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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 WRIT PETITION NO.2755 OF 2020

Kathoba Deo Shikshan Prasarak Mandal,
Akrale, Tq. and District Nandurbar,
Through its President

Shri. Rohidas s/o Shankar Rathod,
Age: 67 years, Occu: Agriculture,

R/o.: Akrale, Tq. and District Nandurbar

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
General Administration Department,
Mantralaya, Mumbai – 32

2. The Principal Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai – 32

3. The Divisional Commissioner,
Nashik Division, Nashik

4. The Assistant Commissioner
(Backward Cell),
Nashik Division, Nashik,
Dist. Nashik

...RESPONDENTS

...

Mr A. B. Girase & Mr Y. B. Bolkar, Advocates, for petitioner;
Mr S. B. Yawalkar, A.G.P. for respondent Nos.1 to 4

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 16th November, 2021

ORAL JUDGMENT : (Per : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner - Education Society has put forth prayer clauses (B), (C), (D), (E), (F) and (G) as under :

“B) By way of appropriate writ, order or directions in the like nature, the Hon’ble court may kindly quash and set aside the impugned communication dated 05/10/2019 issued by the Assistant Commissioner (Backward Cell), Nashik Division, Nashik, as the same is contrary to the Notification dated 09/06/2014 issued by the General Administration Department, Mantralaya, Mumbai.

C) By way of appropriate writ, order or directions in the like nature, the Hon’ble court may kindly direct the respondent No.4 to verify the roaster of the petitioner’s Residential School for the year 2019-2020 by holding that, the Notification dated 09/06/2014 is not applicable to the Residential School run by the petitioner institution.

D) By way of appropriate writ, order or directions in the like nature, the Hon’ble court may kindly hold and declare that, the petitioner’s Residential School is not under obligation to fill the vacant posts from the Local Scheduled Tribe Category Candidates, as the petitioner’s School comes under the Social Justice and Special Assistance Department, Mantralaya, Mumbai.

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E) Pending hearing and final disposal of the Writ Petition, the Hon'ble Court may kindly stay and suspend the effect, implementation and operation of impugned communication dated 05/10/2019 issued by the Assistant Commissioner (Backward Cell), Nashik Division, Nashik, as the same is contrary to the Notification dated 09/06/2014 issued by the General Administration Department, Mantralaya, Mumbai.

F) Pending hearing and final disposal of the Writ Petition, the Hon'ble Court may kindly direct the respondent No.4 to verify the roster of the petitioner's Residential School for the year 2019-2020 by holding that, the Notification dated 09/06/2014 is not applicable to the Residential School run by the petitioner institution.

G) Pending hearing and final disposal of the Writ Petition, the Hon'ble court may kindly hold and declare that, the petitioner's Residential School is not under obligation to fill the vacant posts from the Local Scheduled Tribe Category Candidates, as the petitioner's School comes under the Social Justice and Special Assistance Department, Mantralaya, Mumbai."

3. The petitioner is a Society which operates the Residential School and Junior College, styled as 'Vimukt Jati Bhatkya Jamati (VJNT) Madhyamik Ashram Shala, Kanisht Mahavidyalaya' at Akrale, Tq. and Dist Nandurbar. The said school is under the supervision and control of the Social Justice and Special Assistance Department of the State of Maharashtra. The teaching

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and non-teaching staff to be appointed in such school would not fall within the domain of the School Education and Sports Department, Rural Development Department and Tribal Development Department.

4. By a Notification dated 9th June, 2014, issued under sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India, by the order and in the name of the Governor of Maharashtra, the State Government provided for reservation to the posts, to be filled in by direct recruitment, in the Scheduled areas of the districts which have been declared as such, in the State of Maharashtra, only from amongst the local Scheduled Tribe Candidates having requisite qualifications, notwithstanding anything contained in any other law or rule or order for the time being in force.

5. The petitioner is concerned with category 5, which provides for recruitment of local Scheduled Tribe Candidates with requisite qualifications as 'Teacher', in schools that are administered by the School Education and Sports Department or the Tribal Development Department. The grievance of the petitioner is that the State of Maharashtra has issued a clarificatory communication

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dated 29/07/2015 under the signature of the Under Secretary, State of Maharashtra and addressed to the Assistant Commissioner (Backward Cell) in the office of the Divisional Commissioner, Nashik, indicating that the Notification dated 09/06/2014 mandating recruitment of the teachers in Scheduled areas from amongst the local Scheduled Tribe Candidates, would also apply to the Private Education Societies which are covered by the SJASAD. As such, it is contended that the petitioner-school covered under the Social Justice and Special Assistance Department (SJASAD) would not be covered by the said notification as the appointment of the teachers in the schools covered by the above mentioned two Departments, does not include the SJASAD under which the petitioner school has been sanctioned and is being conducted.

