

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 369 OF 2014

DISTRICT : MUMBAI

Akhil Maharashtra Shikshan Seva)
Rajpatrit Adhikari Sangh,)
Through its President by name)
Shri D.T Junnarkar,)
Working as Deputy Inspector of Education)
Office of Regional Deputy Director of)
Education, Jawahar Balbhavan,)
Charni Road, Mumbai – 400 002.)
Add for service of notice:)
Shri A.V Bandiwadekar, advocate,)
Having office at 9, Ram Kripa,)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)
2. Shri Sunil Baburao Magar,)
Working as Joint Director of)
Education, having office at)
S.S.C and H.S.C Board, Pune)
Division, Pune, Shivajinagar,)
Pune-5, R/o: A-5/12, Ganga)
Residency, Behind Mantra Market)

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- Hadapsar, Pune-28.)
3. Shri Mahaveer Damodar Mane,)
 Working as Director of Education,)
 Having office at Directorate of)
 Primary Education, Anni Bezant)
 Road, Pune-1, R/o: G-6/8)
 Queens Garden Camp, Pune-1.)
4. Shri Namdeo Kondiba Jarag,)
 Working as Director of Education,)
 Having office at Director of)
 Education, Secondary & Higher)
 Secondary, Government of)
 Maharashtra, Pune-1,)
 R/o: 43/15, Janaki Bank Colony,)
 Ganpati Matha, Pune-58.)
5. Shri Dinkar Mahadeo Patil,)
 Working as Joint Director of)
 Education, Class-I, having office)
 at Shikshak Bhavan,)
 192, Navi Peth, Pune-411 030.)
 R/o: Baba's Blue, Flat No. 9,)
 R.S No. 24/5, Katraj, Pune.)
6. Shri Sanjay Marotrao Ganokar,)
 Working as Joint Director of)
 Education and equivalent, M.E.S)
 Class-I, [Administration Branch],)
 Having office at Nagpur Divisional)
 Board, Nagpur, R.T Road,)



- Opp. Air India, Civil Lines,)
 Nagpur 440 001.)
 R/o: 14, Vidya Vaibhav Colony)
 Shegaon Road, Amravati-3.)
7. Shri Mahesh K. Karajgaonkar,)
 Working as Joint Director of)
 Education and equivalent, M.E.S)
 Class-I, [Administration Branch],)
 Having office at Project Controller,)
 M.P.S.P, Mumbai.)
 R/o: 23, Aditya Mansion,)
 Gawande Layout, Sneh Nagar,)
 Near Chatrapati Square, Khamala,)
 Nagpur-15.)
8. Shri Chandramane R. Borkar,)
 Working as Director of M.S Bureau)
 of Text Book Production and)
 Curriculum Research [Balbharati],)
 Having office at S.B Road, Pune-1.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through the Addl. Chief Secretary,)
 School Education & Sports Dept.,)
 Mantralaya, Mumbai 400 032.)
2. The State of Maharashtra,)
 Through the Addl. Chief Secretary,)



General Administration Department,))
Mantralaya, Mumbai 400 032.)
3. Shri S. Choklingam,)
Working as Commissioner,)
Education, Pune.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicants.

Shri D.B Khaire, learned Special Counsel with Shri K.B. Bhise, learned Presenting Officer for the Respondents no 1 & 2.

None for Respondent no. 3.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 08.07.2016



PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicants, Shri D.B Khaire, learned Special Counsel with Shri K.B. Bhise, learned Presenting Officer for the Respondents no 1 & 2. None for Respondent no. 3.

2. This Original Application has been filed by the Applicant no. 1 which is the Association of Gazetted Officers, working in the Education Department of Government of Maharashtra and other Applicants are working as Directors/Joint Directors of Education, who claim that the impugned order dated 18.11.2013, upgrading one of the posts of Director of Education to that of Commissioner of Education will adversely affect their promotional prospects and thus they are directly aggrieved by the said order. The Applicants have also challenged order dated 3.2.2014, posting the Respondent no. 3 as Commissioner of Education.

