

Kinnera Asirwadam and others Vs Govt. of A.P. and others

Court: Andhra Pradesh High Court

Date of Decision: Aug. 28, 2000

Acts Referred: Administrative Tribunals Act, 1985 " Section 28
Constitution of India, 1950 " Article 14, 16, 162, 166, 226

Citation: (2000) 5 ALD 354 : (2000) 5 ALT 108

Hon'ble Judges: V. Eswaraiah, J; B. Subhashan Reddy, J

Bench: Division Bench

Advocate: Mr. S. Ramachander Rao and M/s. L. Ravichander and K.R. Prabhakar, for the Appellant; Mr. D. Prakash Reddy, A.A.G., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Subhashan Reddy, J.

This batch of writ petitions arise out of a common judgment dated 7-5-1999 rendered by the Andhra Pradesh

Administrative Tribunal in OA No.7993 of 1998 and batch and has got a checkered history relating to the appointment of Special Teachers.

2. Laudable purpose of solving twin problems of rampant illiteracy and growing unemployment has been dragged into litigious one and it is still

lingering in spite of lapse of a decade.

3. The Government had formulated a Scheme to appoint Special Teachers (we are not referring to Special Language Pandits is it is not concerned in

these cases) for the purpose of providing education and particularly primary education and to feed the needs of the educational institutions run and

managed by the State and Panchayat Raj institutions. The very word "Special Teacher" connotes that it is apart from the other Teachers, who are

ordinarily recruited under the rules framed either under Article 309 of Indian Constitution or under the rule making power under the statutes or

traceable to both. Such teachers, who are ordinarily appointed under the rules framed, from a cadre with regular pay scale and promotional avenues

etc.

4. Special Teachers, were to be appointed under a special rule framed in G.O. Ms. No.429, Education Department, dated 13-10-1983. This is not

traceable either to Article 309 of Constitution or to any provisions of the statute. The same can be traced only to the executive power of the State

under Article 162 of Constitution. Specific number of posts of Special Teachers were created under another Governmental Order - G.O. Ms.

No.430, Education Department, dated 13-10-1983 and increased later on. We feel it necessary to extract both the Governmental Orders as they

are the one which arise for consideration and any other Governmental Order only revolves round the above two Governmental Orders.

Government of Andhra Pradesh

Abstract

Creation of posts of Special Teachers and Special Language Pandits on fixed pay - Issue of rules regarding appointment and service conditions -

Regarding.

Education (1) Department

G.O. Ms. No.429 Dated 13th October, 1983

ORDER:

Whereas the Government have decided that Special Teachers and Special Language Pandits posts should be created on payment of fixed pay and

whereas the need for issue of rules governing their appointment and service conditions has arisen, the following are issued.

2. Designation for the Posts

The teachers shall be designated as "Special Teachers" and "Special Language Pandits".

3. Qualifications:

The qualifications for the posts of Special Teacher and Special Language Pandits shall be as follows:

(a) Special Teachers (i) Minimum General

E d u c a t i o n a l

qualification as

prescribed in the

General Rules for the

Andhra Pradesh State

and Subordinate

Service; and

(ii) A trained Teacher"s

Certificate of Secondary

Grade or an equivalent

there to or the

certificate of Teacher

Training Institute

(Intermediate trained)

(b) Special Language An oriental title in the

Pandits language concerned with

Training qualifications.

4. If trained candidates are not available to the posts of Special Teachers and Special Language Pandits, the appointing authorities may appoint

untrained teachers, who possess minimum general educational qualifications prescribed for the posts after conducting the written test and interview

for those successful in the written test as done in the case of trained teachers.

5. Appointing Authority:

Details of Schools Appointing Authority

1. Government Schools District Educational Officer

2. Panchayat Samithi Block Development

Schools Officer

3. Schools in Vijayawada Commissioner of the

and Visakhapatnam Corporation.

Corporation.

4. Other Municipalities Chairman of the

Municipality.

6. Mode of Selection:

The selection of the candidates to these posts shall be made by the District Selection Committee Constituted in G.O. Ms. No.289, Panchayat Raj

Department, dated 28-4-1983, in respect of posts sanctioned by the Government, for Government and Panchayat Raj institutions. The procedure

for selection as laid down in G.O. Ms. No.716, Panchayat Raj Department, dated 13-11-1981 shall be followed, by the District Selection

Committee regarding calling of candidates from Employment Exchanges, written examination, interviews etc.

7. The selection of candidates in respect of posts allotted to the Corporations and Municipalities will be done by the Committee formed by the

respective institutions for the purpose under the relevant Acts and Rules.

