Article 309 cannot supersede the rules made by the Legislature.

Rule 4 of the Rules notified in G.O.Ms.No.278 dated 20.06.1983 (i.e the 1983 Rules), related to the conditions of service in various categories of teachers in Mandal Praja Parishads and Zilla Praja Parishads, and prescribed the appointing authority. Thereunder, the District Development Officer is the appointing authority for the posts of Headmasters/Headmistresses, School Assistants and Grade-I Pandits in respect of Zilla Praja Parishads Schools and Mandal Praja Parishad Schools, and all other categories in Zilla Praja Parishad Schools. Rule 11, in Part II of

the 1983 Rules, relates to transfers and postings; and, thereunder, transfers and postings of all members shall be made by the appointing authority subject to the prior approval in writing of the Chairman, Zilla Praja Parishad or the President, Mandal Praja Parishad as the case may be.

The attention of the Division Bench, in **M. Kesavulu**¹, does not appear to have been drawn to the fact that the 1983 Rules were also made in the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, besides the Rule making power conferred under the 1959 Act. As the 1983 Rules were also made in the exercise of powers conferred under the proviso to Article 309 of the Constitution of India, it can always be superseded by Rules subsequently made under Article 309 of the Constitution of India.

In **A.B. Krishna**⁷⁵ and **Chandra Prakash Tiwari**⁷⁶, (both two judge bench judgments of the Supreme Court) the attention of the Supreme Court was not drawn to the earlier Constitution bench judgments in **B.S. Vadera**⁵⁷ and **B.S. Yadav**⁵⁶. In **B.S. Vadera**⁵⁷, a Constitution bench of the Supreme Court held that, if an appropriate legislature has passed an Act under Article 309, the rules framed under the proviso to Article 309 will have effect subject to that Act; in the absence of any Act of the appropriate Legislature on the matter (i.e an Act under Article 309 of the Constitution of India), the rules made under the proviso to Article 309 would have effect; and such rules, unless they can be impeached on grounds such as breach of Part III or any other constitutional provision, must be enforced.

In **B.S. Yadav**⁵⁶, a Constitution bench of the Supreme Court observed that the Governor possessed legislative power under the Constitution; by Article 168 the Governor of a State was a part of the legislature of the State; the most obvious exercise of legislative power by the Governor was the power given to him by Article 213 to promulgate ordinances when the legislature was not in session; under Article 213, the Governor exercised power of the same kind which the legislature normally exercises i.e., the power to make laws; the heading of Chapter IV of Part VI of the Constitution, in which Article 213 occurs, is “*legislative power of the Governor*”; the power of the Governor, under the proviso to Article 309 to make appropriate rules, was of the same kind; it was a legislative power; under Article 213, the Governor substitutes for the legislature because the legislature is in recess; and under the proviso to Article 309, the Governor substitutes for the legislature because the legislature has not yet exercised its power to pass an appropriate law on the subject.

Following the Constitution bench judgments in **B.S. Vadera**⁵⁷ and **B.S. Yadav**⁵⁶, a three judge bench of the Supreme Court, in **P. Murugesan**⁶⁰, observed that, in **B.S. Vadera**⁵⁷, the power of rule making under the proviso to Article 309 of the Constitution has been held to be legislative in character; if so, the test is whether a restrictive view is permissible vis-à-vis a legislature; if not, it is equally impermissible in the case of the rule making authority under the proviso to Article 309; and the only test that such a rule had to pass was that of Articles 14 and 16 of the Constitution.

It is not in dispute that no Act has been made by the State Legislature under Article 309 of the Constitution of India. In the absence of any legislation under Article 309, the Rules made by the Governor, under the proviso to Article 309, would govern; such Rules are legislative in character; the validity of any enactment can only be questioned for violation of any Constitutional provisions, including for violation of the petitioners fundamental rights under Part III thereof; consequently the validity of the 2018 Rules, notified in G.O.Ms. No.16 dated 06.06.2018, made in exercise of the powers conferred under the proviso to Article 309, cannot be questioned on the ground that it is contrary to the Rules made under the 1959 Act which, in any event, has since been repealed.

