***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*** HON'BLE THE CHIEF JUSTICE**

SRI THOTTATHIL B. RADHAKRISHNAN

AND

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

+Writ Petition Nos.23267, 23274 and 27404 of 2017

% 28-08-2018

W.P.No.23267 of 2017

Government Teachers Association, Telangana State Represented by its General Secretary, having its Office at H.No.8-1-302/A/38, Vivekananda Nagar, Shaikpet, Hyderabad and 8 others

... Petitioners

Vs.

Union of India, represented by its Secretary, Ministry of Home Affairs, New Delhi and 14 others

... Respondents

W.P.No.23274 of 2017

Government Teachers Association, Telangana State Represented by its General Secretary, having its Office at H.No.8-1-302/A/38, Vivekananda Nagar, Shaikpet, Hyderabad and 8 others

... Petitioners

Vs.

Union of India, represented by its Secretary, Ministry of Home Affairs, New Delhi and 14 others

... Respondents

W.P.No.27404 of 2017

K. Kamalakar Rao, S/o Vittal Rao, aged 45 years, Occ: School Assistant (Hindi), Government High School, Massomali, Warangal Mandal, Warangal Urban and another

... Petitioners

Vs.

The Union of India, represented by its Secretary,
Ministry of Home Affairs, New Delhi and 3 others

… Respondents

! Counsel for the Petitioners : Mr. S. Ramachandra Rao, SC

^ Counsel for Respondents : Mr. V.Giri, SC
Mr. Ramachandra Rao, AAG
Mr. K. Lakshman, A.S.G.
Mr. Vedula Venkata Ramana, SC
Mr. G. Vidyasagar, SC
Mr. K. Narayana,
Mr. Ramgopal Rao
Mr. P. Veerabhadra Reddy

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> Head Note:

? Cases referred:

1) 2003 (6) ALD 522 (DB)
2) 2008 (4) ALD 209
3) AIR 1967 SC 884
4) AIR 1981 SC 53
5) (1990) 2 SCC 259
6) (1991) Suppl (2) SCC 367
7) 2004 (2) ALD 1
8) AIR 1970 SC 422
9) AIR 1971 AP 118
10) AIR 1973 SC 827

HON'BLE THE CHIEF JUSTICE

SRI THOTTATHIL B. RADHAKRISHNAN

AND

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Writ Petition Nos.23267, 23274 and 27404 of 2017

COMMON ORDER: *(per V. Ramasubramanaian, J)*

The Government Teachers Association along with a few Teachers working as School Assistants in various Government Schools have come up with these writ petitions, challenging--(1) sub-para-(2A) of Para 3 of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 and (2) Entries 23A, 26A and 26B of the Third Schedule to the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975.

2. We have heard Mr. S. Ramachandra Rao, learned senior counsel appearing for the writ petitioners, Mr.V. Giri, learned senior counsel appearing for the State of Telangana along with the learned Additional Advocate General for the State of Telangana, Mr. K. Lakshman, learned Assistant Solicitor General, Mr. Vedula Venkataramana, learned senior counsel and Mr. G. Vidyasagar, learned senior counsel appearing for some of the contesting respondents and Mr. K. Narayana, Mr. Ramgopal Rao and Mr. P. Veerabhadra Reddy, learned counsel appearing for the remaining contesting respondents.

Genesis of the litigation

3. In exercise of the powers conferred by Article 371D of the Constitution, the President issued the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, hereinafter called "the Presidential Order", directing the State Government to organise classes of posts in the civil services of the State and classes of civil posts under the State, into different local cadres for different parts of the State. The Presidential Order contained three Schedules, with the First Schedule enlisting the territories that form part of the city of Hyderabad, the Second Schedule indicating the Districts that will form part of every one of the six zones into which the State was divided namely, Zone-I, Zone-II, Zone-III, Zone-IV, Zone-V and Zone-VI and the Third Schedule enlisting the categories of posts in different departments, which were to be identified as specified Gazetted Categories.

4. It appears that in the composite State of Andhra Pradesh, all schools were historically under the control of the Education Department. But after the formation of Zilla Parishads and Panchayat Samithis, the schools run by the District Boards or the Government, were taken over by the Zilla Parishads, along with the staff in the year 1959. In the year 1962, two different sets of Service Rules were issued, one under G.O.Ms.No.728, dated 10-01-1962 dealing with the categories of posts, method of recruitment, Educational Qualifications, promotional avenues etc., of teachers

working in Government Schools and another under G.O.Ms.No.936, dated 17-07-1962 and G.O.Ms.No.33, dated 25-01-1966, relating to the recruitment, conditions of service etc., of teachers working in Zilla Parishads and Panchayat Samithis Schools.

5. After the advent of the Presidential Order, 1975, the teaching and non-teaching staff working in the Education Department were organised into local cadre under G.O.Ms.No.529, dated 14-04-1976. But the teachers working in Zilla Parishads and Panchayat Samithis Schools were not organised into local cadre.

6. When representations were made, the Government issued G.O.Ms.No.168, dated 20-03-1981 provincialising the services of the teachers working in Zilla Parishads and Panchayat Samithis Schools. It was followed by Ordinance No.20 of 1981, which later became Andhra Pradesh Act 34 of 1981, treating persons working in Panchayat Samithis and Zilla Parishads as those in the civil services of and holding civil posts, under the State. As a consequence, a Government Order in G.O.Ms.No.155, dated 01-03-1983 was issued making the General Rules for Andhra Pradesh State and Subordinate Services applicable to the employees specified in Sections 26 and 51 of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act. By a separate order in G.O.Ms.No.162, dated 01-03-1983, the Andhra Pradesh Civil Services (Conduct) Rules were also made applicable to these employees.

7. Thereafter, the conditions of services of teachers working in Government Schools and teachers working in Panchayat Samithis

and Zilla Parishads Schools came to be governed by a consolidated set of Rules issued in G.O.Ms.No.278, dated 02-06-1983. However, they were kept as two different streams flowing through watertight units. Therefore, despite the teachers of the schools run by Panchayat Samithis and Zilla Parishads becoming part of the Education Department, they were kept as separate cadres for the purposes of appointment, seniority and promotion.

8. By the Constitution (Seventy-Third Amendment) Act, 1992, a new part in Part-IX was inserted in the Constitution, providing for (i) the constitution of Gram Sabhas and Panchayats, (ii) powers, authority and responsibilities of Panchayats, (iii) elections to Panchayats etc. A new Schedule namely Eleventh Schedule was also inserted in the Constitution, enabling the Legislature of the States to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of local self-government, with respect to matters listed in the Eleventh Schedule.

9. Pursuant to the Seventy-Third amendment to the Constitution, the State of Andhra Pradesh enacted the Andhra Pradesh Panchayat Raj Act, 1994, replacing the Andhra Pradesh Mandal Parishads and Zilla Parishads Act, 1986, which itself had repealed the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959.

10. Thereafter, an attempt was made by the Government to integrate the service of teachers working in Government Schools

and teachers working in Schools run by Zilla Parishads and Panchayat Samithies into a common service. When it was challenged before the Administrative Tribunal, the Government issued a revised set of Rules under G.O.Ms.No.538, Education dated 20-11-1998. These set of Rules were intended to govern the service conditions of teachers included in the Andhra Pradesh Educational Subordinate Service. Therefore, by another Order in G.O.Ms.No. 505, Education dated 16-11-1998, a separate set of rules were issued governing the service conditions of the Gazetted Officers of the Andhra Pradesh Educational Services. The posts of Head Masters in Government Schools and Zilla Parishads Schools became Gazetted posts.

11. Both these sets of rules, one governing Gazetted Services and another governing Subordinate Services, issued respectively under G.O.Ms.No.505 Education dated 16-11-1998 and G.O.Ms. No.538 Education dated 20-11-1998, were challenged before the Andhra Pradesh Administrative Tribunal by teachers working in Government Schools. The A.P. Administrative Tribunal upheld the validity of the rules by an order dated 14-05-2000, but declared that the rules cannot be given retrospective effect from 30-12-1996 as sought to be done. As against the said order of the Tribunal, a batch of writ petitions were filed on the file of this Court. By a judgment reported in ***M. Kesavulu v. State of Andhra Pradesh***[1]**,** a Division Bench of this Court (1) set aside G.O.Ms.No.538 and (2) declared as

[1] 2003 (6) ALD 522 (DB)

illegal G.O.Ms.No.505 in so far as it sought to embrace the posts in Education Department for which the local cadre has been organised in respect of the posts of Deputy Inspector of Schools, Head Master and Educational Officers, the posts of Gazetted Head Master and Head Mistress and also Gazetted Head Master and Head Mistress Grade-II in Government High Schools. However, this Court held that it was open to the appropriate authority of the Government to consider the desirability of creating channels of promotions for every service within permissible limits. It was also left open to the Government to create avenues of promotion for the teachers in the Schools of Zilla Parishads and Mandal Parishads, within the parameters of the powers vested in the Government. This court also made it clear that it was open to the Government to take action to organise local cadres in respect of the teachers working in Panchayat Raj institutions in the State in accordance with the provisions of the Presidential Order.

12. It must be pointed out at this stage that the main ground on which this Court set aside one Government Order in full and another Government Order in part was that once the local cadre has been organised in respect of the teachers in the department of Education, such local cadres cannot be merged with other non local cadres or diluted.

13. After filing Special Leave Petitions as against the judgment of this Court in ***M. Kesavulu v. State of Andhra Pradesh*****,** the State Government commenced efforts to organise the cadre of teachers in

Mandal Parishads and Zilla Parishads Schools into local cadres. When the State Government approached the Central Government for appropriate amendment to the Presidential Order, the Central Government expressed apprehensions in view of the pendency of the appeals before the Supreme Court as against the decision in ***M. Kesavulu*****.**

14. Therefore, the State thought fit to enact a law and first issued Ordinance No.12 of 2005, which later became A.P. Act 27 of 2005. In terms of Section 12 (1) of the Act, a set of Rules were issued in G.O.Ms.Nos.95 and 96, dated 25-07-2005.

