

Dharmiah and ors. Vs. the Chief Engineer, Panchayat Raj, Government of Andhra Pradesh and ors.

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SooperKanoon Citation : sooperkanoon.com/429448

Court : Andhra Pradesh

Decided On : Feb-03-1969

Reported in : AIR1970AP236

Judge : Chinnappa Reddy, J.

Acts : Civil Services - Public Employment (Requirement as to Residence) Act, 1957 - Sections 3; Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959; [Constitution of India](#) - Article 16(1), 16(2), 16(3), 16(4) and 245

Appeal No. : Writ Petn. Nos. 2235, 3907 and 3962 of 1968

Appellant : Dharmiah and ors.

Respondent : The Chief Engineer, Panchayat Raj, Government of Andhra Pradesh and ors.

Advocate for Def. : K.G. Kannabhiram, Adv., ;A. Raghuvir and A. Ananda Reddy and ;V. Venkataramiah, Adv.

Advocate for Pet/Ap. : P.A. Chowdary, Adv. for ;M. Lakshmana Rao, Adv. and ;B.P. Jeevan Reddy, Adv.

Judgement :

ORDER

1. The nine petitioners in W. P. No. 2235 of 1968 are temporary employees of the Government of Andhra Pradesh Panchayat Raj Department, working as supervisors under various Panchayat Samithis and Zilla Parishads in the region known as the Telangana Region of the State of Andhra Pradesh. All of them claim that they possess the qualification of residence mentioned in Rule 3 of the Andhra Pradesh Public Employment (Requirement as to Residence) Rules. By an order dated 30-4-1968 the services of all the nine petitioners were terminated by the Chief Engineer Panchayat Raj Department. The petitioners allege that as many as forty-six supervisors belonging to the non-Telangana area in the employment of the Panchayat Raj Department are now working under Panchayat Samithis and Zilla Parishads in the Telangana Area and they claim that so long as even one Supervisor belonging to the non-Telangana area, that is to say, not satisfying the requirement as to residence is working in the Telangana area they cannot be retrenched. they assert that the appointment and continuance of those not satisfying the requirement as to residence is illegal. They seek a mandamus to enforce the Public Employment (Requirement as to Residence) Act and Rules and to direct the respondents to desist from retrenching them. I may mention here that the petitioners do not allege that any of them is senior to any of the non-Telangana employees or that any hostile discrimination has been practiced against them.

2. Originally none of the non-Telangana Supervisors was impleaded as a party. Later some were impleaded as parties and some, though proposed to be impleaded were given up. Those impleaded as parties have also not appeared before me but that does not relieve me of my responsibility in fact, it renders my responsibility the greater because their interests and rights cannot be jeopardised by their non-appearance which may perhaps be due to their incapacity to engage counsel. I considered it desirable to appoint an amicus curiae and I requested Mr. V. Venkataramaiah to assist me and he readily and very kindly agreed to do so. I am grateful to him for his able assistance.

3. In W. P. No. 3907 of 1968 there are 29 petitioners, of whom are teachers employed in various schools under Zilla Parishad Nalgonda. they claim that they have been in the employment of the Zilla Parishad for over nine years after being selected by the Selection Committee constituted under prescribed rules. All of them have now been informed by the Chairman of the Zilla Parishad that their services are being terminated as they are 'non-mulki temporary candidates' who have been appointed without securing relaxation of Rule 3 of the Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959. They question the order of the Chairman of the Zilla parishad as illegal and the Public Employment (Requirement as to residence) Act and Rules on which Chairman's order is based as ultra virers. They see a writ under Article 226 to quash the proceedings of the Chairman, Zilla Parishad Nalgonda and whose services are sought to be terminated on the ground that they do not satisfy the requirement as to residence as contemplated by the Pilla Parishad.

5. When the cases were opened on Friday, I did consider whether they may not more usefully be placed before a Division Bench. Having heard full arguments, I do not think that it is necessary to do so. The questions raised do not appear to be either involved or difficult to answer in the light of what I have heard from learned counsel. If I err in my decision the aggrieved party has a remedy by way of an appeal under C1. 15 of the Letters Patent.