In the hierarchical set up of our Courts, the High Court is bound by the decisions of the Supreme Court. (**Sakinala Harinath v. State of A.P.**⁷⁷). However, in order to guard against the possibility of inconsistent decisions on points of law, by different Division Benches, a rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. (**Union of India v. Raghubir Singh**⁷⁸; **Sakinala Harinath**⁷⁷). If, however, the view expressed by two different Division Benches cannot be reconciled, the pronouncement of a Division Bench of a larger number of Judges should be preferred over the decision of a Division Bench of a smaller number of Judges. (**Mattulal v. Radhelal**⁷⁹; **Sakinala**

⁷⁷ 1993 (6) SLR 1

⁷⁸ AIR 1989 SC 1933

⁷⁹ AIR 1974 SC 1596

Harinath⁷⁷). When a smaller Bench of the Supreme Court lays down a proposition contrary to, and without noticing, the ratio decidendi of the earlier larger Benches, such a decision would not become the law declared by the Supreme Court so as to have a binding effect, under Article 141 of the Constitution, on all the Courts within the country. (**Sakinala Harinath**⁷⁷).

As the law declared by the Constitution bench of the Supreme Court in **B.S. Vadera**⁵⁷ and **B.S. Yadav**⁵⁶, and the three judge bench of the Supreme Court in **P. Murugesan**⁶⁰, binds us, and as these judgments were not noticed in the smaller bench judgment of the Supreme Court (i.e two Judges) in **A.B. Krishna**⁷⁵ and **Chandra Prakash Tiwari**⁷⁶, reliance placed, on the judgments in **A.B. Krishna**⁷⁵ and **Chandra Prakash Tiwari**⁷⁶, by petitioners herein, is of no avail.

Section 3 of the A.P. Reorganisation Act, 2014, refers to the erstwhile 10 Districts of the State of Telangana as forming the Telangana State. Section 3(1) of the Telangana District (Formation) Act, 1974 (hereinafter called the “1974 Act”) enables the Government, by notification, from to time for the purposes of revenue administration, to divide the State into such districts, with such limits as may be specified therein; and each district shall consist of such revenue divisions, and each revenue division shall consist of such mandals, and each mandal shall consist of such villages. By Act 1 of 2017, the Telangana Districts (Formation) Act, 1974 was amended, and the amendments came into force with retrospective effect from 02.06.2014. By Act 1 of 2017, sub-section (7) was inserted after Section 3(6). Section 3(7) stipulates that, notwithstanding anything contained in sub-section (5), the

Government may issue notification, under sub-section (1), to form a new District, Revenue Division, Mandal, Village in variance to the proposals notified under Section 3(5).

In the exercise of the powers conferred under Section 3 of the Telangana Districts (Formation) Act, 1974 (for short the “1974 Act”), the Governor of Telangana, in the interests of better administration and development of the area concerned, after taking into consideration the objections and suggestions received from various people and public representatives, and by altering the boundaries of existing Districts and its Revenue Divisions and Mandals and Villages, notified the new Districts, the Revenue Divisions, the mandals and Villages as specified in the Schedules with effect from 11.10.2016 which was notified in G.O.Ms.No.249 dated 11.10.2016. Schedule-I to the said notification refers to the 31 new districts.

It is clear from Section 3(1) of the 1974 Act that the division of the State into districts is for the purposes of revenue administration. Prior to the notification issued in G.O.Ms.No.249 dated 11.10.2016, the State of Telangana had only 10 districts which were the very same 10 districts as detailed in the 1975 Presidential Order. The 2009 Rules, notified in G.O.Ms.Nos.10 and 12 dated 23.01.2009, were made long before G.O.Ms.No.249 dated 11.10.2016 came into force, and reference to the Revenue districts therein was in the context of the erstwhile 10 districts in the present State of Telangana.

