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DATE OF DECISION 24.12.86

Shri Bapurao Pakhiddey Applicant
Advocate for the Petitioner(s)

Union of India & Anr. Respondent s

None Advocate for the Respondent(s)

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all the Benches ? No

(K. Madhava Reddy
Chairman
24.12.86

②

Abstract

.... Applicant

VS.

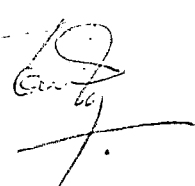
... Respondents.

Applicant through Shri Bapurao Pakhiddey, Advocate.

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Chief Visualiser is sought to be abolished, he will become junior to the Chief Exhibition Officer, which is manned by his junior. The applicant also further contends that this post is referred to in the Recruitment Rules and unless the Rules are amended, the post cannot be abolished.

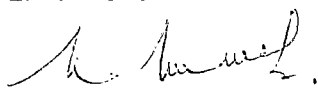
2. We are unable to agree with any of these contentions. Creation or abolition of a post is entirely in the discretion of the President. No court can compel the creation or abolition of any post. That lies in the administrative discretion of the Executive which decision has to be taken having regard to the exigencies of administration. If a post is created, even then it is not obligatory that any rules should be framed for recruitment to that post. So long as no rules are framed, appointment to the post can be made in exercise of the executive power vested in the President and Union of India under Article 53 of the Constitution. Of course, once the Recruitment Rules are framed in exercise of ^{proviso to} Article 309 of the Constitution or by an Act of Parliament, the appointing authority is obliged to conform to the rules or the Act, as the case may be, in making appointments to the posts. Even if rules are framed, the Executive cannot be compelled to fill up any post if, having regard to exigencies of administration or reasons of economy, it chooses not to fill up the post. The right of an employee is to insist upon the compliance of the Rules of Recruitment when any post is in existence and that post is sought to be filled-up. No employee has a vested right to appointment to a post by way of promotion unless such post is sought to be filled up by promotion. The reasons which have prompted the Respondents in abolishing the post cannot be said to be arbitrary or capricious. The abolition of the post has been occasioned by the approval of the proposals for rationalisation of the working of the D.A.V.P. It is neither mala fide nor intended to harm any individual.



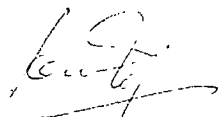
It is not directed against the applicant in particular.

3. Mr. Bapurao Pakhiddey, Advocate, relied upon the judgment of the Supreme Court in Union of India & Ors. Vs. Arun Kumar Roy, A.T.R. 1986 S.C. 61, paragraph 16, in which the Supreme Court held that "a notification has no statutory force. It cannot override rules statutorily made governing the conditions of service of the employees." This judgment, in our view, does not advance the case of the applicant, for no rule is sought to be ignored under the impugned order. Proposals for abolition of certain posts were made and the sanction for the abolition of posts is sought from the President, who had created the posts. The impugned order does not even remotely seek to amend or override any Rules so as to attract the dicta laid down by the Supreme Court in the above mentioned judgment.

4. This application is devoid of any merit and is, accordingly, dismissed.



(KAUSHAL KUMAR)
MEMBER
24.12.1986.



(K. MADHAVA REDDY)
CHAIRMAN
24.12.1986.