A STATE OF ANDHRA PRADESH & ORS.

v.

V. SADANANDAM & ORS. ETC. ETC.

MAY 16, 1989

B [R.S. PATHAK, CJ. AND S. NATARAJAN, J.]

Civil Services: Services—Recruitment to—And method of—Exclusively within the domain of Executive—Not for judicial bodies to judge the wisdom of the Executive.

C *Andhra Pradesh Treasury and Accounts Subordinate Service Rules 1963—Rule 3 and G.O. Ms. No. 196 dated 17.6.83—Head Accountants and Sub-Treasury Officers—Recruitment of—Amended Rule 3—Whether conforms to para 5(2) of Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order 1975.*

D

In these two appeals filed by the State of Andhra Pradesh against the orders of the Andhra Pradesh Administrative Tribunal, the question that arises for consideration is whether amended Rule 3 of the Andhra Pradesh Treasury and Accounts Subordinate Service Rules 1963 is violative of the Andhra Pradesh Public Employment (Organisation of E **Local Cadres and Regulation of Direct Recruitment) Order 1975. The circumstances under which this question has arisen are stated hereinbelow.**

Prior to the filing of Representative Petitions Nos. 1595 and 788 of 1984 by the Respondents in the Tribunal out of which these appeals F **have arisen, seven persons belonging to category 5 of Branch II of the Andhra Pradesh Treasury and Accounts Subordinate Service had presented a Petition before the Andhra Pradesh Administrative Tribunal challenging the vires of Rule 3 of the Andhra Pradesh Treasury and Accounts Subordinate Service Rules 1963, being violative of para 5(1) of Andhra Pradesh Public Employment Order, issued by the President of** G **India under clauses (1) & (2) of Article 371-D of the Constitution, *inter alia* on the ground that it made provision for promotion of clerks of the Directorate of Treasuries and Accounts and Assistants of the Finance Department of the Secretariat to the post of Head Accountants and Sub-Treasury Officer which posts had become Zonal posts after the promulgation of Presidential order. According to them only the U.D.** H **Accountants of the feeder sources of the Zone were eligible for consi-**

deration in that particular Zone for promotion to the rank of Head Accountant and Sub-Treasury Officer and not the personnel from the other Zones, including U.D. Accountants of the Directorate. A

The Tribunal held that by virtue of para 5(1) of the Presidential order, for purposes of promotion, Zonal Cadre had to be treated as a separate unit and consequently the posts of Head Accountants/Sub-Treasury Officers, could be filled up by promotion only on Zonal basis and as such Rule 3 which specified various categories of posts without reference to Zone as feeder posts for the purpose of promotion to the posts in question were inconsistent with para 5(1) of the Presidential order. The Tribunal therefore declared that after the promulgation of Presidential order, the provisions of Rule 3 would have to be reviewed so as to make them consistent with the provisions of the Presidential order. The Tribunal further declared that various categories of feeder posts including the posts of Assistant Section Officers of the Secretariat from which promotion to the posts of Head Accountants/Sub-Treasury Officer could be made, could not be made operative after the promulgation of the Presidential order. After the aforesaid decision of the Tribunal, the State Government amended Rule 3 and gave it a retrospective operation w.e.f. 18.10.1975. B C D

The validity of the amended Rule was questioned by the Respondents in the context of certain Assistant Section Officers in the Finance Department (Secretariat Service) borne on Zone VII being appointed to the post of Sub-Treasury Officers borne on the Subordinate Offices under the Directorate of Treasuries and Accounts borne on Zones I to IV, by filing the said Representation Petitions before the Andhra Pradesh Administrative Tribunal. It was again contended before the Tribunal that the amended Rule 3 was violative of the Presidential order. According to the State the amended Rule had been issued by the Governor in exercise of the power conferred on him by the Proviso to Article 309 of the Constitution and hence the validity of the Rule could not be questioned by the Petitioners. It was further contended by the State that the earlier G.O. was not violative of the Presidential order of the provisions of Article 371-D, but even so, as it was considered by the Tribunal to be inoperative because the special provision did not explicitly state that they had been made in exercise of the authority vested in the State Government under para 5(2) of the Presidential order, the Government had set right the lacuna by framing the amended Rule specifically in exercise of the powers conferred on Government under para 5(2) of the Presidential order. E F G H

A The Tribunal held that the impugned G.O. 196 did not set out under which sub-para viz., sub-para (a), (b) or (c) in para 5(2) of the Presidential order, the G.O. was issued and therefore the amended G.O. could not be upheld. The Tribunal also declared that there was no justification for transferring a person who did not belong to concerned Zone to be inducted into that Zone, as that would defeat the underlying B purpose of the Presidential order.