Even if we were to presume that the District Development Officer (now the Chief Executive Officer of the Zilla Praja Parishad) is the competent authority, the notification in G.O.Ms.No.249

dated 11.10.2016 itself records that the formation of new Districts, Revenue Divisions, Mandals and Villages would not have any effect on the existing elected bodies of Zilla Parishads, Mandal Parishads and Gram Panchayats; and their jurisdiction would continue over the areas covered by the existing districts, as specified in Section 3 of the Andhra Pradesh Reorganisation Act, 2014 till new Zilla Parishads, Mandal Parishads and Gram Panchayats are constituted in accordance with law.

In the light of G.O.Ms.No.249 dated 11.10.2016, the Zilla Parishads existing as on 02.06.2014 would continue to exercise jurisdiction over the areas covered by the erstwhile 10 districts, till new Zilla Parishads, Mandal Parishads and Gram Panchayats are constituted in accordance with law. It is not in dispute that new Zilla Parishads, Mandal Parishads and Gram Panchayats are yet to be constituted, since elections to Panchayat bodies, have not been held after the 31 new districts were formed vide G.O.Ms.No.249 dated 11.10.2016. Consequently, it is the very same erstwhile 10 districts which continue to have 10 Chief Executive Officers of Zilla Parishads; and, even in terms of G.O.Ms.No.278 dated 20.06.1983, it would only be the Chief Executive Officer of the erstwhile 10 districts (Zilla Parishads) who would be the competent authority.

Rule 13 of the 2018 Rules relates to Committees for approving transfers. In terms of Note-IV, below Rule 13(II) of the 2018 Rules, the Committee to approve transfers of teachers in Zilla Parishad/Mandal Praja Parishad Schools is to consist of (a) Chairman of the Zilla Parishad – as the Chairperson; (b) Collector – Vice Chairperson; (c) Joint Collector – Member; (d) Chief Executive Officer, Zilla Parishad – Member; and (e) District Educational

Officer – Member Secretary. It is evident therefore that the Chief Executive Officer of the Zilla Parishad is involved in the decision making process of approving transfer of teachers in ZPP and MPP High Schools in the said district. In terms of the Note below, transfer posting orders are to be issued to all teachers only after approval of the Committee.

Section 97 of the A.P. Mandal Praja Parishads, Zilla Praja Parishads and Zilla Abhivrudhi Sameeksha Mandals Act, 1986 (hereinafter called the ‘1986 Act’) relates to repeals and savings of Act 35 of 1959. Section 97(1) repealed the A.P. Panchayat Samithis and Zilla Parishads Act, 1959 (i.e. Act 35 of 1959). Section 97(2) stipulated that, on such repeal, the provisions of Sections 8 and 18 of the A.P. General Clauses Act, 1891, would apply. Section 276 of the A.P. Panchayat Raj Act, 1994 (hereinafter called the “1994 Act”) relates to repeals and savings and, under sub-section (1)(ii) thereof, the A.P. Mandal Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abhivrudhi Sameeksha Mandals Act, 1986 was repealed. Section 276(2) of the 1994 Act stipulated that, on such repeal, the provisions of Sections 8 and 18 of the A.P. General Clauses Act, 1891 shall apply.

Section 8 the A.P. General Clauses Act, 1891 relates to the effect of repealing an Act and thereunder, where any Act repeals any other enactment, then the repeal shall not (a) affect anything done or any proceedings begun before the commencement of the repealing Act, (c) affect the previous operation of any enactment so repealed or anything duly done or suffered any enactment so repealed; or (d) affect any right, privilege, obligation or liability

acquired, accrued or incurred under any enactment so repealed etc. Section 18 relates to situations where an Act repeals and re-enacts, with or without modification, all or any of the provisions of a former Act. This provision has no application to the present case.

