ANDHRA PRADESH HIGH COURT

Muthineni Krishna Rao

Vs

Union of India

(B Subhashan Reddy and V Rao, J.)

16.10.1998

ORDER

B. Subhashan Reddy, J.

1. These writ petitions relate to service jurisprudence and raise several important questions of law, both Constitutional and statutory. After the decision of the Supreme Court in *L. Chandra Kumar v. Union of India, MR[1]. ,** the validity of several provisions of the Administrative Tribunal Act, 1985 (hereinafter referred to as "the Tribunal Act") is challenged.

2. Two legal practitioners have filed writ petitions WP Nos,21329 and 21439 of 1997 questioning the constitutional validity of the provisions of the Tribunal Act. They got standing of 13 years and 20 years respectively at the Bar. Tliey are the aspirants for either the Office of the Vice-Chairman or Member of the Administrative Tribunal (hereinafter referred to as "the Tribunal"). The attack on the provisions of the Tribunals Act is on the touch-stone of independence of judiciary with regard to tenure of appointment as also on the service conditions upon the independence of judiciary.

3. There was delay in the appointment of teachers for- one reason or the other and when large number of vacancies were to be filled up, the disputes arose on the ground of commission of several irregularities in the conduct of the examinations, raising both factual disputes and also interpretation of important questions of law - both constitutional and legal.

4. Writ Petition Nos.15463, 15712, 19784, 21297, 21460, 21651, 22039, 22799, 22809 and 23677 of 1998 relate to posts of Secondary Grade Teachers (for short 'SG teachers').

5. Writ Petition Nos.23390, 24276, 24288 and 24957 of 1998 relate to Language Pandits Grade-II (either Telugu or Hindi or both). Writ Petition No.22633 of 1998 relates to the post of Physical Education Teacher.

6. Some writ petitions have been filed after exhausting the remedy before the Tribunal and sucli writ petitions with the corresponding OA numbers of the Tribunals are mentioned below:WP 21297 of 1998 -OANo.3614 of 1998 WP 21460 of 1998 - OA No.3419 of 1998 WP 22039 of 1998 -OA No.3366 of 1998 WP 22809 of 1998 WP 19784 of 1998 -OA No.3513 of 1998 WP 22633 of 1998 -OA No.5351 of 1998 WP 24288 of 1998 -OA No.5762 of 1998

7. The other writ petitions have been directly filed in this Court seeking the reliefs mentioned therein, by assailing several provisions of the Tribunals Act.

8. For recruitment of SG teachers, Tclugu and Hindi Pandits Gradc-II, Physical Education Teachers etc., notification dated 15-3-1998 was issued by the Director of School Education calling for the applications from the candidates registered with Employment Exchanges in all the districts of Andhra Pradesh. Each district is a unit with separate District Selection Committee. Nevertheless, the examination papers arc common all over the State. The applications had to be made in the form prescribed and addressed to the Convener, District Selection Committee (District Education Officer) between 18-3-1998 and 31-3-1998 (both days inclusive). There were nearly 40,000 posts notified in the category of SG teachers while the vacancies in other posts are relatively less. A note has been appended to the said notification stating the conditions. Important among them are: (i) Local area reservation will be followed; (ii) Rule of reservation to ST, SC, BC Physically handicapped and Ex-servicemen will be observed and so also 33-1/ 3% for women; (iii) Preference as to the institution i.e., Government/Zilla Parishad / Mandal Parishad has to be indicated in the application, if selected; (iv) Recruitment to the posts of teachers will be subject to the cases pending both in the Supreme Court, High Court and the Tribunal; (v) Minimum qualification for SG teachers was prescribed as a pass in Intermediate or equivalent and also Teacher Training Certificate issued by the Commissioner for Government Examinations, Andhra Pradesh or equivalent certificate. Candidates having higher qualifications like B.Ed/B.Sc, B.Ed/B.Com and B.Ed were also made eligible; (iv) 85 marks allocated for the written test and 15 marks for oral interview. The qualifying mark in the written test for OC, BC and SC/ST was prescribed as 50,45, and 40 respectively entitling them for oral interview, subject to the maximum of three candidates for each post i.e., 1:3. It is pertinent to mention that there is no minimum qualifying marks in the oral interview.

9. While for SG teachers and Language Pandits Gradc-II, written examination was conducted on 19-4-1998, the examination for Physical Education Teachers was conducted on 20-4-1998. We are not here concerned with the posts of School Assistants and Music and Dance Teachers.

10. Recruitment to the above posts is governed by the rules "Andhra Pradesh Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994" contained in G.O.Ms. No.221, Education Department, dated 16-7-1994 and framed in exercise of the powers conferred by

Sections 78 and 79 of the Andhra Pradcsh Education Act. 1982, sub-section (4) of Section 169, sub-section (4) of Section 195 and Section 268 of the Andhra Pradesh Panchayats Raj Act, 1994 and the proviso to Article 309 of the Constitution of India. Rule 2 deals with qualifications and method of recruitment, Rule 3 with Selection Committee making each district as one unit and consisting of District Collector. Chief Executive Officer of Zilla Parishad, District Educational Officer and Subject Expert, nominated by the District Collector and such District Selection Committee is headed by the District Collector as the Chairman, the District Educational Officer being Member-Convener and the others being the members. Rule 12 deals with the written test and Rule 13(a) prescribes the minimum qualifying marks in the written test as 50,45 and 40 for eligibility for interview for open category, backward classes and SC/ST category respectively. Even among such qualified candidates, the number of candidates eligible for oral interview has been restricted to thrice the number of posts advertised under Rule 13(b). Rule 13(c) empowers the District Selection Committee to conduct interviews prescribing the quorum with three members. Under Rule 14, the candidates will be selected on the basis of total marks secured both in the test and the interview. Rules 15 to 19 deal with the action to be taken by the authorities for issuing appointment orders with conditions attached thereto consequent on their selection according to the merit mentioned above.

11. After written test was concluded and the lists of the qualified candidates were prepared in each of the Districts and having found that the number of qualified candidates was falling short of the notified vacancies in the category of Secondary Grade Teachers, the Government has issued Go.Rt.No.618 dated 18-5-1998 reducing the qualifying marks by five marks in each of the categories of OC, BC, SC/ST/PH.

12. Basing on the reduction of qualifying marks, candidates were called for interview. Selections have been completed in some districts and the districts in which the selections are not made because of litigations are (i) Nalgonda (ii) Karimnagar, (iii) Cuddapah, (iv) Anarrtapur, (v) Chittoor, (vi) Warangal, (vii) Khammam, (viii) Nellore and (ix) Kurnool.

13. Several contentions have been raised on behalf of the writ petitioners which are abstractly stated hereunder :

(i) That the statutory provisions contained in Sections 3, 5, 6, 8, 10, 12, 18, 26, 27, 28, 29, 34, 36, and 37 of the Tribunals Act encroach upon the independence of judiciary violating the basic structure of the Constitution of India and as such, they arc unconstitutional;

(ii) The Supreme Court having held in Chandra Kumar's case (supra) that the power of the High Court under Article 226/227 of the Constitution and of the Supreme Court under Article 32 of the Constitution is the basic structure of the Constitution of India and is invoilablc and cannot be

abrogated, ought not to have placed fetters on the exercise of the said powers by imposing alternative remedy principle, and that discretion vested in the High Court to exercise the jurisdiction is an incidence of Article 226 power and that no specific discretion can be given by the Supreme Court that only Division Benches of High Courts should hear matters arising under the Tribunals Act;

(iii) That there are only two constitutional Courts in India i.e., the Supreme Court at the apex level and the High Courts in the States. But, in view of Chandra Kumar's case (supra) the administrative Tribunals have emerged as the third constitutional Courts and that our constitutional scheme framed by the Constituent Assembly does not admit of third constitutional Court and thus, there is an erosion of the basic structure of the Constitution;

(iv) that the Tribunals are ill-equipped and do not have the necessary expertise and the knowledge of law to discharge the important intricate and constitutional functions of judicial review of legislation;

(v) That the Forty Second Constitution Amendment Act, aimed at creating Tribunals in view of the large scale pendency of service matters in the High Courts and to reduce the burden of the High Courts and wanted to exclude the jurisdiction of the High Court and to have only two-tier system i.e.. Tribunal as original jurisdiction and then appeal to the Supreme Court and as such needed Constitution amendment and as the exclusionary clauses in Articles 323A(2) (d) and 323B (3)(d) arc set at naught on the basic structure theory, the entire Constitution amendment has become redundant and otiose',

(vi) That the reduction of five marks after the written examination was conducted by issuing G.O.Rt.No.618, Education Department, dated 18-5-1998 is illegal and unconstitutional;

(vii) That fixation qualifying marks of 50 out of 85 for OC, 45 for BC and 40 for SO ST is on high side and is irrational, arbitrary and violativc of fundamental rights guaranteed in Article 14 in general and Article 16 of the Constitution in particular;

(viii) That several candidates were duly disqualified on the ground that they have mentioned their hall-ticket numbers with pen instead of pencil and such hyper-technical mistake which is not in substance but in form cannot sustain, as it is arbitrary and violativc of Article 14 of the Constitution;

(ix) That there was large-scale copying and the persons who could spend amounts got the benefit of copying and only such candidates who could manocuver and manage could get high marks in the written examination;

(x) That some questions were beyond syllabus;

(xi) That jumbling system was not followed in Warangal;

(xii) That jumbling system though followed in other districts, but was not effectively;

(xiii) That pilot system was permitted, which means that the persons who are already working as teachers were permitted to sit for examination, not to get themselves selected for the posts as they were holding equal posts and also higher posts, but only with ulterior motive of helping other examinees who could grease their palms;

(xiv) That reserved vacancies were not mentioned with break-up figures, but it was generally mentioned that reservations will be followed and mat the same is violativc of the reservation policy enunciated in the Constitution in Articles 15(4) and 16(4);

(xv) That there was impersonation done in Nalgonda district and persons other than the examinees were permitted to write the examinations;

(xvi) That local and non-local posts are not strictly adhered to and that the appointments were made in the correct ratio of 85:15 for locals and non-locals respectively and thus, violating the Presidential Order promulgated in exercise of the powers contained in clauses (1) and (2) of Article 371-D of the Constitution of India;

(xvii) That the reservation quota has not been correctly followed and overall reservation has even exceeded 50% in some cases which is violative of the law laid down by the Supreme Court in*Indira Sawhney v. Union of India*[2] ;

(xviii) That the Government had cancelled the examination in Anantapur district on the basis of just paper reports and the issue raised on the floor of the Legislative Assembly and that there was no other material., much less, legally acceptable material to cancel examination. In the alternative, it is contended tliat the circumstances and material are similar in other districts and following the analogy of Anantapur, the Government ought to have cancelled the examination in all the districts as they are similarly placed and in not doing so, the Government had acted with discrimination; and (xix) The Tribunal ought to have directed the publication of results in all the centres of Cuddapah, but erred in withholding the declaration of results even ignoring the report of the Secretary to School Education. In the alternative, it was pleaded that not only in 7 centres, but in all the centres of Cuddapah, the examination ought to have been cancelled. It is also contended that the Tribunal had erred in directing the Committee to enquire into the allegations of mal-practice in 7 centres of Cuddapah and then leaving the decision, basing on the said report, to the authorities and thus, abdicating the judicial functions of the Tribunal.

14. Sri S. Ramachandra Rao, the learned senior Counsel, led the arguments for the petitioners. He has reiterated the contentions that the Supreme Court in Chandra Kumar 's case (supra) has tested only the validity of Section 28 of the Tribunals Act and clause 2(d) of Article 323-A and clause 3(d) of Article 323-B of the Constitution of India and struck down the same on the ground that the power of judicial review of the Supreme Court and High Courts is the basic structure of the Constitution of India and as such, cannot be excluded and that other provisions of the Tribunals Act have not been interpreted and as such arc open to challenge. He submits that even the finding of the Supreme Court relating to Section 5(6) of the Tribunals Act does not form the ratio decidendi, but is only an obiter and in any event, the Supreme Court cannot create the Tribunal as the 3rd constitutional Court and the Tribunals arc not so constituted to have competence to exercise the power of judicial review of legislation which in result erodes the power of the said judicial review and ultimately results in violation of the basic structure theory. He also submits that the power of appointment of the Chairman, Vicc-Chairman and Members is vested in the executive-Government and that the executive Government being the major litigant and in feet the litigant in each and every case as one of the parties, the independence of judiciary in the Administrative Tribunals cannot be maintained and as such is violative of the basic structure theory. He also submits that when the Chairman who is the Judge of High Court cannot be removed excepting by impeachment, he is vulnerable for just removal without the process of impeachment under the Constitution and that the tenure of five years fixed for the Chairman, Vice-Chairman and Members shakes the confidence of the said adjudicators of the Tribunal making them vulnerable for influence. The constitution of the Benches is to be made by the Government, the financial power is vested in the Government, the procedure that should be adopted in discharging the functions has to be stated by the Government, placement of restrictions on interim orders, ineffectiveness of the execution of me Tribunals' orders and vesting of rule-making power in the Central Government etc., are stated to derogatory to the independent status of the Tribunal and making the Tribunal as a body subordinate to the Government and as such violates the independence of the judiciary.

15. *Sri P. V. Subhrahmanya Sharma, the learned Counsel appearing*[2] *for the* has submitted that the fetters imposed by the Supreme Court in Chandra Kumar's case (supra) on the High Courts' exercise of original jurisdiction without exhaustion of remedy before the Tribunal is unconstitutional and that the Supreme Court has failed to take note of the fact that clause (3) which was inserted in Article 226 by the Constitution 42nd Amendment was done away with by Constitution 44th Amendment and from this the constitutional intent was not to place any fetters and that the Supreme Court ought not to have placed such fetters. He has also emphasised the need for independence of judiciary and reiterated the arguments advanced by Sri S. Ramachandra Rao with regard to maintaining the independence of judiciary and also the lack of such infrastructure in the Tribunal to have the power of judicial review of legislative action and

that under Article 141 of the Constitution of India the Supreme Court could not make an imposition of either directing the High Courts to hear the matters only by Benches and to entertain the cases only after the exhaustion of remedy before the Tribunals. He has also given comparative instances of there being no fixed term for the members of Industrial Tribunal, Income-Tax Appellate Tribunal, Customs Appellate Tribunal and A.P, Sales Tax Appellate Tribunal and the similar need to have the same provisions without any tenure restrictions but only with maximum age restriction so as to ensure the independence of the judiciary. He was also critical of the mode of appointment of Chairman, Vice-Chairman and Members on the ground that there is lot of say for the executive-Government. He also citedGovernment of Andhra Pradesh v. D. Siva Prasad, , stating that the appointments of three Administrative Members of the Andhra Pradesh Administrative Tribunal viz., of Ch. Venkatapathi Raju, DVLN Murthy and T. Mnnivenkalappa were found to be irregular by the Division Bench of this Court. He brings to the notice of this Court that there are thousands of Original Applications and Contempt Cases pending before the A.P. Administrative Tribunal and that the A.P. Administrative Tribunal cannot be said to be effective alternative remedy to the High Court. He cited Union of India v, K.S. Subramanian, , for the proposition that in Keshavananda Bhamthi v. State of Kerala, , it was held that independence of judiciary is the basic structure of the Constitution and that if any law is made in derogation of such laws, it is violative of Article 14 of the Constitution and even in Chandra Kumar 's case (supra) placing fetters on the jurisdiction the High Court is treated as a law under Article 141, tire said law is contrary to the larger Bench's view in Keshavananda Bharathi 's case (supra) and is, thus, unconstitutional.