The State has, therefore, preferred these appeals. Allowing the appeals this Court,

HELD: That the Tribunal has failed to construe para 5(2) of the C Presidential order in its proper perspective and give full effect to the powers conferred thereunder on the State Government to make provisions contrary to the scheme of local cadres prescribed under para 5(1). The words in para 5(2) viz., "nothing in this order shall prevent the State Government from making provision for" sets out the over-riding powers given to the State Government under the sub-para. Such over- D riding powers have been given to the State Government in express terms in recognition of the principle that public interest and administrative exigencies have precedence over the promotional interests of the members belonging to local cadres and zones. [353C-E]

In order to make the provisions of old rule to have currency even E after the Presidential order was passed, the Government issued G.O. Ms. No. 728 on 1.11.75. The Government has issued G.O. Ms. No. 196 dated 17.6.83 for amending Rule 3 so as to make the Rule conform to the requirements of para 5(2) of the Presidential order. [354B, C-D]

The mode of recruitment and the category from which the recruit- F ment for a service should be made are all matters which are exclusively within the domain of the Executive. It is not for judicial bodies to sit in judgment over the wisdom of the Executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the Executive. [355B]

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The question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity or exigency. When the rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination the policy of transfer adopted by the Government cannot H be struck down by Tribunals or Court of Law. [355C]

Rule 3 of the amended Rule declared to be *intra vires* of the Presidential Order. [355E-F] A

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3490-91 of 1987.

From the Judgment and Order dated 5.3.1986 and 1.4.1986 of B the Andhra Pradesh Administrative Tribunal, Hyderabad in R.P. Nos. 1595 of 1983 and 788 of 1984.

P.A. Choudhary, T.V.S.N. Chari, Ch. Badrinath and Mrs. Sumitha Rao for the Appellants.

C. Seetharammayya, B. Parthasarthi and A. Subba Rao for the C Respondents.

The Judgment of the Court was delivered by

NATARAJAN, J. These appeals by the State of Andhra Pradesh D are directed against the judgments of the Andhra Pradesh Administrative Tribunal, Hyderabad, in R.P. Nos. 1595 and 788 of 1984. Originally, the Government of Andhra Pradesh, in purported exercise of its powers under Clause 5 of Article 371-D of the Constitution passed an order G.O. Ms. No. 215 dated 14.7.1986 to annul the two judgments of the Tribunal. On 20.12.1986, this Court negatived the powers of E annulment assumed by the State Government by striking down Clause 5 of Article 371-D and the proviso thereto as being opposed to the basic structure of the Constitution. Thereafter, the State has preferred these appeals by special leave against the judgments of the Administrative Tribunal.

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What falls for consideration in these appeals is whether amended Rule 3 of the Andhra Pradesh Treasury and Accounts Subordinate Service Rules 1963 (hereinafter referred to as the Rules) is violative of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as the Presidential Order) issued on 18.10.1975 by the G President of India under clauses 1 and 2 of Article 371-D of the Constitution.

The validity of the amended Rule was questioned in the context of certain Assistant Section Officers in the Finance Department of the Government of Andhra Pradesh (hereinafter referred to as the H

A Secretariat Officers) borne on zone VII being appointed to the post of Sub-Treasury Officers borne on the Subordinate Offices under the Directorate of Treasuries and Accounts (hereinafter referred to as the Local Cadre) borne on zones I to IV. For a proper appreciation of the matter, it is necessary that Rule 3 before and after amendment and the B Presidential Order are set out.

Under Rule 3 of the Rules, the posts of Head Accountants and Sub Treasury Officers could be filled up by any of the following methods:

(i) By direct recruitment;

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(ii) By promotion from category 3, 4 or 5 of Branch II or from category 3 of Branch I, III, IV, VI or category 2 of Branch VII; and

D (iii) By transfer from among the U.D. Clerks (now called Assistant Section Officers) in the Finance Department of the Secretariat.