6. Sri Venkataramanaiah, amicus curiae and Sri P. A. Chowdary, learned Counsel for the petitioners in W. P. Nos. 3907 and 3962 of 1968 contended that the Public Employment (Requirement as to Residence) Act is void as it offends Article 16 of the Constitution and also because it suffers from the vice of excessive delegation. They also contend that the Act which was to be in force for a period of five years from the date of commencement (21-3-1959) expired on 21-3-64 and the amending act which came into force on 9-5-1964 could not revive a lifeless Act. These are the main contentions raised before me though learned Counsel have presented different facts of the same questions as different contentions. They have also raised some subsidiary points relating to the validity of the Rules.

7. Sir. B. P. Jeevan Reddy. Learned Counsel for the petitioners W. P. No. 2235 of 1968 and the learned Government Pleader contend that the Act is free from all constitutional disability and is within the competence of Parliament. They also contend that the delegation made to the Central Government is within permissible limits. They urge that Parliament could revive an Act which had expired without break or continuity even as it could make a law retropective in operation.

8. Article 16 of the Constitution may be fully extracted here:-

'16. Equality of opportunity in matters of Public employment:- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to class or classes of employment or appointment to an office under the Government of or any local or other authority within a State or Union Territory, and requirement as to residence within that State or union Territory prior to such employment or appointment.

(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular denomination'.

9. The Public Employment (Requirement as to Residence) Act, 1957 was enacted by Parliament in 1957. Before it was amended in 1964 it stood as follows:-

THE PUBLIC EMPLOYMENT (REQUIREMENT AS TO RESIDENCE) ACT,
1957(Act XLIV of 1957)7th December, 1957.

An Act to make in pursuance of Clause (3) of Article 16 of the Constitution special provisions for requirement as to residence in regard to certain classes of public employment in certain areas and to repeal existing laws prescribing any such requirement.

Be it enacted by Parliament in Eight Year of the Republic of India as follows:-

1. Short title and commencement.

(1) This Act may be called the The Public Employment (Requirement as to Residence) Act, 1957.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

2. Repeal of Existing laws prescribing requirements as to residence.

Upon the commencement of this Act, any law then in force in any State or Union Territory by virtue of Clause (b) of Article 35 of the Constitution prescribing, in regard to a class or classes of employment or appointment to an officer under the Government, of or any local or other authority within the State or Union territory any requirement as to residence therein prior to such employment or appointment shall cease to have effect and is hereby repealed.

3. Power to make rules in respect of certain classes of public employment in certain areas. (1) The Central Government may, by notification in the Official Gazette, make rules prescribing, in regard to appointments to -

(a) any subordinate service or post under the State Government of Andorra Pradesh, or

(b) any subordinate service or post under the control of the Administrator of Himachal Pradesh, Manipur or Tripura, or

(c) any service or post under local authority, (other than a cantonment board) within the Telangana area of Andhra Pradesh or within the Union Territory of Himachal Pradesh, Manipur or Tripura

any requirement as to residence within the Telangana area or the said Union Territory, as the case may be prior to such appointment.

(2) In this section:-

(a) 'Subordinate service or post' means any service or post appointments to which are not notified in the Official Gazette but includes any service of thasildars.

(b) 'Telangana area' comprises all the territories specified in sub-section (1) of Section 3 of the States Reorganisation Act, 1956.

4. Parliamentary security of rules- All rules made under Section 3 shall, as soon as may be after there made be laid for not less than thirty days before each House of Parliament and shall be subject to such modifications as Parliament may make during the session in which they are so laid or in session immediately following.

5. Duration of Section 3 and rules.

Section 3 and all rules made thereunder shall cease to have effect on the expiration of five years from the commencement of this Act but such cesser shall not affect the validity of any appointment previously made in pursuance of the said rules'.