8. Remuneration to Teachers:

The teachers appointed against these posts shall be paid a fixed pay of Rs.398/- per month and they shall not be eligible for any other allowances or

any other benefits like leave etc., which the Government, Panchayat Raj and Municipal Teachers get.

9. Term of Appointment:

The appointments of teachers for these posts is on a tenure basis for a period conterminus with the academic year. The services of the teachers shall

be dispensed with on the last working day of the academic year.

10 However, the appointing authority shall have the authority to dispense with their services during the tenure period without any notice and without

assigning any reasons for such termination.

They shall not be paid the fixed pay during summer vacation.

11. Age-Limit of Appointment:

The maximum age limit on the 1st September for appointment in Government Schools as well as schools in the Panchayat Raj Department shall be

30 years.

12. The age concessions available to SC/ST/BC candidates for entering into Government Service will also be applicable to the candidates belonging

to these communities for these posts.

13. The maximum age-limit for appointment in schools of Municipalities/ Corporations shall be as per provisions of the relevant Acts and Rules,

14. Rule of Reservation:

The reservation for SC/ST/BC as per G.O. Ms. No.496, General Administration (Ser.D) Department, dated 8-8-1975 and G.O. Ms. No.498,

General Administration (SC & ST Cell) Department, dated 8-8-1975 shall be strictly followed while filling the posts.

15. Authority for Conducting the Tests:

The authority for conducting the test and interview and the procedure for written test and interview both for trained and untrained candidates shall be

the same as prescribed in these rules.

16. This Order is issued with the concurrence of the Finance Department vide their UO No.613/PSFP/83, dated 13-9-1983.

(By Order and in the name of the Governor of Andhra Pradesh)

K.S.R. Murthy

Secretary to Government.

To

The Commissioner for School Edn., A.P. Hyd".

G.O. Ms. No.430

Government of Andhra Pradesh

Abstract

Elementary Education - Annual Plan Programme 1983-1984 - Sanction of 14-621 posts of Special Teachers and 2,117 posts of Special Language

Pandits on consolidated pay - Orders - Issued.

Education (1) Department

G.O. Ms. No.430 Dated 13-10-1983

Read :

G.O. Ms. No.429, Edn., dated 13-10-1983

ORDER:

Government have decided that the Single Teacher Schools should be converted into two Teachers Schools to the possible extent during 1983-1984

with a view to strengthen the Primary Education. The Government have also decided to strengthen the teaching of the languages in Upper Primary

Schools.

2. To implement the above decisions, Government accord for the creation of 14,621 posts of Special Teachers for appointment in Single Teacher

Primary Schools and 2,117. Special Language Pandits Posts for appointment in Upper Primary Schools under Government and Local Bodies.

These posts are sanctioned upto 29-2-1984 from the date of utilisation.

3. The posts sanctioned in para 2 above shall be filled by following the rules prescribed in G.O. Ms. No.429 Edn., dated 13-10-1983. The

appointment of the Special Language Pandits shall be subject to the following conditions;

(a) Special Teachers and Special Language Pandits shall be eligible to a fixed pay of Rs.398/- per month.

(b) Commissioner for School Education shall distribute the posts district-wise as per needs for Government, Panchayat Raj, Corporation and

Municipal Schools. Further distribution to the needy school shall be done by the District Educational Officer concerned.

(c) The Special Teachers posts will be allotted to Single Teacher Schools, subject to the following conditions:

(i) Priority shall be given for the additional Special Teacher posts to the Single Teachers Schools where the teacher-pupil ratio is satisfied as per

G.O. Ms. No.812, Edn., dated 9-3-1977.

(ii) If there are posts left after distributing to the Schools coming under (a) above, they may be distributed to schools where the teacher-pupil ratio is

not satisfied. In making the allotment of such schools, first preference shall be given to the schools where classes I to V are available. Next

preference shall be given to schools with Classes I to IV. Further these posts shall be sanctioned to the schools with average attendance of 49 pupils

and below in descending order.

(d) The posts of Special Language Pandits shall be allotted to Upper Primary Schools based on the needs.

4. The expenditure on account of the posts sanctioned in para (2) above shall be met from the plan provision made for 1983-1984 under the

following scheme.

Name of the Scheme Provision Category of

available posts

(Rs. lakhs)

1. Opening of new primary schools in School-less habitations 20.47 Special

2. Conversion of Single Teacher Schools into two Teacher 253.33

Schools

3. Appointment of additional SGBT Teachers in existing Primary 101.33

Schools.