Rule 3 thus made provision for the posts of Head Accountants and Sub Treasury Officers being filled *inter alia* by:

E

Promotion of Upper Division Clerks of the Directorate of Treasuries and Accounts & Transfer from among the Assistant Section Officers in the Finance Department of the Secretariat.

F However as per other Rules, only 4 Assistant Section Officers, at any given time were eligible for being recruited as Sub Treasury Officers.

On 18.10.1975, the Presidential Order came to be passed. Para 3 of the Order which enjoins the State Government to organise the posts under the State into different local cadres reads as follows:

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"3. Organisation of Local Cadres—(1) The State Government shall, within a period of twelve months from the commencement of this Order, organise classes of posts in the civil services of, and classes of civil posts under the State into different local cadres for different parts of the state to the extent, and in the manner, hereinafter provided."

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Para 5 which deals with local cadres and transfers of persons consists of 2 sub-paras. The para reads as follows: A

"5. Local Cadres and transfers of persons

(1) Each part of the State for which a local cadre has been organised in respect of any category of posts, shall be a B separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters as may be specified by the State Government, in respect of that category of post.

(2) Nothing in this Order shall prevent the State Government from making provision for— C

(a) the transfer of a person from any local cadre to any Office or Establishment to which this Order does not apply, or *vice-versa*;

D

(b) the transfer of a person from a local cadre comprising posts in any Office or Establishment exercising territorial jurisdiction over a part of the State to any other local cadre comprising posts in such part, or *vice-versa*; and

(c) the transfer of a person from one local cadre to another E local cadre where no qualified or suitable person is available in the latter cadre or where such transfer is otherwise considered necessary on the public interest.

A fourth clause was subsequently inserted as per G.O. Ms. No. 34 G.A.D. (S.P.F.) dated 24.1.81 and it F reads as follows:

(d) the transfer of a person from one local cadre to another local as reciprocal condition subject to the condition that the persons so transferred shall be assigned seniority in the latter cadre with reference to the date of his transfer to that G cadre."

Thereafter, the Government of Andhra Pradesh by G.O.P. No. 728 General Administration S.P.W.A. Department dated 1.11.1975 issued various instructions in relation to the aforesaid Presidential Order including para 5 regarding inter-cadre transfers. H

Seven persons belonging to category 5 of Branch II of the A.P. Treasury and Accounts Subordinate Service presented a representation petition no. 706 of 78 before the A.P. Administrative Tribunal for declaring Rule 3 of the Rules *ultra vires*, in so far as it made provision for promotion of Clerks of the Directorate of Treasuries and Accounts and Assistants of the Finance Department of the Secretariat to the posts of Head Accountants and Sub Treasury Officers, in violation of para 5(1) of the Presidential Order. It was urged by them that with the promulgation of the Presidential Order, the posts of Head Accountants and Sub Treasury Officers had become zonal posts and as such the zone will be the unit for recruitment, appointment, discharge, seniority, promotion and transfer to such a zonal post under paragraph 5(1) of the Presidential Order. They claimed that the Service rules issued under Article 309 of the Constitution, as they existed at the time of the Presidential Order did not conform to the local cadres created under the Presidential Order and hence the State Government had issued G.O. No. 728 for suitable amendments being made to the Service Rules in each service. They further claimed that only the U.D. Accountants of the Feeder Sources of the zone alone are eligible for consideration in that particular zone for promotion to the rank of Head Accountant and Sub Treasury Officer and not the personnel from other zones including U.D. Accountants of the Directorate of Treasuries and Accounts and Assistants of the Finance Department of the Secretariat. In reply the State of A.P. while admitting that under the Presidential Order, the posts of Head Accountant/Sub Treasury Officers were organised into zonal posts nevertheless contended that the personnel from different categories mentioned under the Rules are entitled for being considered for promotion to the rank of Head Accountants/Sub Treasuries Officers by reason of para 5(2)(a) of the Presidential Order and the detailed instructions contained in para 10(a) of G.O.P. No. 728 dated 1.11.1975. The relevant portion in G.O.P. No. 728 dated 1.11.1975 reads as follows:

> "Though posts may be organised into separate local cadres, para 5(2) of the Presidential Order provides that the State Government may make a provision for transfer of persons from, and to, local cadres under certain circumstances. These are elucidated below:
>
> (a) Transfer of a person from any local cadre to any office or establishment to which the order does not apply, or vice versa.