15. The validity of the Act and the Rules became the subject matter of challenge in the second round of litigation. The Tribunal sustained the challenge and declared Section 1 (3) of the Act 27 of 2005 as *ultra vires* the Presidential Order. The Tribunal further held that the State could not have brought an enactment without the approval of the President as stipulated in the proviso to para 3 (1) of the Presidential Order. As a consequence, the Rules issued under Section 12 (1) were also declared illegal.

16. The order of the A.P. Administrative Tribunal came to be challenged in a batch of writ petitions before this Court. In a judgment reported in ***Government of Andhra Pradesh v. P. Vema Reddy***[2]**,** a Division Bench of this Court struck down Act 27 of 2005 in entirety, as unconstitutional. Consequently, the set of Rules issued in G.O.Ms.No.95 and 96 dated 25-07-2005 were also struck

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[2] 2008 (4) ALD 209

down. The conclusions reached by the Division Bench were summarized in paragraph 80 of the report, which may be usefully extracted as follows:

> *"80. We summarize our conclusions as under:*
> *(1) Since Clause (10) of Article 371-D of the Constitution gives over-riding effect to the provisions of Section 371-D, and the Presidential Order made thereunder, over any other provision of the Constitution or any other law for the time being in force, any action taken by the State, in exercise of the powers conferred under the Presidential Order, would be immune from attack for having violated any other provisions of the Constitution or any other law in force.*
> *(2) Since Article 371-D, and the Presidential Order made thereunder, mark a departure from the general scheme of the Constitution, it is only if the action of the State is traceable to any specific provision in the Presidential Order would it be entitled for the protection of Clause (10) of Article 371-D;*
> *(3) Power of the State Government to organize local cadres under Para 3(1) expired on the completion of the 27 month period from the date of commencement of the Presidential Order and, after 17-1-1978, the State Government no longer has the power to organize local cadres.*
> *(4) It is the President, under the proviso to Para 3(1), who alone can require the State Government to organize local cadres;*
> *(5) Unless the President requires the State Government to organize local cadres, any action by the State Government in organizing local cadres on its own, not having been specifically provided for in the Presidential Order, would be subject to Constitution limitations;*
> *(6) Since organizing a local cadre, in effect, amounts to prescribing 'residence' in a part of the State as a qualification for public employment, such action of the State would fall foul of Article 16(2) of the Constitution;*
> *(7) While the General Clauses Act applies to the provisions of the Presidential Order, Section 21 thereof, which provides that the power to make an order would include the power to rescind, is not available to the State Government, since it does not have the power to make an order, requiring local cadres to be organised, after 17-1-1978;*
> *(8) Since the power to make the order, requiring the State Government to organize local cadres, has been specifically conferred on the President under the proviso to Para 3(1) of the Presidential Order, Section 21 of the Genera! Clauses Act would enable the President to make an order rescinding the order whereby local cadres were organised and, in effect, requiring the State Government to abolish local cadres;*
> *(9) It is only when the President requires it to do so is the State Government entitled, under the Presidential Order, to organize newly created cadres into local cadres and abolish cadres which hitherto had been organized into local cadres;*

(10) It is only after the President has required the State Government to organize, the newly created cadres, into local cadres would Para 13 of Presidential Order apply and in the interregnum, from the date on which the President, by order, has required the State Government to organize local cadres till the date on which local cadres are actually organized, appointments made and promotions effected would only be provisional;

(11) Since the State Government does not have the power to organize local cadres on its own, in the absence of a specific provision in the Presidential Order enabling it to do so, any action in this regard would amount to prescription of "residence" in a part of the State as a qualification for employment and would be in violation of Article 16(2). Such State action is neither protected under the Presidential Order nor can any such appointment made, or promotions effected ultravires Article 16(2) be treated as provisional under Para 13 of the Presidential Order;

(12) Local cadres can only be organized in respect of departments of the State Government and not for cadres under any local authority. As such neither Para 3(1) nor its proviso would enable organization of cadres, under any local authority, into local cadres;

(13) While the State has the inherent power to create and abolish cadres in civil services under the State, it does not have the power on its own, without being required by the President to do so, to either organize the newly created cadres into local cadres or to abolish cadres which hitherto were organized into local cadres;

(14) What cannot be done directly cannot be done indirectly. A conjoint reading, of Sections 3, 4 and 5 of Act 27 of 2005 with its preamble, would establish that the very purpose and object of Act 27 of 2005 is to integrate cadres of teachers and other employees in government, mandal parishad and zilla parishad schools. Sections 3(1) and 4(1) of Act 27 of 2005, in effect, abolish local cadres. Through a circuitous process o' abolishing cadres which were organized into local cadre and, in effect, abolishing the local cadres themselves, Act 27 of 2005 seeks to make a law which is beyond its legislative competence. Act 27 of 2005 is, thus, a piece of colourable legislation;

(15) Since the State does not have power to abolish local cadres without the President requiring it to do so, and as the President has not so required till date, Section 3(1) and Section 4(1) of Act 27 of 2005 which abolishes cadres of teachers in government schools and other employees in the school education department of the government, which had been organized into local cadres in G.O.Ms. No. 529 dated 14-5-1976, is ultravires the Presidential Order and is liable to be struck down.

(16) Consequent upon Sections 3(1) and 4(1) of Act 27 of 2005 having been struck down, the local cadres, organized under G.O.Ms. No. 529 dated 14-5-1976, remain in force;

(17) Section 5(1) of Act 27 of 2005 which integrates posts of teachers and other employees in a local cadre with those which do not belong to a local cadre, is also in violation of the Presidential Order and the law laid down by the Supreme Court in S. Prakasha Rao (13 supra) and the Division Bench of this Court in M. Kesavulu (supra).

> *(18) The rules in G.O.Ms. Nos. 95 and 96 dated 25-7-2005 to the extent teachers in government, mandal parishad and zilla parishad schools are treated as a unified cadre and a common unit is prescribed for appointment, seniority, promotion etc., to posts in this cadre, are ultra vires the Presidential Order and are liable to be struck down since cadres under a local authority cannot form part of the local cadres of departments of the Government of A.P.;*
> *(19) Since Sections 3, 4 and 5 of Act 27 of 2005 constitute the basis for Act 27 of 2005, and the other provisions of the Act are closely interwoven and not severable therefrom, Act 27 of 2005 is struck down in its entirety. The Rules in G.O.Ms. No. 95 & 96 dated 25-07-2005, do not survive after the parent Act 27 of 2005 has been struck down."*

17. The decision of this Court in ***P. Vema Reddy*** was also challenged before the Supreme court. By a common order dated 30-09-2015 passed in the entire batch of Civil Appeals in C.A.Nos.4878 to 4901 of 2009 and S.L.P. (Civil) No.35880 of 2011, a few arising out of the decision in ***M. Kesavulu*** and the rest arising out of the decision in ***P. Vema Reddy***, the Supreme Court held that there was no reason to interfere with the decisions of this Court and that the appeals were liable to be dismissed. However, liberty was granted to the State Government to send a proposal to the Union of India for obtaining the approval of the President. Since the final order passed by the Supreme Court on 30-09-2015 in the aforesaid appeals, has a bearing upon the present round of litigation, the order of the Supreme Court is extracted as follows:

> *"The application for amendment of cause-title and the application for amendment are allowed as prayed for.*
> *Heard learned counsel for the rival parities.*
> *We see no reason to interfere with the well-considered decision in exercise of our jurisdiction under Article 136 of the Constitution of India. While dismissing the appeals and the special leave petition, we deem it appropriate to make the following observations/directions:*

1. Since the recruitment to the local authorities, the Panchayat Samitis and the Zila Parishads are said to have been done in compliance with Para 8 of the Presidential Order, the State Government is at liberty to send a proposal to the Union of India for obtaining the approval of the President of India to integrate the teachers of the Panchayat Samitis and the Zilla Parishads, who are also government servants with the existing local cadres of teachers. As and when such proposal is sent to the Union of India, the same shall be considered at an early date.

In the meantime, it would be open to the State Government to frame Rules to make suitable promotional avenues for teachers and other employees of the Panchayat Samitis and the Zilla Parishads."

18. By the time the Supreme Court passed orders on 30-09-2015, the composite State of Andhra Pradesh was bifurcated under the Andhra Pradesh Reorganisation Act, 2014 with effect from 02-06-2014. It appears that both the State Governments pursued the matter with the Central Government. As a result, the President of India issued two orders, one in GSR 637 (E) dated 23-06-2017, inserting Entries 23A, 26A and 26B in the Third Schedule to the Presidential Order 1975, and another in GSR 639 (E) dated 23-06-2017 inserting sub-paragraph (2A) in paragraph 3 of the Presidential Order, 1975, in so far as the State of Telangana is concerned. Similar orders were issued by the President in respect of the State of Andhra Pradesh.

19. After the bifurcation of the composite State with effect from 02-06-2014, the A.P. Administrative Tribunal continued to exercise jurisdiction over both the States, until the State of Telangana withdrew from the Tribunal. Therefore, challenging GSR No.637 (E)

dated 23-06-2017, the Government Teachers Association of the State of Telangana have come up with W.P.No.23274 of 2017. Challenging sub-paragraph (2A) under paragraph 3 of the Presidential Order inserted by GSR 639 dated 23-06-2017, the same Association has come up with a writ petition in W.P.No.23267 of 2017. Two Government High School Teachers have independently come up with the third writ petition in W.P.No.27404 of 2017 challenging sub-paragraph (2A) under paragraph 3.