Once an Act is repealed, everything relating to that Act gets extinguished as if that Act never existed on the Statute Book, unless the repealing Act provides otherwise. However, the acts done under the Act are saved under the provisions of the General Clauses Act. In any case, even if there was no General Clauses Act, such acts would be saved. (**State of Punjab v. Mohar Singh**⁸⁰; **Duroflex Coir Industries Ltd. v. Assistant Commissioner (Assessment) of Sales Tax**⁸¹; **Abyudaya Educational Society v. Kanumalla Gram Panchayat Rep. by Secretary, Prakasam Dist.**⁸²). Whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the Statute book, except for certain purposes as provided under Section 8 of the A.P. General Clauses Act. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal. (**Dagi Ram Pindi Lall v. Trilok Chand Jain**⁸³; **Gajraj Singh v. STAT**⁸⁴; **Property Owners' Assn. v. State of Maharashtra**⁸⁵; **Mohan Raj v. Dimbeswari Saikia**⁸⁶; **Hirendra Pal Singh**²²).

If the statute, under which the Rules are made, is repealed, the Rules made thereunder are impliedly repealed, and cease to

⁸⁰ AIR 1954 SC 84

⁸¹ 1993 Supp. (1) SCC 568

⁸² 2006 (6) ALD 1 (FB) = 2006 (5) ALT 767

⁸³ AIR 1992 SC 990 = (1992) 2 SCC 13

⁸⁴ AIR 1997 SC 412

⁸⁵ AIR 2001 SC 1668

⁸⁶ AIR 2007 SC 232

have any validity, unless the repealing statute contains some provision preserving the validity of the Rules notwithstanding the repeal. This follows from the rule that when an Act of Parliament (or the Legislature) is repealed it must be considered (except to transactions passed and closed) as if it had never existed. (**Harish Chandra v. State of M.P.**,⁸⁷; **Craies on Statute Law 6th Edn. 334; Abyudaya Educational Society**⁸²). It would follow that any Rule, made under a repealed Statute, ceases to have any validity unless the repealing Act contains some provision preserving the validity of the Rule notwithstanding the repeal. (**Watson v. Winch**⁸⁸; **Harish Chandra**⁸⁷).

As the 1959 Act, under which the Rules notified in G.O.Ms. No.278 dated 20.06.1983 was made, has been repealed, the effect must be that these Rules, which are in the nature of subordinate legislation, must also be held to have been repealed. (**Harish Chandra**⁸⁷). G.O.Ms.No.278 dated 20.06.1983 which was issued under Section 26(3) and (4), Section 51 (3) and (4) and Section 60 of the Andhra Pradesh Panchayat Samithis, Zilla Parishads Act, 1959 would no longer survive consequent upon the repeal of the 1959 Act by the 1986 Act, which in turn has been repealed by the 1994 Act. Reliance placed on G.O.Ms.No.278 dated 20.06.1983 is, therefore, of no avail.

X. DOES ISSUANCE OF G.O.Ms.NO.61 DATED 24.05.2018 RENDER THE 2018 RULES UNNECESSARY?

It is contended, on behalf of the petitioners, that the State Government had issued G.O.Ms. No.61 dated 24.05.2018 lifting the ban on transfers and postings of employees in all public

⁸⁷ (1965) 1 SCR 323 : AIR 1965 SC 932

⁸⁸ (1916) 1 KB 688

services in the State; it was wholly unnecessary for the 2018 Rules, notified in G.O.Ms. No.16 dated 24.05.2018, to be made; and the executive instructions in G.O.Ms. No.61 would have sufficed.

Learned Additional Advocate-General would submit that, availing the special provisions in G.O.Ms.No.61, dt. 24.5.2018, the School Education (Service II) Department issued G.O.Ms.No. 16, dated 06.06.2018 notifying the Telangana Teachers (Regulation of transfers Rules, 2018) in order to facilitate and regulate transfers of Head Masters, Grade II (Gazetted) and Teachers working in Government/ZPP/MPP Schools in terms of G.O.Ms.No.61, Finance Department, dt. 24.5.2018; and the said Rules have been notified in the Telangana Gazette on 14.6.2018.

G.O.Ms.No.61, dated 24.5.2018 makes special provisions with respect to the Education Department, and requires Special Rules to be formulated for effecting transfers. Para VI (a) of G.O.Ms. No.61 dated 24.05.2018 reads thus:

“Based on this transfer policy, Education Department will formulate detailed operational guidelines for transfers of teachers / lecturers”.