10. By a notification of the Central Government the Act came into force on 21-3-1959 and by effect of Section 5 of the Act is ceased to be in force on 21-3-1964. However on 9-5-1964 the Public Employment (Requirements as to Residence) Amendment Act 1964 was enacted. This Act is as following:-

'Short title.

1. This Act may be called the Public Employment (Requirement as to Residence) Amendment Act, 1964.

Amendment of Section 4.

2. For Section 4 of the Public Employment (Requirement as to Residence) Act, 1957 (hereinafter referred (44 of 57) to as the principal Act), the following sections shall be substituted namely:-

4.***** Amendment of Section 5.

3. In Section 5 of the principal Act, for the words 'five years' the words 'ten years' shall be substituted and shall be deemed always to have been substituted.

Validity of rules and action taken thereunder.

4. For the removal of doubts, it is hereby declared that all rules made under Section 3 of the principal Act and in force immediately before the 21st March, 1964 shall continue to be in force after that date until amended, varied or rescinded as if such rules were made under the Principal Act as amended by this Act and any action taken (including appointment made) in pursuance of those rules on or after the 21st March, 1964 and before the commencement of this Act shall be as valid and operative as if it had been taken in accordance with law'.

11. Pursuant to Section 3 of the Act 1957 rules were made on 21-3-1957 and they are as follows:-

'The Andhra Pradesh Public Employment (Requirement as to Residence) Rules 1959.

1. Short Title:-

These rules may be called the Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959.

2. Definitions:-

In these rules, unless context otherwise requires.

(a) 'appointing authority' in relation to any post means an authority empowered for the time being to make appointments as to that post.

(b) 'appointment' includes a permanent, quasi-permanent or temporary appointment but does not include an appointment of a casual nature.

(c) 'post' means a post specified in the First Schedule.

(d) 'Prescribed date' in relation to a post means the last date fixed for making applications for appointments to that post.

(e) 'Schedule' means a Schedule to these rules.

3. Requirements as a residence prior to appointment:

A person shall not be eligible for appointment to a post within the Telangana Area under the State Government of Andhra Pradesh or to a post under a local authority (other than a cantonment board) in the said area unless - (i) he has been continuously residing within the said area for a period of not less fifteen years immediately preceding the prescribed date; and

(ii) he produces before the appointing authority concerned if so required by it, a certificate of eligibility granted under these rules;

Provided that in relation to posts in the Secretariat Departments and the Offices of the Heads of Departments of the State Government of Andhra Pradesh situated in the cities of Hyderabad and Secunderabad, the requirement as to residence laid down in the rule shall apply to the filing of only the second vacancy in every unit of three vacancies which are to be filled by direct recruitment;

Provided further that any period of temporary absence from the Telangana area for the purpose of prosecuting his studies or for undergoing medical treatment or any period of such temporary absence not exceeding three months for any other reason shall not be deemed to constitute a break in the continuity of such residence, but for the purpose of calculating said period of fifteen years any such period of temporary absence shall be excluded.

4. Eligibility certificate:-

xx xx xx 5. Relaxation of Rule 3.

(1) The State Government may, in exceptional cases and for reasons to be recorded in writing, relax the provisions of Rule 3.

(2) A quarterly statement of all cases of relaxation's shall be published by the Government of Andorra Prudish in the Official Gazette of the State on the form prescribed in the third Schedule and a copy of every such statement shall be forwarded to the Central Government. Sd. V. Viswanathan, Special Secretary.

THE FIRST SCHEDULE(See Rules 2 and 3)

POSTS.

(a) any post (whether included in the cadre of a service or not) within the Telangana area under the State Government of Andhra Pradesh the appointment to which is not notified in the Official Gazette of the Andhra Pradesh State.

(b) The post of Tahsildar by whatever name designed within the Telangana area; under the control of Andhra Pradesh.

(c) any post (whether included in the cadre of a service or not) under a local authority (other than a cantonment Board) in the Telangana area of the Andhra Pradesh, which carried a scale of pay the minimum of which does not exceed three hundred rupees per mensem or a fixed pay not exceeding the amount.

Explanation: 'Pay' means basic pay plus special pay, if any, sanctioned to a post but does not include various allowances.