20. It is stated across the Bar that similar Presidential Orders issued in respect of the State of Andhra Pradesh are under challenge before the A.P. Administrative Tribunal.

21. Thus, we have on hand three writ petitions, two of which challenge sub-paragraph (2A) of paragraph 3 of the Presidential Order, 1975, inserted by GSR 639 (E) dated 23-06-2017 and the third challenging the insertion of Entries 23A, 26A and 26B in the Third Schedule to the Presidential Order, 1975 under GSR No.637 (E) dated 23-06-2017.

Grounds of challenge:

22. Assailing the impugned amendments to the Presidential Order, it is contended by Mr. S. Ramachandra Rao, learned Senior Counsel for the petitioners – (1) that Article 371D applies only to persons employed in public services under the control of the State Government and not to the employees of the local bodies such as Zilla Parishads and Mandal Parishads, which are not under the control of the Government; (2) that teachers working in local bodies,

are governed by the Seventy-Third amendment to the Constitution and particularly Article 243G read with the Eleventh Schedule and hence, they are out of the Government control; (3) that Article 371D empowers the President only to direct the State Government to organise civil posts and the posts in the civil services of the State into local cadres, but it does not authorise the President himself to organise posts into local cadre; (4) that the two decisions of this Court in ***M. Kesavulu*** and ***P. Vema Reddy*** holding that integration of teachers working in local bodies with the teachers working in Government schools is unconstitutional, has already been upheld by the Supreme court; and (5) that the impugned amendments to the Presidential Order are given retrospective effect, thereby taking away the vested rights of those in service and no amount of self certification, as found in the Note to the Presidential Order that no one is adversely affected by the retrospectivity, can cure this defect.

23. In response to the above contentions, it was argued by Mr. V. Giri, learned Senior Counsel appearing for the State of Telangana – (1) that the impugned amendments to the Presidential Order were brought forth, in view of the liberty granted to the State Government by the Supreme Court in its judgment dated 30-09-2015 rendered in Civil Appeal Nos.4878 to 4901 of 2009 arising out of the decisions of this Court in ***M. Kesavulu*** and ***P. Vema Reddy***; (2) that therefore, the impugned amendments cannot be found fault with, especially when they were brought forth, pursuant to a liberty granted by the Supreme Court; (3) that in view of the decisions of the two

Constitution Benches of the Supreme Court, one in ***State of Assam v. Shri Kanak Chandra Datta***[3] and another in ***Mathuradas Mohanlal Kedia v. S. D. Munshaw***[4], the issue as to whether the servants of the local bodies are in the civil services of the State, is no longer *res integra*; (4) that the fact that the teachers of Zilla Parishads and Panchayat Samithis have already been provincialised and brought into State services, was recognized even in the decision in ***P. Vema Reddy***; (5) that in view of clause (10) of Article 371D, the provisions of any order made by the Parliament shall have effect notwithstanding anything contained in any other provision of the Constitution; (6) that therefore, as pointed out in sub-paragraphs 1 and 2 of paragraph 80 of the report in ***P. Vema Reddy***, the impugned amendments of the Presidential Order are not amenable to challenge on the basis of any other constitutional provision; (7) that in view of the law laid down by the Supreme Court in ***S. Prakasha Rao v. Commissioner of Commercial Taxes***[5], the President alone has been given the power to organise the local cadre, which he may do by himself without requiring the State Government to organise local cadres; (8) that since the power given under clause (1) of Article 371D is to do something for the creation of equitable opportunities and facilities for the people belonging to different parts of the State, the President has the power even to order the integration of the cadres; and (9) that the power conferred

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[3] AIR 1967 SC 884
[4] AIR 1981 SC 53
[5] (1990) 2 SCC 259

upon the President under Article 371D being a special power, he is entitled to provide retrospectivty to the amendments so made.

24. Mr. Vedula Venkata Ramana, learned senior counsel appearing for some of the contesting respondents submitted – (1) that on and from 20-11-1998, the power of appointment of teachers to local bodies vested with the District Committees and hence, the Chief Executive Officer of the Zilla Parishad ceased to be the appointing authority; (2) that all the Rules applicable to the holders of civil posts or the persons in the civil services of the State, are applicable to teachers of local bodies; (3) that as per the decision of the Supreme Court in ***Government of A.P. v. A. Suryanarayana Rao***[6], the expression "in the matter of public employment" appearing in clause (1) of Article 371D is of wider import and hence, the President was well within his power to integrate different posts in the same department into a common cadre and that therefore, when the amendments to the Presidential Order merely seek to remove the base on which the amendments struck down on the earlier occasions were made, the same cannot be faulted.

25. Supplementing the aforesaid submissions, Mr. G. Vidyasagar, learned senior counsel appearing for some of the contesting respondents invited our attention to the decision of a Larger Bench of this Court in ***Ranga Reddy District Sarpanches Association v. Government of Andhra Pradesh***[7], in which the validity of certain provisions of the Andhra Pradesh Panchayat Raj

[6] (1991) Suppl (2) SCC 367
[7] 2004 (2) ALD 1

Act, 1994 and the Rules and Government Orders issued, fell for the consideration of this Court. By a majority, the Larger Bench of this Court held that the directives envisaged by Article 243G are directory in nature and that Article 243G and the Eleventh Schedule do not curtail the legislative power of the State under Article 246 and that in the administration of Panchayat Raj institutions, necessary Governmental control is essential and it is for the legislature to decide the extent of such control. The majority held that Articles 243G and 246 (3) have to be read harmoniously and that while testing the constitutional validity of a statute, the Court is not concerned with the wisdom or otherwise, the justness or otherwise of the law.

26. We have carefully considered the above submissions.

Historical Background of Article 371-D

27. Before we deal with each one of the rival contentions, it may be necessary to record the historical background of Article 371D and the two Presidential Orders issued thereunder. ***It is true that this Court as well as the Supreme Court have, on occasions, brought out this history. But if history can repeat itself, the repetition of history may not be unwise, since at times it is sought to be distorted***.

28. As brought out by this Court in its decision in ***Dr. B. Satish Kumar v. Union of India***, to which one of us (VRS,J) was a party, the erstwhile State of Hyderabad comprised of three linguistic areas, viz., Telangana, Maratwada and Karnataka. In the year 1919, Nizam

issued a Firman promulgating the Mulki Rules, which provide for requirement of residence in the State for fifteen years as an essential qualification for public employment. These Rules were contained in Appendix-N to the Hyderabad Civil Services Regulations.

29. After the Constitution of India came into effect on 26.01.1950 and Hyderabad was declared as a Part –B State, a circular dated 14-06-1950 was issued by the Government of Hyderabad, making that portion of the Mulki Rules which prescribe birth and descent, as inoperative with effect from 14-06-1950. However, the other portion of the Mulki Rules not inconsistent with the Constitution was declared as saved by Article 35 (b) of the Constitution.

30. On and from 01-11-1956 the State Reorganisation took place and the Telangana region of the erstwhile State of Hyderabad became part of the newly formed State of Andhra Pradesh, while the Maratwada and Karnataka regions of the erstwhile State of Hyderabad respectively became parts of Maharashtra and Mysore (present Karnataka State). But the portion of the Mulki Rules saved by Article 35 (b) of the Constitution continued to operate by virtue of Section 119 of the States Reorganisation Act, 1956.

31. Within a few months of the reorganization of the States after independence, the Parliament enacted the Public Employment (Requirement as to Residence) Act, 1957, making a special provision for requirement as to residence in regard to certain classes

of public employment in certain areas. By Section 2 of the State Act, all laws saved by Article 35 (b) of the Constitution prescribing in requirement as to residence, stood repealed. But, Section 3 of the Act empowered the Central Government to make Rules prescribing a requirement as to residence, within the Telangana area for appointment to any Subordinate Service or post, under the State Government. Section 15 of the Act made it clear that the Rules framed by the Central Government in terms of Section 3 would be in force only for a period of 15 years.

32. In exercise of the powers conferred by section 3 of the State Act, namely Central Act No.44 of 1957, the Central Government issued a set of Rules known as Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959 prescribing that for appointment to certain posts, within the Telangana area of the State of Andhra Pradesh, the candidates should satisfy the requirement prescribed therein as to residence.

33. When the aforesaid Rules were sought to be implemented by terminating the services of persons appointed in violation of those Rules, a challenge was made before the Supreme Court to the very constitutional validity of Central Act No.44 of 1957 and the Rules issued therein. In ***A.V.S. Narasimha Rao v. State of Andhra Pradesh***[8] a Constitution Bench of the Supreme Court declared Section 3 of Act No.44 of 1957 as unconstitutional. Consequently,

[8] AIR 1970 SC 422

Rule 3 of the Rules was also struck down. However, the Supreme Court refused to go into the validity of the Mulki Rules.

34. But the decision of the Supreme Court in ***A.V.S. Narasimha Rao*** lead to certain ancillary questions, viz., (1) whether Section 2 of Act No.44 of 1957 would have also died a natural death; and (2) whether the Mulki Rules would survive or not. These questions were sought to be answered by a Full Bench of this Court in ***P. Lakshmana Rao v. State of Andhra Pradesh***[9], which held that the entire Act No.44 of 1957 died a natural death in view of the decision of the Constitution Bench in ***A.V.S. Narasimha Rao***. The Full Bench also held that Mulki Rules would continue to be valid.

35. But the decision of the Full Bench in ***P. Lakshmana Rao*** was overruled by a Larger Bench in ***V. Venkata Reddy v. Director of Industries and Commerce***. The Larger Bench held that the Mulki Rules are not valid and operative after the formation of the State of Andhra Pradesh and after the decision of the Supreme Court in ***A.V.S. Narasimha Rao***.