16. Sri J. Sndheer, the learned Counsel appearing for some of the writ petitioners, took us into the fact situation alleging malpractices and serious irregularities in the conduct of examinations like mass-copying, jumbling system not being followed, pilot system being followed, contradictions in the declaration of results, fixation of disproportionately high standards of qualifying mark in the written test and non-prescription of any qualifying marks in the oral test, issuance of G.O. R.t. No.618 as being illegal, unconstitutional and without jurisdiction. In other respects, he adopted the arguments' of Sri S. Ramachcmdra Rao.

17. Sri Praiap Narayan Sanghi, the learned Counsel appearing for the petitioner in Writ Petition No.22799 of 1998, submits that the petitioner was qualified in the written examination and was also called for interview, but because of reduction in the qualifying mark, in view of G.O. Rt. No.618, he was not selected and the persons who have scored less marks than the petitioner in the written examination were selected and that the petitioner has been unduly deprived of the right to appointment and that G.O. Rt. No.618, dated 18-5-1998, is illegal, unconstitutional and without jurisdiction. In other respects, he adopted the arguments of Sri S. Ramachandra Rao. Mr. K. Lakshmi Narasimha, the learned Counsel appearing for the petitioner in WP No.21439 of

1997 has also addressed on the necessity of independence of judiciary and assailing the provisions of the Tribunals Act, had adopted the arguments of Sri S. Ramachandra Rao. Mr. ty.N. Narasimha Reddy, the learned Counsel appearing for the petitioner in WP No.22039 of 199S has assailed the judgment of the Tribunal in OA No.3366 of 1998 and submitted that the written examination conducted ought to have been cancelled not only in the 7 centres of Cuddapah, but in all the centres of Cuddapah district and that even with regard to 7 centres, the Tribunal had erred .in abdicating its judicial functions entrusting the same to the Executive. On the other hand, Mr. KJagan Mohan Reddy, the learned Counsel appearing for the petitioners in WP No.22809 of 1998 has assailed the Order of the Tribunal stating that there are no grounds to even order enquiry with regard to 7 centres in Cuddapah, that the Tribunal went wrong in making that exercise, as the Secretary to Government had already reported that excepting sporadic incidents, the written examination on the whole was not vitiated and that the enquiry in 7 centres was uncalled for and sought for declaration of the results of the written examinations held. Mr. K. Jagan Mohcin Reddy, similarly sought the same prayer in Writ Petition No. 19784 of 1998 relating to Anantapur district and it was the subject matter of OA No.3513 of 1998 in the Tribunal, complaining that absolutely there is no material to cancel the written examination in Anantapur district and only on the basis of the statement made by the Minister on the floor of the Assembly, the written examination was cancelled and that there is absolutely no material, much less, legally acceptable/ material to cancel the written examination and sought for declaration of the results on the basis of the written examination held on 19-4-1998 and he was critical of the approach of the Tribunal in holding that the cancellation ofthe written examination is a matter of policy of the Government and strenuously contended that it was for the judicial authorities to consider on objective standards as to weather the written examination was vitiated. Mr. N. Ranga Reddy, the learned Counsel appearing for the petitioner in Writ Petition No.22633 of-1998 has sought for the declaration of results on the basis of the re-examination conducted in Anantapur district on 12-8-1998; but, this will depend upon the result in WP No.19784 of 1998.

18. The learned Advocate-General countered the arguments of the learned Counsel for the petitioners stating that the proposition laid down by the Supreme Court in Chandra Kumar's case (supra) is authoritative and that the judgment is correct as the jurisdiction of the Supreme Court and the High Court is upheld and that the power of this Court is not taken-away, but is made to exercise only after Tribunal's judgment or order and such deferment of exercise of power by this Court cannot be said to be unconstitutional and that eventhough the Tribunal's composition, as of now, is not wcli-cquipped, regulatory measures can be taken to properly structure them to make them effective adjudicatory body and that the Tribunals may not be serving as supplemental, but can be said to be providing alternative remedy and that alternative remedy, though not a rule of law, but it is a self-imposed restriction and in appropriate cases, this Court can always entertain the writ jurisdiction or the power of judicial superintendence and that though Administrative

Members are not trained, they can be made to sit along with the Judicial Member and as such, the deficiency, if any, can be cured. He has defended all the provisions of the Tribunals' Act as intra vires and also the orders of the Tribunals and the action of the Government in cancelling the written examination in Anantapur district and not cancelling the written examination in other districts.

19. Mr. G. Raghuram, the learned senior Counsel appointed by the Court as amicus curiae submitted that the law stated by the Supreme Court in Chandra Kumar's case (supra) is a per curium and that all relevant judgments of the Supreme Court have been considered and the law was evolved. It is his submission that the relevant constitutional and statutory provisions were either extracted or succinctly discussed in Chandra Kumar 's case (supra) including that of relevant and significant judicial precedents of the Supreme Court. He has further submitted that the Supreme Court after enunciating the availability of judicial review including the constitutional review in the Tribunals, clearly rejected the contention that Administrative Members be excluded and their appointment to the Tribunals be stopped and that the Court found the appointment process involving consultation with the Chief Justice as an adequate safeguard of the quality of appointments to these offices and that administrative supervision by the High Courts over the Tribunals was negatived. He has defended the provisions contained in the Tribunals Act and submits that the Supreme Court felt that the statutory environment was adequately structured to permit availability of judicial review powers including the vires areas in the Administrative Tribunals and that the fact that the constitutional remedy under Articles 226 and 227 is available to correct any erroneous exercise, persuaded the Supreme Court to permit this legislative experiment by the Tribunals and that the Supreme Court was also alive to the alarming docket explosion and pendency in many High Courts and resultant .damage to the interests of the citizen and the public and the Court took note of the various studies and committees that went into this question and suggested solutions. On an overall assessment, the Court clearly and unambiguously negatived every challenge to the vires of the Act. The Court interpreted the Constitution and the Act and that the Supreme Court is the final interpreter and arbiter of constitutional text and structure, that Chandra Kumar's case (supra) clearly and unequivocally incorporates a jurisdictional limitation on the High Court from entertaining any matter within the jurisdiction of the Tribunal without first approaching the Tribunal and this is a limitation on the jurisdiction of the High Court as well as a limitation on the remedy available to the citizen, that the structural composition of the Tribunal was available to the Court, the Court was nevertheless satisfied that it was suited to the task, the more malignant and troubling areas relate to the unsatisfactory functioning of some of the incumbents, this is occasioned by serious errors of judgments by the members constituting the appointment committees, they should be sensitized to the relevant needs and special qualities of the incumbents necessary for the specific Tribunal in the context of its jurisdiction, greater care and concern should animate the

deliberations and consultations of these committees and such failures, shortcomings and errors of judgment, however, cannot invalidate the Act. He also submitted that the question whether the Chandra Kumar's case (supra) opinion is ratio/rationes decidendi or obiter or gratis dicta and in which areas, may not be of consequence and that the said decision is an authoritative and binding interpretation of the Constitution and of the Act and that it is the law within the meaning of Article 141 and that it cannot be validly attacked on the ground that some provision of the Act was not evaluated in the language propounded now and having regard to the elaborate extraction of the provisions of the Act' in the judgment and the detailed consideration accorded by the Court to all the major constitutional premises, no minor premises can be pressed into service to avoid the decision.

20. Mr, Y. Rama Rao, the learned Counsel appearing for the successful candidates in the written examination of Warangal district and Mr. S. Bharat Kumar for the successful candidates of Nalgonda district have adopted the arguments advanced by the learned Advocate-General and sought for the dismissal of the writ petitions.

21. Now concisely stated, the points which arise for consideration are:

(i) Whether judicial review under Articles 226/227 of the Constitution is a basic feature of the Indian Constitution and did it undergo any change in view of Chandra Kumar's case (supra)?

(ii) Whether the directions by the Supreme Court in Chandra Kumar's case (supra) regarding the exhaustion of alternative remedy and hearing to be made only by a Division Bench of the High Court forms dicta or obiter and as to whether it cannot be construed as a binding precedent under Article 141 of the Constitution?

(iii) Whether Administrative Tribunal is a third constitutional Court and if not, what is its status and nature of functions?

(iv) Whether several provisions of the Administrative Tribunals Act, 1985 are an affront to independence of judiciary and thus violative of basic feature of the Indian Constitution and are liable to be struck down as ultra vires the Constitution?

(v) Whether the qualifying mark prescribed in the written examination for eligibility for oral interview is arbitrary and violative of Articles 14 and 16 of the Constitution?

(vi) Whether the reduction of qualifying marks for the respective classes of OC, BC and SC/ST/PH in G.O. Rt. No.618, dated 18-5-1998 is arbitrary, illegal and unconstitutional?

(vii) Whether several malpractices alleged in the examination are established and even if

established, are of such magnitude an destructive of very object and intcndment of the examinations entailing in cancellation of entire examinations?

(viii) Whether the disqualification of some candidates, who ticked answers with pen, is arbitrary and illegal and vitiates the entire examination?

(ix) Whether non-specification of number of vacancies in reserved categories vitiates the notification?

(x) What is the maximum percentage of reservation permissible?

(xi) Whether the area reservation under the Presidential Order of 1975 issued under Article 371-D of the Constitution is mandatory and what is the effect of breach of the same?

22. First of all, we deal with the factual aspects and the legal provisions concerning the same.

23. Both on the advent of examinations as also thereafter, there was lot of unrest among the examinees particularly those who felt disappointed on the ground that malpractices were committed like mass-copying piloting, not making the jumbling process effective and even leakage of papers etc. and they were flashed in press media. It was more intensive in the districts of Karimnagar, Warangal, Nalgonda, Adilabad, Cuddapah and Anantapur. Kurnool, Ncllore and Chittoor can also be added to the above list. As of now, in the said 9 districts the selection process is not completed on account of the unrest mentioned above and the consequent litigation. But, in no case, the Government has ordered any enquiry excepting in the case of Cuddapah district. In the case of Cuddapah, the Secretary, School Education, namely, Ms. M.Chaya Ratan, was sent for enquiry. It is worthwhile to extract the enquiry report, as the other cases have to be tested in the light of the same even though specific enquiries have not been made in each of the districts.

> "Enquiry Report in Teachers Recruitment Test 1998 Held on 19-4-1998 & 20-4-1998 In Cuddapah District In pursuance of the instructions from the Chief Secretary to conduct a detailed enquiry based on which a decision either to withhold the results or to release the results for finalising the teachers selection be taken, I have proceeded to Cuddapah by Rayalaseema Express on 11-5-1998. As the Collector was not available, I had earlier spoken to the Joint Collector and DRO and requested them to release a press note to be published on 11-5-1998 indicating that Government have deputed a senior officer to conduct a detailed enquiry into the allegations of mass-copying etc., at Cuddapah. Accordingly, a press note has been published in all the newspapers. The enquiry commenced from 9.00 a.m. on 11-5-1998. I have met a number of individuals, associations and groups of students, public representatives etc. I have also visited some of

the centres where the written examinations were conducted. The enquiry commenced with a detailed review of the steps taken by the district administration to conduct the examinations in proper and fair manner. In Cuddapah, out of 9,451 candidates, who applied, 6755 have appeared for examination for which district administration has identified 32 centres. There were complaints of mass-copying in six centres. Therefore, a detailed analysis of the performance levels was taken up for the six centres, in particular. Some of the steps taken by the district administration to ensure proper conduct of examination are as follows:

1. Appointment of only District level Officers as Superintendents.

2. Appointment of one Mandal Revenue Officer to each centre to act as sitting squad.

3. Appointment of Gazetted Officers and Superintendents of the Mandal Offices as Hall Superintendents/Other Government officials were nominated as Invigilators.

4. Appointment of route officers to distribute questions papers and after distributing the same to act as flying squads.

5. Allotment of Chief Superintendents only on 18-4-1998 at 10.00 a.m to ensure perfect conduct of examinations.

6. Allotment of Hall Superintendents and Invigilators to the centres only on 19-4-1998 at 6.00 a.m Further, they were sent by the RTC buses to the centres. In some cases excess staff were also posted. A large reserve was also maintained at the Collectoratc.

7. Within a given centre, candidates were not allowed to sit in the order of Hall Tickets. All the Hall Ticket numbers were jumbled to create randomness in their arrangement. There was no relation between any of the two adjacent hall ticket numbers after the jumbling process was completed. Hence any intention.

8. On the part of the candidates to indulge in malpractices with the aid of known friends was nipped in the bud as totally different candidates were arranged without a given hall.

9. The District Collector had called for a meeting of the Chief Superintendents, Hall-Superintendents and invigilators on 16-4-1998 and directed that the teachers examination be conducted impartially and no scope be given for criticism. The District Collector also cautioned that any failure in this regard would result in disciplinary action besides launching criminal proceedings.

10. Sufficient police personnel have been provided at the centres to ensure law and order and

facilitate conduct of fair examination.

11. Notices had been given by the MRO, Cuddapah to all Xerox units in Cuddapah town to remain closed on 19-1-1998 and 20-4-1998 without any exception.

12. All candidates with multiple hall-tickets were identified in advance and extra vigilance was put on them to ensure that they did not indulge in any malpractice, by seating all such candidates in separate halls.

13. Total confidentiality was maintained in handling the question papers in Treasury and in transporting them to examination centres. The question papers where taken to the exam centres under proper security and alongwith the route officers.

14. The allotment of Chief Superintendents, Hall Superintendents and Invigilators was done in total confidence. The candidates had no opportunity of knowing the Chief Superintendent/Hall superintendents and Invigilators.