4. Upgrading Primary Schools into Upper Primary Schools by 77.50

way of diversion from the Scheme.

Appointment of Language Pandits after meeting the full 12.91

requirements of language pandits

465.54

Upgrading of Primary Schools into Upper Primary Schools 67.41 Special

Language

Pandits

532.95

5. The District Selection Committees and the Committees formed for Municipal Corporations/Municipalities will recruit the candidates for the above

posts as per rules laid down in G.O. Ms. No.429 Edn, dated 13-10-1983, for the posts that will be allotted to Government, Panchayat Raj and

Municipal Institutions respectively. The District Collector in the case of posts for Government and Panchayat Raj Institutions and the Commissioner

of Corporations/ Municipalities in the case of posts for the teachers under their control should ensure that the candidates sponsored by Employment

Exchanges are informed of the terms and conditions governing the appointment as given in Annexure. A copy of the Annexure should be sent to the

candidates while calling for written test and their consent letter agreeing to the condition obtained either before the written test or at the time of

interview.

6. In case of posts which are still left over untrained candidates may be appointed by following same procedure prescribed above.

7. A proforma for appointment order is enclosed in Annexure-II. All the appointing authorities shall issue appointment orders to the selected

candidates in this form only and no other form of appointment should be made.

8. The expenditure shall be debited to the heads of account as detailed below:

(i) Schools under Government ""277-Education.A. Primary - MH 010 Government Primary Schools -Scheme included in the plan - SH (01)

Government Primary Schools -010 Salaries.

(ii) Panchayat Samithis ""277 - Education - A. Primary Education - MH 20. Assistance to local bodies for Primary Education - Scheme included in

the plan - SH (02) teaching grants to Panchayat Samithis 090 Grants-in-aid-091 Grants-in-aid towards salaries"".

(iii) Corporations and Municipalities ""277-Education-A Primary Education - MG 20. Assistance to local bodies for Primary Education - Scheme

included in the plan - SH (01) teaching grant to Municipalities - 090 grants-in-aid 091 Grant-in-aid towards salaries"".

9. This order issues with the concurrence of Finance and Planning Department vide their UO No.613/PSEP/83-I, dated 13-9-1983.

(By order and in the name of the Governor of A.P.)

K.S.R. Murthy

Secretary to Government.

5, The petitioners among others were the applicants for the posts of Special Teachers. On 25-5-1989 written test was conducted and later on oral

interviews were held, selection lists of the candidates were prepared and appointments were made. For open category (OC) candidates, the

qualifying mark was 30 out of 80 in the written test and 20 marks were allocated for oral test (interview). But, the total marks to be obtained by the

OC category candidates were not be less than 40 so as to make them eligible for appointment, that too by maintaining merit and also subject to

reservations. Insofar as reserved category candidates are concerned, there were no qualifying marks, but had to be arrayed in order of their merit

for selection, basing upon their rankings in the reserved category. The petitioners were not appointed. The complaint of the petitioners had been that

even though they had participated in the written test and obtained qualifying marks and were called for the oral interview and had also obtained

minimum qualifying marks entitling them for appointments, but were unduly denied their right to be appointed by the arbitrary action of the appointing

authorities by mis-interpreting the various Governmental Orders compelling them to redress their grievances before the hierarchy of judicial

authorities right from the Administrative Tribunal to the Apex Court and not once, but several times spanning over a decade.

6. The dispute between the parties was carried before the A.P. Administrative Tribunal in RP Nos.23505 to 23515 of 1989 and connected RPs,

OAs and MAs: Among other questions, the questions raised before the Administrative Tribunal were (1) Whether the selection of the candidates for

the posts of Special Teachers and Special Language Pandits was governed by the provisions of G.O. Ms. No.716 or G.O. Ms. No.231, and (ii)

What is the currency of the selection list prepared for the posts of Special Teachers and whether it was current till the next list was prepared as

urged for the petitioners or for only one year from the date of approval as urged by the respondents. The A.P. Administrative Tribunal by its

Judgment dated 22-8-1990 ruled that the selection of the candidates for the posts of Special Teachers and the currency of the select list for the

posts of Special Teachers was governed by the provisions of G.O. Ms. No.716 and issued certain consequential directions to the respondents. The

respondents, despite judgment and Order of the Tribunal did not appoint the petitioners. Therefore, the petitioners approached this Court in WP

No.518 of 1993 and connected writ petitions, seeking directions to the respondents to appoint them as Special Teachers and to enforce the

judgment rendered by the A.P. Administrative Tribunal dated 22-8-1990. While doing so, the petitioners also called in question the Constitutional

validity of Article 323-A(2)(d) of the Constitution of India of the extent it empowers Parliament, by law, to exclude the jurisdiction of the High