THE SECOND SCHEDULE (See Rules 3 and 4)xx xx xx THE THIRD SCHEDULE(See Rule 5 (2))"

12. Article 16(1) of the Constitution broadly guarantees to all citizens equality of opportunity in matters of employment under the State. Article 16(2) in no uncertain terms, prohibits any discriminations on grounds only of religion, race, caste, sex, descent, place of birth, residence of any of them. Clauses (3), (4) and (5) are in the nature of exceptions to Article 16(1) and (2). We are concerned in the present Writ Petitions with Article 16(3). Now, it may be noted that Article 16 (3) does not authorise Parliament to make any law prescribing any requirement as to residence

within a State or States for employment under the Union Government, (not being connected with Union Territory) what is even more important is that it does not authorise the Legislature of any State to make any law prescribing any requirement as to residence within the State for employment under the Government of that State. The Articles are thus clearly designed to prevent the practice of narrow parochialism in matters of Public Employment by the Government of a State any requirement as to residence within that State. Parliament, is however, authorised to make a law, prescribing in regard to employment under the Government of a State any requirement as to residence within that State. Thus the law made by Parliament may prescribe a requirement as to residence within the State, as a condition for securing employment under the Government of that State. But surely it cannot be said on the language of Article 16(3) that Parliament may make law prescribing a requirement as to residence, not within the State, but within a region, an area a district, a taluk, a town or a village of the State as a condition for securing employment under the Government of the State. The maximum concession that the makers of the constitution were prepared to make, from the broad rule that there should be no discrimination on the ground of residence in matters of public employment, was the imposition of a condition regarding residence within the State meaning thereby, residence anywhere in the State for employment under the Government of the State. Even this condition, the Constitution makers desired should be imposed by Parliament and Parliament alone, by making a law in that direction. Conditions regarding residence within regions of the State tending to disharmony and disunity within the State appear to have been far from the contemplation of the Constitution makers. Even the concession enabling Parliament to make a law prescribing a requirement as to residence within a State for employment under the Government of the State is not made in any narrow spirit of parochialism, but in the larger interests of efficiency of Public Service, to prevent 'people who are flying groom one province to another from one State to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take the plums and walk away'. A reference to the proceedings of the Constituent Assembly makes the position very clear. As pointed out by their Lordships of the

Supreme Court in A. K. Gopalan v. State, : 1950 CriLJ1383 and other subsequent cases it is permissible to refer to the proceedings of the Constituent Assembly to resolve latent ambiguities.

In the draft Constitution which was presented to the Constituent Assembly Article 10 dealt with 'equality of opportunity in matters of public employment.

Clauses (1) and (2) were as follows:-

'10. Equality of opportunity in matters of public employment:-

(1) There shall be equality of opportunity for all citizens in matters of employment under the State.

(2) No citizen shall, on grounds only of religion race, caste, sex, descent, place of birth, or any of them, be ineligible for any office under the State'.

13. Clause (2) it may be noticed, did not refer to residence at all and while Article 10 contained clauses corresponding to Clauses 4 and 5 of Article 16, there was no clause corresponding to the present clause (3) of Article 16. Sri Jaspat Roy Kapoor and Sri K. M. Munshi moved an amendment that the word 'residence' may be inserted after the word 'birth' in Clause (2) of the article. Sri Jaspat Roy Kapoor stated in his speech moving the amendment.

'Sir, there being only one citizenship for the whole country, it should carry with it the unfettered right and privilege of employment in any part and in every nook and corner of the country Even citizen of the country, Sir, I think, must be made to feel that he is a citizen of the country as a whole and not of any particular province where he resides. He must feel that wherever he goes in the country, he shall have the same rights and privileges in the matter of employment as he has in the particular part of the country where he resides. Unfortunately, Sir for some time past, we have been observing that provincialism has been growing in this country. Every now and then we hear the cry. 'Bengal for Bengalis', 'Madras for Madras' and so on and so forth. This cry, Sir, is not in the interests of the unity of the country, or in the interests of the solidarity, of the country. We find that some provincial governments have laid it down as a rule that for employment in

the province the person concerned should have laid it down as a rule that for employment in the province the person concerned should have been living in the province for many years I submit, Sir, that this is a tendency which must be checked with a strong hand. I, therefore, submit that in the matter of employment there should be absolutely no restriction whatsoever unless it is necessary in the interests of the efficiency of services. The unity of the country must be preserved at all costs; the solidarity of the country must be preserved at all costs. We must do every thing in our power to preserve the unity of the country, and the amendment that I have moved aims at this and is a step in this direction'.