6. It is also the contention of the petitioner that no addition can be made to the notification, which is the law, with the aid of a communication issued by the Under Secretary in the form of guidance or clarification addressed to the Backward Cell of the Nashik Division. To support such contention, reliance is placed upon the following judgments :

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1. DDA and others vs. Joginder S. Monga and others, (2004) 2 Supreme Court Cases 297.
2. Union of India and others vs. Sh. Somasundaram Viswanath and others, AIR 1988 Supreme Court 2255
3. Punjab Water Supply & Sewerage Board vs. Ranjodh Singh and others, (2007) 2 Supreme Court Cases 491.

7. The learned A.G.P., while opposing this petition, relies upon the brief affidavit-in-reply filed by the Naib Tahsildar (Backward Class Cell), Nashik Division, Nashik, in which it is contended that the impugned communication dated 05/10/2019 refers to the Notification dated 09/06/2014, and is self explanatory. A Corrigendum dated 26/06/2015 read with the Government Resolution dated 05/03/2015 would cover the Class-3 posts of private institution/society. The affiant - Naib Tahsildar supports the impugned communication dated 05/10/2019 by contending that the same is in tune with the guidelines found in the letter dated 29/07/2015. He then states in the affidavit that the Government Resolution dated 05/03/2015 will be applicable to Class-3 posts of private institutions/societies in which implementation of reservation is being done according to the Reservation Act, 2001. In the light of this contention, he submits that the claim of the petitioner is irrelevant.

8. The learned A.G.P. has placed before us two amendments made to the Notification dated 09/06/2014, under the name and seal of the Governor of Maharashtra, dated 31/10/2014 and 29/08/2019. He submits that the Tribes Advisory Council has made the following recommendations in its 50th meeting :

“(1) In the villages of the Scheduled Areas having more than 50 per cent of tribal population to the total population of the villages, 100 per cent of the posts in such notified cadres shall be filled by local Scheduled Tribe candidates ;

(2) In those villages of the Scheduled Areas having tribal population between 25 per cent to 50 per cent of the total population of the villages, 50 per cent of the posts in such notified cadres shall be filled by local Scheduled Tribe candidates ;

(3) In those villages of the Scheduled Areas having tribal population less than 25 per cent of the total population of the villages, 25 per cent posts in such notified cadres (except Kotwal and Police Patil) shall be filled in from local Scheduled Tribe candidates; whereas in such villages having tribal population less than 25 per cent of the total population, the posts of Kotwal and

Police Patil shall be filled according to the Merit, and as per the existing policy of reservation in the district;”

9. He then submits that the State of Maharashtra has advanced the interests of even the women candidates from the local scheduled tribes in the matters of recruitments in all the categories mentioned in the Appendix to the Notification dated 09/06/2014. He, therefore, prays for the dismissal of the petition.

10. At the outset, we deem it appropriate to record our displeasure for the conduct of the respondent authority, authorizing a Naib Tahsildar of the Backward Class Cell from the Nashik Division, to file an affidavit-in-reply, when the coverage of the Notification dated 09/06/2014 was being questioned and knowing well that the decision in this petition would apply to the scheduled areas in the entire State of Maharashtra.

11. The Fifth Schedule (Article 244(1)), provides for the Administration and Control of scheduled areas and scheduled tribes. Part ‘A’ has excluded the States of Assam, Meghalaya, Tripura and Mizoram from the expression ‘State’. Under Part ‘B’ – ‘ADMINISTRATION AND CONTROL OF SCHEDULED

AREAS AND SCHEDULED TRIBES', Clauses 4 and 5 provide as under :

“4. Tribes Advisory Council.—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

(3) The Governor may make rules prescribing or regulating, as the case may be,—

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof,

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(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

5. Law applicable to Scheduled Areas.—

(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor

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may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.”

12. Part ‘C’ under the Fifth Schedule provides Clause 6 as under :

“6. Scheduled Areas.—*(1) In this Constitution, the expression “Scheduled Areas” means such areas as the President may by order declare to be Scheduled Areas.*

(2) The President may at any time by order —

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

[(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;]

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a

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new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

[(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;]

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.”

There is no dispute that district Nandurbar has been declared as a scheduled area vide Notification dated 09/06/2014 issued under the Fifth Schedule.