15. Around the exam centre prohibitory orders under Section 144 Cr.PC were promulgated to ensure peace and order.

Problems:

Some of the problems encountered in the conduct of examination appear to be in relation to overcrowding in some of the centres. Inadequacy of space a major constraint which can perhaps be avoided if the examination had not clashed with other examinations viz., SSC and Intermediate. Many of the candidates have given applications together and because the department was issuing hall-tickets across the counter, there was possibility for friends to sit together which gives scope for copying. There were cases of students giving more than one application and later they choose centre as per their convenience which again gives scope for copying. In Cuddapah, however, anticipating this problem, the candidates have been jumbled to ensure that they did not sit according to their hall-ticket serial order, which however unfortunately may not have been the case with some other districts. As the stake in this kind of examination is very high, all steps need to be taken to ensure that the above problems arc not repeated in future. Apart from selecting the dates for the examination carefully to ensure they do not clash with other examinations, buildings with proper facilities alone need to be identified and the candidates need to be given hall-tickets at a later date without following the seating according to hall-ticket number in any case. To avoid more than one application, Rs.100/- could be charged towards application fee. It may be worthwhile to make invigilation staff to go to neighboring districts instead of giving the same district hereafter.

Findings:

An analysis of the results was carried out centre wise and the statistics arrived at, do not show any oddities in the distribution of results amongst the centres. It was reported that Basi Reddy Law College, Basavatharakam Law College and Subbi Reddi Degree College centres had witnessed large scale of mass copying, In fact the percentage of results in these centres is below the District Pass Percentage. An analysis of candidates who had passed using question papers of codes A, B, C & D has shown that there is no substantial difference in the pass percentages. In fact all the four codes have sent up almost uniform results.Based on the enquiries, verification particularly of the 6 centers it was clear that there was no evidence of mass copying. However, the good performance in some of the centres indicates there may have been some sporadic copying perhaps with the help of invigilators and we need to take steps to curb the tendency in future. I have therefore issued a press note as follows:

> "In pursuance of the Government directions for an enquiry, following a/ press release regarding the conduct of enquiry on 11-5-1998, representations were received from various completion of the Teacher Selection process. Specific allegations/claims were also verified some with reference to records. Similarly, detailed computerized analysis of the results on various parameters has been undertaken.There is no evidence to substantiate the allegation of mass-copying1 in any centre. The computerised analysis did not reveal any consistently, extraordinary-performance in any centre. Further, the results obtained by the candidates bearing codes A, B, C, & D has also been more or less uniform.It is, therefore, decided to release the results and complete the selection process-in Cuddapah district. The District Administration will take further action accordingly."

The problems highlighted above are being brought to the notice of the Director of School Education for appropriate action in future.This is submitted to Chief Secretary for your kind perusal.

(M. Chaya Kafan) Sccretary(School Administration)"

24. The Government having been satisfied with the said report, did not proceed further and did not cancel the examinations in Cuddapah District. Insofar as Anantapur district is concerned, the Government had cancelled the examinations by virtue of the Memo dated 15-5-1998, which reads as follows:"

> "Government of Andhra Pradesh Education (Ser. VI) Department Memo No.14205/Ser.VI-A1/98-2, Edn. dated 15-5-1998 Sub:-District Selection Committee 1998 -Anantapur district - Certain allegations of mass copying - cancellation of the examination

- Regarding.

Ref:--DO Lr.No.l4205/Ser.VI/98-l Edn, dated 29-4-1998 of Sri B.S. Somayajutu, Dy.Secy.to Government, Education Department.

The attention of the Director of School Education, Hyderabad is invited to the reference cited and he is informed that as announced by the Hon'ble Minister for Social Welfare on the floor of the Andhra Pradesh Legislative Assembly, Government hereby cancel the Examination of the District Selection Committee 1998 in respect of Anantapur district for teachers recruitment.

The Director of School Education, Hyderabad is requested to take necessary action accordingly in the matter.

M. ChayaRatan Secretary to Government.

To The Director of School Education, Hyderabad."

25. The allegation with regard to Anantapur and Cuddapah districts and for that reason in other districts too, arc not dissimilar and they are same. Further, there is no enquiry report in the case of Anantapur district even though it was called for as is evident from the letter of the Deputy Secretary to the Chief Minister dated 27-4-1998, which was pursuant to the representation by the Unemployed Teachers Union, Anantapur district with 7 signatories addressed to the Chief Minister on 26-4-1998. Mr. S. Balasitbrahtnanyam, the concerned Deputy Secretary has informed that a detailed enquiry has to be conducted into the allegations of mass-copying and the representation dated 26-4-1998 mentioned above along with press clippings were enclosed and the enquiry report was called for within 3 days thereof; but, there was no such enquiry report submitted. By another letter dated 29-4-1998 the said Deputy Secretary has called for the report by 30-4-1998 positively. But, there was no trace of such report. To clarify the situation, we have asked Mr. Subrahmanyam, the learned Government Pleader for School Education, as to whether there is any other file than submitted to the Court. But, he stated that, that was the only file, from which we do not find any enquiry report excepting the letters mentioned above and then the Memo dated 15-5-1998, which was extracted above. As such, it is clear that the examinations in Anantapur district were, cancelled on the basis of the representation dated 26-4-1998 made by the Unemployed Teachers Union of Anantapur district with 7 signatories and in fact, primarily on the basis of the statement made by the concerned Minister on the floor of the Assembly, which is evident from the Memo mentioned above. At the most it can be said that the examinations in Anantapur district were cancelled on subjective satisfaction and not on objective material and considerations. But, judicial authorities cannot act on subjective considerations and

that too in matters like this where valuable rights are involved and more so in these days of acute unemployment. Teachers posts had been vacant since last several years and there were series of litigations in the Courts and when they were notified for recruitment, lakhs of persons applied and Statewide nearly 2 lakhs persons have participated in the written test after rejection of other applications for want of fulfilling the requirements. The cancellation of the examinations in Anantapur district has been challenged as stated above in WP No. 19784 of 1998 and for not cancelling the examinations in other districts, writ petitions have been filed making the same allegations as were made in Anantapur district and with the same material like press clippings etc. In fact, insofar as Cuddapah District is concerned, when the Tribunal has ordered enquiry with regard to 7 centres, WP No.22039 of 1998 has been filed to annul the examinations in all the centres of Cuddapah, while WP No.22809 of 1998 has been filed to declare the results of the written examination by ignoring the complaints and assailing that part of the order of the Tribunal in OA No.3366 of 1998.

26. Having regard to the nature of allegations and the material, the main thing being press media clippings, what is applicable to Anantapur district has to be made applicable to other districts also and if not, in the reverse, what is applicable to other districts has to be applicable to Anantapur district also and more so, in view of the detailed report of the high ranked official i.e.. Secretary to Government relating to Cuddapah district. The said report has to be taken as basis for all the districts, as, in a case like this where thousands of posts and lakhs of aspirants/applicants are there, each case and each candidate cannot be the subject matter of enquiry and overall situation has to be taken into account. In a mass examination like this, spread over to all the 23 districts of Andhra Pradesh, some instances as mentioned by the petitioners like copying and other irregularities do occur. But, what is to be seen as to whether such sporadic incidents can outweigh the larger considerations in public interest. The Court is to be satisfied by cogent and clinching material that the illegalities and irregularities like mass-copying, piloting etc., in fact have taken place and that written examination had become a farce and that the merit has suffered yielding to malpractices resulting in undue and unfair advantage to the unmerited candidates. Pros and cons have to be weighed and if the illegalities and irregularities arc not of the great significance and did not affect the overall object and intendment of the examinations, the purpose of the examinations has to be given its fruitful effect by declaring and acting upon the same. In fact, that is the finding of fact of the Tribunal and without being elaborative, we just extract the operative portion in one of the judgments rendered by the Tribunal, which, in fact, can be adopted for all other cases too, as, already stated above, the allegations arc similar. A Division Bench of the Tribunal by Judgment dated 23-7-1998 rendered in OA Nos.3419 and 3674 of 1998 held:

"The applicants heavily relied upon the news items appeared in the newspapers to substantiate

their case. In other words, the sheet anchor in this case for the applicants is newspaper items. We are not in a position to persuade ourselves to take into account the news items appeared in the press since in number of cases, the concerned officials who conducted the examinations denied such allegations. The applicants could not produce any convincing and corroborating evidence in respect of the allegations levelled by them. Therefore, it can safely be said that all the allegations levelled by the applicants are very vague and not supported by any material evidence."That apart, the percentage of results which is extracted below shows nothing abnormal in' Anantapur as compared to other districts where also similar allegations of malpractices were alleged.District OC BC.A BC.B BC.C BC.D SC ST Anantapur 67.0 64.5 64.5 64.5 62.0 61.0 52.0 Katimnagar 68.0 62.0 67.5 58.0 66.0 60.0 49.5 Khammam 67.0 62.5 64.5 56.5 66.5 63.0 50.5 Nalgonda 67.5 64.5 68.0 61.5 65.5 65.0 52.0 Warangal 66.0 65.0 66.0 56.0 63.0 60.5 52.5

27. A mention has to be made with regard to Cuddapah district covered by OA No.3366 of 1998 relating to WP Nos.22039 and 22809 of 1998. In view of the finding of the Tribunal mentioned above in OA Nos. 3419 and 3674 of 1998, no different consideration can arise in the case of Cuddapah district and as such, directions in OA No.3366 of 1998 to constitute a committee to enquire into the allegations said to have been committed in some centres of Cuddapah district are baseless and unsustainable. The Tribunal was incorrect in applying two standards, one for Cuddapah and another for other districts and more so, when there is only one enquiry conducted with regard to Cuddapah as compared to no enquiry conducted in any of other 22 districts and the said enquiry report being in consonance with the approach of the Tribunal mentioned above in OA Nos.3419 and 3674 of 1998. Further, the Tribunal, which is a judicial body and which has to resolve the disputes exercising the judicial power of the State, "was not entitled to abdicate its functions and leave the decision to the executive after making enquiry. Such action is impermissible under law.

28. With regard to disqualifying of several candidates for mentioning their hall-ticket numbers with pen instead of pencil is concerned, the authorities cannot be found fault with, as the computer was fed with such system and a specific condition is mentioned in the instructions issued to the candidates. Further, such disqualified candidates in the whole of the State are in small number i. e., 496. With regard to non-mentioning of specific figures relating to reservation, no hardship or legal injury has been caused to any reserved candidate, as, we have scanned through the records and found that the reservation policy has been followed. In view of what is stated supra, points (vii) and (viii) are answered in the negative.

29. With regard to reservations, we have to say that there is an error in following the same and the exercise made in implementation of reservation policy is perfunctory. It is astonishing to note that the authorities, who are said to be expert academicians in the matter of appointments, do not

even know the basic rule or reservation and the law of the land relating thereto laid down by the Supreme Court in Indira Sawhney 's case (supra). Even though it is mentioned in the Notification that the reservation policy as enunciated in G.O.Ms. No.65, General Administration Department, dated 15-2-1997 will be followed, there is no specification of posts for each of the reserved categories. That apart, the reservation, which is permissible under G.O.Ms.No.65, is only to the extent of 15% for SCs., 6% for STs and 25% for BCs. The remaining 54% is kept for open competition. There is no reservation to Ex-servicemen insofar as Teachers posts are concerned, but the same was wrongly given. Even if reservation to Ex-servicemen is permissible, it has to be given horizontally adjusting in the respective categories along with the reservation of 33-1/3% for women candidates and 3% for physically handicapped candidates. The proposition laid down by the Supreme Court in Indira Sawhney's case (supra) is that only class reservation is vertical, while all other reservations are horizontal. As such, the women, physically handicapped and ex-servicemen, if permissible, have to be adjusted only within the respective categories of OC, BC, SC and ST of 54% : 24% : 15% : 6% respectively. It is sufficient by depicting the error committed in one district, which, in fact, is the error committed in all the districts. We state the error with regard to Karimnagar district.

Sl.No	Community	No. of posts notified	No.of candidates Qualified	No. Called for interview	No. of candidates selected	No. of posts Stillvacant	Re-marks

1.

OC General

2.

OC-Women

3.

BCA-General

4.

BCA-Women

5.

BCB-General

6.

BCB-Women

7.

BCC-General

.

8.

BCC-Women

9.

BCD-General

10.

BCO-Woman

11.

SC- General

12.

SC-Women

.

13.

ST- General

14.

ST-Women

15.

PHC- General

16.

PHC-Blind

17.

Ex.Ser-Genl.

18.

Ex.Ser-Women

The above table shows that there is a vertical reservation for women. While they are entitled for 785 posts out of 2333, what is allocated for selection to them is 1015 posts. The same error is committed with regard to physically handicapped and Ex-Servicemen candidates also. This has to be rectified. Learned Government Pleader for School Education tried to explain that because of the carry forward system more reservations had to be given to women, BCs and PH candidates. We do not agree with this contention for the reason that such a carry forward system to women, BCs and PH candidates is only provided for the first time in G.O. Ms. No.65 and admittedly, as no selection has been made to the posts of Teachers and language Pandits and Physical Education Instructors, which are the subject matter of these writ petitions, the question of carry forward for this selection docs not arise. With regard to area reservation, it is not 85%: 15% as contended by the learned Counsel for the petitioners. That is only applicable with regard to admissions in educational institutions and not with regard to public employment. The Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, which has been promulgated by the President of India, in exercise of the constitutional powers contained in clauses (i) and (ii) of Article 371-D, mandates reservation of posts of 70% for locals and 30% for open in public employment (insofar as these posts are concerned) and the same has got to be followed strictly- But, as we have seen the selection list, the same has not been followed and there are lot of violations in that regard. The ratio of 70% : 30% is reckoned separately in each of the categories even including women. As the Presidential Order takes precedence over any other reservation in view of non-obstante clause contained in clause (x) of Article 371-D of the Constitution, which, a Full Bench of this Court has dealt with elaborately in D.R. Babit v. Nizam Institute of Medical Sciences, AIR 1998 A.P. 162, the area reservation will prevail over any other reservation. As the reservations-have not been done properly in accordance with what is stated above the entire list has to be redrawn accordingly. That apart, the order of rotation mentioned in G.O. Ms. No.65 itself is erroneous, as, in the unit

of 100 vacancies, there are 35 roster points indicated as against women, but it shall not be more than 33-1/3% and even if the fraction is taken as one, it should be 34 and not 35. This has to be rectified. The correct method is to follow the area reservation first by adjusting the class reservation vertically in both locals and non-locals and then reservations for the gender, physically handicapped and ex-servicemen have to be adjusted horizontally within the above categories of OC, BC, SC and ST. The reservations for OC, BC, SC and ST in the ratio of 54% : 25% : 15: 6% respectively have to be spread in the proportion of 70% : 30%. As such, we hold that non-specification of number of vacancies in reserved categories is an error, but is not such a serious error, which vitiates the notification. But, the anomalies, which arc mentioned above, would have been avoided even at the threshold, had the reserved vacancies been specified in the notification. The selection list now has to be redrawn in all the districts by maintaining the policy of area reservation first and then class representation next in the manner indicated above. The question paper being common to all the districts of the State and being set by a common centralised machinery and so also the valuation of written test, and as there are lot of anomalies in the oral interview and consequent allotment of marks and fixation of area and class reservations and also other reservations, as different districts have done in a different manner, it is desirable to have a centralised agency for the entire selection consisting of experts, which will avoid this unnecessary and avoidable litigation and aids in smooth and speedy conduct of selection process. Of course, this has to be followed for future selections, as, we do not want to disturb the present selection process, which was already undergone. Point Nos.(ix) to (xi) are answered accordingly.