> This enables a provision being made for drawing persons on tenure basis from different local cadres to fill equivalent posts in Major Development Projects, Special Offices or Establishments etc. There are also cases where provision exists for appointment of persons in mofussil offices by transfer to the offices of Heads of Departments. For instance, a certain proportion of ministerial posts in the offices of Heads of Departments is to be filled by transfer from ministerial categories in the subordinate offices in the districts. A provision of this kind is protected under the Presidential Order."

The full bench of the Tribunal considered the rival contentions of the parties and came to the view that para 5(1) of the Presidential Order made it clear that for the purpose of promotion, zonal cadre has to be treated as a separate unit and consequently the posts of Head Accountants/Sub Treasury Officers, which have been declared as zonal posts could be filled up by promotion only on zonal basis and consequently Rule 3 of the Rules which specified various categories of posts without reference to zone as feeder posts for the purpose of promotion to the posts in question are inconsistent with para 5(1) of the Presidential Order. The Full Bench therefore held that "after the promulgation of Presidential Order the provisions of Rule 3 referred to above would have to be reviewed so as to make them consistent with the provisions of the Presidential Order." The Full Bench also considered the scope and effect of G.O. No. 728 dated 1.11.75 and held as follows:

> "In our opinion, once this point is conceded, the contents of paragraph 10 of G.O. (P) No. 728 dated 1.11.1975 cited by the respondents in this respect would be properly understood. What that paragraph clearly suggests is that under paragraph 5(2) of the Presidential Order it is open to the State Government to authorise transfer of a person from any local cadre to any office or establishment to which the order does not apply or *vice versa*. It is in this context that the particular paragraph clarifies the types of transfers which the Government would authorise. The sentence "a provision of this kind is protected under the Presidential Order" occurring in that paragraph has, therefore, to be read *as conveying that a provision of this kind could be made by the State Government under paragraph 5(2) of the Presidential Order.* Apparently the respondents have mis-

A interpreted this sentence to understand that the provision of Rule 3 of A.P. Treasuries and Accounts Subordinate Service Rules in question continues to be operative *without any specified provision being made in the rules in pursuance of the authority given to the State Government under paragraph 5(2) of the Presidential Order.* This clearly B cannot be the correct interpretation as discussed above."

(Emphasis supplied)

Thus it came about that the Full Bench declared that the various categories of feeder posts including Assistants, (now named Assistant Section Officers of the Secretariat) from which promotion to the posts C of Head Accountants/Sub Treasury Officers can be made, cannot be made operative after the promulgation of the Presidential Order.

After the Full Bench of the Tribunal rendered its judgment holding that Rule 3 ceased to have operative force after the Presidential Order was made, the State Government amended Rule 3 and gave D retrospective effect to the amended Rule with effect from 18.10.1975. The amendment to the Rule was made in the following terms:

"The amendment hereby made shall be deemed to have come into force on the 18th October, 1975.

E AMENDMENT

In the said rules, in the Table under Rule 3, in column (3) against category (2) Head Accountants and Sub-Treasury Officers of Branch-II for items (ii) and (iii), the following items shall be substituted, namely:

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(ii) By promotion from category 3, 4 or 5 of Branch II;

(iii) By transfer from among the category of Upper Division Accountants (Senior Accountants) of Branch I, Branch III or Branch VI or Upper Division Accountants G (Senior Accountants) of Branch—VII);

(iv) By transfer from among the category of Assistants (Assistant Section Officers) of Finance and Planning (Finance Wing) Department of the Secretariat."

H Challenging the validity of the amended rule two representation

petitions viz. R.P. No. 1595 of 83 and R.P. No. 788 of 84 came to be filed before the A.P. Administrative Tribunal. Once again, a plea was raised that amended Rule 3 was also violative of the Presidential Order. The State contended that the amended Rule had been issued by the Governor in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution and hence the validity of the Rule cannot be questioned by the petitioners. It was secondly contended that the earlier G.O. was not violative of the Presidential Order or the provisions of Article 371-D, but even so as it was considered by the Tribunal to be inoperative because the special provisions did not explicity state that they had been made in exercise of the authority vested in the State Government under para 5(2) of the Presidential Order, the Government had set right the lacuna pointed out by the Tribunal by framing the amended rule specifically in exercise of the powers conferred on Government under para 5(2) of the Presidential Order.