While the 2018 Rules have statutory force, as they were made in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India and Sections 78 and 99 of the A.P. Education Act, G.O.Ms.No.61 dated 24.05.2018 are merely in the nature of executive instructions. Executive Instructions can only supplement and not supplant Rules, (**Senior Supdt. of Post Offices v. Izhar Hussain**⁸⁹; **St. Johns Teachers Training**

⁸⁹ (1989) 4 SCC 318

Institute v. Regional Director, NCTE⁹⁰), and cannot be so framed or utilised as to override the provisions of the Rules as it would then destroy the very basis of the rule of law, and strike at the very root of orderly administration of law. (**Mannalal Jain v. State of Assam⁹¹**). It is only when the Rules are silent on any particular point, can the Government fill up the gaps and supplement the rules and issue instructions not inconsistent with the Rules already framed. (**Sant Ram v. State of Rajasthan⁹²**).

As submitted by the Learned Additional Advocate-General, G.O.Ms.No.61 was issued only for a limited duration i.e upto to 15.06.2018 before which Para VI(a) thereof required detailed operational guidelines, for transfer of teachers to be formulated. The Government has, instead of formulating operational guidelines, chosen to frame Rules instead. The question whether the executive instructions, in G.O.Ms.No.61 dated 24.05.2018, would have sufficed, and whether it was necessary to issue the 2018 Rules are wholly irrelevant in considering whether or not the 2018 Rules are constitutionally valid. Whether executive instructions would suffice, or whether Rules should be made, are again matters for the Government to decide, and not the Courts to prescribe. This contention, urged on behalf of the petitioners, does not also merit acceptance.

XI. PUBLICATION OF THE 2018 RULES IN THE STATE GAZETTE:

It is contended on behalf of the petitioners that the 2018 rules cannot be taken to have come into force as they were not notified as required by the said Act (A.P. Education Act); Section

⁹⁰ (2003) 3 SCC 321

⁹¹ AIR 1962 SC 386

⁹² AIR 1967 SC 1910

2(31) of the A.P. Education Act requires Rules to be notified in the Gazettee; and even under Section 15 of the A.P. (Telangana Area General Clause Act 1308 Fasli), the same is the requirement.

This contention does not merit acceptance as the 2018 Rules notified in G.O.Ms.No.16 dated 06.06.2018 were published in the Telangana Gazette on 14.06.2018, copy of which has been enclosed along with the written submissions filed by the Learned Additional Advocate-General.

XII. IS TRANSFER OF SEVERAL EMPLOYEES, JUST PRIOR TO THE 2018 RULES BEING NOTIFIED, A MALAFIDE EXERCISE OF POWER?

It is contended, on behalf of the petitioners, that the respondents had transferred a select few teachers, numbering around 300, within the existing the 31 new Districts, for extraneous considerations, that too by relaxing the ban on transfers, just prior to the issuance of the impugned Rules, to ensure that these 300 posts are not shown in the present transfer counselling; and this action on their part is malafide and is liable to be set aside.

While the documents annexed to the Writ Petition reflect some teachers being transferred within the present 31 Districts, the petitioners allege that such transfers were for extraneous reasons. While transfer of a select few teachers, just on the eve of the 2018 Rules being made and notified on 06.06.2018, does create doubts on the legitimacy of such transfers, it is only if those, who were extended the benefit of such transfers, are arrayed as respondents in the Writ Petition, and are afforded an opportunity of filing their counter-affidavits, can this question be examined.

As elaborate arguments were advanced in these Writ Petitions, on several other issues, we had asked the Learned Senior Counsel and the Learned Counsel for the petitioners, and the Learned Additional Advocate-General appearing on behalf of the respondents, whether these Writ Petitions could be finally disposed of at the stage of admission itself. We had also pointed out that, while the legal contentions urged by Learned Senior Counsel and Learned Counsel on either side could be examined without the respondents being called upon to file their counter-affidavit, this contention, of transfers being effected for extraneous reasons, could only be examined after counter-affidavits are filed by them.