Courts under Article 226. The petitioners also sought a declaration that Section 28 of the Administrative Tribunals Act, 1985 to the extent it divests

the High Courts of their jurisdiction under Article 226 as unconstitutional. The cases were then referred to Full Bench. The Full Bench of this Court

by its judgment dated 26-10-1993 declared that Article 323-A(2)(d) of the Constitution is unconstitutional to the extent it empowers Parliament, by

law, to exclude the jurisdiction of the High Court under Article 226. The Full Bench also declared that Section 2.8 of the Administrative Tribunals

Act, 1985 to the extent it divests the High Court of its jurisdiction under Article 226 is unconstitutional. However, the Full Bench declined to decide

the writ petitions and the writ appeals no merits on the ground that the petitioners and the appellants had to first invoke the jurisdiction of the A.P.

Administrative Tribunal and directed the petitioners to approach the Tribunal.

7. But, the petitioners had again filed WP Nos.17104 to 17106 of 1993 on the ground that when the High Court had the power to entertain writs in

service matters, it is for the High Court to consider in each individual case as to whether alternative remedy is effective and whether it should be

resorted to. The above three writ petitions were admitted and by a common order dated 12-11-1993 passed in WPMP Nos.21607 to 21609 of

1993 directions were issued to appoint the petitioners therein a Special Teachers subject to the condition that they file written undertakings before

the concerned authorities to the following effect:

(a) that their appointments are purely ad hoc and subject to the result of the writ petitions;

(b) that they should not claim any equity in their favour because the appointments are made pursuant to the said order; and

(c) in case ultimately the petitioners fail and this Court directs that the candidates, who have been appointed on ad hoc basis had no right to be

appointed, then they shall forthwith vacate their appointments without any dispute and will accept their termination without any demur.

It was also made clear that only such of the persons who had passed the tests, both written and oral (Who have secured 40% and more) and who

were in the select list were eligible for appointment subject to availability of vacancies.

8. Meanwhile, the Government had carried the matter to the Supreme Court by filing SLP and seeking for the stay, and the Supreme Court had

granted Special leave (which was numbered as Civil Appeal No.169/94) and by order dated 14-1-1994 had stayed the operation of the judgment

of the Full Bench.

9. The Government had then filed petitions to vacate the interim orders dated 12-11-1993 passed in WPMP Nos.21607, 21608 and 21609 of

1993 and the learned single Judge by order dated 8-9-1994 made the said orders absolute and issued the following directions:

(i) The Respondents-State and Panchayat Raj Institutions are directed to prepare select list of all those writ petitioners who have secured 40% of

the marks in both written and oral tests strictly in accordance with Rule 13 of G.O. Ms. No.716 dated 13-11-1981 and appoint all those writ

petitioners who find a place in such select list as Teachers subject to the same terms and conditions specified in the interim order of this Court dated

12-11-1993 made in WP MP Nos.21607, 21608 and 21609 of 1993.

(ii) The respondents-State and Panchayat Raj Institutions are further directed not to make any direct recruitment for the posts of teachers unless and

until they comply with the direction No.(i) issued supra;

(iii) When the Respondents-State and Panchayat Raj Institutions comply with the direction No.(i) they will be free to make recruitment for the

remaining posts of teachers;

(iv) It is made clear that if the respondents-State and Panchayat Raj Institutions deem it advisable and expedient to appoint the writ petitioners

covered under direction No.(i) on regular basis and without imposing any condition as specified by this Court in its order dated 12-11-1993 made

in WPMP Nos.21607, 21608 and 21609 of 1993 in order to give a quietus to the long standing dispute, they are free to do so and this order will

not come in their way;

10. Two more writ petitions were filed by the Special Teachers-aspirants in WP Nos.17084 of 1994 and 17728 of 1994 seeking similar directions

as were granted to 911 petitioners in WPMP Nos.21607, 21608 and 21609 of 1993. But, the direction sought for was not granted, as, by that

times, the stay granted by the Supreme Court in Civil Appeal No. 169 of 1994 was in operation. As such, by order dated 7-10-1994, the plea of

the petitioners in miscellaneous petitions in WP Nos.17084 and 17728 of 1994 was negated.