The Tribunal held that what was challenged by the petitioners was not the powers of the Governor to issue the statutory rule but the Government's power to fill a zonal post by the method of transfer by a person who did not belong to the zone in which the vacancy had arisen by referring to para 5(2) of the Presidential Order in the Preamble of the Notification making the amendment. Dealing with this question the Tribunal referred extensively to the judgment rendered by the Full Bench of the Tribunal in the earlier case R.P. No. 708 of 78 and held that the judgment of the Full Bench did not afford scope to the State Government to pass a G.O. in conflict with para 5(1) of the Presidential Order and furthermore the impugned G.O. Ms. No. 196 did not set out under which sub para viz. sub-para a, b or c in para 5(2) of the Presidential Order the G.O. was issued and therefore the amended G.O. cannot be upheld. It was also held by the Tribunal that there was no justification for transferring a person who does not belong to concerned zone to be inducted into that zone merely because such a practice had existed in the past and moreover the underlying purpose of the Presidential Order would be destroyed if the State Government is allowed to fill up vacancies in zonal posts by a person not belonging to that zone. It is the correctness of the view taken by the Tribunal that is challenged in these appeals.

Mr. T.V.S.N. Chari, learned counsel for the State and Mr. Seetaramiah, learned counsel for the respondents advanced arguments in support of their respective contentions in the appeals.

A Before we examine the correctness of the view taken by the Tribunal striking down the amended Rule 3 as being violative of the Presidential Order, we may usefully recall the relevant provisions of the Presidential Order which have to be borne in mind. As already stated para 3(1) enjoins the State Government to organise various classes of posts in the civil services and classes of civil posts under the B State into different local cadres for different parts of the State in accordance with the further provisions contained in para 3. For our purposes it is unnecessary to refer to the other provisions of para 3 except to point out that the direction contained in para 3(1) is not an inexhorable one. Sub para 8 of para 3 makes provision for the Central Government, if it is not practicable or expedient to organise local C cadres under the paragraph in respect of any non-gazetted category of posts in any department, to make a declaration to that effect, and it is further provided that on such declaration being made, the provisions of the para shall not apply to such category of posts. It is, however, common ground that the posts of Head Accountants and Sub-Treasury Officers have been constituted into Zones I to IV and the U.D. Assis- D tants and Assistant Section Officers in the Finance Department of the Secretariat have been organised for the city of Hyderabad into a separate category falling under Zone VII. The question for consideration is whether the U.D. Clerks of the Directorate and Assistant Section Officers in the Secretariat falling under Zone VII can be transferred by promotion to the local cadre posts in zones I to IV. The Tribunal has E held that such transfers cannot be effected for the following reasons:

1. The reasons which weighed with the full Bench for striking down the unamended Rule 3 will hold good for striking down of the amended Rule 3 also.

F 2. The amendment to the Rule cannot be deemed to have been regularly effected by the Government because the Rule does not set out under which relevant clause viz. clause (a), (b) or (c) of sub para 2 of para 5 of the Presidential Order the Government has exercised its powers to amend the Rule.

G 3. The amendment sought to be effected by the Govt. would have the effect of destroying the scheme of constituting separate local cadres and separate zones contained in para 5(1) of the Presidential Order.

4. There is no convincing reason as to why persons in the H Directorate who do not belong to Zones I to IV should be in-

ducted into those zones and the system cannot be allowed to be continued merely because such a practice was in vogue prior to the issue of the Presidential Order. A

5. Since the amended Rule is virtually a repetition of the old Rule, it cannot be legitimised merely because Government claims to have amended the Rule in purported exercise of its powers under para 5(2) of the Presidential Order. B

On a consideration of the matter, we find that the Tribunal has clearly erred in everyone of the reasons given by it for striking down the amended Rule 3.