14. The amendment moved by Sri Jaspat Roy Kapoor was accepted by Dr. B. R. Ambedkar and passed by the Constituent Assembly.

15. I stated earlier that in the Draft Constitution there was no clause corresponding to the clause (3) of Art. 16 Sri Alladi Krishnaswami Ayyar moved an amendment introducing a new clause in Art. 10 of the Draft Constitution and this became Clause (3) of Article 16. In the course of his speech introducing the amendment Sri Krishnaswami Ayyar stated:

'The object of the amendment is clear from the terms and the wording of it. In the first, part of the article, the general rule is laid down that there shall be equal opportunity for all citizens in matters of employment under the State and thereby the universality of Indian citizenship is postulated. In paragraph 2 of article 10, it is expressed in the negative, namely that no citizen shall be ineligible for any office under the State by reason of race, caste, sex, descent, place of birth and so on. The next two clauses are in the nature of exceptions to the fundamental and the general rule that is laid down in the first part of the article. Now what the present amendment provides for is this that in case of appointment under the State for particular reasons, it may be necessary to provide that residence within the State is a necessary qualification for appointment by and within the State. That is the object of this amendment and instead of leaving it to individual States to make any rule they like in regard to residence, it was felt that it would be much better if the Parliament lays down a general rule applicable to all states alike, especially having

regard to the fact that in any matter concerning fundamental rights it must be the Parliament alone that has the power to legislate and not the different Units in India'.

Dr. B. R. Ambedkar accepting the amendment moved by Sri Krishnaswami Ayyar stated:

'I shall explain the purpose of this amendment. (It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution, or which we propose to establish by this Constitution. Therefore in my judgment, the argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument.) At the same time, it must be realised that you cannot allow people who are flying from one province to another from one State to another as mere birds of passage without any roots without any connection with that particular province, just to come, apply for the posts and so to say, take the plums and walk away. Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in very many provinces rules have been framed by the provinces rules have been framed by the provincial Governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore the proposal in the amendment that although as a general rule residence should not be a qualification, yet some exception might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces however, what we found was that while different provinces were laying down a certain period as a qualifying period for posts the periods varied considerably. Some provinces said that a person must be actually domiciled. What that means, one does not know. Others have fixed ten years, some seven years and so on. It was therefore felt that, while it might be desirable to fix a period as a qualifying test should be uniform throughout India. Consequently, if that object is to be achieved,

viz., that the qualifying residential period should be uniform, that object can be achieved only by giving the power to Parliament and not giving to the Local Units, whether provinces or States. That is the underlying purpose of this amendment putting down residence as a qualification'.

16. Thus it is clear from the debates of the Constituent Assembly that Art. 16 (3) was introduced to promote any spirit of narrow provincialism; far from that it was introduced to promote efficiency of service without sacrificing the principle of equality of opportunity in the matter of public employment. It was introduced to secure uniformity. The law to be made by Parliament providing for requirement as to residence was to be uniform and was not be designed to prevent persons of one State seeking employment under the Government of other States. The law was only to provide for some qualification regarding residence in regard to some classes of employment so as to promote efficiency of service in connection with that class of employment. If I may say so the law to be made was to attract rather than to prevent, it was to invite officials to develop attachment to the places where they worked rather than to force them to go away. The law was certainly not mean to prescribe requirements as to residence within parts of a State, so as to prohibit residents of other areas of the State from seeking employment.