30. As already stated above, after the written test was conducted and the results were announced, 5 marks in each of the categories - OC, BC and SC/ST/PH - were reduced by issuing G.O.Rt.No.618, Education Department, dated 18-5-1998, which is under attack in some of the writ petitions mentioned above. It is apt to extract the said Governmental Order.

"GOVERNMENT OF ANDHRA PRADESH ABSTRACT District Selection Committee 1998 Teachers' Recruitment -Reduction of qualifying marks by 5 marks for all the three categories in the written examination for the posts of SGBTs in relaxation of Rule 13(a) ofG.O.Ms.No.221, Edn., dated 16-7-1994-Orders-Issued.

Education (Ser.VI) Department

G.O.Rt.No.618 Dated 18th May, 1998 Read the following :

1.G.O.Ms.No.221, Education, dt 16-7-1994

2. G.O.Ms.No.58, Education, dt.4-3-1998

ORDER:

The Government after careful consideration of the reports from certain District Collectors have decided to reduce the qualifying marks prescribed under Rule 13(1) of the A.P. Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994 by five marks in respect of Secondary Grade Basic Trainees.

2. All the District Collectors and Chairman, District Selection Committees, are hereby directed to take necessary action in the matter,

3. The following notification will be published in the Extra-ordinary issue of A.P. Gazette dated the 18th May, 1998.

NOTIFICATION

Whereas sub-rule (a) of Rule 13 of the A.P. Direct Recruitment of Posts of Teachers (Scheme of Selection) Rules, 1994, prescribes the requisite minimum marks to be secured by the candidates in the written test for OCs, BCs and SCs/STs. as 50, 45 and 40 respectively.And, whereas, in G.O.Ms.No.58, Education, dated the 4th March, 1998, the Government have prescribed a detailed schedule relating to issue of notification calling for applications and conduct of examinations during the period from 10-3-1998 to 15-6-1998 and in terms of the above orders, recruitment to the posts of teachers is in progress;And, whereas, the feed back from certain Collectors indicates that qualified candidates in certain categories and in some districts even in respect of OCs are not available in adequate number to fill up all the notified vacancies;And, whereas, in public interest, and to ensure filling up of all posts of teachers before the reopening of schools and to ensure opportunity to more candidates, the Government have decided to reduce the prescribed minimum marks by 5 (Five) for all the categories in the written examination for the posts of Secondary Grade Basic Trainees;Now, therefore, in exercise of powers conferred by Rule 31 of the A.P. State and Subordinate Service Rules, 1996, the Governor of Andhra Pradesh hereby relaxes sub-rule (1) of Rule 13 of the A.P. Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994 and directs that the candidates belonging to OCs, BCs SCs/STs., who have secured five (5) marks less than the minimum prescribed under the said rule in the written examination, may be called for interview in the ratio of 1:3, for the posts of Secondary Grade Basic Trainees as notified under G.O.Ms.No.58, Education, dated 4th March, 1998.(By order and in the name of the Governor of Andhra Pradesh) M. Chaya Ratnam

Secretary to Govemment(SE)"

31. It is submitted by M/s J. Sudheer and Pratap Narayan Sanghi, the learned Counsel, that the qualifying marks, which have been prescribed under the statutory rules framed in exercise of the powers under the A.P. Education Act, A.P. Panchayat Raj Act and the Proviso to Article 309 of the Constitution of India, cannot be reduced and there was no power or jurisdiction for the Government to reduce the qualifying marks merely because there were no sufficient number of qualified candidates for recruitment. They submit that there is no power or jurisdiction for the reason that G.O. Rt.No.618, dated 18-5-1998 is traced to Rule 31 of A.P. State and Subordinate Service Rules, 1996 and the same cannot be pressed into service. Even if the said Rules can be pressed into service, the same can be made applicable to only Government posts and in the instant cases the recruitment was made to Government and also local bodies like Zilla Parishads and Mandal Parishads and a choice was given to the candidates to indicate in the application form, the preference which would be considered at the time of selection; such being the mix-up it is contended that Rule 31 of A.P. State and Subordinate Service Rules, which have been framed under the Proviso to Article 309 of the Constitution, are inapplicable and as such, G.O.Rt.No.618 dated 18-5-1998 is void, illegal and unconstitutional. Their contention is that, if any rule is to be changed, which has been issued in G.O.Ms.No.221, Education, dated 16-7-1994, the same could have been changed in the same fashion exercising the powers under Sections 78 and 79 of the A.P. Education Act, 1982, sub-section (4) of Section 169, sub-section (4) of Section 195 and Section 268 of A.P. Panchayats Act, 1994 and the Proviso to Article 309 of the Constitution as were invoked while framing the Andhra Pradesh Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994, we find force in their contentions.

32. Common notification has been issued for selection of SG teachers and other posts mentioned above prescribing the qualifying marks in the written examination at 50,45, and 40 out of 85 for OC BC & SC/ST/PH respectively. The said notification is in consonance with Rule 13(a) of A.P. Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994, which have been framed in exercise of the rule-making power drawn from various provisions of the Acts mentioned supra, in view of several vacancies of SG Teachers in Government Schools, as also schools run by Zilla Parishad and Mandal Praja Parishad. Written Examination was conducted pursuant to the above notification, which is in consonance with _the statutory rule and there cannot be any deviation from the same. Merely because requisite number of qualified candidates were not available, the Government is not entitled to issue a notification like G.O. Rt.No.618, dated 18-5-1998 by reducing the qualifying marks facilitating the disqualified in the written test to appear for the oral interview. That apart, G.O. Rt.No.618 was issued not in exercise of the rule making power under which G.O Ms.No.221, dated 16-7-1994 was issued framing the rules, the title of which is stated supra. G.O. Rt. No.618, is not in the nature of amending G.O. Ms.No.221.

In fact, it cannot be, for the reason that it is not in exercise of the rule making power under which G.O. Ms.No.221 was issued. G.O. Rt.No.618 has been issued under Rule 31 of the Andlira Pradesh State and Subordinate Service Rules which liave been framed under proviso to Article 309 of the Constitution. They may be only in the nature of some relaxation, but they are not having the effect of amending G.O. Ms.No.221. Further, the Andhra Pradesh State and Subordinate Service Rules have got no application in the instant case and in any event, are only applicable to the Government schools and not Zilla Parishad or Mandal Praja Parishad schools. But, there cannot be any dichotomy. What is not applicable to the teachers of Mandal and Zilla Parishad schools cannot be made applicable to the teachers of Government schools as it was a common notification and the option was given to give choice with regard to schools run by the Government or other local authorities. If the rule is to be amended, it has to be done by invoking the correct statutory provisions and that should be done only before issuance of notification and not at a later stage. As already stated above, there is no minimum qualifying marks in the oral interview and if candidates secure the minimum qualifying marks in the written examination for the respective categories of OC, BC and SC/ST/PH even if they get '0' marks in the oral interview, they are bound to be selected subject to the vacancy position and in order of merit. But, what has happened in the instant case is that by reduction of marks after the written test and evaluation, the candidates, who secured lower marks .than qualifying marks, have been admitted for oral interview and some of them scored over the candidates, who were qualified in accordance with the notification. We just give an instance in Writ Petition No.22799 of 1998. The petitioner, namely, J. Krishna Kumar had appeared for written test with hall-ticket No.19100640 and is an 'OC' and secured 50.50 marks in the written test and 6.25 marks in the oral interview, the total being 56.75 marks. His selection was automatic having regard to the marks he has secured, but his selection was over-turned because of the reduction in the qualifying marks and the candidates who scored less than him in written test made a march over him. Such instances galore. There is also another aspect to be considered and that is the rationale in choosing the '5 mark theory' in reduction. Any reduction in marks should have nexus with the object to be achieved and the object to be achieved, which is ex facie clear from G.O. Rt.No.618, dated 18-5-1998, is that as requisite" number of candidates have failed to secure the marks specified in the notification, the candidates, who have secured lower marks, are facilitated to attend the interview and if that be the case, the reduction of marks should be such that scope should be given to the last candidate, who has got possibility of getting selected and it cannot be a just arbitrary reduction of 5 marks without any purpose. The learned Government Pleader for School Education has produced before us the marks of the candidates of several districts, but we do not want to multiply and we take the marks of the candidates of Khammam district. We have, in depth, perused the marks lists of Khammam district. In order to avoid duplicity, we are adopting the basis of marks of OC category candidates, which analogy will automatically apply

to other candidates of BC and SC/ST/ PH. In Khammam district, the last candidate (OC category) who had obtained the qualifying marks of 50 is at rank No.837. From rank No.838 downwards, the candidates permitted for interview are with marks less than 50 and by virtue of G.O.Rt. No.618, dated 18-5-1998 they were permitted to appear for interview. Clubbing the written test marks with oral interview marks and starting from rank No.838 Hall-Ticket No.22102204, candidate P. Satyanarctyana, who preferred ZP/MP (Zilla Parishad/Mandal Parishad) belonging to OC category, secured 48 marks in written test and 13.1 marks in oral making a total of 61.1. The last of such candidates who were called for interview in view of qualifying marks reduction in G.O.Rt,No.618 is rank No.1528 with Hall-Ticket No.22100069 namely D. Jayalakshmi, who opted ZP/MP and is an OC and obtained 45 marks in written test and 10 marks in oral interview making a total of 55 marks. Now, the argument with regard to irrationality in just reducing 5 marks is that, the oral marks being 15, the possibility of securing 15 marks cannot be ruled-out and if that is so, why 40 marks were not prescribed as a qualifying mark in written test for OC candidates, in which event, adding 15 marks of oral interview, which is not improbable or impossible, the total marks would be 55 and in not doing so, there is a discrimination as equals are unequally treated. Another argument is that from rank No. 1200, namely N. Ravi Shanker, who opted ZP/MP belonging to OC category and secured 47.5 marks in the written test and 10,5 marks in the oral test, total being 58 marks, if the qualifying marks were reduced to 43 and with a probability of obtaining 15 marks in oral test, it would make 58 and the candidates who secured 58 with written test marks of 43, should have been on par with the candidates with rank No. 1200 and below and that even on this count the reduction of only 5 marks is also arbitrary and irrational. In OA No.5762 of 1998, which was filed by the petitioner in Writ Petition No.24288 of 1998, it was held by the Tribunal that "the question whether qualifying marks have to be reduced or not is a policy decision to be taken by the Government". But we do not concur with the said view. It is, of course, for the executive Government to prescribe the marks by resorting to the appropriate rule making power as was done in G.O.Ms.No.221 and also to reduce the same. But the same should be done before the notification and the notification should be in consonance with the policy enunciated in the rule and whatever examination has to be conducted and selection process to be undergone shall only be in accordance with the rule which was in vogue on the date of notification and the same cannot be changed in the middle of selection process and, that too, in the manner done in G.O.Rt.No.618. Further, a policy decision also is susceptible to the vice of discrimination which is prohibited under equality clause in , Article 14 and also oilier provisions in Part-Ill of the Constitution, A policy decision which is against the Statute Law is also illegal and is liable to be set aside. Further, G.O. Rt.No.618 cannot be tenned as an amendment to the rule at all and it was issued only for a particular purpose of these cases so as to reduce the mark for the reason that the qualified candidates are less in number. Apart from the fact that it cannot be termed as an

amendment of rule which, of course, is contrary to law, cannot be made for a particular purpose like this. If sufficient candidates conforming to the vacancies are not qualified in the written test, then a fresh notification has to be issued but the solution cannot lie in taking decision like in G.O.Rt.No.618. Our view is fortified by the decisions mentioned below.

33. In Durgachamn v. State of Orissa, , the Supreme Court held that appointment to the post has to be in accordance with the rule and as no minimum qualifying marks were prescribed for viva voce test and contrary to rules, Public Service Commission prescribed minimum qualifying marks for viva voce test and excluding the candidates for not securing the so prescribed marks, was held to be illegal. In Prakash Vir v. State of Haryana, 1992 (1) SLR 157, it was held by a Division Bench of Punjab and Haryana High Court that qualifications once advertised cannot be relaxed until and unless it is clearly stated in the advertisement that the qualifications are relaxable. To the same effect is a Judgment of a learned single Judge of the Gujarat High Court in A.N, Kctria v. M.S. University, Baroda, 1992 (1) SLR 524. In P. Gcmeshwar Rao v. State of A.P., 1988 (4) SLR 545, the Supreme Court held that amendment of a rule in service matters is not retrospective and that the amendment cannot be made applicable to vacancies which arose prior to the date of amendment. In Kiddip Singh v. State of Punjab, 1972 SLR 706, the Punjab and Haryana High Court held that the qualifications mentioned in the advertisement for selection for appointment cannot be relaxed and if relaxation has to be made, advertisement has to be issued again enabling all eligible persons to apply for the job according to the relaxed qualifications. In view of what is stated supra, G.O.Rt.No.618, dated 18-5-1998, is arbitrary, illegal and discriminatory.

