

A THE COMMISSIONER, CORPORATION OF MADRAS
v.
MADRAS CORPORATION TEACHERS' MANDRAM AND ORS.

NOVEMBER 8, 1996

B [K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Service Law :

C *Creation of post and prescribing qualification therefor—Power of Court to give direction—Held, it is the legal or executive policy of the Government to create a post or to prescribe qualifications therefor—Court or Tribunal is devoid of power to give such direction.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 15074-75 of 1996.

D From the Judgment and Order dated 2.8.94 of the Tamil Nadu Administrative Tribunal, Madras, in O.A. No. 708 of 1993.

E R. Mohan R. Nedumaran, V.G. Pragasan and Ms. Pushpa Rajan for the Appellant

Naveen R. Nath and S.R. Bhat for the Respondents.

The following Order of the Court was delivered :

F Leave granted.

G These appeals by special leave arise against the order of the Administrative Tribunal, Tamil Nadu passed in OA No. 708/93 and 1685/93 on August 2, 1994. The appellant-Corporation had adopted a dual policy of appointment of Education Officers either by promotion from the subordinate cadre or appointment by deputation from the Government service. It would appear that the post of Education Officer was upgraded to the post of Deputy Director and they sought appointment by transfer of a Government officer to fill up the post of Deputy Director to supervise the educational standards in the Corporation. The respondents-Union H challenged the said action of the appellant in the Tribunal. The Tribunal

while upholding the power of the Corporation had directed thus:

A

“Therefore, a post in the cadre of the Corporation equivalent to the District Educational Officer should be created to which persons from the Corporation’s cadre could be appointed and such persons could be considered after a minimum period of experience for advancement to the higher post in the rank of Chief Educational Officer to be in overall charge of the Corporation’s Educational Departments.”

B

Feeling aggrieved against this order, this appeal has been filed, Shri R. Mohan, learned senior counsel for the Corporation, has contended that the creation of the post and prescription of qualifications are the legal policy of the Government or the executive policy of the Government. The Tribunal cannot give the direction to create a post or to prescribe the experience as may be required as an incumbent to hold the post. We find that there is force in the contention.

C

Learned counsel for the respondents, in fairness, was unable to meet the contention but he sought to sustain this order on the ground that appointment by transfer affects in-service candidates. We cannot go into it because it is not the subject matter in this case. Under these circumstances, as stated earlier, the question is: whether the Tribunal can give direction to create a post or to prescribe the minimum qualifications for the post? It is well settled legal position that it is the legal or executive policy of the Government to create a post or to prescribe the qualifications for the post. The Court or Tribunal is devoid of power to give such direction. The impugned direction, therefore is clearly illegal.

D

E

The appeals are accordingly allowed. But in the circumstances without costs.

F

R.P.

Appeals allowed.