3. Learned Counsel for the Applicants argued that the Respondent no. 1 has sanctioned various posts at the level of Director of Education from time to time. As per the revised office memorandum dated 17.3.2003 and the Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) Recruitment Rules, 2013, Schedule 'A', there are nine posts of Directors of Education in the State. These posts are to be filled by promotion of Joint Director of Education on the basis of strict selection with due regard to seniority. The Respondent no. 1 issued a G.R on 18.10.2013 converting one post of Director, viz. Director, State Institute of Educational Technology (Bal Chitrawani) as Commissioner of Education. The Respondent no. 1 withdrew the said G.R and issued another G.R dated



18.11.2013, converting the post of Director, Bal Chitrawani to that of Commissioner of Education. The Respondent no. 3 was posted as Commissioner of Education by order dated 3.2.2014.

4. Learned Counsel for the Applicants contended that G.R dated 18.11.2013 is bad in law and illegal. There is no material to suggest that Directors of Educations were found lacking in any manner to implement the Act of 2009, viz. Right of Children to Free and Compulsory Education Act, 2009, which is main reason for upgrading one post of Director to the level of Commissioner. As such it was not necessary to post a Commissioner for implementation of the said Act. The ground to abolish the post of Director, Bal Chitravani that there was no sufficient work for that post is not based on facts. Other post of State Project Director, Maharashtra Prathmik Shikshan Parishad, which is included in Schedule 'A' to the Recruitment Rules for the posts of Directors of Education notified on 29.6.2013, does not find mention in the G.R dated 18.11.2013 which mentions only eight posts. Learned Counsel for the Applicants contended that the State Institution of Educational Technology (Balchitravani) has been given the task of development of multimedia teaching and learning material and it cannot be said that there is not enough work. Learned Counsel for the Applicants stated that there are major changes in G.R dated 18.11.2013 as

compared to G.R dated 18.10.2013. As such, fresh approval of Cabinet was required before G.R dated 18.11.2013 could be issued. Learned Counsel for the Applicants stated that the Child Right Act, 2005 provides for establishment of a Commission for protection of rights of children. This Commission has been assigned duties under the Act of 2009. State Advisory Council is also required to be constituted. However, the Act of 2009 does not envisage appointment of Education Commissioner. Learned Counsel for the Applicants stated that in G.R dated 2.5.2014, powers, duties and responsibilities of the Commissioner of Educations are listed. These are entirely of administrative nature and do not relate to quality of education. The creation of the post of Commissioner will therefore not further the cause of Act of 2009. Even for effectively coordinating the work of all Directors, there was no need to create the post of Commissioner, and the Respondent no. 1, i.e. Secretary of the Department could have done that. Teachers in Education Department are required to hold B. Ed qualification. Such persons are promoted as Deputy Directors, Joint Directors and Directors. However, the Respondent no. 3 does not have such qualification and is, therefore, not eligible to hold a post in Education Department. G.R dated 18.11.2013 has been issued in violation of recruitment rules dated 29.6.2013 for the post of Directors and is therefore, bad in law. Learned Counsel for the Applicants argued that if the



Respondents wanted to create a post of Commissioner, first the Recruitment Rules for the post of Directors dated 29.6.2013, should have been amended and the post of Director, Balchitravani removed from the Schedule 'A' to the Rules. The relevant Cadre Rules for IAS should have simultaneously been amended and then the post of Commissioner should have been created. Only then, order appointing an IAS officer as Commissioner of Education could have been issued. The Respondents have failed to follow due procedure and G.R dated 18.11.2013 is liable to be struck down on that count.

5. As regards appointment of Respondent no. 3 as Commissioner of Education by order dated 3.2.2014, learned counsel for the Applicant argued that cadre strength of I.A.S cadre in each State is fixed by the Indian Administrative Service (Fixation of Cadre Strength) Regulation, 1955. Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954 provides that cadre strength will be determined by the Central Government in consultation with the State Government. The post of Commissioner of Education was not included in the I.A.S cadre of Maharashtra. State Government alone cannot change the strength and composition of a cadre. Before issuance of G.R dated 18.11.2013, creating the post of Commissioner of Education, Government of India was not consulted. An I.A.S officer, cannot be posted to posts not included in the cadre. As the post of Commissioner