17. Article 16 (3) refers to employment under the Government of a State, 'State' of course in the context of the Article can only refer to the States i.e., the territories mentioned as comprising the States in the First Schedule to the Constitution. The law to be made by Parliament in pursuance of Article 16 (3) must, therefore, be in regard to employment under Government of the State. The class or classes of employment or appointments to offices under the Government of the State anywhere within the territory of a State. The law cannot confine itself to posts within a particular area of a State. Similarly the requirement as to residence within the State cannot mean a requirement as to residence anywhere within the State and not in a particular region of the State. If classes of posts throughout the State are to be preserved for persons possessing certain residential qualification it would be unreasonable to think that the constitution makers contemplated preservation of such State-wide posts for residents of regions within the State.

18. It is urged that State must include an area or a region of the State even as a whole must include a part. Sri Jeevan Reddy invites my attention to the definition of 'State' in Article 12 of the Constitution and to the power of Parliament under Article 245 to make laws for the whole or any part of the territory of India Art. 12 states:

'In this part, unless the context otherwise requires, 'the State' includes the government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India'

The Article itself contemplates that the word 'State' may have different meanings indifferent contexts and it is clear in the context of Article 16 that there can only be one meaning that can be given to the word 'State' occurring in that Article. the power of Parliament under Art. 245 to make laws for the whole or part of the territory of India has nothing to do with power under Article 16 (3).

19. It is also urged that Article 16 (3) is intended to protect the residents of a backward State or a backward region within a State. I have already referred to the debated of the Constituent Assembly which clearly show that it was not meant to be such. A comparison of clause (3) of Art. 16 with clause (4) of Art. 16 clearly shows that the 3rd clause of Art 16 was never meant to safeguard alleged interests of residents of backward States or regions. If that was the object nothing would have seen easier than to model clause (3) on the same lines as clause 4. The concept of a backward State or backward region and the idea that an exception should be made in regard to such areas in the matter of enforcement of fundamental rights is wholly absent in the Constitution. Even if it was designed to protect interests of the residents of a backward State I am of the view that a further dissection of the State into regions is wholly unjustified by Article 16 (3).

20. The learned Government Pleader urges that a geographical classification of a State into regions on the basis of historical considerations has been upheld by the Supreme Court in some cases. He therefore contends that the division of the State of Andhar Pradesh into the Telangana and non-Telangana areas is an eminently reasonable classification in the context of the historical developments which led to

the disintegration of the erstwhile Hyderabad State and the formation of the State of Andhra Pradesh in 1956. But no question of any reasonable classification arises at all. Considerations of reasonable classification which may be relevant in deciding questions arising under Article 14 are entirely irrelevant in deciding questions arising under Article 16 (3).

21. At this juncture, I may point out that at the time of reorganisation of State in 1956, suitable textual amendments had to be made to various articles of the Constitution including Article 16 (3) but it was not thought fit to amend the Constitution to provide any safeguards in the matter of Public employment to persons belonging to transferred territories. The State Reorganisation Act also contains no such provisions. I am, therefore convinced that Article 16 (3) does not permit the division, by parliamentary legislation, of State into regions for the purpose of employment under the Government of a State and the consequent mutilation of the unity of the State and the unity of the Nation, solemnly desired in the preamble to the Constitution. In my view, Section 3 of the Public Employment (Requirement as to Residence) Act is ultra vires the power given to Parliament under Article 16 (3) of the Constitution and is opposed to the fundamental rights guaranteed by Article 16(1) and (2) of the Constitution because Sec. 3 prescribes as a condition of employment residence within a region of the State, namely Telangana Region. The rules made under Section 3 follow suit. I have taken into consideration the fact that the Act has remained unchangeable for ten years, but I am afraid weight of years does no weight to the validity of an enactment encroaching upon fundamental rights.