13. The issue raised in this petition is as regards whether an explanatory or clarificatory communication by the Under Secretary could either expand or curtail the coverage of the reservation policies as prescribed under the Appendix to the Notification dated 09/06/2014. The introduction to the Notification dated 09/06/2014 indicates the intention of the State Government as under :

“And whereas, the Scheduled Areas in the State are characterised by low Human Development Indices, backwardness, remoteness, poverty, and whereas the social indicators of the Scheduled Areas are, on an average, inferior to the average of social indicators in the State;

And whereas, Article 46 of the Constitution of India casts duty on the State to promote with special care, the educational and economic interests of the Scheduled Tribes;

And whereas, on a reference from the Governor of Maharashtra, the Tribes Advisory Council of Maharashtra has identified the problems of service delivery in the Scheduled Areas due to vacancies, absenteeism, lack of commitment, lack of knowledge of local dialects among the Government staff, responsible for service delivery, as contributing to the above;

And whereas, recognising the factors identified above, the Tribes Advisory Council of Maharashtra has recommended issuing of a notification by the Governor for reserving the posts of Talathi, Surveyor, Gram Sevak, Anganwadi Supervisor, Teachers , Adivasi Vikas Nirikshak, Agriculture Assistant, Livestock Assistant, Auxiliary Nurse and Midwife (ANM), and other equivalent posts in Group C and Group D, in the Scheduled Areas for the local candidates of the Scheduled Tribes ;

And whereas, the Governor of Maharashtra, in order to improve the quality of service delivery in the Scheduled Areas, to promote educational development of Tribals in Scheduled Areas, to address the communication problems arising out of the lack of knowledge of the local dialects and culture, to address

issues of frequent absenteeism of staff in the various institutions situated in the Scheduled Areas; and with a view to ensure that there is an improvement in the quality of service delivery of the important programs and schemes of the Government, being implemented for the welfare and advancement of the Scheduled Tribes living in the Scheduled Areas, has decided to reserve certain posts in direct recruitment, as identified and given in the APPENDIX appended to this notification, in favour of the local candidates of Scheduled Tribes in the Scheduled Area;”

14. In pursuance to the above, the notification mandating recruitment to the 10 categories under their respective Departments, was provided in the said notification which is as under :

“In exercise of the powers conferred by subparagraph (1) of Paragraph 5 of the Fifth Schedule to the Constitution of India, the Governor of Maharashtra hereby directs that section 4 of the “ Maharashtra State Public Services [Reservation for Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes] Act, 2001 (Maharashtra Act No. VIII of 2004)” and any other Rules or Orders made in this regard, shall apply to the appointment to the posts specified in the APPENDIX to this notification subject to the modification that all such posts which are to be filled

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in by direct recruitment for the Scheduled Areas of the districts which have Scheduled Areas, in the State of Maharashtra shall be filled in by the local Scheduled Tribe candidates only, having requisite qualification, notwithstanding anything contained in any other law or rule or order for the time being in force in this regard :

Provided that, one-third of the posts mentioned in the said APPENDIX shall be filled in by the women candidates of the local Scheduled Tribes.

Explanation.—For the purpose of this notification, the ‘local Scheduled Tribe candidate’ means, those Scheduled Tribe candidates who have themselves or whose parents or grandparents have been continuously residing in the Scheduled Areas of the respective districts since 26th January 1950 till date.

APPENDIX

Serial No. (1)	Name of the Posts (2)	Department (3)
1	Talathi	Revenue and forest Department
2	Surveyor	Revenue and forest Department
3	Gram Sevak	Rural Development Department
4	Anganwadi Supervision	Women and Child Development Department
5	Teacher	School Education and Sports Department or Tribal Development Department.
6	Adivasi Vikas Nirikshak	Tribal Development Department
7	Agriculture Assistant	Agriculture, Dairy Development, Animal Husbandry and Fisheries Department
8	Livestock Assistant	Agriculture, Dairy Development Animal Husbandry and Fisheries Department

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9	Auxiliary Nurse and Midwife (ANM)	Public Health Department
10	Multi Purpose Health Worker (MPW)	Public Health Department

15. It is not in dispute that the schools conducted by the Social Justice and Special Assistance Department were not brought within the ambit of Sr. No. 5. It is equally undisputed that, by an amendment dated 14/08/2014 to the above stated notification, issued under the order and in the name of the Governor of Maharashtra, the following amendments/additions were made :

“Now, therefore, in exercise of the powers conferred by sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India, the governor of Maharashtra hereby amends the said Notification, as follows, namely :-

In the Appendix to the said Notification, -

(a) for entry 5, the following entry shall be substituted, namely:-

“5. Teacher ...