of Education was not a cadre post, it was an ex-cadre post and the Respondent no. 3 could not have been posted to that post. Learned Counsel for the Applicants argued that the I.A.S (cadre) Rules, 1954 and I.A.S (Fixation of Cadre strength) Regulations 1955 were violated by the Respondents no 1 & 2 while posting the Respondent no. 3 as Commissioner of Education. Also, before posting the Respondent no. 3 as Commissioner of Education, approval of Civil Services Board was not obtained. This is mandatory in terms of G.R dated 31.1.2014 issued after the judgment of Hon'ble Supreme Court in the case of **T.S.R SUBRAMANIAN Vs. UNION OF INDIA : AIR 2014 S.C 263**. Learned Counsel for the Applicants contended that order dated 3.2.2014 may be struck down.

6. Learned Counsel for the Applicants relied on the following judgments:-

(i) T.S.R Subramanian & Others Vs. Union of India & Others : AIR 2014 S.C 263. This judgment is regarding Constitution of Civil Services Board in connection with transfer and posting of officers and for providing of minimum tenure of service to various civil servants.


(ii) E.P. Royappa Vs. State of Tamil Nadu & another: AIR 1974 SC 555. It is held that the State Government



alone cannot alter the strength and composition of the cadre.


(iii) Judgment dated 17.11.2015 of this Tribunal in O.A no 576/2014 and 872/2013. This is a judgment by which the Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Recruitment) Rules, 2013 were struck down as there was no distinction between teaching and non-teaching posts though admittedly, 419 out of a total of 1070 posts in M.E.S, Group 'B' are teaching posts.

7. Learned Special Counsel Shri D.B Khaire, argued on behalf of the Respondents that the Applicants have challenged the orders of appointment of an IAS officer on the upgraded post of Commissioner of Education on two main grounds viz. (i) there is no provision in the IAS (cadre) Rules, 1954 and IAS (Fixation of cadre strength) Regulations, 1995 of the post of Commissioner of Education, and the State Government has no powers to create a cadre post or change the composition of a cadre. In addition, the posting of the Respondent no. 3 was without reference to the Civil Services Board and (ii) the action of the State Government in upgrading post of Director, Bal-Chitravani is without any justification, and it infringes provisions of Recruitment Rules of 2013 for the post of Director of Education. No person not having degree of B. Ed, can be




posted in Education Department and there is no requirement under the Commissions for Protection of Child Rights Act, 2005 or the Right of Children to Free and Compulsory Education Act, 2009 to create a post of Commissioner of Education. There is no material on record to show that Director/s of Education have failed to implement the Act of 2009 effectively. Also, by reducing one post of Director, the promotion prospects of Applicants are already affected and they are aggrieved by the G.R dated 18.11.2013 and order dated 3.2.2014.


8. Learned Special Counsel argued that as per the Indian Administrative Service (Cadre) Rules, 1954, cadre posts in a State can be filled by cadre officers only. A cadre officer is defined as a Member of the Indian Administrative Service. A cadre officer can be posted to an ex-cadre posts, which are included in the Schedule (for each State) to the I.A.S (Fixation of cadre strength) Regulations, 1955. The post of Commissioner of Education has since been included as a cadre post in the Schedule for Maharashtra in 1975 Regulations. Till then, it was an ex-cadre post and the State Government had powers to post an IAS officer to such an ex-cadre post. For posting an IAS officer to an ex-cadre post, State Deputation Reserve quota is prescribed and no approval from Central Government is required for that. Learned Special Counsel stated that the Applicants have not alleged that State Deputation Reserve was exceeded by




posting an IAS Officer viz. the Respondent no. 3, as Commissioner of Education. Learned Special Counsel argued that the charge of the post of Commissioner of Education was given to an IAS officer on 22.10.2013, by giving additional charge. By order dated 3.2.2014, independent charge was given to the Respondent no. 3. Learned Special Counsel argued that the challenge to order dated 3.2.2014 does not survive as Shri S. Choklingam, posted as Commissioner of Education by that order have since been transferred. Also, by notification dated 16.2.2015, the post of Commissioner of Education has been declared as a cadre post.