11. Questioning the order of the learned single Judge making the stay absolute on 8-9-1994, the State had filed Writ Appeal Nos.1176, 1177 and

1190 of 1994. Assailing the order dated 7-10-1994 passed by the learned single Judge refusing to grant interim orders, the petitioners therein had

filed Writ Appeal Nos.1201 and 1202 of 1995. All the five writ appeals were heard by a Division Bench. By its Order dated 25-9-1995 the

Division Bench did not go into the merits, but safeguarded the interest of the petitioners in whose favour there was interim direction, not to fill up

Special Teachers posts, which were admittedly vacant. But, later on, review petitions having been filed, the stay order was modified by order dated

3-4-1996, issuing directions to appoint the petitioners in whose favour there were directions granted on 12-11-1993 and were later made absolute

by order dated 8-9-1994, by stipulating the time. All the writ petitions were directed to be posted after the disposal of Civil Appeal No. 169 of

1994 by the Supreme Court.

12. The said order was challenged by the Government by filing SLP Nos. 10643 to 10647 of 1996, but no interim orders were granted by the

Supreme Court and consequently, the Government on 8-7-1996 issued G.O. Ms. No.156 appointing 911 Special Teachers, who are the

petitioners in WPNos.17104, 17105 and 17106 of 1993.

13. That is how, the above petitioners had been working as Special Teachers at a consolidated pay of Rs.398/- per month even on this day,

because of the continuance of the interim order granted earlier on 12-11-1993. Meanwhile, the Supreme Court had decided the matter relating to

constitutional validity of the Administrative Tribunals Act on 18-3-1997 in L. Chandra Kumar Vs. Union of India and others, holding that High

Court has got power of judicial review, but only subject to exhaustion of alternative remedy. In view of the same, the Government had sought to

withdraw SLP Nos.10643 to 10647 of 1996 and they were allowed to be withdrawn by the Supreme Court by its Order dated 22-4-1997.

14. Thereafter, WP Nos. 18601 of 1994 and Batch came up for hearing before a Division Bench and the Division Bench had dismissed the writ

petitions by its common order dated 8-7-1998 on the ground of non-availing of alternative remedy in view of the above judgment in Chandra

Kumar's case (supra), repelling the petitioners' contention that there was no need to again approach the Tribunal in view of finality attained to the

judgment of the Tribunal in RP Nos.23505 of 1989 and Batch. But, on a mention being made on 9-7-1998, the Division Bench had directed the

Registry of A.P. High Court to transmit all the writ petitions with other material papers to the A.P. Administrative Tribunal, by dispensing with the

fresh filing before the Tribunal.

15. The A.P. Administrative Tribunal had taken up the matter by numbering the said transmitted writ petitions as OA No.7993 of 1998 and Batch.

Before the Tribunal, same contentions were advanced by the parties. The petitioners relying on G.O. Ms. No.716 had contended that they were

eligible to be appointed without any reference to any panel, while the Government harped upon G.O. Ms. No.231 and contended that the

petitioners were not at all empanelled and had no right to seek appointments. The Tribunal held that G.O. Ms. No.716-procedure was applicable

but negated the relief sought for by the petitioners on the ground of vacancy position. For the reasons mentioned infra, the changing view of the

Tribunal first holding that G.O. Ms. No.716-procedure was applicable in its judgment dated 22-8-1990 and then holding in RP No.2400 of 1994

that it was G.O. Ms. No.231-procedure applicable and again accepting the first view, have got no bearing on the adjudication of these cases.

16. By interim order, 911 Special Teachers, who were in service pursuant to G.O. Ms. No.156, were directed to be continued. There were no

such directions to others who were not in service. Result is that there are two sets of petitioners in WP Nos.10586, 10685 and 10687 of 1999

numbering 911, who are working as Special Teachers on ad hoc basis pursuant to the interim order dated 12-11-1993 culminating into G.O. Ms.

No. 156, dated 8-7-1996 and the other set of petitioners in WP Nos. 10688, 10684 and 10686 of 1999, who are not having that benefit of ad hoc

appointment.

17. Mr. S. Ramachander Rao, the learned senior Counsel appearing for the petitioners, submits that a special scheme was evolved for appointing

Special Teachers in a special drive to eradicate illiteracy, that the procedure for recruitment is governed by G.O. Ms. No.716, dated 13-11-1981,

that this was already upheld by A.P. Administrative Tribunal in RP No.23505 of 1989 and batch by its judgment dated 22-8-1990, and that the

said judgment had become final and binding on the respondents. Learned senior Counsel submits that in view of the above, whatever vacancies

were notified for which examinations were held in the month of May, 1989 have got to be filled up with the qualified candidates and that the

petitioners having been qualified, they were entitled to be appointed and denial of their rights is violative of Article 14 of Constitution in general and

Article 16 in particular. He submits that there is no question of any panel and that too keeping it valid for one year and all the persons, who were

qualified to be appointed as Special Teachers, were entitled to be appointed till the exhaustion of all the vacancies.

