

Writ Petition Nos. 23267, 23274 and 27404 of 2017

Government Teachers Association v. Union of India

2018 SCC OnLine Hyd 296 : (2018) 5 ALT 431 (DB)

In the High Court of Andhra Pradesh

(BEFORE THOTTATHIL B. RADHAKRISHNAN, C.J. AND V. RAMASUBRAMANIAN, J.)

Government Teachers Association, Telangana State Represented
by its General Secretary, having its Office at H. No. 8-1-
302/A/3 Petitioners

v.

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

Writ Petition Nos. 23267, 23274 and 27404 of 2017

Decided on August 28, 2018

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

The Order of the Court was delivered by

V. RAMASUBRAMANIAN, 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

public employment. The said object has nothing to do with the integration of cadres, which is necessitated by administrative exigencies.

87. 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.

88. 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.

89. 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.

90. 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.

91. 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.

92. 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).

93. 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. (1)	Category (2)	Name of the Department (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

94. 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.

95. 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.

96. 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:

97. 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.

98. 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.

99. 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.

100. 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.

101. 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.

102. 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.

103. 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.

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