9. Coming to the validity of G.R dated 18.11.2013, learned Special Counsel argued that the Applicants have stated that earlier G.R dated 18.10.2013 was issued upgrading the post of Director, Bal-Chitravani to that of Commissioner of Education. However, that G.R was cancelled and a fresh G.R dated 18.11.2013 was issued which is impugned in the present Original Application. In para 6.20 of the Original Application, the difference between these G.Rs have been highlighted. It is claimed by the Applicants that the cabinet has approved proposal to create the post of Commissioner of Education and the said decision was implemented by issuing G.R dated 18.10.2013. However, if any changes in that G.R were to be made, fresh approval of Cabinet was necessary. In absence of fresh approval from



Cabinet, G.R dated 18.11.2013 is invalid. Learned Special Counsel argued that the Cabinet has approved proposal to upgrade one post of Director of Education to that of Commissioner of Education. The changes in G.R dated 18.11.2013 are peripheralⁱⁿ nature and do not contravene the approval obtained from the Cabinet. No fresh approval from the Cabinet was, therefore, necessary. 

10. The Applicants have stated that there are 9 posts of Directors of Education in the State as per Schedule 'A' to the Recruitment Rules of 2013, while the G.R dated 18.11.2013 mentions only 8 posts. Learned Special Counsel stated that the post of Project Director, Maharashtra Prathmik Shikshan Parishad (MPSP), Mumbai was wrongly included in the Schedule 'A' of the Recruitment Rules of 2013 for the post of Directors of Education. As per the Memorandum of Association of MPSP, the post of Project Director is to be filled by State Government from amongst the Directors of Education or persons holding equivalent posts or from other senior and eligible officers of the State. A G.R dated 7.5.1994 was also issued in this regard. Learned Special Counsel argued that the process to amend the Recruitment Rules of 2013 is underway to delete this post from the Schedule 'A'. 

11. Learned Special Counsel argued that the decision to upgrade the post was taken by the State Government to effectively implement the Right of Children to Free and Compulsory Education Act, 2009, which came into force on 26.8.2009. The Rules framed under this Act came into force in the year 2011. Major structural changes were required to be made in the education department to meet the emerging challenges in the educational field. It was, therefore, decided to create a post at the Commissioner level to effectively coordinate the work entrusted to different Directorates. It was found that the Director, Bal-Chitravani did not have sufficient work load and the same could be handled by a junior Officer. The post of Director, Bal-Chitravani was, accordingly, upgraded to the level of Commissioner of Education and was taken out of that institution. This was done for better implementation of the provisions of the Act of 2009. It is true that the Act of 2009 itself does not provide for creation of the post of Commissioner. However, after considering all the relevant facts, Government decided to create a post of Commissioner to effectively implement the provision of the Act. As none of the existing Directors of Education was given the duty of implementation of the said Act, there is no question of State Government showing any lack of faith in their capabilities. This policy decision ensures that a very senior officer is made responsible for implementation of this Act. Learned Special Counsel argued that the

Commissioner for Protection of Child Rights under the Child Rights Act, 2005 is to be appointed in the context of the rights of children and for providing speedy trial of offences against children or of violation of child rights. This Commission is entrusted with the duty of monitoring right of children to education also under the Act of 2009. It does not mean that a Commissioner of Education cannot be appointed to implement the provision of this Act as there is no provision in the Act for 2009 for that post. If that logic is extended, that Act of 2009 does not provide for appointment of any officer. That does not mean that the Act can be implemented without appointing any officer or staff. This argument does not deserve consideration.

12. Learned Special Counsel argued that it is not necessary that every officer in Education Department should have a B. Ed or D. Ed Degree. In fact, the recruitment rules of Deputy Education Officer, Group 'B' framed in 2013 provided first class degree of a University in any subject as the qualification for that post. The rules were declared invalid by this Tribunal by judgment dated 17.11.2015, on the ground that out of a total of 1070 posts of MES Group 'B', 419 were teaching posts and such posts cannot be filled by persons having only a University degree. The rules were not struck down on the ground that B. Ed should be made mandatory for all posts. Learned Special Counsel argued that once the

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post of Commissioner is declared as 'Cadre' post under the I.A.S (cadre) Rules, this issue no longer remains relevant.