34. With regard to standard of syllabus, there is a mention to make. Secondary Grade Teachers are elementary teachers from I Standard to VII Standard. The educational qualification is a pass in Intermediate plus Teacher Training Certificate course. They cannot be equated with graduates in education (B.Ed). Certainly, the standard of the graduates like BA, B.Sc and B.Ed, will be higher than the candidates with Intermediate qualification and the Teachers Training Certificate. In fact, B.Ed, can be studied only after acquiring baclielor degree in Arts, Science or Commerce and for B.Ed, entrance itself, the qualifying marks in the written test is 45%, which is National standard as evidenced by the norms and standards for teacher-education institutions which was issued by the National Council for Teacher Education at New Delhi in the year 1995 in exercise of the rule making power under Section 12(e) of the National Council for Teachers Education Act, 1993, and para 8.0 fixes the norms regarding admissions criteria and 45% of the marks is the criterion for admission to B.Ed or Master degree courses in open category with provision for relaxation for SC/ST and other reserved candidates, and it is ununderstandable as to how the pass marks can be as high as 50, 45, 40 for OC, BC and SC/ST candidates. We have posed a specific question to the learned Advocate-General as to whether in the State of Andhra Pradcsh, for any

examination -qualifying entrance, or competitive - this per centage of marks which comes to 58% for OC, 52.8% for BC and 47% for SC/ST are prescribed and the learned Advocate-General replied in the negative stating that minimum qualifying mark is only 45% as stated above which in terms of 85, will come to 38.25 marks. Even for medical, engineering and agricultural courses which are high professional courses, the qualifying marks are 45% and for other remaining courses it is 35%. Even for District Judges selection as also Munsif Magistrate Selection, in the written test the qualifying marks is 30 out of 80 which comes to 37.5%. Even in the examinations conducted by the Andhra Pradesh Public Service Commission, for State Service, the qualifying marks in the written test is 40%, 35% and 30% respectively for OC, BC and SC/ST/PH while for Subordinate Services, it is 30% for all the communities. In the instant case, certainly the qualifying mark is on high side and is arbitrary. It is also discriminatory for the reason that the candidate with a pass in Intermediate and Teacher Training Certificate can never be equated with graduates and postgraduates and here is a case of uncquals being treated equally, thus, violating Article 14 of the Constitution of India. But, because of the acute unemployment problem, we cannot put a restriction on the persons having higher qualification not to compete for SG teachers or even for Language Pandits Grade-II. Over Population which is rising at the alarming rate of 2% per annum is causing the struggle for employment for existence which is traceable to the fundamental right to life under Article 21 of the Constitution. For that reason, neither are we inclined to set aside the written examination held nor do we suggest to restrict the maximum educational qualification to only Intermediate. Merit is welcome and more so in teachers' profession, but it does not mean that persons with basic and minimum qualifications should be disadvantaged. Standard of syllabus should be of basic standards with qualifying marks in written test not to exceed 40% marks for OC 35% marks for BC and 30% marks for SC/ST/PH candidates. Further, as higher qualified are expected to try for greener pastures, making the elementary teachers' post as a spring board, the entire list in order of merit should be kept alive for a minimum period of one year entitling the next eligible candidates for selection. The Government of Andhra Pradesh, represented by its Secretary, Education Department, is directed to amend G.O.Ms.No.221, Education Department, dated 16-7-1994 accordingly well in advance of next notification.

35. The Parliament has taken notice of large pendency of cases in the High Court and that service matters were pending for years and wanted to lessen the burden of the High Courts sparing them for deciding other varied important matters and entrusting the service matters by setting-up Administrative Tribunals to the exclusion of the High Court. The result was the Constitution (42nd Amendment) Act, 1976. Part XIV-A was introduced incorporating Articles 323-A and 323-B in the Constitution. We are not here concerned with Article 323-B. Article 323-A reads thus:

"323-A Administrative Tribunals :--(1) Parliament may, by law provide for the adjudication or trial by administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government.

(2) A law made under clause (1) may--

(a) provide for the establishment of an administrative Tribunal for the Union and a separate administrative Tribunal for each State or for two or more States.

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said Tribunals.

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said Tribunals.

(d) exclude the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in clause (1).

(e) provide for transfer to each such administrative Tribunal of any cases pending before any Court or other authority immediately before the establishment of such Tribunal as would have been within the jurisdiction of such Tribunal if the causes of action on which such suits or proceedings arc based had arisen after such establishment.

(f) repeal or amend any order made by the President under clause (3) of Article 371-D.

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such Tribunals.

(3) The provisions of this Article shall have effect notwithstanding anything in any other provision of this Constitution or any other law for the time being in force.

This Constitution amendment was felt necessary as the jurisdiction of the High Courts was sought to be excluded, and as the jurisdiction of the High Courts under Article 226, even if it is amendable, can be done so only by Constitution Amendment by invoking constituent power of Parliament under Article 368 and in view of the proviso to sub-clause (b) of clause (2) of Article 368. Of course, for changing the legislative list in VII Schedule also, the constitutional amendment is necessary. The consequence was the exclusion of the jurisdiction of the High

Court in view of Article 323-A (I) (d) and transforming the State's legislative power in Entry (3) of List II to that of concurrent legislative power by transforming the same as Entry 11-A of List III of Schedule VII. That was done by Section 67 of the above Constitution Amendment, which come into force from 3-1-1977. We need not enter into the debate as to whether the Administrative Tribunals Act, 1985 can also be traced to the above Entry 11-A of List III, as it can be construed to have been enacted pursuant to Article 323-A(2) (a) of the Constitution. For making any changes in Article 32 in accordance with clause (3) thereof, no Constitution amendment is necessary under Article 368. It can be done by the Parliament in its legislative power as provided under Article 35 of the Constitution. Article 35 enables the Parliament to invest the powers exercisable by the Supreme Court in clauses (1) and (2) of Article 32 in any other Court, but without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) thereof.

36. Constitutional validity of the Tribunals Act was challenged in S.P. Sampath Kumar v. Union of India, AIR 1987 SC 386, on the ground that the jurisdiction of the High Court under Articles 226/227 is a basic feature of the Constitution and the service jurisdiction cannot be taken away from it. But, the Supreme Court repelled the contention on the ground that basic structure theory is not violated, as, equally alternative mechanism was found by entrusting the service matters to Administrative Tribunals and that Administrative Tribunals were necessary to lessen the burden of the High Court and for inexpensive and speedy disposal of service matters. Again, the matter was agitated in Sakinala Harinath v. Union India, 1994 (1) APLJ 1 and a Full Bench of this Court held that the dicta laid down by the Supreme Court in Sampath Kumar's case (supra) is per inairium in view of the majority judgment in Kesavananda Bharalhi 's case (supra) holding that the High Court's power of judicial review is a basic feature of the Constitution and cannot be taken away. The matter landed in the Supreme Court along with other matters arising out of decisions by the Tribunals constituted under Article 323-B of the Constitution and the result is the verdict of the Supreme Court in L. Chandra Kumar v. Union of India (supra).

37. The Supreme Court and the High Courts are the constitutional functionaries, of which the Supreme Court is the superior. Apart from the appellate power under Article 136, the Supreme Court possesses the original jurisdiction under Article 32 of the Constitution to issue writs for the enforcement of the fundamental rights. High Court under Article 226 of the Constitution is empowered to issue writs for enforcement of fundamental rights as also in other matters. We need not trace the history of the power of judicial review by referring to the pre-constitutional decisions as it is a firmly established that rule of law and judicial review are the basic features of the Constitution of India. Keshavananda Bharathi 's case (supra) is the first significant judgment on this aspect of judicial review being the basic structure of the Constitution and that it is unamendable. Several Supreme Court judgments have affirmed this. The power of judicial

review over administrative and legislative actions has been exercised by the Supreme Court and High Courts in several cases. The Supreme Court has said that the power of judicial review can be exercised even for the actions inside the Legislature when it tells upon the independence of judiciary (vide hi Re under Article 143 Constitution of India Keshav Singh's case, , that the Speaker's action of disqualification of elected representatives of legislative bodies can be questioned (vide *Kihoto Hollohan v. Zaehillhu*[3], that imposition of President's rule under Article 356 of the Constitution can be tested (vide S.R. Bombay v. Union of India,), and that impeachment of a Judge of the High Court or Supreme Court can be tested (vide Sub-committee on Judicial Accountability v. Union of India,) and so on. We need not multiply the decisions, for, Chandra Kumar's case (supra) decided by the Supreme Court affirms the power of judicial review of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution. In Chandra Kumar's case (supra) the decisions rendered by the Constitution Benches in Sampath Kumar's case (supra), J.B. Choprav, Union of India, , MB. Majunuiar v. Union of India, , Amulya Chandra Kalita v. Union of India, , *UK. Jain v. Union of India*[4], Keshavananda Bharathi's case (supra), Keshav Singh 's case (supra) *Indira Nehru Gandhi v. RajNaraian*[5], Minerva Mills v. Union of India, , Kihoto's case (supra) and Dr. Mahabal Ram v. Indian Council Agricultural Research, were considered and it was held by unanimity Court of 7 Judges Constitution Bench of the Supreme Court that the power of the High Court under Article 226/227 and of the Supreme Court under Article 32 of the Constitution are the basic features of the Constitution and the said constitutional Courts cannot be divested of the said basic features and that the said rights, which form the basic structure of the Constitution, are inviolable rights and cannot be taken away. In the said case, the Supreme Court while upholding the power of judicial review of the Supreme Court and the High Courts, held that Tribunals cannot be called effective alternative mechanism, but at the best, they can be called as alternative mechanism and precisely what the Supreme Court said was that the Tribunal has to be treated as a Court of first instance playing a supplemental role and subject to the judicial review of the High Court under Articles 226/ 227 of the Constitution. Accepting that judicial review is the basic structure of the Constitution and the Supreme Court and the High Courts cannot be divested of the same and that the power of judicial review still vests in the Supreme Court and High Courts under Article 32 and Article 226/227 of the Constitution of India over service matters, the Supreme Court in Chandra Kumar 's case (supra) has struck down Article 323-A (2)(d) and consequently, Section 28 of the Administrative Tribunals Act, 1985 and as such, there need not be any multiplication of decisions on the point of power of judicial review of the Supreme Court and High Court?. But, the proposition in Chandra Kumar's case (supra) laid down by the Supreme Court though recognises the power of judicial review of the High Court, but in view of imposition of alternative remedy, there is a metamorphosis in the nature of judicial review of the High Court. It is also the same in the case of Supreme Court under Article 32 as the Supreme Court in Chandra

Kumar's case (supra) has emphatically said firstly, the litigant has to approach the Tribunal, then the High Court and then as a last resort to the Supreme Court under Article 136. Article 136, as enacted originally in this Constitution, confers the ultimate power of appeal on the Supreme Court, over all matters decided by the Courts and other authorities in the entire country. Article 136 is not the original jurisdiction, while Article 32 is. That original jurisdiction is now not available because of Chandra Kumar's case (supra). The High Court cannot also exercise its extraordinary original jurisdiction. Judicial review is of three kinds viz., (i) Legislative action, (ii) administrative action and (iii) judicial decision. Basically, the judicial review of administrative action as also of legislative action is an exercise against the action of the State, as public authorities act in exercise of the above executive or legislative powers. Judicial review under Article 226 of the Constitution of India is a subject of public law and as such, the essence of judicial review involves collateral attach against the legislative or executive action in deciding on the said actions of the above two coordinate authorities. But, that basic feature of extraordinary original jurisdiction had undergone change by Chandra Kumar's case and in view of alternative remedy principle enunciated, the High Court can only test the judgment of the Tribunal, which in effect is the exercise of judicial review of a judicial decision of the Tribunal. It has also to be borne in mind that 42nd Constitution Amendment incorporating Article 32-A has lost its fervor of Constitutional amendment because of the striking down of sub-clause (d) of clause (2) of Article 323-A and what is left is the ordinary legislation.

38. It is true that bar of alternative remedy was created by the Constitution (42nd Amendment) Act, 1976 and that the same was removed by the Constitution (44th Amendment) Act, 1978. But, by that itself, it cannot be said that the High Court has to entertain each and every case even if alternative remedy is available. Even before the fetter placed by the Constitution (42nd Amendment) Act, 1976, there had been a line of decisions and particularly by the Supreme Court, right from the birth of the Constitution, that alternative remedy is an important circumstance to consider while exercising the extraordinary jurisdiction of the High Court under Article 226 and the High Court should not exercise jurisdiction when the effective alternative remedy is available. In Baburam v. Zilla Parishad, , the Supreme Court held that when alternative and equally efficacious remedy is open to a litigant he should be required pursue that remedy and not to invoke the jurisdiction of the High Court to issue prerogative writ. It was also held that exhaustion of statutory remedy does not affect the jurisdiction of the High Court to issue a writ; but existence of an adequate legal remedy is to be taken into consideration in the matter of granting writs and where such remedy exists, it will be sound exercise of jurisdiction to refuse to interfere with the writ jurisdiction unless there are good grounds therefor. It was also held that rule of exhausting of statutory remedy before a writ is granted, is a rule of self-imposed limitation, a rule of policy and discretion rather than a rule of law and the Court may, therefore, in exceptional cases issue a writ such as writ of certiorari notwithstanding the fact that the

statutory remedies have not been exhausted. In the said case the previous judgments of the Supreme Court in *Rashid Ahmed v. Municipal Board, Kainma, and U.P, State v. Mohd Nooh*[6], were relied on.

39. In Kartar Singh v. State of Punjab, 1994 (3) SCC 569, a Five-Judge Constitution Bench of the Supreme Court in its majority judgment held that the High Court's jurisdiction under Article 226 cannot be taken away by legislation and that the High Court is a superior Court and the decision of the High Court is conclusive as to all relevant matters thereby deciding including its own jurisdiction. It was held by a majority of 4:1 that the High Court should not normally entertain bail applications under TADA, but in extreme circumstances, its jurisdiction is not excluded. It was held that the power given to the High Court under Article 226 is an extraordinary power not only to correct the manifest error, but also to exercise it for the sake of justice and that under the scheme of the Constitution, High Court is the highest Court for the purpose of exercising civil, criminal, appellate or even constitutional jurisdiction so far that the State is concerned and that the jurisdiction possessed by it before coming into force of the Constitution was preserved by Article 225 and Articles 226 and 227 and an extraordinary jurisdiction was conferred on it to ensure that the subordinate authorities act not only in accordance with law they also function within the framework of law and that the jurisdiction of the High Court has not been taken away and in fact could not be taken away by legislation. It was held that the High Court has jurisdiction to entertain a petition under Article 226 in extreme cases. But, what are such extreme cases cannot be put in a straight jacket and held that the High Court must not be oblivious of the sensitivity of the legislation and the social objective inherent in it and, therefore, should exercise it for the sake of justice in rare and exceptional cases, the details of which cannot be fixed by any rigid formula. In N.P. Ponnuswami v. Returning Officer, , Sangram Singh v. Election Tribunal Kotah, and S.T. Muthitsami v. K. Natarajan, , which related to election matters, it was held by the Supreme Court that though no Legislature can impose limitations on the constitutional powers of the High Court under Article 226, it is sound exercise of jurisdiction to bear in mind the policy of the Legislature to have disputes about these special rights decided as speedily as may be by the special adjudicatory bodies created under the statutes and that the writ petition should not be entertained lightly in these class of cases. Where it is open to the aggrieved person to move another Tribunal for obtaining redress in the manner provided for in a statute, the High Court should not ordinarily entertain a petition under Article 226 of the Constitution, permitting machinery created by the statute to be by passed.