36. But the Supreme Court reversed the decision of the Larger Bench, in its decision reported as ***Director of Industries and Commerce v. V. Venkata Reddy***[10], holding that the Mulki Rules continued to be in force by virtue of Article 35 (b) though Section 2 of Act No.44 of 1957 did not survive.

37. Frustrated by this ping pong game fought by intellectuals in Courts, people took to streets in the form of agitations, of which

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[9] AIR 1971 AP 118
[10] AIR 1973 SC 827

the one in 1969 and the other in 1972 rocked the political establishment. Therefore, President Rule was imposed in the State on 10-01-1973 and a Six Point Formula was arrived at by and between the leaders of the two regions, viz., Telangana and Andhra Pradesh. The Six Point Formula provided for (1) accelerated development of the backward areas of the State; (2) Institution of uniform arrangements throughout the State enabling adequate preference to local candidates in the matter of admission to Educational Institutions; (3) Preferential treatment to a specified extent in the matter of direct recruitment to Non-Gazetted (other than some posts) posts and corresponding posts under the local bodies and the posts of Tahsildars, Junior Engineers and Civil Assistant Surgeons; (4) Setting up of a high-power Administrative Tribunal for dealing with the grievances of those in public employment; (5) An amendment of the Constitution in a manner conferring enabling powers on the President, so that the implementation of the formula did not lead to further litigation and consequent uncertainty; and (6) the discontinuance of the Mulki Rules and Regional Committee.

38. Towards implementation of Six Point Formula, the Constitution (Thirty-Second Amendment) Act, 1973 was enacted. By this amendment Clause (1) of Article 371, pursuant to which the Central Act No.44 of 1957 was enacted, was omitted and two new Articles, namely Article 371D and 371E were inserted.

39. The statement of objects and reasons for the Constitution (Thirty-Second Amendment) Act, 1973 is extracted in Para 14 of the

decision of this Court in ***P. Vema Reddy***. In a nutshell what was stated in the statement of objects and reasons in the Thirdty-Second Amendment to the Constitution was (1) that at the time of formation of the State of Andhra Pradesh in 1956, certain safeguards were envisaged for the Telangana Area; (2) that clause (1) of Article 371 was intended to provide such safeguards; (3) that Central Act No.44 of 1957 enacted pursuant to Article 371(1) was held by the Supreme Court to be unconstitutional in ***A.V.S. Narasimha Rao***; (4) that the failure of the safeguards as envisaged at the time of formation of the State led to agitations; and (5) that eventually the Public Representatives on both sides agreed upon a Six Point formula towards the implementation of which the constitutional amendment was brought forth.

40. The history behind Article 371D is recorded in this judgment in the foregoing paragraphs, to drive home the point that any interpretation given to Article 371D cannot go contrary to the Objects and Reasons, which have their foundation in the Six Point Formula.

Grounds of challenge to the impugned Presidential Order:

41. At the outset, we should make it clear that any Presidential Order issued in terms of Article 371D, is not amenable to challenge on the ground that it is *ultra vires* any other provisions of the Constitution, since the provisions of Article 371D and any order made by the President thereunder is given overriding effect under Clause (10) of Article 371D. But, it is always open to the Court to test

whether the Presidential Order issued in exercise of the powers conferred by Clause (1), is *ultra vires* any of the prescription contained in Article 371D itself. Keeping this fundamental premise in mind, we shall now examine the grounds of challenge to the impugned Presidential Order.

Grounds 1 and 2

42. The first two grounds of challenge to the impugned Presidential Order are (i) that Article 371D itself is applicable only to those in service under the control of the State Government and (ii) that teachers working in local bodies, are governed by the Seventy-Third Amendment to the Constitution and particularly Article 243G read with the Eleventh Schedule and The Andhra Pradesh Panchayat Raj Act, 1994 hence, they are out of the Government control.

43. The first ground of challenge is sought to be countered by Mr.V.Giri, the learned senior counsel appearing for the State and the learned senior counsel appearing for the contesting respondents on the ground that sub-clause (a) of clause (2) of Article 371D of the Constitution uses the expression “posts in the civil service of the State” and “classes of civil posts under the State”. In ***State of Assam v. Kanak Chandra Dutta*****,** the Constitution Bench of the Supreme Court held that a person appointed as Mauzadar for the purpose of collection of revenue in the State of Assam was the holder of a civil post, though he was virtually a person appointed on contract for collection of revenue. The Supreme Court held that there

is no formal definition “post” and “civil post”. The Court pointed out that as long as there is a relationship of master and servant and the existence of such relationship is indicated by the State’s right to select and appoint the holder of the post, its right to suspend and dismiss him and its right to control the manner and method his doing the work and the payment by it of his wages or remuneration, he will be deemed to be holding a civil post.

44. The same logic was followed by another Constitution Bench in ***Mathuradas Mohanlal Kedia v. S.D. Munshaw*****.** In this case, the Court was concerned with officers and servants employed in several Municipalities constituted under the Bombay District Municipal Act, 1901 and who were working as employees of the Gram panchayats or Nagar Panchayats established in the place of Municipalities under the provisions of the Gujarat Panchayats Act, 1961. The Court held that the true test for the determination of the question whether a person is holding a civil post or is a member of the civil service, is the existence of a relationship of master and servant between the State and the person holding a post under it. The existence of such relationship depended upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration.

45. Therefore, it is contended by the learned senior counsel appearing on the side of the respondents that the issue as to

whether teachers and other servants working in Panchayats and Zilla Parishads are the holders of the civil posts or not, is no longer *res integra*.

46. But, the contention of the learned senior counsel for the respondents loses sight of the fact that the decisions of the Supreme Court in ***Kanak Chandra Dutta*** and ***Mathuradas Mohanlal Kedia*** were delivered long before the Seventy-Third Amendment to the Constitution. This is why the Division Bench of this Court, while dealing with this same issue in ***Vema Reddy***, did not overrule a similar contention raised on behalf of the petitioners. On the contrary, this Court rejected the contention of the learned Advocate General at that time and yet chose to proceed on the basis that even if they are taken to be the holders of civil posts, the amendments under challenge in ***Vema Reddy*** cannot be upheld. This can be seen from paragraphs 21 to 23 of the decision in ***Vema Reddy***, which read as follows:

> *"21. 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.*
>
> *22. The learned Advocate-General would emphasize, placing reliance en Mathurdas Kedia v. S.D. Munshaw and State of Gujarat v. Ramanlal Keshavlal Soni , that posts under local authorities are also civil posts as the posts have been provincialised, there exists a master and servant relationship between the State Government and such employees, and their salaries are paid from out of the consolidated fund of the State. It is not necessary for us to examine whether posts under "local authorities" are civil posts. For the purpose of these batch of cases we shall presume that they are. Since only such "local authorities", which are subject to the control*

of the State Government, come under the purview of the Presidential Order, as provided for under Para 2(d) thereof, we shall also presume that the Mandal Parishad and Zilla Parishad schools, wherein teachers and other employees are employed, are also subject to the control of the State Government. As noted above 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. Para 3(2) requires categories of posts of lower division clerks and below in each "department" in each District to be organized into a separate local cadre. 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. Even when it comes to posts under the Hyderabad Urban Development Authority, a local authority, Para 6(4) uses the words "cadre" and not "local cadre". 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). 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 classes of civil posts under a local authority. It is for this reason that, while the cadres/posts of teachers in government schools was 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. In this context, it is useful to refer lo M.P. Ananthanarayana v. State of A.P. Division Bench Judgement in W.P. No. 26072 of 2006 and batch dated 28-6-2006, wherein a Division Bench of this Court observed:

"…...At this juncture, we must also examine the decision of the Tribunal, which held that the Presidential Order has a limited application to the Board. It was held so in O.A. No. 5792 of 2003 and batch on 29-10-2004. The correctness of that decision was challenged earlier before this Court in three writ petitions stated supra. Unfortunately, the issue was not decided by this Court as the petitioners preempted the decision by withdrawing the said writ petitions. Dealing with the issue, a Division Bench of the Tribunal held as follows:

xxxx. Thus 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 whose scale of pay does not exceed 480 per mensem or any amount corresponding to it as may be specified in this regard in the

successive revisions of pay scales granted by the State Government from time to time are applicable to posts born on the establishment of a local authority. It is significant to note that in para-3, 4, 5 of the Presidential Order, there is no mention about the posts born on the establishment of a local authority where as in para-6 and 8 there is mention about the posts born on the establishment of a local authority. This clearly goes to show that para-3,4 and 5 of the Presidential Order has no application to posts born on the establishment of a local authority.

We have examined the scheme and language of the Presidential Order and we approve the findings recorded by the Tribunal insofar as the applicability of the Presidential Order to the Board is concerned....