13. Learned Special Counsel argued that the Applicant nos 2 to ~~5~~^{Three} have joined this Original Application on the ground that they are aggrieved by impugned G.R dated 18.11.2013. ~~Two~~^{Three} of these Applicants are already promoted as Directors of Education and cannot have any grievance, as they have not been demoted. They continued to be Directors. Other ~~two~~^{four} Applicants are working as Joint Directors. As per recruitment rules, they will be eligible to be considered for promotion as Directors, after working as Joint Directors for three years. It is not contended by them that they have become eligible to be considered for promotion and for want of vacancies, they are not being considered. They have no specific grievance, available at this point of time. As such, there challenge to the Original Application is based on future contingencies, which may not arise. They may retire before becoming eligible, or, there may be vacancies, when they become eligible.

14. Learned Special Counsel argued that the Applicants have challenged G.R dated 18.11.2013, which is a policy decision of the Government. He referred to the following judgments in support of his contention that the State Government have full powers to create or abolish

any post, even when such abolition may result in demotion of employees.

- (i) M. Ramanath Pillai Vs. The State of Kerala & Another etc. 1973 (2) SCC 650.

It has been held that every Government has a right to abolish a post. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity.

- (ii) State of Haryana & others Vs. Navneet Verma : (2008) 2 SCC 65.

It has been held that power to create or abolish a post rests with the Government. It is matter of Government policy. Courts may not interfere unless the decision suffers from malafide, legal or factual.

- (iii) S.S Dhanva Vs. Union of India & others : (1991) 3 SCC 567.

Abolition of a post does not amount to premature termination of service, if an employee loses post due to such abolition.

- (iv) Avas Vikas Sansthan & Another Vs. Avas Vikas Sansthan Engineers' Association & others : (2006) 4 SCC 132.

It has been held that power to abolish a post is vested in Government. For the economy and need

for streamlining the administration, State Government has powers to make alteration in staffing pattern.


- (v) Commissioner, Corporation of Madras Vs. Madras Corporation Teachers' Mandram & others : (1997) 1 SCC 253.

Tribunal's direction to create a post to enable in service person to be promoted was struck down by Hon'ble Supreme Court.

- (vi) Dr. Suryodhana Sahu & others Vs. Jitendra Kumar Mishra & others : (1998) 7 SCC 273. The petition seeking preventing the Government from appointing persons without super specialty qualification as Lecturer was not considered.

Learned Special Counsel argued that the State Government has full power to create or abolish a post or to change the staffing pattern. Power to prescribe qualification for a post also rest with the Government. He argued that this Original Application is not maintainable and may be dismissed.

15. The Applicants have challenged two orders viz. appointment of the Respondent no. 3 as Commissioner of Education by order dated 3.2.2014 and G.R dated 18.11.2013, upgrading one post of Director of Education



to that of Commissioner of Education. The challenge to the order dated 3.2.2014 is mainly on the ground that the provisions of the Indian Administrative Service (Cadre) Rules, 1954 and the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 were violated by the State Government, when the Respondent no. 3, who is made a respondent by name, was appointed as Commissioner of Education (Commissioner in short), by order dated 3.2.2014. The contention of the Applicants is that the post of Commissioner was not a 'cadre' post as defined in the IAS (cadre) Rule when the order dated 3.2.2014 was passed. A post under the State Government can be declared as a cadre post, only by the Central Government under the Regulations of 1955 and State Government on its own cannot do so. The Respondents have contended that as per Regulations, when the impugned order was passed strength of Senior Duty posts in Maharashtra was 190. 25% of that number, i.e. 47 posts which are not 'cadre' posts, could be filled by posting I.A.S officers. This 25% quota is in addition to Senior Duty posts and is called State Deputation Reserve. State Government could have posted 47 I.A.S Officers in ex-cadre posts at that point in time. The Regulation of 1955 were amended by the Central Government by notification dated 16.2.2016 (page 368 of the Paper Book) and the number of Senior Duty posts is increased to 196. The post of Commissioner of Education is now included as a cadre


post. It is seen that Rule 8(2) of the I.A.S (Cadre) Rules, reads:-

“8(2). A cadre officer shall not hold an ex-cadre post in excess of the number specified for the concerned State under item 5 of the Schedule to the Indian Administrative Service (Fixation of Cadre strength) Regulation 1955.”