40. Plethora of precedents need not be cited on this aspect, as the well established exceptions to alternative remedy arc: (1) the action taken under a statute is ultra vires the Constitution; (2) the statute is intra vires but the action taken is without jurisdiction; (3) where the action is

procedurally ultra vires i.e., violation of principles of natural justice. But, the above principles are applicable only with regard to such adjudicatory bodies which do not possess the power of judicial review of testing the vires of the legislative action. But, since the Administrative Tribunal possesses the power of judicial review of legislative action by virtue of the judgment in Chandra Kumar v. Union of India (supra) the above stated grounds are not available for by-passing the alternative remedy provided under the Tribunals Act and necessarily before approaching the High Court, a litigant has to be first approach the Tribunal in service matters.

41. It is next argued by the learned Counsel for the petitioners that even if the alternative remedy is a bar with regard to other matters under Article 226, in so far as enforcement of fundamental rights are concerned, alternative remedy cannot be a bar. They pointed out that Article 226 comprises of two limbs for the issuance of writs or appropriate relief for (1) enforcement of fundamental rights and (2) for other matters and that in so far as the first limb is concerned, the said power is co-extensive with that of the Supreme Court under Article 32 while the relief with regard to the 'other matters' is concerned, an extended one, not available under Article 32. The argument is that since the fundamental rights are inalienable and the High Court's jurisdiction to enforce the same is a basic feature of the Constitution, the same cannot be a bar merely because the Tribunal is also vested with the jurisdiction of judicial review of legislative action and that the Supreme Court did not deal elaborately and did not mean that even where fundamental rights were violated the High Court should not exercise its extraordinary original jurisdiction and wait till the decision of the Tribunal. Their argument is that the observations of the Supreme Court in Chandra Kumar v. Union of India (supra) with regard to the exhaustion of alternative remedy has to be understood in the context other than the enforcement of the fundamental rights, as the Tribunal can never be said to be a guarantor or protector of the fundamental rights and that only the Supreme Court and the High Courts are the guarantors and protectors of the fundamental rights and that in any event the alternative remedy theory can never be applied in a case of enforcement of fundamental rights. It is further submitted that since the jurisdiction of the High Court to enforce fundamental rights under Article 226 is similar to that of the Supreme Court under Article 32, the principles laid down by the Supreme Court under Article 32 are directly applicable to the jurisdiction under Article 226, so for as the enforcement of fundamental rights isconcerned. They have cited the judgment in Additional Secretary to *Govt of India v. Alka Subhash Gadia*[7], in which the Supreme Court speaking through its Three-Judge Bench held that the power of judicial review under Article 226 or under Article 32 is untrammelled and that judicial review being a part of the basic structure of the Constitution, the power of the High Court under Article 226 cannot be circumscribed in any way by any law including detention law. The learned Counsel for the petitioners further cited Keshav Singh's case (supra) where Seven Judge Bench of the Supreme Court pointed out that when a citizen moves the Court and complains that his fundamental rights have been contravened, it will plainly be the duty of the Court to examine

merits of the said contention and that inevitably arises the question as to whether personal liberty of the citizen had been taken away according to the procedure established by law and that the power of the High Court under Article 226 and of the Supreme Court under Article 32 are not subject to any exceptions, that, therefore, it cannot be contended that a citizen cannot move the High Court or the Supreme Court to invoke the jurisdiction even in cases where his fundamental rights have been violated and that the judicial power conferred on the High Courts and the Supreme Court is meant for protection of the citizen's fundamental rights. May, be, there is a distinction between enforcement of fundamental rights and adjudication regarding in fraction of other statutory and legal rights. But, the Supreme Court did not make any such distinction and held that the Tribunals are entitled to adjudicate even with regard to legislative action, which implies that in so far service matters are concerned, whatever grounds are available under the Constitution to impugn a legislative action, be it principal or Subordinate, has to be first decided before the Administrative Tribunals. But, for adjudication of instant cases the above contention does not arise for consideration for the reason that Writ Petition Nos.21297, 21460. 22039, 22809, 19784, 22633 and 24288 of 1998 have been filed against the orders passed by the Andhra Pradesh Administrative Tribunal as specified in paragraph 6 supra. Of course, other Writ Petitions are directly filed by questioning the provisions of the Tribunals Act which Chandra Kumar's case (supra) itself permits. That apart, in the above Writ Petitions directly filed into this Court challenging the vires of the provisions of the Tribunals Act, related questions were raised before the Administrative Tribunal and in fact that some pleas, both factual and legal, have been negatived by the Tribunal and in such cases it is futile to again drive them to the Administrative Tribunal as a mere formality. For instance, some aspirants for SG teachers had filed OA No.3674 of 1998 and the said plea was rejected and the result is Writ Petition No.21297 of 1998. The said case is from Warangal and other aspirants who filed Writ Petition No.15752 of 1998 also hail from Warangal with same complaints and as such the rule of alternative remedy cannot be insisted. The cases of applicants for SG teachers in Writ Petition No. 15463 of 1998 from Khammam district and Writ Petition Nos.21651 and 23677 of 1998 from Karimnagar District are also with similar allegations as that of Warangal and Nalgonda. Similarly, with regard to 5% reduction, questioning G.O.Rt.No.618, the plea was rejected by the Tribunal in OA NO.5762 of 1998 against which Writ Petition No.24288 of 1998 is filed. While other Writ Petition Nos.22799, 24276 and 23390 of 1998 also raise similar questions which had already been answered by the Tribunal in OA No.5761 of 1998.

42. We arc of the considered view, that what the Supreme Court meant was not to rush to the High Court first before getting adjudication of the lis before the Court of first instance i.e., the Tribunal and when the lis has been adjudicated by the Tribunal taking a particular view, where common questions of fact and law arise like the instant ones, adherence to alternative remedy theory becomes just an empty formality and the Supreme Court would not have meant that

invocation of the original jurisdiction of the Tribunal should just be a formality. In fact there is a guidance by the Supreme Court in exactly a similar matter in the case of Union of India v. P. Sathikumarana Nair, in which service matters arising out of original application filed before the Central Administrative Tribunal, Cochin Bench were pending before the Supreme Court and then Writ Petition under Article 32 was filed regarding similar matters and the Supreme Court had directly entertained the writ petition and granted the relief. The said case was decided after the Judgment was rendered in Chandra Kumar 's case (supra). It is apt to extract the relevant portion contained in paragraph 11 thereof.

> "11. In view of our decision in the Civil Appeal, the consequence must necessarily be that the 14 petitioners who have approached the Central Administrative Tribunal in OA No.K-274/87 must also be treated likewise as the writ petitioners-respondents in CA No.913 of 1987. Therefore, Civil Appeals arising out of Special Leave Petition Nos.648 of 1990 and 6894 of 1994 are also allowed granting the appellant therein the same relief, as to pay scales above mentioned. Coming to Writ Petition (C) No.277 of 1994, the six writ petitioners therein are in identical situation and are also entitled to the same treatment as the writ petitioners whose cases have been decided in CA No.913 of 1987. Otherwise, it would be discriminatory. We hold that they are also entitled to the same pay scale of lecturers above referred to."

In view of the same, alternative remedy bar is not applicable to the petitioners in WP Nos.15463, 15712, 21651, 22799, 23390, 23677, 24276 and 24947 of 1998, which have been directly filed without intervention of the Tribunal. That apart, they have questioned the vires of the provisions of the Tribunals Act. Two other Writ Petition Nos.21329 and 21439 of 1997 are filed by two Advocates challenging the provisions of the Tribunals Act and as such question of alternative remedy docs not arise at all. So far as the direction to hear the matters arising under the Tribunals Act by a Division Bench is concerned, there is nothing objectionable as under the rules framed by this Court, the Division Bench has to hear such matters and that apart, having regard to the object and intendment of reducing the hierarchy of Courts, there is nothing wrong in the direction of the Supreme Court in directing such matters to be heard by the Division Bench as in the event of the single Judge hearing the matter, again there will be a writ appeal and the object of expeditious disposal of the cause will get frustrated.

43. Moreover, Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all Courts within the territory of India, the principle that the Judges, whatever be their own views, must follow the decisions of the Tribunals to which they are subordinate is not an unwritten code based on what is known as judicial comity, but so far as the Supreme Court is concerned, it is incorporated into a Constitutional dictum. Supreme Court

is thus one of the chief sources of law arid is, in that respect, one of the makers of law. That the law declared by the Supreme Court is binding on all Courts means in other words that the law declared by the Supreme Court is made the law of the land, as the law so declared will have to be administered: The-binding nature of the observations of the Supreme Court extends also to the obiter dictum of the Court on a point raised and argued before it. In Chandra Kumar's case (supra) the Supreme Court has emphatically held that the High Court is not entitled to entertain cases until the exhaustion of remedy before the Tribunal.

44. In Assistant Collector CE, Chandan Nagar v. Dunlop India Ltd, , it was held that it will never be necessary for us to say so again that in the hierarchical system of Courts, which exist in our country, it is necessary for each lower Court including the High Court, to accept loyally the decisions of the higher forums and that it is inevitable in an hierarchical system of Courts that there are decisions of the Supreme Appellate Tribunal, which do not attract the unanimous approval of all members of the judiciary and that the judicial system only works if some one is allowed to have the last say and that last word once spoken, is loyally accepted and that better wisdom of the Court-below must yield to the higher wisdom of the Court above and that is the strength of the hierarchical system (emphasis is ours).

45. The Supreme Court has considered the previous judgments and more particularly, the judgment rendered by the Constitution Bench in Keshav Singh 's case (supra) and took a view that alternative remedy should be first invoked and as such, alternative remedy theory propounded by the Supreme Court in Chandra Kumar's case (supra) is a dicta laid down and is a law which is in operation and we cannot refuse to apply the said current law, which, in fact, was laid down while interpreting the very Administrative Tribunals Act, from which these cases emanated and came up for decision before us. As the legislative policy of the Government is reflected through the legislative enactments, the judicial precedent laid down by the Supreme Court and which is binding under Article 141 of the Constitution is to be taken as a judicial policy by the Apex Court and as the Apex Court has taken a judicial policy that the Tribunal should exist as Court of first instance and they have to be approached first and then only the High Court can test the validity of the said judgments of the Tribunals, has to be accepted by the High Courts as a matter of judicial discipline to follow the dicta laid down by the Supreme Court and as such we hold that in service matters, the litigants are bound to first approach the Administrative Tribunals and only thereafter, the High Courts.

46. The argument that Chandra Kumar's case (supra) seeks to create the Tribunals as the third constitutional Court is incorrect. In fact, Chandra Kumar's case relegates the Tribunal to a position of a Court of first instance like any other Court/ Tribunal of ordinary original jurisdiction, ofcourse, with the power of judicial review of legislative action and by investiture of

such power alone, it cannot be said that the Tribunal is vested with any constitutional status. A Court of first instance is aking to a Court under Section 37 of the Code of Civil Procedure. In Jowitt's Dictionary of English law, a Court of first instance is defined as "Court before which an action is first brought for trial as contrasted with an appellate Court; hence, the expression 'at first instance' means at the original trial". As such, the argument that the Chandra Kumar's case (supra) has created a third constitutional Court in the Tribunal is devoid of any substance.

47. Now, we proceed to dissect 37 Sections of the Tribunals Act grouped in 5 chapters:

Chapter I Sections 1 to 3 Chapter II Sections 4 to 13 Chapter III Sections 14 to 18 .

Chapter IV Sections 19 to 27 Chapter V Sections 28 to 37 Sections 1 to 4,6,7,9,10,12,14,15,16,19,20,21, 23,24,25,26,29, & 29-A, 30, 31, 32,33,34,35, 36 & 36-A and 37 do not call for any comments, as we find nothing unusual in the said provisions. For that reason, we are also not elaborating the purport of each of the above Sections.

48. Sections 5 and particularly subsection (6) thereof was already held valid by the Supreme Court in Chandra Kumar's case (supra). The Supreme Court said that in the cases involving the challenge to legislative actions, the Administrative Member alone should not be constituted Bench to deal with the matter and that Judicial Member should also be posted constituting a Division Bench to examine such cases. The above directives of the Supreme Court have to be understood in the context that the Administrative Member may not be well versed with the limits of the Legislature and of the limited Government and the constitutional supremacy and the right of judiciary to step-in to check the excesses in legislative action, be it principal or subordinate, if any, and that the person with judicial knowledge and experience will add to the quality of administration of justice in such cases. That is why, a Bench with the Judicial Member is suggested so as to fulfil the task of judicial review of legislative actions. But, the said directive of the Supreme Court has to be understood in the context it is said as mentioned above and that being the general directive of the Supreme Court, this Court has to see how to effectuate the said directives of the Supreme Court. In Andhra Pradesh Administrative Tribunal, as of now, there are 3 Administrative Members and 3 Judicial Members and 2 Vice-Chairmen, one from the Administrative side and another from Judicial side plus the Chairman. The Chairman is the retired High Court Judge. While the Administrative Members have been drawn from executive side, Judicial Members have been drawn from among the Gradc-I District Judges. A Judicial Member is defined in Section 3 (i) of the Act which reads :

> "Judicial Member' means a Member of the Tribunal appointed as such under this Act and includes the Chairman or a Vice-Chairman who possesses any of the qualifications specified in sub-section (3) of Section 6." In the circumstances, until arrangement is made

to reconstitute the Andhra Pradesh Administrative Tribunal as and when future vacancies occur, the cases involving the challenge to legislative actions in the said Tribunal shall be dealt with a Bench presided by the Chairman.

49. Section 17 of the Tribunals Act was held to be inoperative by this Court in Govt. of A.P. v. K. Anantha Reddy, in view of Chandra Kumar's case (supra) reinvesting the High Court with power of judicial review over the decisions of the Administrative Tribunals. Section 28 of the Tribunals Act, which was enacted pursuant to the Constitutional Amendment contained under Article 323-A(2Xd) was set aside as a consequence of setting aside the above constitutional amendment.