22. Sri Chowdary goes further and urges that any law made by Parliament in pursuance of Article 16 (3) must be a law applicable to all the States of the Union uniformly. He says that Parliament cannot make a law under Art. 16 (3) for one State and not make a law for other States or make different laws for different States prescribing different requirements as to residence prior to employment. According to him, under the Constitution there is but one common citizenship for all persons entitled to be citizens, carrying with it the same privileges and immunities. The extent and contents of the rights flowing from citizenship and residing in a citizen are the same. Any subtraction from the value of the common

citizenship must be common to all citizens. Therefore, all disabilities, like privileges and immunities, must be common to all citizens. Therefore, all disabilities, like privileges and immunities, must be common to all citizens. Otherwise the value of the Citizenship will vary from citizen to citizen or from a class of citizens to class of citizens, leading to the establishment of different grades of citizens. This, Mr. Chowdary says was pointed out by Dr. Ambedkar in the speech already extracted by me where it is said:

'It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by the Constitution or which we propose to establish by this Constitution.

23. Dr. Alladi Krishnaswami Ayyar, 'a proud parent' of the Constitution as he has been described, in the Srinivasa Sastri Memorial Lectures delivered by him stated:

'The constitution adopts the principles of single citizenship and not a dual citizenship as in most Federations. It does not countenance degree of citizenship and conceives of equal and uniform rights to all citizens. There is no office or position which a citizen cannot hold. There are critics who take the view that universal citizenship and suffrage based upon a philosophy of equality is not a desirable end in itself. But the Indian Constitution has adopted a different principle believing in the rights, of the common man as the basis of democratic rule and in the dignity of human personality'.

24. I must confess that I am greatly attracted by the argument, as indeed all passionate lovers of freedom and equality are bound to be attracted by such arguments. But I must view it as a lawyer and a Judge, and doing so, I cannot say I am altogether convinced that the language of Art. 16 (3) prohibits Parliament from prescribing different requirements as to residence for employment under Governments of different States, though the achievement of uniformity is clearly one of the objects of Article 16 (3). It is however, not necessary for me to express

any final opinion in view of what I have already said about the validity of the Act.

25. The next contention of Sri Venkatramanayya and Sri Chowdary is that the delegation made by Section 3 of the Public Employment Act is far beyond the limits of permissible delegation and the provision is, therefore, ultra vires. Sri Chowdary urges that it is not a mere question of excessive delegation, but a question of breach of a constitutional mandate. He says that the prescription of 'any requirements as to residence prior to such employment or appointment' must be by Parliament or not at all. This argument deserves consideration. Article 14 to 31 (b) deal with various basic rights, the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to property. All these articles of the Constitution contain various embargoes on action by the State being defined by Article 12 of the Constitution as including Parliament, Legislatures of each of the States, Government of the Union and each of the States, Local authorities etc. Some of these rights also have certain exceptions and these exceptions are mentioned in some of the clauses of the several articles. For example, Clauses (2) and (3) of Article 15, Clause (3), (4) and (5) of Article 16, Clauses (2) to (6) of Article 19, Clause (7) of Article 22, Clause (2) of Article 23, Clause (2) of Article 24 and Clauses (2) and (3) of Article 28 deal with such exceptions. Except in the case of the exceptions contained in Clause (3) of Article 16 and Clause (7) of Article 22, in the case of all the other exceptions, the law to be made or the action to be taken by the State is defined in Article 12, that is to say, by Parliament, Union Government, Legislature of a State, Government of a State etc. It is only in the case of exceptions contained in Clause (3) of Article 16 and Clause (7) of Article 22 that the Constitution insists that Parliament alone shall make the law dealing with the exceptions contained in those clauses. Surely this is a matter of some significance. It solemnly emphasises the great importance given by the Constitution to the common citizenship concept and effectively prevents State Legislature and State Governments from making laws prescribing requirements as to residence within their States as qualification for appointment in those States. The responsibility for prescribing any requirement as to residence is laid squarely on the shoulders of Parliament. Parliament alone, therefore, can prescribe what is required to be prescribed under Article 16 (3) or not at all. Sri Chowdary invites my

attention to the following language occurring in a judgment of Gajendragadkar J., in *M. R. Balaji v. State of Mysore*, : AIR 1963 SC649 .