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In the first place, we must point out that the Tribunal has failed to construe para 5(2) of the Presidential Order in its proper perspective and give full effect to the powers conferred thereunder on the State Government to make provisions contrary to the scheme of local cadres prescribed under Para 5(1). The words of sub-para (2) of Para 5 viz. "nothing in this order shall prevent the State Government from D making provision for" sets out the over riding powers given to the State Government under the sub-para. Such over-riding powers have been given to the State Government in express terms in recognition of the principle that public interest and administrative exigencies have precedence over the promotional interests of the members belonging to local cadres and zones. Since Para 5(2) also forms a part of the E Presidential Order, it forms part of the scheme envisaged for creating local cadres and zones. The Tribunal was, therefore, in error in taking the view that if the State Government was to exercise its powers under Para 5(2) and make provision for promotion of UD Assistants in the Directorate and Assistant Section Officers in the Secretariat to be transferred to posts in Zones I to IV, it will be the very negation of the F creation of cadres and zones under Para 5(1) and it will be destructive of the scheme underlying the Presidential Order. In fact the Tribunal has realised the operative force of Para 5(2) to some extent but it has failed to give full effect to its realisation of the scope of Section 5(2). In Para 12 of its judgment in RP No. 1595 of 1983 the Tribunal has stated that since the amended rule refers to Para 5(2) of the Presidential G Order "it will no longer be open to the petitioners to attack the amendment as was done in respect of the earlier amendment in the previous RP". The Tribunal has thus noticed that the amended Rule has been brought about by the Government in exercise of its powers under Para 5(2) but it has failed to draw the logical inference following therefrom. H

A As regards the view taken by the Tribunal that the reasons which weighed with the Full Bench for holding that the unamended Rule ceased to have operative force after the Presidential Order was made would have relevance even with reference to the amended Rule, the Tribunal cannot be said to have acted correctly. The Full Bench was concerned with the amended Rule 3 which was framed long before B the Presidential Order was passed. In order to make the provisions of the old Rule to have currency even after the Presidential Order was passed, the Government issued G.O. Ms. No. 728 on 1-11-75. However, the Full Bench was of the view that the G.O. did not conform to the requirements of para 5(2) of the Presidential Order and therefore the Full Bench held the old Rule cannot have operative force "without C any specific provision being made in the Rules in pursuance of the authority given to the State Government under para 5(2) of the Presidential Order." It was in acceptance of this position the Government had issued G.O. Ms. No. 196 dated 17.6.83 for amending Rule 3 so as to make the Rule conform to the requirements of para 5(2) of the Presidential Order. The Tribunal has failed to realise this position and D has therefore committed the error of holding that the view taken by the Full Bench with reference to the old Rule will continue to hold good even with reference to the amended Rule. Another patent error which the Tribunal has committed is in holding that G.O. Ms. No. 196 is not valid because it does not set out the relevant clause under which the Government was exercising its powers under the Presidential E Order. The Tribunal's observation is worded as under:

> "In the impugned G.O. Ms. No. 196 supra, no particular sub-paragraph has been invoked. The situation under which each sub sub-para will be applicable has been stated. Clearly provisions contained in sub sub para (b) and (c) are F not attracted; much less sub sub-para (a). We are, therefore, not convinced that recruitment by the method of transfer could come under any one of the aforesaid provisions."

The observations of the Tribunal is manifestly wrong because G.O. Ms. No. 196 clearly sets out that the Notification was being issued by G the Government in exercise of its powers under Section 3 of the Andhra Pradesh Ordinance 5 of 83 read with para 5(2)(a) of the Presidential Order. The Tribunal has completely lost sight of the relevant portion of the G.O.

We are now only left with the reasoning of the Tribunal that H there is no justification for the continuance of the old Rule and for

personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusions, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the Executive. It is not for judicial bodies to sit in judgment over the wisdom of the Executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the Executive. As already stated, the question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the Rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the policy of transfer adopted by the Government cannot be struck down by Tribunals or Court of law.

In the light of our discussion, we find that the grievance expressed by the State over the judgment of the Tribunal is well-founded. In so far as Civil Appeal No. 3491 of 87 is concerned, though there was no direct challenge therein to the validity of the amended Rule 3, the Tribunal has allowed the Representation Petition filed by the petitioners because of the view taken by it in R.P. No. 1595 of 1983. Hence the judgment of the Tribunal in that case also has to be set aside.

In the result, we set aside the judgments of the Tribunal, and allow both the appeals and declare Rule 3 of the amended Rule to be *intra vires* of the Presidential Order. There will be no order as to costs.

Y. Lal Appeals allowed.