Both Sri S. Ramachander Rao and Sri M. Surender Rao, Learned Senior Counsel, fairly stated that, with a view to enable the Court to finally decide the Writ Petitions even in the absence of counter-affidavits being filed by the respondents, they did not press for an adjudication on this issue. Learned Additional Advocate-General, appearing for the State of Telangana, also agreed that these Writ Petitions could be finally decided even though no counter-affidavit has been filed on behalf of the respondents. We, therefore, refrain from adjudicating the contentions urged under this head. Suffice it to leave these questions open for consideration in independent legal proceedings, if any, instituted by the petitioners herein later.

XIII: OTHER CONTENTIONS:

(A). IS RESORT TO WEB-COUNSELLING, FOR EFFECTING TRANSFERS, ILLEGAL?

It is contended, on behalf of the petitioners, that Rule 2 of the 2018 Rules mandates that transfers shall be made by way of

online/web counselling, though none of the teachers have knowledge of web counselling; if on-line/web counselling is allowed, almost all teachers would be required to opt for more than 3000 schools which is an impossible task; as this on-line/web counselling failed in the State of A.P, it had reverted to off-line counselling; yet the respondents are insisting on web counselling; and their action is arbitrary and illegal.

Regarding the petitioners complaint of lack of knowledge of web counseling, on the basis of which transfers are sought to be effected, it can justifiably be contended that it would be difficult for those, ignorant of its nuances, to exercise their option through this process. Learned Additional Advocate-General would submit that the process of web counseling has been resorted to only with a view to avoid the possibility of officials being influenced, by those who are now subjected to transfer, to transfer them to a place of their choice. It is unnecessary for us to dwell on this issue since difficulties, if any, faced by a section of the teachers would not, by itself, justify the 2018 Rules being struck down. Suffice it to observe that if those, who are unfamiliar with the web counseling process, seek assistance, the State Government should provide them necessary guidance to enable them to exercise their option through the web counseling process. As resort to web counseling cannot, by itself, be said to violate Articles 14 and 16 of the Constitution of India, we find it difficult to agree with the submission, urged on behalf of the petitioners, that resort to the web counseling process, for effecting transfers, is illegal and unconstitutional.

(B). IS FAILURE TO GIVE SPOUSE CASES TOP PRIORITY, IN THE 2018 RULES, FATAL?

It is contended, on behalf of the petitioners, that, while effecting transfers in all departments, spouse cases are being given first priority; strangely, in the impugned rules, instead of giving first priority to spouse cases, the respondents are giving only ten points which is nothing but class discrimination.

While statutory Rules, or Rules made under the proviso to Article 309 of the Constitution of India, can be struck down if it is contrary to the provisions of the Constitution, including Part-III thereof, what the petitioners, in effect, seek from this Court is to include spouse cases as the first priority in the 2018 Rules. It would be wholly impermissible for this Court to undertake any such exercise, since that would not only result in judicial legislation, but would also amount to the Court usurping the Rule making power of the Government regarding which category should be given top priority. These are all matters for the Rule making authority to decide, and not for this Court to impose. It is only if persons similarly situated are treated differently can the plea of discrimination be sustained. Whether spouse cases should be given first priority, or whether such category of teachers should be given 10 points instead, are matters for the Government, in its wisdom, to prescribe and, save violation of Articles 14 and 16 of the Constitution of India, no interference is called for.

(C). ARE PROMOTIONS REQUIRED TO BE MADE BEFORE EFFECTING TRANSFERS?

It is contended, on behalf of the petitioners, that it is the practice in vogue, for the last several years, that, before effecting transfers, promotions are made; as per G.O.Ms. No.32 dated

12.09.2016, the respondents are required to effect promotions every year; the respondents had effected promotions before transfers in 2015; though the petitioners were awaiting promotions for the last three years, and though there are vacancies, the respondents, without giving promotions, are seeking to effect transfers at the cost of students.