Item 5 in the Schedule to Regulation of 1955 is item 3 at present and it is defined as “State Deputation Reserve not exceeding 25% of item 1 above.”

The claim of the Respondents is that the Respondent no. 3 was posted as Commissioner, which was an ex-cadre post in exercise of powers under Rule 8(2) of the cadre rules. This appears to be correct. The Applicants have not specifically denied the contention of the Respondents in para 16 of the affidavit in reply dated 27.4.2015 which reads:-

“Since the post of Commissioner, Education, is not included in cadre notification dated 14.5.2007, it is not a cadre post, but if it is a ex-cadre post & State Government has full powers to make appointment on this post and no approval is required from Central Government nor any change expected in notification dated 10.4.2007.”



However, the notification dated 10.4.2007 has since been amended by notification dated 16.2.2015 by Government of India, and the post of Commissioner of Education is now a Cadre post. Before 16.2.2015, State Government could have filled that post by appointing an I.A.S officer, as the post before 16.2.2015 was an ex-cadre post. In the affidavit in rejoinder dated 15.7.2015, there is no rebuttal of this averment by the Applicants. The Applicants have, however, cited judgment of Hon'ble Supreme Court in Royappa's case (supra). This judgment is regarding second proviso to Rule 4(2) of the I.A.S (Cadre) Rules, 1954. Majority judgment of Hon'ble Supreme Court has held that State Government cannot add posts temporarily to the cadre unless similar posts already exists in cadre. The judgment of the Hon'ble Supreme Court is in context of cadre officer, who was sought to be posted on a non-cadre post and State Government claimed that it has power to add to the cadre posts under second proviso to Rule 4(2) of the Cadre Rules. Here the State Government has already stated that the Applicant was appointed to an ex-cadre post and there does not appear any controversy on that count. The judgment in Royappa's case is clearly not applicable to the facts in the present case.

16. The Respondent no. 3 is no longer the Commissioner of Education, having been transferred from that post during the pendency of this Original



Application. Even, otherwise, the Schedule of cadre posts in Maharashtra has now the post of Commissioner. Before notification dated 16.2.2015 was issued amending the Schedule, State Government had powers to appoint a cadre officer to the then non-cadre post of Commissioner. Considering all this facts, Applicants' challenge to the appointment of the Respondent no. 3 as Commissioner by order dated 3.2.2014 must fail.

17. The Applicants have challenged G.R dated 18.11.2013 upgrading the post of Director, Bal Chitravani to that of Commissioner on various grounds. It is stated that the Cabinet sanction has resulted in G.R dated 18.10.2013 and once that G.R was cancelled, fresh approval of the Cabinet was required before G.R dated 18.11.2013 could be issued. It is claimed that there are material differences between these two G.Rs. From the material produced on record by the Applicants, which they had obtained under the Right to information Act, it is seen that the following decision was taken by the Cabinet, viz.

शालेय शिक्षण व क्रीडा विभाग/प्रशा-५
आज दि.०४ सप्टेंबर, २०१३ रोजी सहाय्यी अतिथीगृह येथे झालेल्या मंत्रीमंडळ बैठकीतील
निर्णयाबाबत कार्यवृत्त

| विषय क्र. | विषय | मंत्रीमंडळाने घेतलेले निर्णय |
|-----------|---|---|
| ७ | पुणे येथे कार्यरत शिक्षण संचालक संवर्गातील एका पदाचे रूपांतर करून आयुक्त (शिक्षण), महाराष्ट्र राज्य, पुणे | शालेय शिक्षण विभागाच्या अधिपत्याखालील क्षेत्रीय स्तरावरील महाराष्ट्र शिक्षण सेवा गट-अ (प्रशासन शाखा) मधील शिक्षण संचालक व तत्सम या संवर्गातील पुणे येथे |