(i) Rural Development Department

(ii) Tribal Development Department”;

(b) for entry 9, the following entry shall be substituted, namely:-

*“9. Auxiliary Nurse and Midwife (ANM)
Rural Development Department”;*

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(c) *for entry 10, the following entry shall be substituted, namely:-*

“10. Multi-Purpose Health Worker (MPW)....

(i) Rural Development Department,

(ii) Public Health Department”;

(d) *the following entry shall be added at the end, namely:-*

“12. Kotwal Revenue and Forest Department.”.

16. Consequent to the above, the School Education and Sports Department under which some schools may be operating, was deleted from entry No.5 of the Appendix. The Tribal Development Department was placed at Sr. No.(ii) and the Rural Development Department was placed at Sr. No.(i) insofar as recruitment of teachers was concerned. Amendments were made to Sr. No. 9 in relation to ‘ANM’ and at Sr. No. 10 to the Multi-Purpose Health Workers. It is also undisputed that by an earlier amendment dated 14/08/2014, Sr. No.8 ‘Live Stock Assistant’ was converted into ‘Live Stock Supervisor’ and two categories were added at Sr. No. 11 – ‘Forest Guard’ and at Sr. No. 12 – ‘Kotwal’.

17. By yet another Notification dated 29/08/2019, issued by order and in the name of the Governor of Maharashtra, based on the recommendations of the Tribes Advisory Council (reproduced

above), it was further provided that “Section 4 of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukt Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (Maharashtra VIII of 2004), Section 4 (1) (B) of the Maharashtra State Reservation (of seats for Admissions in educational institutions in the States and for appointments in the public services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 (Maharashtra LXII of 2018) and any other Rules or Orders or Instruments issued in this regard, shall apply to the appointment to the posts specified in the Appendix appended to this notification (hereinafter referred to as the “the said notified cadres”), subject to the modification that, all such posts which are to be filled in by direct recruitment, in the villages of the Scheduled areas, in the State of Maharashtra specified by the Tribal Development Department, shall be filled in by (sic from) the local Scheduled Tribe candidates having requisite qualifications, notwithstanding anything contained in any other law or rule or order for the time being in force in this regard”, in the following ratio :

“(1) villages in Scheduled Areas where tribal population is more than 50 per cent of the total population of the villages, 100 per cent of the posts in the said notified cadres shall be filled by local Scheduled Tribe candidates;

(2) villages in Scheduled Areas where tribal population is between 25 per cent to 50 per cent of the total population of the villages, 50 per cent of the posts in the said notified cadres shall be filled by local Scheduled Tribe candidates;

(3) villages in Scheduled Areas where tribal population is less than 25 per cent of the total population of the villages, 25 per cent of the posts in the said notified cadres (except Kotwal and Police Patil) shall be filled by local Scheduled Tribe candidates; whereas in such villages having tribal population less than 25 per cent of the total population, the posts of Kotwal and Police Patil shall be filled according to the Merit, and as per the existing policy of reservation in the district :

Provided that, one-third of the posts mentioned in the said APPENDIX shall be filled in by the women candidates of the local Scheduled Tribes.

Explanation.— For the purpose of this notification, the ‘local Scheduled Tribe candidate’ means, those Scheduled Tribe candidates who have themselves or spouses or whose parents or grandparents have been continuously residing in the Scheduled Areas of the respective districts since 26th January 1950 till date.”

18. Pursuant to the above, the Appendix to the said Notification dated 29/08/2019 adds 5 more categories, which read as under :

APPENDIX

<i>Serial No. (1)</i>	<i>Name of the Posts (2)</i>	<i>Department (3)</i>
1	Talathi	Revenue and forest Department
2	Surveyor	Revenue and forest Department
3	Gram Sevak	Rural Development Department
4	Anganwadi Supervision	Women and Child Development Department
5	Teacher	(i)Rural Development Department (ii)Tribal Development Department.
6	Adivasi Vikas Nirikshak	Tribal Development Department
7	Agriculture Assistant	Agriculture, Dairy Development, Animal Husbandry and Fisheries Department
8	Livestock Supervisor	Rural Development Department
9	Auxiliary Nurse and Midwife (APW)	Rural Development Department
10	Multi-Purpose Health Worker (MPW)	(i)Rural Development Department (ii)Public Health Department.
11	Forest Guard	Revenue and forest Department
12	Kotwal	Revenue and forest Department
13	Forest Watcher	Revenue and forest Department
14	Cook (Swayampaki)	Tribal Development Department
15	Laboratory Attendant	Tribal Development Department
16	Kamathi	Tribal Development Department
17	Police Patil	Home Department

19. The affidavit-in-reply filed on behalf of the respondents does not deal with the aspect of the teachers to be appointed in schools which are under the administration of the Social Justice and Special Assistance Department of the State of Maharashtra or

such scheduled areas which may be covered by the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA Act). The affidavit does not state that besides such reservation, the PESA Act would apply to private educational institutions.