'The it is urged that even if special provision can be made by the State under article 15 (4), the said provision must be made not by an executive order by legislatioin. This argument is equally misconceived. Under Article 12, the State includes the Government and the Legislature and not the Government. Besides whether the Constitution intended that a certain action should be taken by legislation and not be executive action it has adopted suitable phraseology in that behalf. Article 16 (3) and (5) are illustrations in point. Both the said sub-clauses of Article 16, in terms, refer to the making of the law by the Parliament in respect of the matters covered by them. Similarly, Arts. 341 (2) and 342 (2) expressly refer to a law being made by Parliament as therein contemplated. Therefore when Article 15 (4) contemplates that the State can make the special provision in question, it is clear that the said provision can be made by an executive order'.

26. This passage appears to support the contention of Sri Chowdary. Sri Venkatramanayya urges that the essential legislative functions have been delegated by Section 3 if the Public Employment (Required as to Residence) Act. The essential legislative function of Parliament when making a law in pursuance of Art. 16 (3) of the Constitution in regard to a class or classes of employment or appointment to an office and the Government of or any local or other authority within, a State is to 'prescribe' 'any requirement as to residence within that State prior to such employment or appointment'. By Section 3 of the Public Employment (Requirement as to Residence) Act the Parliament has empowered the Central Government to make rules in regard to appointment to certain services under the Government of Andhra Pradesh to prescribe any requirement as to residence within the Telangana area prior to such appointment. Thus what the Constitution empowers the Parliament to do is precisely-the identity of the language employed may be noted-what Parliament enables the Central Government to do. It appears to my mind to be clear case of delegation of an essential legislative function. If Article 16 (3) and Section 3 of the Act are placed in juxtaposition and read the position becomes very clear.-

Article 16 (3) Section 3 Nothing in this article shall prevent The Central Government may, by notification in the Parliament from making any law, Official Gazette, make rules: Prescribing in regard to a class or, Prescribing in regard to appointment to- classes of employment or appointment to (a) any subordinate service post under the State an office under the Government of, or Government of Andhar Pradesh, or (b) any subordinateany local or other authority within, a service or post under the control of the Administrator of State or Union Territory. Himachal Pradesh, Manipur or Tripura or (c) any service post under local authority (other than a cantonment board) within the Telangana area of Andhra Pradesh or within the Union Territory of Himachal Pradesh, Manipur or Tripura.any requirement as to residence. any requirement as to residence. Within that State or Union territory. Within the Telangana area or the said Union Territoryas the case may be. Prior to such employment or appoint- Prior to such appointment. ment.

27. Reading Section 3 of the Public Employment Act in juxtaposition with Article 16 (3) of the Constitution it is clear that the legislative function of prescribing any requirement as to residence prior to employment has been delegated by Parliament to Central Government. It is Parliament and Parliament alone that can say that a person should be a resident within a certain state for a period of one, two, five or ten years as the case may be prior to his seeking employment under the Government of that State in regard to particular posts. That function cannot be delegated to any other authority since that would amount to an abdication of legislative power. I have no hesitation to hold that S. 3 of the Public Employment (Requirement as to Residence) Act void, on this ground also.

28. In the view that I have taken on the two principal questions argued before me I do not think it is necessary to consider other points urged before me regarding validity of the Act and the Rules, as also an argument urged by Sri Chowdary that his clients are in any case protected by the doctrine of equitable estoppel. I hold that Section 3 of the Public Employment (Requirement as to Residence) Act and the rules made in pursuance of Section 3 are void and cannot be enforced. W. P. Nos. 2235 of 1968 and 3907 of 1968 and 3962 of 1968 are allowed with costs. In W. P. Nos. 3907 and 3962 of 1968 there will be a declaration that Section 3 of the Public Employment (Requirement as to Residence) Act, 1957 as amended by the

Act of 1964 and the Andhra Pradesh (Requirement as to Residence) rules are void and inoperative, and directions will issue to the respondents not to give effect to the orders complained of. Advocate's fee Rs. 150/-.

29. Order accordingly.

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