23. ***The submission of the Learned Advocate General that, since posts of teachers in Mandal Parishad and Zilla Parishad schools are civil posts, they come under the control of the department of education of the State government and, as they are paid salaries and allowances from the budget of this department, it is always open to the government to bring such teachers within the department of education, does not merit acceptance****. Even if it were to be held that such teachers hold civil posts, the fact remains that they are working in schools of Mandal Parishads and Zilla Parishads which, under Part IX of the Constitution and the provisions of the A.P. Panchayat Raj Act, are institutions of local self government. In Hanga Reddy District Sarpanches Association v. Government of AP. , a larger bench of five judges of this court, held that it is for the State Legislature to decide, by expressing its will through legislation or subordinate legislation, as to what extent Panchayat Raj Institutions should be conferred with power and authority and that Articles 40 and 243-G of the Constitution have left it to the wisdom of the State Legislature as regards the extent of the powers and authority to be endowed on Panchayat Raj institutions. It is, however, well to remember that the powers to be conferred on the Panchayats, by the State Legislature, must be such as are required to enable them to function as institutions of self-government. Under Section 4(3) of the A.P. Panchayat Raj Act, 1994 the Gram Panchayat, under Section 148(4) the Mandal Parishad and under Section 177(2) the Zilla Parishad, are bodies corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to enter into contracts and, by its Corporate name to sue and be sued. These Panchayat Raj institutions are independent legal entities distinct from that of the Government of Andhra Pradesh. The A.P. Panchayat Raj Act, 1994, made pursuant to the Seventy-Third amendment and introduction of Part IX to the Constitution could not have and, in fact, has not treated these Panchayats as forming part of any department of the State Government, for that would defeat the very object of making Panchayats institutions of local self-government."*

47. It may be seen from the statement of objects and reasons appended to the Seventy-Second Amendment Bill 1991 to the

Constitution, which was enacted as the Constitution Seventy-Third Amendment Act, 1992 that the object of inserting Part-IX in the Constitution was to enable the local bodies to function as units of Self-Government. The provisions inserted in Part-IX of the Constitution provided for (1) constitution of Panchayats, (2) elections to all seats in the Panchayats, (3) fixation of a tenure for Panchayats, (4) devolution by the State Legislature, of powers and responsibilities upon the Panchayats, with respect to the preparation of plans for economic development and social justice and for the implementation of the development schemes, (5) *grants-in-aid* to the Panchayats from the consolidated fund of the State and appropriation by the Panchayats of the revenues of designated taxes, duties, tolls and fees, (6) setting up of a Finance Commission and the review of the financial position of the Panchayats once in five years, and (7) auditing of the accounts of the Panchayats.

48. This is why Article 243G empowers the Legislature of a State, by law, to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. The law so enacted may contain provisions for devolution of powers and responsibilities upon Panchayats with respect to the preparation of plans for economic development and social justice and implementation of schemes for economic development and social justice including those in relation to matters listed in the Eleventh Schedule. Article 243 H empowers the Legislature of a State, by law, to authorise Panchayats to levy,

collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. The law so enacted may also provide for making such *grants-in-aid* to the Panchayats from the consolidated fund of the State. It may also provide for constitution of such funds for crediting all monies received respectively by or on behalf of the Panchayats and for withdrawal of such monies therefrom.

49. In exercise of the powers so conferred by Part-IX of the Constitution, the Legislative Assembly of the State of Andhra Pradesh enacted the Andhra Pradesh Panchayat Raj Act, 1994, providing for (1) constitution, administration and control of Gram Panchayats, (2) powers, functions and property of Gram Panchayats (3) taxation and finance, (4) public safety, convenience and health, (5) constitution, incorporation, composition, powers and function of Mandal Parishads, (6) constitution, incorporation, composition, powers and functions of Zilla Parishads, (7) constitution of Election Commission for Local Bodies, (8) constitution of Finance Commission and other various other ancillary matters.

50. Section 36 of the Andhra Pradesh Panchayat Raj Act, 1994, hereinafter called 'the Act', which deals with officers and other employees of Gram Panchayats, obliges the Government to pay out of the Consolidated Fund of the State, the salaries, allowances, pension etc., of the employees and the officers. Section 36 of the Act also left it to the rule making power of the Government under the proviso to Article 309 of the Constitution, to classify the posts,

prescribe the methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the officers and employees of a Gram Panchayat. The Government also reserved to itself under Section 36 (1) of the Act, the power to fix and alter the number, the designations and grades of and salaries, fees and allowances payable to officers and other employees of a Gram Panchayat. But Section 74 of the Act provided for the creation of a "Gram Panchayat fund" to which the taxes and levies collected by the Gram Panchayat as well as the grants received from the Government are to be credited. It is from out of this Gram Panchayat fund that the salaries and allowances and pensions and pensionary contributions of the officers and servants of the Gram Panchayat are to be paid, under Section 75 (2) of the Act. In other words, the Consolidated Fund of the State may be the source, but the same is liable to be credited into the Gram Panchayat Fund and it is only from the Gram Panchayat Fund that the payment of salaries and allowances to the officers and servants are to be made.

51. Part-III of the Andhra Pradesh Panchayat Raj Act, 1994, deals with the constitution, incorporation, composition, functions and powers of the Mandal Parishads. Just as Section 36 of the Act deals with officers and other employees of the Gram Panchayat, Section 169 of the Act deals with officers and other employees of Mandal Parishads. Section 169 (3), which is *in pari materia* with Section 36 (2) of the Act, obliges the Government to pay out of the Consolidated Fund of the State, the salaries, allowances, re-

allowances, pensions and contributions of the officers and employees of the Mandal Parishads. The rules relating to recruitment, conditions of service, classification, pay and allowances are also to be regulated in terms of the rules framed under the proviso to Article 309 of the Constitution.

52. Section 171 of the Act deals with the creation of a Mandal Parishad Fund and it is similar to Section 74. Just as Section 75 (2) (a) (ii) of the Act enjoins upon the Gram Panchayat, the duty to provide for payment of salaries and allowances of its officers and servants from out of Gram Panchayat Fund, Section 172 (3) makes it clear that the expenses of the Mandal Parishads, to be met out of Mandal Parishad Fund, shall include, the salaries and allowances of officers and other employees.

53. Likewise, Section 177 speaks about the constitution of Zilla Parishads. Part-IV of the Andhra Pradesh Panchayat Raj Act, 1994, which deals with the constitution, incorporation, composition, powers and functions of Zilla Parishads, contains a unique provision that is not to be found in Part-II dealing with Gram Panchayats and Part-III dealing with Mandal Parishads. Under Section 192 (1) (xv), every Zilla Parishad shall have the power to establish, maintain or expand secondary, vocational or industrial schools.

54. At this juncture, it may be relevant to note the distinction between the power conferred upon a Gram Panchayat, the power conferred upon a Zilla Parishad and the power conferred upon a Mandal Parishad. Section 46 of the Act, which speaks about the

powers of Gram Panchayat, merely enables the Gram Panchayat to make provisions for the promotion and development of pre-primary education, elementary education, social and health education, cottage industries and trade. It does not talk about the establishment of schools, though it talks about the establishment and maintenance of cattle sheds. In contrast, Section 161, which speaks about the powers and functions of a Mandal Parishad, merely enables the Mandal Parishads to exercise such powers and perform such functions as may be entrusted to it by the rules in this behalf in regard to the subjects enumerated in Schedule-I. The Mandal Parishad is also conferred under Section 161 (2), the power to carry out the functions specified in Schedule-II. Schedule-I is actually common to Gram Panchayats, Mandal Parishads and Zilla Parishads, as can be seen from the fact that a reference is made to Schedule-I in Section 45 (2), Section 161 (2) and 191 (1) of the Act.

55. In other words, Section 46 (iii), which deals with Gram Panchayat, merely speaks about the power of the Gram Panchayat to take measures for promotion and development of pre-primary education and elementary education. In contrast, Section 161 (2), which deals with the powers and functions of a Mandal Parishad, does not elaborate except making a reference to Schedules-I and II. Entry 17 in Schedule-I reads thus:

"Education, including primary and secondary schools"

This Schedule-I is common to Gram Panchayat, Mandal Parishads and Zilla Parishads.

56. But Schedule-II to which a reference is made only in Section 161 contains an entry in Entry 5, which is elaborate. Entry 5 under Schedule-II reads as follows:

> ***"5. Education:-*** *Maintenance and expansion to Elementary and Basic Schools and in particular,-*
> *(i) management of Government and taken over Aided Elementary and Higher Elementary Schools;*
> *(ii) establishment of Adult Education Centres and Adult Literacy Centres;*
> *(iii) provision and improvement of accommodation for schools with people's participation;*
> *(iv) conversion of existing Elementary Schools into Basic Schools; and*
> *(v) taking of such action as may be necessary for the promotion of education for all children until they complete the age of fourteen years."*

Therefore, ***the role of Mandal Parishads in the matter of establishment of schools, appears to be far greater than the role of Gram Panchayat. But the role of the Zilla Parishads appears to be far greater than that of the other two as seen from Section 192 (1) (xv) of the Act***.

57. In fact, Section 197 speaks about the constitution of a Zilla Parishad Fund. Section 198 (1), which enumerates the source of income of Zilla Parishads, gives an indication that the funds of the Zilla Parishads shall consist of both Central and State Governments funds allotted to the Zilla Parishads. Under Section 198 (3), the expenses of the Zilla Parishads include the salaries and allowances of its officers and other employees.

58. It must be kept in mind that the very object of the Constitution Seventy-Third Amendment is to make Gram Panchayats, Mandal Parishads and Zilla Parishads, independent units of Self-Government. ***The consolidated fund of the State is only one of the sources of funds received by these three units of local self-government. The moment a contribution is made by the State Government to a Gram Panchayat or Mandal Parishad or Zilla Parishad, from out of its Consolidated Funds, the colour of the coin fades. Thereafter, the money paid, partakes the character of the Gram Panchayat Fund or Mandal Parishad Fund or Zilla Parishad Fund and the salaries and allowances of the officers employed in these units of local self-government are paid only out of the respective funds and not out of the consolidated fund of the State.***

59. ***If source of funding can determine the existence of the relationship of master and servant, the officers and servants of local bodies will have many masters. The reason is that the Mandal Parishad Fund under Section 172 (1) (iii) is to include Central as well as State aid and also the aid received from the All India Bodies and Institutions for the development of cottage and village industries, Khadi, Silk, Coir, Handicrafts and the like. Similarly, the funds of the Zilla Parishads, are to include, under Section 198 (1), the Central or the State Government funds as well as the grants from All India Bodies and Institutions.***

60. Though the State Government, under various provisions of the Andhra Pradesh Panchayat Raj Act, 1994, has reserved to itself the power to make rules under the proviso to Article 309 of the Constitution for the classifications and methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the officers and employees appointed to Gram Panchayats under Section 36 (3), all Mandal Parishads (under Section 169 (4) and all Zilla Parishads under Section 195 (4), the same may not tantamount to the creation of the relationship of master and servant between the State Government and the officers and servants of Gram Panchayats, Mandal Parishads or Zilla Parishads.