No Rule, either under Article 309 of the Constitution of India or under any Statute, has been brought to our notice which obligates the State Government to always make promotions before effecting transfers. The mere fact that such a practice is said to have existed earlier cannot, in the absence of any such statutory obligation on the Government to do so, be said to have violated any of the petitioners rights. This contention is only to be noted to be rejected.

XIV. IS RULE 4 OF THE 2018 RULES, IN MAKING THE DISTRICT EDUCATIONAL OFFICER OF THE ERSTWHILE 10 DISTRICTS, AS THE COMPETENT AUTHORITY, ULTRA-VIRES ARTICLES 14 AND 16 OF THE CONSTITUTION OF INDIA?

It is contended on behalf of teachers, appointed and working in Zilla Parishad schools, that the petitioners cannot be subjected to the control of the erstwhile District Educational Officers; and it is the existing District Educational Officers, of the newly constituted 31 districts, who are alone the competent authority; the DEOs of the erstwhile revenue districts should not have been named as the competent authority for issue of transfer and posting orders; and though the post of District Educational Officers, of the erstwhile ten districts, are not in existence, strangely Rule 4 states that, for effecting transfers, the District Educational Officers of the

erstwhile ten districts shall consult the District Educational Officer of the newly formed 31 districts.

Learned Additional Advocate-General, appearing on behalf of the respondents, would submit that, in the place of the erstwhile District Educational Officers, the Regional Joint Director of School Education will be asked to issue transfer and posting orders duly effecting transfers on the basis of the erstwhile district as a Unit, and management wise.

Rule 4 of the 2018 Rules relates to the competent authority for issue of transfer and posting orders and, thereunder, the District Educational Officer of the erstwhile Revenue District shall consult the District Educational Officers of the newly formed 31 Districts in effecting transfers. It is not in dispute that, consequent on the formation of 31 new revenue Districts, District Educational Officers have been appointed in each of these 31 Districts of the State of Telangana, and there is no post of District Educational Officer now in existence in relation to the erstwhile ten Districts. Since the State Government has chosen to appoint District Educational Officers in each of the new 31 Districts, and these officers no longer exercise jurisdiction over the erstwhile ten Districts, Rule 4, whereunder the District Educational Officer of the erstwhile ten Revenue Districts are designated as the competent authority to effect transfer of School Assistants/SGTs and equivalent cadres, is irrational, since a non-existent authority has been made the competent authority for issuing transfer and posting orders.

The 1975 Presidential Order does not prescribe who should be the competent authority for appointment, promotion, transfers etc. It only requires a District to be treated as a unit for the organisation of certain local cadres, and as a local area in certain contingencies, and stipulates the erstwhile ten Districts as such Units. As the 1975 Presidential Order has no application, in the context of Rule 4 of 2018 Rules, the State Government was not obligated to prescribe that the DEOs of the erstwhile ten Districts should be the competent authority when there is no longer such a post in existence. Prescription of a non-existent competent authority, as the person to effect transfers, is irrational and unreasonable, and is in violation of Articles 14 and 16 of the Constitution of India. Rule 4 of the 2018 Rules is therefore ultravires Articles 14 and 16 of the Constitution of India, and is liable to be struck down.

XV. CONCLUSION:

While we find no merit in the submissions put forth on behalf of the petitioners, on all other contentions, as indicated hereinabove, we are satisfied that Rule 4 of the 2018 Rules, which prescribes the District Educational Officers of the erstwhile Districts as the competent authority to effect transfers of teachers in local body schools, (which post is no longer in existence consequent on 31 District Educational Officers being appointed to the newly formed 31 Districts), is ultravires Articles 14 and 16 of the Constitution of India. Rule 4 of the Rules, notified in G.O.Ms. No.16 dated 06.06.2018, is therefore declared unconstitutional. All the Writ Petitions are, accordingly, disposed of. The

miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

Date: 02.07.2018.

Note: L.R. copy to be marked
B/o
MRKR/CS