18. On the other hand, Mr. D. Prakash Reddy, the learned Additional Advocate General appearing for the respondents, submits that G.O. Ms

No.716, dated 13-11-1981 was no more in force, as the same was superseded by G.O. Ms. No.369, dated 17-6-1987, which was amended by

G.O. Ms. No.313, dated 24-5-1987, which again underwent a change in G.O. Ms. No.231, dated 31-3-1989 and that it was G.O. Ms No.231,

dated 31-3-1989 which was operative and applicable for selection of special teachers, who had appeared for written test in the month of May,

1989, that basing upon the procedure contemplated in the said G.O. Ms. No.231, dated 31-3-1989, a list of selected candidates was prepared

keeping 50% more candidates than the vacancies, that the tenure of the said list was one year and whoever were eligible to be appointed according

to the merit and within the above tenure of one year were appointed, that the petitioners were, in fact, not entitled to be appointed as they were not

empanelled, that after the lapse of one year, no right remained for anybody to claim appointment and that later clarification in G.O. Ms No.301,

dated 21-11-1990 cannot be stretched to mean that the list was to be kept open till the exhaustion of all the vacancies and that it only meant that the

list would enure only to such persons, who are empanelled and not to the persons like the petitioners, who were not empanelled.

19. Entire dispute revolves round the procedure for selection of special teachers and there is no issue raised with regard to correctness or otherwise

of the constitution of the District Selection Committee; as such, we need not refer to G.O. Ms No.289, Panchayat Raj Department, dated 28-4-

1983. Procedure for selection contemplated in G.O.Ms. No.716, dated 13-11-1981 was to be followed for selection of special teachers as

mentioned in G.O. Ms No.429, dated 31-10-1983 in clause (6) thereof under the caption "Mode of Selection". In G.O. Ms. No.716, dated 13-

11-1981 the first part relates to the constitution of District Selection Committee for the posts specified in Annexure-I, which is no way concerned

with, as already stated above, for adjudication of these cases. What is to be considered is the procedure, which is prescribed in Annexure-II thereof

and to what extent it is applicable to the selection of the special teachers and the manner in which list has to be prepared and appointments are to be

made.

20. In G.O. Ms No.429, dated 13-10-1983 reference to G.O. Ms No.716, dated 13-11-1981 has been made only regarding the procedure for

calling the candidates from Employment Exchanges, conducting written examination and interviews etc. The word "etc", cannot be stretched beyond

the preparation of list in accordance with the merit; the only difference being that while for OC category, the merit list can be prepared for such of

those candidates, who have obtained 40% and more and the candidates obtaining below 40% have to be omitted, while for reserved categories,

because of there being no qualifying marks, they have to be arranged in terms of their relative merit separately in respect of each of those reserved

categories i.e., Scheduled Tribes, Scheduled Castes and Backward Classes. Beyond this, no other part of procedure in G.O. Ms. No.716, dated

13-11-1981 can be imported into G.O. Ms. No.429, dated 13-11-1983 while selecting special teachers. For the reason that special teachers

appointment is made under a special scheme envisaged in G.O. Ms. No.429, dated 13-10-1983 for the specific number of posts created, on

different aspects, different Governmental Orders have been borrowed by referential legislation. It has to be kept in mind that several G.Os., have

been borrowed by making references to them but not incorporating them. There is a vital difference between a referential Legislation and adaptation

of legislation, as, in the former when a reference is made to a particular provision of law or a Governmental Order, the said reference is applicable to

change in statutes and the G.Os., while in the case of adaptation. Whatever statute or G.O. is adapted, the same alone is applicable regardless of

the amendments or changes to the said statutes or G.Os. adapted. An indepth reading of G.O. Ms. No.429, dated 13-10-1983 leaves no doubt

that as it was only a special scheme, it had made reference to several G.Os on several aspects like constitution of District Selection Committee

referring to G.O. Ms. No.289, dated 28-4-1983; G.O. Ms. No.716, dated 13-11-1981 for the purpose of only procedure relating to calling of

candidates from Employment Exchanges, Conducting written examination, interviews and preparation of list in order of merit as mentioned supra;

and G.O. Ms. Nos.496, and 498, General Administration Department, both dated 8-8-1975 for the purpose of observance of reservations for

SC/ST/BCs. Whenever such Governmental Orders to which reference is made are changed, the references to the said G.Os., shall always deemed

to have made to the later G.Os., either modifying earlier G.Os., or superseding the same.