61. We are conscious of the fact that the salaries and allowances, pension and contributions of the servants or the officers and other employees of Gram Panchayats are liable to be paid under Section 36 (2) from out of the consolidated fund of the State. Similarly, the salaries and allowances and pension and contributions of the officers and servants of Mandal Parishad are to be paid under Section 169 (3) from out of the consolidated fund of the State and the salaries and allowances etc., of the officers and servants of the Zilla Parishads are also to be paid under Section 195 (3) out of the consolidated fund of the State. ***But despite these provisions, there is an incongruity in the statutory prescription. Section 74 speaks about the creation of Gram Panchayat Fund, Sections 171 speaks about the creation of Mandal Parishad Fund and***

Section 197 speaks about creation of a Zilla Parishad Fund. It is into these funds that the grant-in-aid from the State Government is to be credited. It is from out of these respective funds that the salaries and allowances of the officers and servants are to be paid, as seen from Section 75 (2) (a) (ii) in the case of Gram Panchayat, Section 172 (3) in the case of Mandal Parishad and Section 198 (3) in the case of Zilla Parishads.

62. Therefore, we are very much doubtful whether the tests laid down by the two Constitution Benches of the Supreme Court in ***Kanak Chandra Dutta*** and ***Mathuradas Mohanlal Kedia*** will stand satisfied, after the advent of the Seventy-Third amendment to the Constitution and the Andhra Pradesh Panchayat Raj Act, 1994. Before the advent of the Panchayat Raj, the local bodies remained independent institutions only on paper. Now they have become (at least on theory) independent units of local self-governments. ***To say that (1) they have no power of appointment, (2) they have no relationship of master and servant, (3) they have no power to dismiss an employee or regulate his conduct, would actually strike at the root of the very object of the Seventy-Third Amendment of the Constitution***.

63. It may be true on facts that certain teachers of the Zilla Parishads and Panchayat Samithis in the State of Andhra Pradesh, have already been provincialised and they have been included in the Andhra Pradesh Education Service and Andhra Pradesh Education Subordinate Service. But, the same may not strike at the autonomy

of the local bodies and make the local bodies be at the mercy of the State Government even to take disciplinary action against a person working in a Gram Panchayat, Mandal Parishad or Zilla Parishad.

64. Therefore, we are of the considered opinion that the teachers working in the schools established and run by Gram Panchayats, Mandal Parishads and Zilla Parishads may not be the holders of civil posts or posts in the civil services of the State.

65. But there is one impediment for us to decide the *lis* on hand, solely on that basis. When the appeals arising out of the decisions of this Court in ***Kesavulu*** and ***Vema Reddy*** came up for final hearing, the Supreme Court gave liberty to the State Government to approach the Central Government for an amendment of the Presidential Order. While doing so, the Supreme Court recorded, not as a matter of a judicial opinion, but as a matter of concession by all parties before the Supreme Court, that the teachers of Panchayat Samithis and Zilla Parishads have also become government servants. It is on this basis that liberty was granted to the State Government to seek amendment of the Presidential Order. We would have been better off, if an opinion of a binding nature had been rendered by the Supreme Court as to whether the teachers of Panchayat Samithis and Zilla Parishad schools are holders of civil posts or holders of posts in the civil services of the State, within the meaning of these expressions under Article 371D (2) (a) of the Constitution. The relevant portion of the order of the Supreme Court reads as follows:

> *"1. Since the recruitment to the local authorities, the Panchayat Samitis and the Zila Parishads are said to have been done in compliance with Para 8 of the Presidential Order, the State Government is at liberty to send a proposal to the Union of India for obtaining the approval of the President of India to integrate the teachers of the Panchayat Samitis and the Zilla Parishads, who are also government servants with the existing local cadres of teachers. As and when such proposal is sent to the Union of India, the same shall be considered at an early date.*
>
> *In the meantime, it would be open to the State Government to frame Rules to make suitable promotional avenues for teachers and other employees of the Panchayat Samitis and the Zilla Parishads."*

66. Today, ***we cannot take a view that will make the basis on which a liberty was granted by the Supreme Court, a dead letter***. If teachers employed in the schools run by Zilla Parishads and Panchayat Samithis are not the holders of any post in the civil services of the State or the holders of civil posts, they cannot even be organised into local cadre, as Article 371D (2) (a) of the Constitution does not apply to them. But it is not possible for us today, to hold so, as the same would annul the effect of the order of the Supreme Court dated 30-09-2015. Therefore, even while expressing our opinion as indicated above and holding that the first and second grounds of challenge to the impugned Presidential Orders are liable to be sustained, we make it clear that our hands are tied and we are not in position to allow the writ petitions on the first and second grounds of challenge, as the same may tantamount to nullifying the order of the Supreme court dated 30-09-2015.

Third ground of attack:

67. The third ground of attack to the impugned Presidential Order is that Article 371D of the Constitution empowers the President only to direct the State Government to organise civil posts and posts in the services of the State into local cadre, but it does not authorise the President himself to organise posts into local cadre.

68. We do not think that such a dichotomy is borne out by Article 371D. A careful look at clause (1) (2) of Article 371D would show-

(i) that clause (1) empowers the President, by order, to provide 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;

(ii) that under sub-clause (a) of clause (2), the Presidential Order made under clause (1) may require the State Government to organise any class or classes of posts into different local cadres;

(iii) that under sub-clause (b) of clause (2), the Presidential Order made under clause (1) may specify any part or parts of the State, which shall be regarded as the local area, for direct recruitment to posts in any local cadre under the State Government and for direct recruitment to posts in any cadre under any local authority within the State; and

(iv) that under sub-clause (c) of clause (2), the Presidential Order may specify the extent to which and the manner in which and

the conditions subject to which, preference or reservation shall be given or made in the matter of direct recruitment.

Clause (1) and (2) of Article 371D read as follows:

> *"(1) The President may, by order made with respect to the state of Andhra Pradesh, provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of state, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State*
> *(2) An order made under clause (1) may, in particular,-*
> *(a) 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 principal and procedure as may be specified in the order the persons holding such post to the local cadres so organised;*
> *(b) specify any part or parts of the State which shall be regarded as the local area-*
> *(i) for direct recruitment to posts in any local cadre, (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government;*
> *(ii) for direct recruitment to posts in any cadre under any local authority within the State; and*
> *(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;*
> *(c) specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made-*
> *(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;*
> *(ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order, to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be."*

69. A careful look at clauses (1) and (2) of Article 371D would show that ***while clause (1) deals with the power to make order, clause (2) deals with the matters that the Presidential Order may provide for or deal with. Sub-clause (a), (b) and (c) of clause (2) deal respectively with (1) the organisation of posts into local cadres, (2) the demarcation of the State into local area and (3) the prescription relating to reservation***.

70. ***The source of power of the President is to be found in clause (1) of Article 371D and this clause does not oblige the President to delegate his power***. It is only in clause (2) and that too with respect to the organisation of local cadres, that a power of delegation is recognized. ***When the substantial provision conferring power upon the President to pass an order does not stipulate any restriction upon his power, the mere fact that he is also entitled to require the State Government under sub-clause (a) of clause (2), to organise posts into local cadre, does not divest the President of the power to organise posts into local cadre.*** Therefore, the third ground of challenge to the impugned Presidential Order cannot be accepted.

Fourth ground of attack:

71. The fourth ground of attack is that the decisions of this Court in ***M. Kesavulu*** and ***P. Vema Reddy*** to the effect that there cannot be an integration of the cadre of teachers in local bodies with the cadre of teachers in Government Schools have attained finality.

But the impugned order tends to overreach the decision of the Constitutional Court.

72. It is seen from paragraph 68 of the report in ***M. Kesavulu*** that one of the contentions raised by the learned counsel for the petitioners therein was that the integration of services of persons from separate and distinct cadres was illegal. ***In paragraph 70 of the report in M. Kesavulu, this Court came to the conclusion that though the services of teachers in the schools run by Panchayat Samithis and Zilla Parishads were provincialised and the same pay scales and other benefits were extended to them, they continued to stand on a different footing, in view of the necessity to protect the autonomy of the Panchayat Raj Institutions***. It was held towards the end of the paragraph 70 of the decision in ***M. Kesavulu***, that despite the provincialisation of their services, the teachers in Panchayat Samithis schools cannot be treated as absorbed teachers in Government services. In paragraph 72 of the decision in ***M. Kesavulu***, the argument of the learned Additional Advocate General appearing for the State that there was integration of service, was rejected. Paragraph 72 reads as follows:

> *"72. We also notice another flaw in the order passed by the Government. Though the learned Additional Advocate-General contends that it is integration of the services of the teachers working in Government schools and also Panchayat Raj institutions, but the G.O. does not spell out any integration obviously for the reasons referred to above. It is only specifically says that these rules apply to the teachers in Panchayat Raj institutions and the Government schools. Therefore, they are*

> *applied independently to the teachers working in Panchayat schools and teachers working in Government schools. Under these circumstances and in the absence of specific notification issued by the Government under the proper statute, the integration cannot be inferred. Therefore, on this ground also, G.O. is not sustainable and accordingly, liable to be set aside."*

After thus holding that the Government Orders impugned in ***M. Kesavulu*** did not talk about the integration of cadre, this Court also pointed out in paragraphs 87 to 90 that the posts of teachers working in Panchayat Raj Institutions were not organised into local cadre under the Presidential Order. ***An argument was raised in M. Kesavulu that once provincialisation had taken place, the posts so provincialised would automatically form part of local cadres***. But, the said argument was rejected in paragraph 97 of the report.