20. It is apparent that in the first Notification dated 09/06/2014, followed by the Notification dated 14/08/2014, 31/10/2014 and 29/08/2019, schools administered by SJASAD have not been brought within the ambit of the notification issued by the Governor of Maharashtra under paragraph 5 (1) of the Fifth Schedule to the Constitution of India. In fact, the last Notification dated 29/08/2019, which mentions that all earlier notifications stand superseded, mandates appointment to the posts specified in the Appendix by selecting and appointing candidates from amongst the local Scheduled Tribes Candidates only. The State Government has not put forth any contention in the affidavit-in-reply to indicate that the Social Justice and Special Assistance Department under which the petitioner school has been recognized, would be covered either by the Rural Development Department or the Tribal Development Department insofar as the

appointment of 'teacher' at Sr. No. 5 in the Appendix or the PESA Act.

21. In our view, the non inclusion of the Social Justice and Special Assistance Department right from the issuance of the first notification till the 4th Notification dated 29/08/2019 in this regard, is consistent. The language used in all the notifications, and especially the last notification, would clearly signify that all posts which are to be filled in by direct recruitment in the scheduled areas in the State of Maharashtra specified by the Tribal Development Department, shall be filled in from the local Scheduled Tribes Candidates having requisite qualifications in categories specifically falling under the Appendix to the notification. The intention of the State Government in ensuring the advancement of the scheduled tribes candidates from the scheduled areas in those categories set out in the Appendix, seems to be specific and laudable.

22. In this backdrop, the impugned communication dated 29/07/2015, on the basis of which respondent No.4 has issued the impugned letter dated 05/10/2019 to the petitioner, would lose significance as that was with reference to the Notification dated

09/06/2014. The last notification dated 29/08/2019 leading to the supersession of the earlier notifications, and published in the Maharashtra Government Gazette on the same day, would obliterate the direction in the impugned communication dated 05/10/2019.

23. In DDA and others (supra), the Honourable Apex Court dealt with the significance of a communication or an executive instruction in conflict with a statute or a statutory rule and concluded in para 30 as under :

“30. It is not a case where a conflict has arisen between a statute or a statutory rule on the one hand and an executive instruction, on the other. Only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. The lessor under the deed of lease is to fix the market value. It could do it areawise or plotwise. Once it does it areawise which being final and binding, it cannot resile therefrom at a later stage and take a stand that in a particular case it will fix the market value on the basis of the price disclosed in the agreement of sale.”

24. In Union of India and others vs. Somsundaram Viswanath (supra), the Honourable Apex Court concluded in paragraph 6 that executive instructions in conflict with the statutory provisions and

the rules made under the proviso to article 309, would lose their significance and would not have a binding effect.

25. In Punjab Water Supply and Sewerage Board (*supra*), the Honourable Apex Court concluded that a policy decision of the State Government adopted by means of the circular/letter would be void. Any departmental letter or executive instructions would not prevail over statutory rules and constitutional provisions.

26. The learned A.G.P. has attempted to support the stand of the Government, on the basis of the communication dated 29/07/2015, that teachers appointed in schools run by private institutions under the supervision and control of the Social Justice and Special Assistance Department, can also be covered under the reservation policy keeping in view the laudable object of the State Government.

27. We find from the notifications before us and the power vested in the Governor to promote the educational and economic interest of the State under para 5 (1) of the Fifth Schedule, in the light of the recommendations of the Tribe Advisory Council, that the schools Governed by the Rural Development Department and Tribal Development Department were alone brought within the

ambit of the Appendix in the matter of recruitment of teachers from the Scheduled Tribes category candidates. If the Council or the State Government intended to include all schools or schools within the administration of the Social Justice and Special Assistance Department, it could have specifically so provided in the said notification. We do not intend to create an embargo on the power of the Governor in doing so, by this judgment.

28. As such, this petition succeeds. The same is partly allowed. The impugned communication dated 05/10/2019 is rendered insignificant and shall not be acted upon, to the extent of the schools administered by the SJASAD. Rule is made absolute in the above terms.

29. We make it clear that this judgment is restricted to the challenge posed by the petitioner to the impugned letter dated 09/06/2014 and the impugned communication dated 05/10/2019.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)