21. G.O. Ms. No.716, dated 13-11-1981 was amended by G.O. Ms. No.369, dated 17-6-1987. But, the said amendment related only to the

composition of the District Selection Committee, enlarging the same by including the Chairman, Zilla Praja Parishad and also one president of

Mandal Praja Parishad to be nominated by the Government, retaining the District Collector as the Chairman. By later G.O. Ms. No.393, dated 24-

6-1987 retaining the composition as it is, the Chairman, Zilla praja parishad was made the Chairman of the District Selection Committee, relegating

the District Collector to the second position. G.O. Ms. No.393 further underwent amendment by G.O. Ms. No.231, Panchayat Raj and Rural

Development Department, dated 31-3-1989. Here, there is no change in the composition of the District Selection Committee, but 11 posts which

were hitherto included in the earlier G.Os., were added with 13 more, making it 24 posts, for which a District Selection Committee Had to make

appointments. As the 13 more posts were added, it necessitated changes regarding prescription of qualification and procedure for appointment to

the said posts, and they were provided under Annexure-II thereof. This Annexure-II to G.O. Ms. No.231, dated 31-3-1989 has to be read as a

supersession of Annexure-II of G.O. Ms. No.716 insofar as procedure for appointment is concerned.

22. In view of the above as the examinations for the selection of Special Teachers were held during the month of May, 1989, reference to G.O. Ms.

No.716, dated 13-11-1981 made in G.O. Ms. No.429, dated 13-10-1983 has to be deemed as a reference to G.O. Ms. No.231, dated 31-3-

1989, and doubtless, the procedure which was applicable for selection of Special Teachers has to be what is mentioned in Annexure-11 of G.O.

Ms. No.231, dated 31-3-1989. As such, we cannot countenance the contention of Sri S. Ramachander Rao, the learned senior Counsel appearing

for the petitioners, that even in May, 1989 when the petitioners wrote written examinations, the procedure in G.O. Ms. No.716, dated 31-11-1981

was applicable. We hold that it was the procedure envisaged in Annexure-11 of G.O. Ms. No.231, dated 31-3-1989 which was applicable to the

said examinations.

23. But, by the said conclusion itself we cannot hold that the action of the respondents in treating the panel as lapsed after one year of preparation

thereof is correct. In fact, a careful reading of both the Clauses of G.O. Ms. No.716 and G.O. Ms. No.231 relating to the tenure of the panel does

not make out a vital distinction. The difference lies only in phraseology, i.e., the form and not in content.

24. While construing the statutory provision or the Governmental Order, they have to be read in entirety and then understood. Clause 17 of G.O.

Ms. No.716, dated 13-11-1981 or Clause 8(g) of G.O. Ms. No.231 cannot be read in isolation. They have to be read along with clause (1) of

Annexure-II, which obligates the appointing authority to furnish every year in the first week of July, the estimate of the number of vacancies likely to

arise over a period of 12 months in each of the posts specified in the Annexure to the District Development Officer concerned. Further, Clause (17)

of G.O. Ms. No.716 has to be read along with clause (14) also, which reads:

The District Collector shall within a week of finalisation of the selection, allot candidates to the appointing authorities concerned"".

and Clause (17) reads:

The list of candidates referred to in Para 14 above shall be valid till another list for the succeeding year is prepared"".

Clause 8(g) of Annexure-II of G.O. Ms. No.231 reads:

That the panel approved by the District Selection Committee shall be valid for a period of one year from the date of its approval"".

The said Clause has to be read along with Clause 8(e). Which reads:

that selection of candidates shall be limited to the number of vacancies notified and not exceeding 50% of notified vacancies shall be kept in waiting

list"".

From the above clauses, we cannot be oblivious of the very obvious factor that the above two Governmental Orders and particularly the clauses

mentioned above relate only to the post specified therein and not to the appointment of special teachers. There was no question of estimation of

vacancies of special teachers in each year as was to be done for the posts specified in the above G.Os. Specific number of posts were identified for

recruitment of special teachers and in fact, the recruitment process of special teachers made in 1989 was the last and the said scheme of

appointment of special teachers was abolished and is not in vogue thereafter.

25. From what is stated above, there was no difference in the obligation of preparation of yearly panels either under G.O. Ms. No.716 or G.O. Ms.

No.231 and Clause 8(g) of G.O. Ms. No.231 was only mentioned by way of abundant caution and for more clarity. It is also clear that the

preparation of panel has got no application in the appointment of special teachers and that both the appointing authority and the Government had

erred in applying that panel-theory to the appointment of special teachers. However, the conclusion reached by the Government in G.O. Ms.