73. In other words, the decision of this Court in ***M. Kesavulu*** was based upon two important aspects namely (i) that the Government orders impugned therein did not talk about integration; and (ii) that the posts in Panchayat Raj institutions had not been organised into local cadres by any Presidential Order.

74. The procedural defect so pointed out in ***M. Kesavulu*** was sought to be removed by the Government through a legislative enactment in the form of A.P. Act 27 of 2005. But the same became the subject matter of challenge in ***P. Vema Reddy***. This Court struck down the enactment on the ground that the power of the State Government to organise posts into local cadres under Para 3 (1) of the Presidential Order had expired on completion of a period of 27

months from the date of commencement of the Presidential Order and that therefore, after 17-01-1978, the State no longer had the power to organise local cadre.

75. It is this lacuna that is sought to be removed by the impugned Presidential Order. If seen in this context, it will be clear that the President has not lost his powers to issue any order under clause (1) of Article 371D either organising any post into a local cadre or empowering the State to organise any post into a local cadre. In ***M. Kesavulu*** and ***P. Vema Reddy***, the State Government sought to integrate the posts in two different cadres, first through the executive fiat and next through a legislative enactment, for both of which Article 371D or the Presidential Order did not accord any sanction. But, it does not mean that even the President has exhausted his power to organise a post into a local cadre.

76. In other words, ***so long as Article 371D remains, the power of the President to make an order under clause (1) stands. The order so issued should deal with three things namely (i) organise posts into local cadres, (ii) specify parts of the State as local areas and (iii) specify the extent and conditions subject to which reservation has to be given in favour of local candidates.*** In other words, ***the order issued by the President under clause (1) will make provisions with regard to the three things namely (a) local cadre, (b) local area and (c) local candidates.***

77. ***But, unfortunately, the impugned Presidential Order does not merely organise the posts of teachers in local bodies into local cadre. The impugned Presidential Order namely sub-para (2A) of para 3 goes a step further by integrating the cadre of teachers of local bodies with the cadre of teachers of Government Schools.*** Sub-para (2A) inserted under paragraph 3 by the impugned Presidential Order reads as follows:

> ***"(2A) 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."***

78. ***While we have no doubt that the President himself can organise any posts into a local cadre or empower the State Government to organise any classes of posts into a local cadre, we have our own doubts as to whether the President can go further and order the integration of two different cadres.***

79. We have already extracted clauses (1) and (2) of Article 371D. As stated earlier, clause (1) of Article 371D confers power upon the President to make provisions, by order, in the matter of public employment and in the matter of education. ***Clause (2) pinpoints 3 specific aspects to be covered in the Presidential Order, namely (i) local cadre, (ii) local area and (iii) local candidate. Article 371D does not speak about the integration of any cadre***.

80. Even paragraph 3 of the Presidential Order, 1975 does not empower the State Government to integrate different classes of posts. ***We have no difficulty in accepting the power of the State***

Government as an employer to integrate different classes of posts or different cadres into one. But, the question here is whether the same can be done in terms of Article 371D and the Presidential Order issued thereunder.

81. The issue can be appreciated better, if sub-paragraph (2A) is juxtaposed with the other sub-paragraphs of Para 3. Paragraph 3 of the Presidential Order as it will stand amended with the insertion of sub-para (2A) reads as follows:

> ***"Para 3. Organisation of local cadres :-*** *(1) The State Government shall, within a period of eighteen months from the commencement of this Order, organize 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 to the extent, and in the manner, hereinafter provided:*
> *[Provided that, notwithstanding the expiration of the said period, the President may by order, require the State Government, whenever he considers it expedient so to do, to organise any 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].*
> *(2) The 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 shall be organised into a separate cadre.*
> ***Explanation****:- For the purposes of this sub-paragraph, sub-paragraph (1) of paragraph 6, and sub-paragraph (1) of paragraph 8, a category shall be deemed to be equivalent to or lower than that of a Junior Assistant if the minimum of the scale of pay of a post belonging to that category or, where the post carries a fixed pay, such fixed pay, is equal to or lower than the minimum of the scale of pay of a Junior Assistant.*
> *(2A) 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."*
> *(3) The posts belonging to each non-gazetted category, other than those referred to in sub-paragraph (2), in each department in each zone shall be organised into a separate cadre.*
> *(4) The posts belonging to each specified gazetted category in each department in each zone shall be organised into a separate cadre.*
> *(5) Notwithstanding anything contained in sub-paragraphs (3) and (4), the State Government may, where it considers it expedient so to do and with approval of the Central Government, organize the posts belonging to any of the categories referred to therein, in any department, or any establishment thereof, in two or more continuous zones into a single cadre.*

> *(6) Notwithstanding anything contained in sub-paragraphs (2), (3), (4) & (5), the Central Government may notify the departments in which and City of Hyderabad and on such notification, the posts belonging to each such category in each such department in the said City (other than those concerned with the administration of areas falling outside the said City) shall be organised into a separate cadre and the posts so organised shall be excluded from the other cadres, organised in pursuance of this paragraph, or constituted otherwise and comprising of posts belonging to that category in that department.*
> *(7) In organising a separate cadre in respect of any category of posts in any department for any part of the State, nothing in this Order shall be deemed to prevent the State Government from organising or continuing more than one cadre in respect of such category in such department for such part of the State.*
> *(8) Where the Central Government is satisfied that it is not practicable or expedient to organise local cadres under this paragraph in respect of any non-gazetted category of posts in any department, it may, by notification, make a declaration to that effect and on such declaration the provisions of this paragraph shall not apply to such category of posts."*

There are 8 sub-paragraphs in paragraph 3 of the Presidential Order. The first deals with the power of the State to organise different classes of posts into different local cadres. The second obliges the State to organise the posts belonging to the category of Junior Assistant and equivalent or lower categories to be organised into a separate cadre. The third speaks about the organisation of posts in non-gazetted categories other than the category of Junior Assistant etc., into a separate cadre. The fourth sub-paragraph obliges the posts belonging to each specified gazetted category in each department in each zone to be organised into a separate cadre. The fifth sub-paragraph speaks about the organisation of certain posts in two or more continuous zones into a single cadre, subject to the prior approval of the Central Government. The sixth sub-paragraph deals with the City of Hyderabad. The seventh sub-paragraph recognises the powers of the State Government to

organise more than one cadre in respect of any category of posts, which has been organised into local cadre. The eighth sub-paragraph deals with the power of the Central Government to declare that certain posts in the non-gazetted category cannot be organised into local cadre.

82. Thus, it is seen that paragraph 3 in entirety speaks only about the organisation of different classes or categories of posts into different local cadre and it does not talk about the integration or merger of different categories of posts. The reason why Article 371D as well as paragraph 3 of the Presidential Order remains silent about the integration of different cadres is that the only object of Article 371D is to provide equal opportunities for people belonging to different parts of the State in the matter of public employment. The said object has nothing to do with the integration of cadres, which is necessitated by administrative exigencies.

83. ***To put it differently, Article 371D is an affirmative action for the removal of regional imbalances. Integration of different cadres lies in the realm of administrative exigencies, which has nothing to do with the problem of regional imbalances. But, in their anxiety to overcome the legal hurdles created by M. Kesavulu and P. Vema Reddy, the Governments secured a Presidential order that goes beyond the scope, the purport and the express provisions of Article 371D.***

84. Taking advantage of the opinion expressed by the Supreme Court in ***Suryanarayana Rao*** to the effect that the

expression *"in the matter of public employment*" is of wider import, it was contended by the learned senior counsel for the State that clause (1) of Article 371D deserved a liberal interpretation, as it uses another expression namely *"equal opportunities*". But we do not think so. ***While giving any interpretation to the words and phrases found in Article 371D, the Court should keep in mind two things namely (a) the Six Point Formula that formed the basis for the Thirty-Second Amendment to the Constitution and (b) clause (10) of Article 371D, which gives overriding effect to Article 371D as well as the Presidential Order issued thereunder, over the other provisions of the Constitution including Articles 14 and 16 of the Constitution***.

84. ***Any special provision in the Constitution that eclipses Articles 14 and 16 has to be construed strictly and not liberally. With the exponential increase of the field of fundamental rights in the recent past, any provision of the Constitution that expressly overrides the fundamental rights guaranteed under Articles 14 and 16 of the Constitution should receive strict and not liberal construction***.

85. Keeping this principle in mind, If we look at Article 371D, it will be clear that neither Article 371-D nor the Presidential Order, 1975 speak about the integration of two different cadres. The Six Point Formula aimed at removing the regional imbalances, did not contemplate integration of different cadres as a method of offsetting the imbalances. If by inserting sub-paragraph (2A) in paragraph 3,

the Order had merely declared that the teachers in the schools run by Panchayat Samithis and Zilla Parishads shall be organised into local cadres, we could not have found fault with the same. In other words, if sub-paragraph (2A) had used the same language as used in sub-paragraphs (2) and (3) by merely declaring "posts belonging to each non-gazetted category of teachers in Mandal Parishads, and Zilla Parishads in each District shall be organised into a separate cadre", no one could have taken exception to the same. But the difficulty in sub-paragraph (2A) lies in the insertion of the words "Government Schools" and the word "Integrated". If the words "Government School" and the word "Integrated" are not found in the impugned sub-paragraph (2A), the same would have been perfectly in tune with the scheme of Article 371D of the Constitution and we would have no hesitation in upholding the same. The reason is that in the absence of the words "Government School" and the word "Integrated", sub-paragraph (2A) would be perfectly in line with the sub-paragraphs (2) and (3) of paragraph 3.