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| | हे पद भारतीय प्रशासन सेवेत नव्याने निर्माण करण्याबाबत | कार्यरत शिक्षण संचालक संवर्गातील एका पदाचे रूपांतर करून आयुक्त (शिक्षण), महाराष्ट्र राज्य, पुणे हे पद भारतीय प्रशासन सेवेत नव्याने निर्माण करण्यास मान्यता देण्यात आली. आयुक्त (शिक्षण) यांच्या नियंत्रणाखाली सर्व संचालक (राज्य प्रकल्प संचालक, महाराष्ट्र प्राथमिक शिक्षण परिषद, मुंबई वगळून) काम करतील. उर्वरित ७ संचालकांच्या कामाचे व मनुष्यबळाचे पुर्न:वाटप करण्याचे सर्व अधिकार विभागास राहतील. |
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From this document, it is clear that the Cabinet had given approval to upgrade one of the posts of Directors of Education to that of Commissioner of Education. The remaining Directors, except Project Director of MPSP, would work under the control of Commissioner and the Commissioner was given power to reallocate work and man powers to various Directors. It is to be seen whether the G.R dated 18.11.2013 violates the above mandate given by the Cabinet to the Education Department. We do not find any provision of G.R dated 18.11.2013 which is beyond the mandate given by the Cabinet. Minor differences between G.R and earlier G.R dated 18.10.2013, which was superseded, will not require fresh approval of the Cabinet. This contention of the Applicants is without substance.

18. The Applicants have stated that the reason given in the G.R dated 18.11.2013 that for effective implementation of the Right of Children to Free and Compulsory Education Act, 2009, (Act of 2009) the post



of Commissioner is created is not tenable. It is stated that the Act does not provide for creation of the said post, though, under Section 31(g) the State Commission for Protection of Child Rights constituted under the Child Rights Act of 2005 have been assigned duties under this Act. Under Section 34, State Advisory Councils are also envisaged. However, no provision for the post of Commissioner is made in the Act of 2009. We are not at all impressed by this argument. The Commissions under the Child Rights Act of 2005 are constituted to ensure that the rights of children are protected. Such Commissions have been given powers under the Act of 2009 to monitor the child's right to education also. This Act also envisages constitution of State Advisory Councils. Both the Commission and Advisory Councils are consisting of Members, who are to be appointed as per the provisions of the Act. It is not necessary to provide organizational structure in an Act of a Department, which is entrusted with the implementation of a particular law. It will be decided by the State Government considering the scope and nature of work, which will be required to be done. In the present case, if there is no provision for creation of the post of Commissioner in the Act of 2009, we fail to understand as to how that will make creation of that post illegal. There is no provision in the Act for creation of any post. This contention is totally without any foundation.



19. The Applicants have claimed that the existing Directors were fully competent to carry out the implementation of the Act of 2009 so it was not necessary to create the post of Commissioner. However, the State Government had found it necessary to bring out structural changes in the administrative set up of the educational system in the State and for better coordination, decided to create the post of Commissioner. The Applicants do not have any authority to challenge the said decision of the Government. Similarly, the argument that only a person having degree in Education can work in Education Department cannot be accepted. The reliance of the Applicants on the decision of this Tribunal dated 17.11.2015 in O.A nos 576/2014 and 872/2013 is misplaced as this Tribunal did not hold that B. Ed or M. Ed Degree was required for the post of Deputy Education Officer. The Recruitment Rules provided that a simple degree for the post was sufficient, which was found not to have nexus with the object of the Recruitment Rules as 419 of out 1070 posts were teaching posts for which B. Ed/ M. Ed would be the necessary qualification. For the rest of the posts, not requiring teaching, the Tribunal did not examine the issue in greater detail. In the present case, once the post of Commissioner is declared as Cadre post, this issue does not survive.




20. The Respondents have relied on a number of judgment of Hon'ble Supreme Court regarding powers of the State Government to create or abolish posts. In Pillai's case (supra), Hon'ble Supreme Court has held:-

"14. The first question which falls for determination is whether the Government has a right to abolish a post in service. The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of Government policy. Every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are decided by the Government in the interest of administration and general public."

In para 23, it is held that:-

"23. A post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily malafide or as a mask of penal action within the meaning of Article 311(2). In the present case, none of these elements namely arbitrariness, malafide or mask over some penal action are present."