50. We do not also find anything derogatory in Sections 18 and 22 of the Tribunals Act. Interpretation laid by the learned Counsel for the petitioners that Section 18 empowers the Government to allot the subject to the Benches including the Constitution of Benches is misconceived. As the Tribunals Act is a consolidated one, both for Central Tribunals and State Tribunals, it has to be understood contextually. In fact, Section 18 does not relate to the State Administrative Tribunal. It only relates to the Constitution of the Benches of Central Administrative Tribunal. As such, we do not find anything wrong with the said legal provision. Mr. S. Ramachander Rao, the learned Counsel for the petitioners, was very critical about Section 22 submitting that there is no procedure prescribed to adjudicate the cases and without such fixed procedure, such conferment of power to decide the cases according to the principles of natural justice. results in unbridled, uncontrolled, uncanalised and unfettered power leading to arbitrariness and thus, ultimately violating Article 14 of the Constitution of India. We do not agree with this contention, either. There is enough guidance in Section 22, as, it is specifically stated therein that the Tribunal shall be guided by the principles of natural justice. It only means to say that the rigor of the procedure envisaged under the Civil Procedure Code need not be followed for the reason that it may cause delays. Adherence to principles of natural justice will not do any injustice to the parties and on the other hand aids in expeditious disposal for the reason that the principles of natural justice cannot be put in straight jacket and can be applied and adopted and followed according to the needs and necessities of particular case because of the flexibility. Following the rules of the Code of Civil Procedure, which are inflexible, will not suit the needs of expeditious disposal of the service matters before the Tribunals. That apart, principles of natural justice mandate the following of principles of fair play and fair play includes affording opportunity to both the parties and the mode and manner of opportunity to be afforded are left to the discretion of the Tribunal and there is nothing wrong in it, as there are cases and cases where a distinction has to be made with regard to the kind of opportunity to be afforded. For instance, an opportunity in a case of transfer cannot be so elaborate as an opportunity in case of promotion and in the case of dismissal it is still higher. As such, Section 22 of the Tribunals Act is flexible enough arming the Tribunal to adjust to the situation and is perfectly in

consonance with Article 14 of the Constitution and is intra vires the Constitution. That apart, for any such glaring violating of principles of natural justice, the High Courts are there to take up judicial review.

51. With regard to Section 27 of the Tribunals Act, it is so vague and meaningless. It reads thus:

"27. Execution of orders of a Tribunal :--Subject to the other provisions of this Act and the rules, the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any Court (including a High Court) and such order shall be executed in the same manner in which final order of the nature referred to in clause (a) of subsection (2) of Section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed." But, there is no machinery for execution of the orders passed by the Tribunal either in the statute or in the statutory rules made by the Central Government or the State Government. Even the State Government can frame rules by amendment, adopting Section 151 and relevant rules of Order XXI of the Code of Civil Procedure. Otherwise, the Tribunals will remain as ineffective bodies.

52. Now, we come to the crucial provisions contained in Sections 8. 11 and 13 of the Administrative Tribunals Act, 1985. Section 8 reads thus:

> "Term of Office :--The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for reappointment for another term of five years :
>
> Provided that no Chairman, Vice-Chairman or other Member shall hold office as such after he has attained,
>
> (a) in the case of the Chairman or Vice- Chairman the age of sixty-five years, and
>
> (b) in the case of any other Member, the age of sixty-two years."

Now, because of Chandra Kumar's case (supra) the Tribunal has the power of judicial review of administrative action, judicial decisions (arising under Section 29-A of the Tribunals Act) and also of legislative action. As stated above, since last 13 years, much time is lost only in the legal squabbles on the validity or otherwise of the Tribunals Act. But, now a situation has arisen to stabilise Service Law Justice Delivery System and to take effective steps in that direction in the light of what is stated by the Supreme Court in Chandra Kumar's case (supra). In view of the important functions of the judicial review of three kinds mentioned supra and more so of the more important one i.e., judicial review of legislative action, there is a requirement for superior ability. The interpretation of Constitution is in many vital respects different from the

interpretation of an ordinary statute. Not only is the task of interpretation of Constitution more onerous, but it also calls upon a wide perspective and a richer equipment on the part of the Judge because it is an organic instrument. Proper application of a Constitution requires a lot of study of law. In a judicial review of legislation, it has to be seen as to what are the legal limits on the Legislature. In the case of judicial review of administrative action, there should be a clear-cut finding of facts, for which thorough marshalling of facts is necessary and then application of judicial precedents relevant thereto. In fact, in most of the cases decided by the Administrative Tribunal, be it State or Central, in the State of Andhra Pradcsh, no clear-cut findings are being given and so also the application of relevant and binding judicial precedents. The Administrative Tribunals have to now realise that they are the Courts of first instance and discharge their functions in the light of their status as such, as stated by the Supreme Court so as to lessen the burden of the High Court relating to facts as also application of law thereto. The direction of the Supreme Court in Chandra Kumar 's case (supra) to elevate the standards of the Tribunals, has to be taken in the context, apart from other elements including security of tenure, the quality of the personnel manning the Tribunals. The said Judgment was rendered by the Supreme Court on 18-3-1997. Nearly 20 months rolled by, but no steps have been taken by the Government to give effect to the said law laid down by the Supreme Court in Chandra Kumar's case (supra). The role of the High Court to exercise the power of judicial review having become secondary, there is every duty cast upon the Government to see that the Administrative Tribunals be transformed into effective adjudicatory bodies. It is needless to mention that the present setup of the Administrative Tribunals cannot meet the aspirations of the litigants and the challenges in the adjudicatory process of complicated questions of constitution and law. That is the general opinion of the Bar including the learned Advocate-General, who, in fact, had openly expressed his opinion that the present set up of Andhra Pradesh Administrative Tribunal is not up to the standard. When the Supreme Court had decided the Sampath Kumar's case (supra) the time was too short to judge the functioning of the administrative Tribunals and as such, it was held that the administrative Tribunals are the substitutes for the High Court and as such, mere was no violation of basic structure theory. But, after 1 lyears of the said judgment, the Supreme Court had acknowledged in Chandra Kumar's case (supra) that the working of the administrative Tribunals did not inspire the confidence in litigant public and as such held that the administrative Tribunals can never be called substitutes for the High Courts, but, they will play only a supplemental role and that too, as a Court of first instance. It is not that the Supreme Court was unaware of the deficiencies in the set-up of administrative Tribunals and the personnel manning the same, but the Supreme Courty strove hard to maintain balance by giving effect to 42nd Constitution Amendment and the consequent enactment of Tribunals Act and creation of Central Administrative Tribunal at Delhi and at headquarters of several States and setting-up of State Administrative Tribunals and did not want to frustrate the legislation made by the Parliament,

which was with an avowed object of lessening the burden of the High Courts and leaving the latter to deal with other varied and important matters and to settle the service matters by inexpensive and speedy disposals, yet maintaining the basic structure of Constitution i.e., power of judicial review by the High Court to make a scrutiny of the decisions of the administrative tribunals. With regard to desirability of continuance of the administrative tribunals, it is apt to extract what the Supreme Court said in Chandra Kumar's case (supra):

> "In the years that have passed since the report of the Mallimath Committee was delivered, the pendency in the High Courts has substantially increased and we are of the view that its recommendation is not suited to our present context. That the various Tribunals have performed upto expectations is a self-evident and widely acknowledged truth. However, to draw an inference that their unsatisfactory performance points to their being founded on a fundamentally unsound principle would not be correct. The reasons for which the Tribunals were constituted still persists; in deed, those reasons have become even more pronounced in our times. We have already indicated that our constitutional scheme permits the setting-up of such Tribunals."

By the above statement, the Supreme Court had felt the necessity of continuing the jurisdiction of Administrative Tribunals to deal with the service matters, even while expressing dissatisfaction over the functioning of the Tribunals and directed to take drastic measures to elevate the standards of the personnel manning the Tribunals to ensure that they stand upto Constitutional scrutiny in the discharge of power of judicial review conferred upon them. The Supreme Court had also directed to ensure that even Administrative Members are chosen from amongst those who have some background to deal with such cases. The Supreme Court also took note of the situation that the Tribunals have been functioning inefficiently because there is no authority charged with supervising and fulfilling their administrative requirements. But, it did not agree to invest the High Court with the said administrative supervision on the ground that the High Courts were already overburdened. It is apt to extract the relevant portion relating to the suggestion regarding the setting-up of separate and single nodal agency for the purpose of administrative supervision.

> "......The situation at present is that different Tribunals constituted under different enactments arc administered by different administrative departments of the Central and State Governments. The problem is compounded by the fact that some Tribunals have been created pursuant to Central Legislations and some others have been created by State Legislations. However, even in the case of Tribunals created by Parliamentary legislations, there is no uniconformity in administration. We are of the view that, until a wholly independent agency for the administration of all such Tribunals can be set-up it is

> desirable that all such Tribunals should be, as far as possible, under a single nodal Ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law. It would be open for the Ministry, in its turn, to appoint an independent supervisory body to oversee the working of the Tribunals. This will ensure that if the President or the Chair-person of the Tribunal is for some reason unable to take sufficient interest in the working of the Tribunals, the entire system will not languish and the ultimate consumer of justice will not suffer. The crcation of a single umbrella Organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals are maintained. To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds arc allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out That body will also have to take into consideration the comments of expert bodies like LCI and the Malimath Committee in this regard. We, therefore, recommend that the Union of India initiate action in this behalf and after consulting all concerned, place all these Tribunals under one single nodal department, preferably, the Legal Department."

53. We sought information from the Central Government Standing Counsel as to what steps have been taken to give effect to the above directives of the Supreme Court for elevating the standards thereof as also the constitution of a single nodal ministry. We posed two written interrogatories, which are:

(1) As to whether any supervisory authority has been constituted with regard to Central and State Administrative Tribunals and the Chairman, Vice-Chairman and Members manning the same and if so, what are the steps taken and modalities and norms set; and (2) What are the measures, which have been taken to elevate the standards of the Members including the Vice-Chairman of the Administrative Tribunals, be it Central or State, so as to see that they effectively discharge the judicial power of the State conferred upon them under the provisions of the Administrative Tribunals Act, 1985.

The said interrogatories were replied as hereunder:

(i) No supervisory authority has been constituted with regard to the Central Administrative Tribunal and the State Administrative Tribunal an the Chairman, Vice-Chairman and Members.

(ii) No specific instructions have been issued regarding any elevation of standards of the Members and Vice-Chairman of the Central Administrative Tribunal and State Administrative

Tribunal. However, the Vice-Chairman and Members of the Central Administrative Tribunal are appointed by the President in consultation with the Chief Justice of India on the basis of recommendations of a Selection Committee headed by a sitting Judge of the Supreme Court. Similarly, Vice-Chairman and Members of the State Administrative Tribunals arc appointed in consultation with the Governor of the concerned State and the Chief Justice of India on the basis of a Selection Committee under the Chairmanship of the Chief Justice of the respective High Courts. This process is expected to ensure that only competent persons are appointed to the Tribunal."

54. It is, thus, clear that the Supreme Court directives, which are mandatory in nature, have not been implemented so far and in fact, no steps have been initiated inspite of lapse of 20 long months, which is quite a substantial period of delay having regard to the importance and magnitude of the matter, as it relates to adjudication of important and never ending service law cases. Inaction on the part of the Governments stated above is already showing impact on the High Court. In this Court, there are complaints that cases are not being disposed off by the Administrative Tribunal and that even urgent cases are not being promptly attended to and where there is imminent necessity of passing interim orders, a notice is being issued and then the case never reaches. In fact, the system of an interlocutory application is not being followed in the Tribunal. Only, when vacate petition is filed, it is numbered as VMA (Vacate Miscellaneous Application). Since the decision in Chandra Kumar 's case (supra) there is a spurt in the service cases coming from the Tribunals, bom State and Central (Hyderabad Bench). This Court is almost converted as the Administrative Appellate. It is not the number with which we are concerned, but with the nature of the writ petitions, which the Supreme Court in Chandra Kumar's case (supra) wanted to avoid and it is opposite to extract that part of the judgment of the Supreme Court:

> "It has been contended before us that the Tribunals should not be allowed to adjudicate upon the matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting-up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Court and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15, and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold

> that all such decisions \vill be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction, the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter."

But the purpose stated by the Supreme Court is not transformed into a reality. There are writ petitions filed involving, important and unimportant, even sundry matters like transfers, interlocutory orders and even against cases where notice is issued, contending that cases warrant passing of interim orders either way, so that the litigant knows as to where he stands.

55. Had the Government reacted and responded to the directives in Chandra Kumar's case (supra), the Service Law Justice Delivery System would have been streamlined, by this time, in proper perspective. When a law is enacted, the Courts' first endeavour is to sustain the law unless it is clearly violative of the constitutional provisions and even if it is violative in some respects, the defects which are directed to be rectified are bound to be rectified or otherwise, such law will become bad and redundant with the passage of time and then has to be declared so. Without the supervisory authority, as suggested by the Supreme Court, the Tribunals cannot function effectively and they will go unguided. When the Supreme Court has directed to take steps to elevate the standards of the members and Vice-Chairman of the Tribunals, it was so said, having taken cognizance of the inefficient functioning of the Tribunals and mere increase in the salary consequent to Fifth Pay Commission cannot amount to elevation of standard. If the money is the criterion, no Advocate with reasonable practice will accept the judicial post. Advocates, who practice for long years and acquire intellectual capital in branches of law, are offered to serve on the Bench and that is serving the society and in fact, serving the State. That is the practice being followed in the appointment of the Juijges of the Supreme Court and the High Court. It is understandable as to why even a single Advocate has not so far been offered for appointment as a Judicial Member or Vice-Chaimian, to which they are eligible to be appointed in terms of the qualifications prescribed in sub-section 2(a) and 3(a) of Section 6 of the Tribunals Act. There are scores of advocates practising in service law, exclusively. But, incentive has to be provided to them by inviting them to the Bench, but with security of tenure, which is one of the important constituents of independence of Judiciary. The 5 years tern prescribed in Section 8 of the Tribunals Act certainly acts as disincentive and erodes the independence of judiciary. The argument that there is a provision for re-appointment for another term of 5 years is of no consequence as the very stand taken by the Central Government in the counter is that the re-appointment will be considered basing on the performance of the candidate. This is the worse

tiling which can happen to a person performing the judicial functions of the State, as he has to just depend upon the will of the Government which is a party in service litigation. There is no right to have re-appointment. There cannot be any claim in that regard. If his term is not renewed, then he is neither here nor there, as due to the Bar created in Section 11(f) of the Tribunals Act, the advocates who presided over the Administrative Tribunal cannot practice before the said Tribunal. A High Court Judge is always appointed just on the verge of his retirement and he will be hardly having some months in addition to the extention of three years he gets by virtue of appointment as the Chairman. Administrative Members have also been appointed just on the verge of their retirement and the retiring age being 58, they get an additional term of 4 years. There is one more important thing to say. The Administrative Members, though possess rich administrative experience, they never had legal education and training. Even with regard to Judicial Members, appointments have been made only from the cadre of District Judges. The A.P. Administrative Tribunal has got now the Judicial Members as also one Vice-Chairman, who were first recruited as Mun sif Magistrates and then promoted as Subordinate Judges and then as District Judges and later on appointed as Judicial Members of A.P. Administrative Tribunal. During the tenure of their judicial office either as Magistrate, Subordinate Judge or the District Judge, they might not have an occasion to deal with the Constitutional matters. In fact, they are prevented from doing so in view of Section 113 of the Code of Civil Procedure in civil cases and by virtue of Section 395 of the Criminal Procedure Code in criminal cases. We felt it apt to extract those provisions:

"Section 113 CPC:

113. Reference to High Court:--Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may take such order thereon as it thinks fit:Provided that where the Court is satisfied that a case pending before it involves a question as the validity of any Act, Ordinance or Regulation or of any provisions contained in the Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting-out its opinion and the reasons therefor, and refer the same for the opinion of the High Court." Section 395 of Cr.P.C

395. Reference to High Court :--(1) Where any Court is satisfied that a case pending-before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of the opinion that such Act, Ordinance, Regulation or provision is

invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court."In feet, it is very seldom that the constitutional questions are raised before the Subordinate Courts for above reasons and it is always the High Courts which were approached under Article 226 whenever there was a contention relating to infirmity in legislative action. From the above, it is obvious that the Members of the Tribunal, both the Judicial and Administrative, when appointed may not be equipped with knowledge in Constitutional law which is the essence of judicial review of legislative action. The Judge is one who possesses intellectual capital of legal acumen right at the time of appointment and the moment he is appointed, he is expected to adjudicate matters with all that intellectual capital and legal acumen at his command. This was elaborately dealt with by the Supreme Court in several cases and significant being *Chandra Mohan v. State of A.P*[8]*.,* which view was quoted with approval in Kumar Padma Prasad v. Union of India, and in a latest judgment in State of Maharashtra v. Labour Law Practitioners Association, . It is pertinent to mention that in Kumar Padma Prasad's case (supra) the appointment of Mr. K.N. Srivastav, who was holding a post in Judicial Office, but did not discharge the functions of a Judicial Officer for the requisite period mentioned in Article 217 of the Constitution was restrained from taking oath even after he was appointed as a Judge of the High Court and a warrant to that effect was issued by the President of India, which in view of the order of the Supreme Court became non cst and ultimately, Mr. K.N. Srivastav could not become a Judge of the High Court. Apart from the necessity of appointing qualified advocates to infuse new blood into the Tribunals for making them efficient adjudicatory machineries in service law matters, there is also a need to appoint the sitting or retired High Court Judges. We fail to understand as to when a provision is made for appointing sitting or retired High Court Judges even as Vice-Chairman, the same was not resorted to till this day. So also in the case of the Advocates. By such inaction, the frustration which is seeping into the minds of the litigants and lawyers stares us by influx of service matters into the High Court, even directly. It may be relevant to give the pendency of cases in A.P. Administrative Tribunal as on 1-9-1998, as furnished by the Registrar.

Year Total Pending Contempt case RPs on remand from the Supreme Court OAs

Grand total 22629 By seeing the above table, it cannot be said that the legislative intent of the Tribunals Act has been satisfied. But, now steps have to be taken to give effect to the law laid down/by the Supreme Court in Chandra Kumar's case (supra). There shall not be any further lapse on that aspect. Otherwise, the Tribunals Act will become counter productive the way this Court is being stormed with service matters. This Bench had had that experience presiding for four months in 1997 and for a similar period this year viz., 1998. The judiciary is a creature of the Constitution. The judicial service, although a State service, is likewise, not an ordinary statutory service, but a constitutional service. Further, in the appointments made, merely

because high Constitutional functionaries are taking-up the selection, alone, will not suffice, as the experience in dealing with the service matters is the essence and that aspect has to be considered along with other aspects. But, as we have seen the appointments made to Andhra Pradesh Administrative Tribunal, it was only on the ground of confidential reports, which have got no bearing on the experience in service law jurisprudence. It is not that mere are no qualified persons in the judiciary in the rank of District Judges as also Administrative Officers apart from the Advocates, but the experience of service law jurisprudence should be given a thrust and it is the essence, to make the service law jurisprudence system efficient, to tap the right talent at the right age and not at the ripe age. Advocates and Judicial Officers, at a considerably young age than in Administrative Tribunals, have been appointed as members of Customs, Excise and Gold (Control) Appellate Tribunal and Income-Tax Appellate Tribunal with the superannuation period as 62 years and again they have been considered for appointment as Judges of the High Court and there arc instances in this Court i. e., Justice S. V. Maruthi from CEGAT and Justice T.N.C. Rangarajan from Income-Tax Appellate Tribunal and if it is followed in the appointments to Administrative Tribunals also, it will certainly attract good talent adding to the efficacy and quality of the Administrative Tribunals making it an adjudicatory machinery with a judicial content as effective a High Court. In a democracy, the Rule of taw is paramount and the Constitution of India has incorporated the theory of Rule of law which is the basic feature of the Constitution and independence of judiciary, is an essential Rule of law. The system of judicial review can become successful only when the borders of fields of independence of judiciary are firmly maintained. Independence of judiciary can become meaningful only if the personnel manning the same arc made free-from any wants and fear from any comer and then only Justice Delivery System can become free from constraints, restraints and pressures, as basically, judicial review is the assertion of Rule of Law as controlling State action. Further, independence of Judges does not only mean independence of their mind and discretion from extraneous influence, but also independence of their seat and tenure from uncertainties. Protection of tenure assures stability and dignity. Protection of tenure is not only relevant for the Judge, but in the context of independence of judiciary, it is also relevant to the citizen who is entitled to have his rights decided by a body of men whose security of tenure is safeguarded against the shifting currents of opinion. It is rather paradoxical that a dispenser of justice of service personnel regarding their service conditions, which include their service tenure, illegal terminations or dismissals to ward off the pleasure doctrine, is himself subjected to pleasure doctrine by fixation of term of five years. Further, it is not that merely because fixed tenure of 5 years is not there, the Chairman, Vice-Chairman of Member will become omnipotent and are irremovable from office even for misconduct or incapacity. There is sufficient safeguard against their proven misconduct or in capacity under Section 9 of the Tribunals Act. In view of such safeguard in Section 9, the fixed tenure of 5 years is irrelevant and surplusage, apart from being in derogation of independence of

judiciary, which is a basic feature of the Constitution. We draw strong support for the above findings recorded by us from the judgment rendered by the Supreme Court *in All India Judges Association v. Union of India,* suggesting increase in age of the superannuation of the Judicial Officers and also providing basic amenities as a measure for maintaining the independence of judiciary, as also Nine-Judge Constitution Bench of the Supreme Court in *SC Advocates-On-Record Association v. Union of India, ,* which overruling its earlier judgment in S.P. Gupta v. Union of India, , has held that the Chief Justice of India has got primacy, by a majority of 7:2, but there is a total unanimity that the independence of judiciary is the basic structure of the Constitution. In the said case, it was further held "It calls upon the superior Courts in large measure, the responsibility of exploring the ability and potential capacity of the Constitution on a proper diagnostic insight of a new legal concept and making this flexible instrument serve the needs of the people of this great nation without sacrificing its essential features and basic principles which lie at the root of Indian democracy. However, in this process, the main objective should be to make the Constitution quite understandable by stripping away the mystique and an enigma that perrneats and surround it and by clearly focussing on the reality of the working of the constitutional system and scheme so as to make the Justice Delivery System more effective and resilient. A healthy independent judiciary can be said to have been firstly secured by accoinplisliment of the increasingly important condition in regard to the method of appointment of the rights., privileges and other service conditions. The resultant inescapable conclusion is that only the consummation or totality of all the requisite conditions beginning with the method and strategy of selection and appointment of Judges will secure and protect the independence of judiciary. Otherwise, not only will the credibility of the judiciary stagger and decline, but also the entire judicial system will explode which in turn, may cripple the proper functioning of the democracy and the philosophy of this cherished concept will be only a myth rather than a reality. The essence of the above deliberation and discussion is that the independence of judiciary is the live wire of our judicial system and if that wire is snapped, the doomsday of judiciary will not be far off. It cannot be disputed that the strength and effectiveness of the judicial system and its 'independence heavily depends upon the calibre of men and women, who preside over the judiciary and it is most essential to have a healthy independent judiciary for having a healthy democracy because if the judicial system is crippled, democracy will also be crippled. The litigation explosion stares us in the face and unless it is dealt with by adopting radical measures, the situation is likely to go out of hand."For the above reasons, we strike down the specification of term of five years in Section 8 of the Administrative Tribunals Act, 1985 as unconstitutional and void.

Section 13(1) of the Tribunal Act reads:

"13. Staff of the Tribunal ;--(1) The appropriate Government shall determine the nature

and categories of the officers and other employees required to asset a Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it may think fit." Here, there is some dent made in the independence of judiciary for the reason that for the effective functioning of the Tribunals, the Chairman need to have powers to specify the sttaffing pattern having regard to workload and other factors and as such, the Chairman should have primary role in asking for staffing pattern and unless it is so unreasonable and disproportionate, the Government should not have any say in the staffing pattern and has to provide the staffing pattern as sought for by the Chairman. That apart, for proper control and efficient administration and discipline, it is the Chairman, who shall be invested with the powers of appointing his staff right from the Registrar to the Attender. Sections 13(1-A) and (2) are in proper form.

56. In view of what is stated supra, we hold:

(i) that the ratio laid down by the Supreme Court in L. Chandra Kumar v. Union of India (supra) is the law of the land under Article 141 of the Constitution of India;

(ii) that, in service matters covered by the Tribunals Act, the remedy of Judicial Review should be first availed before the Administrative Tribunals before approaching the High Court;

(iii) that Section 8 of the Tribunals Act fixing the tenure of appointment as 5 years would be protanto unconstitutional and accordingly Section 8 of the Tribunals Act is read down that the Chairman and Vice-Chairman shall hold the office till the attainment of 65 years of age from the date of assumption of office and the Members, both the Judicial and Administrative, shall hold the office till the attainment of 62 years of age from the date of the assumption as such;

(iv) that the sitting or retired High Court Judges shall also be considered for appointment to the post of Vice-Chairman of the Andhra Pradesh Administrative Tribunal;

(v) that the Advocates shall also be considered for appointment as Judicial Members as also Vice-Chairman of the Andhra Pradesh Administrative Tribunal;

(vi) that in the next vacancy, which is falling vacant in this week because of retirement of Sri Kuppu Rao, Member of the A.P. Administrative Tribunal, an Advocate be considered in that place;

(vii) that the Chairman of A.P. Administrative Tribunal shall have powers of appointing and supervising the staff;

(viii) that the nodal agency as directed by the Supreme Court in Chandra Kumar's case (supra)

shall be constituted by the Government of India, within a period of one month from the date of receipt of a copy of this order;

(ix) that in future, in the personnel appointed to man the Administrative Tribunals, the experience on the Service Law Jurisprudence and the concerned Constitutional provisions shall be one of the relevant considerations, which is one of the elements of elevation of standards of such personnel;

(x) that G.O.Rt.No.618, Education Department, dated 18-5-1998 is set aside as being arbitrary, illegal, and unconstitutional and the action taken in pursuance thereof is void and non est, and as such, all selections/appointments made pursuant to the reduction of marks are set aside;

(xi) that the selection to the posts of Secondary Grade Teachers made only in accordance with the qualifying marks mentioned in the notification dated 15-3-1998 read with rule I3(a) of the Andhra Pradesh Direct Recruitment for Posts of Teachers (Scheme of Selection) Rules, 1994 arc valid, and the rest with reduction of marks pursuant to G.O.Rt.No.61S, dated 18-5-1998 are invalid;

(xii) that the selections/appointments made pursuant to the notification dated 15-3-1998, be it Secondary Grade Teachers, Language Pandits or Physical Education Teachers, shall be made by strictly following the area-reservation of 70% : 30% for locals and open respectively, stipulated under the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 and any selections made in violation thereof shall be illegal, unconstitutional and void;

(xiii) that the rule of reservation shall be limited to the maximum extent of 46% (25% for Backward Classes, 15% for Scheduled Castes and 6% for Scheduled Tribes) and this percentage shall be spread among 70% locals and 30% open and any contravention thereof shall be illegal, unconstitutional and void;

(xiv) mat the carry forward rule followed in the case of women candidates, Backward Classes and Physically Handicapped shall be illegal, unconstitutional and void and the same shall be operative only from the next selection onwards;

(xv) that while the reservations to Scheduled Castes, Scheduled Tribes and Backward Classes shall be vertical, the other reservations made to women, physically handicapped or otherwise shall only be horizontal and have to be adjusted in the respective categories of OC, BC, SC and ST.

(xvi) that the written examinations held for Secondary Grade Teachers, Language Pandits and Physical Education Teachers posts on 19-4-1998 and 20-4-1998 are valid and are to be given

effect to.

(xvii) that the posts remaining unfilled in view of this judgment and occur in near future shall be notified afresh amending G.O.Ms.No.221, Education (Ser-III) Department, dated 16th July, 1994 as" mentioned in the body of the judgment regarding the qualifying marks fixing the same as 40% for OCs, 35% for BCs and 30% for SCs/STs in the written examination as also the centralised system of selection of the candidates.

(xviii) that the cancellation of the written examinations of Anantapur district issued by the Government in its Memo No.14205/Ser.WAl/98-2 Eda, dated 15-5-1998 is set aside and the interviews be held in accordance with the qualifying marks obtained pursuant to the notification dated 15-3-1998 and the selections/appointments be made accordingly.

(xix) that the judgment of the A.P. Administrative Tribunal in OA No.3366 of 1998 is set aside and the results in all the centres of Cuddapah district held pursuant to the notification dated 15-3-1998 shall be declared and the selections/appointments be made accordingly.

57. In the result, all the writ petitions are disposed off in the terms mentioned above. No order as to costs.

58. Before parting with the case, we shall not fail in our duty to record our appreciation for the valuable service and assistance rendered by Sri V. Venkataramnaiah the learned Advocate General; Mr. S. Ramachander Rao, the learned senior Counsel and Mr. G. Raghu Ram, the learned senior Counsel and Amicus curiae and other learned Counsel.

Cases Referred.

11997 SC 1125
2petitioner in writ petition No.21329 of 1997
3(1992) Supp(2) SCC 651
4(1993) 4SCC 119
5AIR 1975 SC 2291= (1975) Supp SCC 1
6AIR 1958 SC 86
71992 SCC (Cri) 301
8AIR 1966 SC 1987