No.301, dated 21-11-1990 read with G.O. Ms. No.678, dated 28-11-1990 is correct. It is apt to read the said conclusion in Clause 6(ii) of G.O.

Ms. No.301, which is to the following effect:

The panels insofar as recruitment of special teachers is concerned, prepared in accordance with the instructions contained in G.O. Ms. No.231,

Panchayat Raj Department, dated 31-3-1989 shall be operative till all the candidates in the waiting list panel are exhausted as against the panel

validity of one year from the date of empanelment as per existing guidelines".

The Proviso added in G.O. Ms. No.678, dated 28-11-1990 reads as follows:

Provided that the panel prepared for Special Teachers shall be valid and operative until all the candidates in the panel are exhausted".

26. In view of what is stated supra, the irresistible conclusion is that such of the qualified candidates, who appeared for the selection of Special

Teachers were eligible to be appointed, subject, of course, to the availability of vacancies.

27. With regard to vacancy position, Mr. S. Ramachander Rao, the learned senior Counsel appearing for the petitioners, draws our attention to

several newspaper cuttings wherein it was reported that there were more than 20,000 vacancies of "Teachers to be filled up and efforts were on to

recruit them. But, all such Teacher posts cannot be tapped by the petitioners. The petitioners are entitled to only such posts, which were unfilled on

the basis of the mis-interpretation of the Governmental Orders and importing the theory of panel and tenure and validity thereof. Such unfilled

vacancies were indisputably 912 as mentioned in the Annexure to G.O. Rt. No.670, Education Department, dated 6-5-1995. There is another

contention raised by Mr. S. Ramachander Rao, the learned senior Counsel, that the appointment orders issued with regard to 911 petitioners by

virtue of G.O. Ms. No. 156, dated 8-7-1996 had become final and that as they are continuing even now by virtue of the interim orders passed,

cannot be disturbed. We cannot accede to this contention for the reason that G.O. Ms. No. 156 was issued pursuant to the interlocutory order

passed by this Court, which became final because of the withdrawal of the SLP and whatever order has been passed on 12-11-1993 enure to the

benefit of the said petitioners only pending the disposal of the writ petition and only because of fortuitous circumstance of their approaching this

Court before the grant of Supreme Court orders cannot vest them with any right to continue in preference to the other set of petitioners, who could

not get interim orders because of the intervening stay orders of the Supreme Court. By this, we are not opening pandora's box and we are restraining

the grant of relief only to the writ petitioners before us for the reason that even the selection of the candidates panel-wise and appointment orders

issued thereto are erroneous and even might get upset to some extent, as dichotomy was played by the appointing authorities. While G.O. Ms.

No.716 was adopted for construing the qualifying mark, G.O. Ms. No.231 was followed for preparation of panels and fixing the tenure thereof.

There is a vital distinction between G.O. Ms. No.716 and G.O. Ms. No.231 regarding the qualifying marks. While in G.O. Ms. No.716, the

qualifying marks for oral interview is fixed as obtaining of 30% in written test, there is no qualifying marks fixed in G.O. Ms. No.231 for the purpose

of oral interview, but 85 marks have been allotted for written test and 15 marks for oral test; however, retaining the overall minimum qualifying mark

of 40 for the purpose of selection and appointment (insofar as open category candidates are concerned). But to review the appointments made on

the basis of the above error may lead to chaotic situation unsettling the settled appointments and in fact, that is not the point raised by either side and

as such, we refrain from entering into that arena. However, having regard to the fact that there are only 912 vacancies, which left unfilled because of

the erroneous interpretation and importing the panel-theory and as there are more number of qualified candidates among the petitioners, the

petitioners have to be arranged in terms of their merit among them and in order of that merit, the appointments are to be made. We make it clear

that such of 911 petitioners, who stand qualified to be appointed in order of the above merit, shall continue and others have to pave the way for

more meritorious candidates basing upon the merit list. We reiterate that merit list shall be drawn for 912 posts only among the writ petitioners

herein and shall not percolate beyond them for the reason of their initiation of legal proceedings right on time and pursuing the same before several

forums right from A.P. Administrative Tribunal to that of Supreme Court and others even if they were qualified, had not initiated any legal

proceedings and remain contended. This exercise shall be made by the appointing authorities within a period of one month from the date of receipt

of a copy of this order. It is pertinent to mention that the above 912 vacancies shall not form part of the selection process for recruitment of

Teachers pursuant to DSC-2000.

28. Accordingly, all the five writ petitions are disposed of. No costs.