Learned Advocate Shri Bandiwadekar argued that in para 37 of this judgment, Hon'ble Supreme Court has held that:-

“Therefore as a general rule the doctrine of estoppel will not be applied against its governmental, public or sovereign capacity. An exception, however, arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice.”

He argued that G.R dated 18.11.2013 is a case of manifest injustice. We are not impressed with this line of arguments. There has been no injustice. The person, who was occupying the abolished post of Director, Bal Chitravani has not been demoted, but given another post in the same pay scale. No one else has pleaded estoppel.

In the case of Naveen Verma (supra), more or less similar view have been taken. It is held that:-

“17(e) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from malafides, legal or factual.”

In the present case, we have been unable to detect any malafide in the action of the Government.

In Dhanoa's case (supra) Hon'ble Supreme Court has held that:-

"29. As regards the first contention, namely, that in view of the service Rules, the Election Commissioners were entitled to remain in their posts for a period of five years or till they attained the age of 65 years, whichever event occurred earlier, we are of the view that this is not a case of a premature termination of service. It is a clear case of the abolition of posts on account of the reasons stated earlier and the termination of the service is a consequence thereof. Hence the termination of service is not open to challenge on the ground of any illegality."

In the present case, services of no person have been terminated.

In Avas Vikas's case (supra) Hon'ble Supreme Court has held that:-

" 59. It is well settled that the power to abolish a post which may result in the holder thereof ceasing to be a Government servant has got to be



recognized. The measure of economy and need for streamlining the administration to make it more efficient may induce any State Government to make alterations in the staffing pattern of the Civil services necessitating either the increase or the decrease in the number of posts or abolish the posts.”

Learned Advocate Shri Bandiwadekar argued that G.R dated 18.11.2013 has not been issued as an economy measure and as such this judgment is distinguishable. We are unable to appreciate his argument. G.R dated 18.11.2013 upgrades the post of Director, Bal Chitravani to that of Commissioner. The effect of this G.R on the Applicants is that one post of Director of Education stands abolished and thereby they are aggrieved. If the State Government has decided to create a new post of Commissioner, without affecting any existing post, the Applicants probably would not have been aggrieved. There cannot be any doubt that the decision to upgrade one post of Director was taken as an economy measure. Otherwise, the State would have been required to create a new post of Commissioner.

21. From the survey of the judgment of Hon'ble Supreme Court it is quite clear that the State Government's decision to issue G.R dated 18.11.2013 was a policy decision, which the State Government was



fully competent to take. There is no arbitrariness or malafide in the decision of the Government. No one is directly affected by the decision as the incumbent Director, Bal Chitravani was not demoted.

22. The Applicants no 2 to ³ have joined this Original Application in challenging the G.R dated 18.11.2013 and order dated 3.2.2014. ^{Three} ~~Two~~ of the Applicants are already working as Directors of Education and G.R dated 18.11.2013 does not adversely effects them. ^{Four} ~~Two~~ other Applicants are at present working as Joint Directors, and claim that their prospects for promotion are adversely affected. Whenever staffing pattern in a department changes, such situation may arise. However, these Applicants are also not directly affected by this G.R. Organization of a Department cannot remain static or unchanged only on the ground that abolition of some posts may adversely affect some employees. Hon'ble Supreme Court has held that even loss of a job, on abolition of a post is not illegal. As such, we do not find any reason for the Applicants to feel aggrieved.

23. The Applicants have stated that G.R dated 18.11.2013 infringes provision of Recruitment Rules of 2013 for the post of Director of Education. It is a fact that Schedule 'A' to these rules lists 9 posts of Directors. However, the Respondents have explained that the post

of Project Director, Maharashtra Prathamick Shikshan Parishad is not exclusively to be filled by the Director of Education. It is not a promotional post in the cadre, but a selection post and other suitable Government Officer can also be appointed to that post. Action to suitably amend the Recruitment Rules is under way, which will take care of the post of Director, Bal Chitravani also, which has been effectively abolished by G.R dated 18.11.2013. We hope that necessary action will be completed expeditiously. B

24. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 08.07.2016

Dictation taken by : A.K. Nair.