86. At the cost of repetition, it should be pointed out that the organisation of different posts in each department in each District into local cadre was to ensure that a major portion of the posts in every department in every District is filled up by local candidates. At the time when the Thirty-Second amendment was made to the Constitution, it was felt and recognised that all posts in all departments in all the Districts were occupied by non-locals due to the social and educational advancement of some parts of the State.

Therefore, with a view to provide a level playing field to socially and educationally backward Districts, the posts in each department in each District were organised into local cadres and 85% of the posts in each District in each department were reserved for the local candidates. While organising the posts in each department in each District could sub-serve the object sought to be achieved, the integration of cadres had no nexus to the object sought to be achieved. This is the reason why neither Article 371D nor the Presidential Order ever contemplated or whispered about the integration of cadres, but talk only about the organisation of local cadres. The theme of the song in all sub-paragraphs of paragraph 3 of the Presidential Order is on "each department in each District". It is not "different departments in each District" or "different departments in different Districts". ***Therefore, we are of the considered view that sub-paragraph (2A) is ultra vires Article 371D, in as much as no power of integration of different cadres is conferred upon the President under Article 371D. Nor can we read into Article 371D, the existence of any power to integrate different cadres, as part of the power to organise local cadres.***

87. Coming to the second impugned Presidential Order by which entries 23A, 26A and 26B are inserted in the Third Schedule to the Presidential Order, 1975, it is seen that the Third Schedule enlists Specified Gazetted Categories. The expression "Specified Gazetted Category" is defined in paragraph 2 (1) (j) of the Presidential Order to mean any gazetted category specified in the

Third Schedule. It also includes any other gazetted category notified as such by the Central Government. Sub-paragraph (4) of paragraph 3 of the Presidential Order provides for organising the posts belonging to each specified gazetted category in each department in each zone into a separate cadre. Therefore, the entries in the Third Schedule should be read along with paragraph 2 (1) (j) and paragraph 3 (4).

88. The emphasis in paragraph 3 (4) is on three things namely (1) each specified gazetted category, (2) in each department and (3) in each zone. Keeping this mind, let us now have look at the impugned entries.

S.No.	Category	Name of the Department
(1)	(2)	(3)
23A	Mandal Educational Officer, Head Master and Head Mistress in Government and Zilla Parishad High Schools	Education Department
26A	Senior Lecturers, District Institutes of Education and Training	Education Department
26B	Lecturers, District Institutes of Education and Training	Education Department

89. It is not clear as to how the writ petitioners in W.P.No. 23274 of 2017 are affected by entries 26A and 26B out of the three entries made by the impugned Presidential Order. It is not pleaded by the writ petitioners, who are working only as School Assistants, that they have an avenue of promotion to the post of senior lecturers or lecturers in the District Institute of Education and Training included in entries 26A and 26B.

90. But Entry 23A deals with the posts of Mandal Educational Officer, Head Master, Head Mistress in Government and Zilla Parishad High Schools. In other words, three different gazetted categories of posts, namely Mandal Educational Officer, Head Master and Head Mistress in Government High Schools and Head Master and Head Mistress in Zilla Parishad High Schools are brought under a single entry in Entry 23A. But paragraph 3 (4) of the Presidential Order lays emphasis on the organisation of each specified gazetted category in each department in each zone into a separate cadre. Paragraph 3 (4) of the Presidential Order reads as follows:

> ***"(4) The posts belonging to each specified gazetted category in each department in each zone shall be organised into a separate cadre"***

91. Therefore, Entry 23A inserted by one of the impugned amendments to the Presidential Order goes contrary to the express language of paragraph 3 (4) of the Presidential Order. Entries 26A and 26B do not suffer from such a vice.

92. Therefore, we are of the considered view that sub-paragraph (2A) of Paragraph 3 and Entry 23A inserted in the Third Schedule to the Presidential Order, 1975 are *ultra vires* of Article 371D only and the very scheme of the Presidential Order, 1975.

Ground No.5:

93. The last ground of challenge is to the retrospectivity conferred upon the amendment to the Presidential Order. Paragraphs 1 (3) of the impugned GSR 639 (E) dated 23-06-2017

declares that it shall be deemed to have come into force with effect from 20th day of November, 1998. A similar provision is found in paragraph 1 (3) of the GSR 637 (E), dated 23-06-2017 in relation to Entry 23A.

94. Interestingly, an "explanatory memorandum" is provided in the impugned Presidential Order GSR 637 and 639 dated 23-06-2017. It reads as follows:

> **"It is certified that no person is adversely affected by making the said orders effective with retrospective date".**

We do not know the basis on which such an explanatory memorandum was incorporated in the impugned Presidential Orders. The reason as to why the date 20-11-1998 was chosen, to give effect to the impugned amendments is that it was on the said date namely 20-11-1998 that G.O.Ms.No.538, set aside by this Court in **M. Kesavulu** was issued. To be precise, the Government first issued G.O.Ms.No.505 Education dated 16-11-1998, bringing the posts of Parishad Educational Officer and Gazetted Head Masters of Zilla Parishad High Schools and Mandal Educational Officer into the Andhra Pradesh Educational Service. By the next order in G.O.Ms.No.538, Education dated 20-11-1998, the Andhra Pradesh School Educational Subordinate Service Rules were made applicable to teachers working in Government as well as Panchayat Raj institutions. Since these two Government Orders G.O.Ms.No.505 and 538 were set aside by this Court in **M. Kesavulu,** the impugned

Presidential Orders seek to give retrospective effect from 20-11-1998, the date of issue of G.O.Ms.No.538.

95. It was submitted by the learned senior counsel appearing on behalf of the State Government that the Government will ensure that none of the service conditions such as scales of pay, seniority, promotions already granted etc., to Government school teachers will be affected by the impugned Presidential Orders and that at the most the mere chances of promotion available to them may get affected. Therefore, he contended that none of the vested rights of the writ petitioners are sought to be taken away by the impugned Presidential Orders and that even if they do so, they are not amenable to challenge on account of clause (10) of Article 371D.

96. But as we have indicated earlier, any interpretation to Article 371D should be in conformity with the objects behind the Thirty Second Amendment to the Constitution and the Six Point Formula. Such an interpretation cannot be liberal in view of the insulation of Article 371D and the Presidential Order issued thereunder from attack on the basis of any other provisions of the Constitution.

97. If we keep the above fundamental premise in mind, it is doubtful whether the Presidential order can have retrospective effect. The object of empowering the President to issue an order is to ensure that the backward areas of the State get a push so as to enable people of those regions to equip themselves in course of time and become fit enough to run the race in matters of education

and employment, on equal terms. Putting the clock back and organising certain posts into local cadre and integrating them with retrospective effect, is not at all recognized by the Presidential Order. The power to issue a Presidential order under Article 371D is not for ratification of any act already done in violation of the Presidential Order. Article 371D merely confers power upon the President to organise various classes of posts in each department in each District into local cadres. Once this is done, it will be up to the Government (1) to merge or integrate different categories of posts and (2) to give retrospective effect, if permissible in law.

98. Instead of requesting for a Presidential order, merely to organise the posts of teachers in Zilla Parishad schools and Panchayat Samithis schools into local cadre in terms of Article 371D and thereafter, integrate them with others in terms of the rules issued under the proviso to Article 309, the Government appears to have taken a shortcut and have the retrospective effect sanctioned by the Presidential Order itself. If the impugned Presidential Order had merely stopped with the organisation of the posts of teachers in Panchayat Samithi institutions into local cadre, it could have fallen into the domain of the Government to amend the Service Rules to integrate both the cadres. If the State Government had done this in exercise of the powers conferred by the proviso to Article 309, the same would have become vulnerable to challenge on the ground that the retrospective effect given to the rule, sought to take away the vested rights. In order to insulate the retrospective effect from

any attack on the ground of Article 14, the State Governments appear to have adopted the devious method of seeking a Presidential Order to integrate 2 different cadres with retrospective effect. No court can approve of such a game plan. Therefore, the fifth ground of attack is also liable to be upheld.

99. In view of what is stated above, we are of the considered view that sub-paragraph (2A) inserted in paragraph-3 of the Presidential Order 1975 by GSR 639 (E) dated 23.06.2017 is ultra vires the power conferred by Clause (1) of Article 371D and beyond the purview of the different aspects indicated in sub-clauses (a) (b) and (c) of clause (2) of Article 371D of the constitution. Similarly, Entry 23A inserted in the Third Schedule to the Presidential Order, 1975 by GSR 637 (E) dated 23.06.2017, in as much as the same places Mandal Educational Officer, Headmaster and Headmistresses in Government and Zilla Parishad High Schools in the same class, is ultra vires Article 371D. While there is power conferred by Article 371D to organise any class or classes of posts, no power of integration or merger of cadres is expressly or impliedly conferred by Article 371D(1) of the Constitution. Hence W.P.Nos.23267 of 2017, and 27404 of 2017 are allowed and the impugned Presidential orders are set aside. W.P.No.23274 of 2017 is partly allowed, setting aside Entry 23A inserted in the Third Schedule to the Presidential Order, 1975. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

V. RAMASUBRAMANIAN, J

Date: 28-08-2018

Js/Ksn

HON'BLE THE CHIEF JUSTICE

SRI THOTTATHIL B. RADHAKRISHNAN

AND

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Writ Petition Nos.23267, 23274 and 27404 of 2017

(Per VRS,J)

28th August, 2018

Ksn