Sectt. H-27—60,004—17-11-

Edn. (1950) Department

Ms. SERIES.

G.O. NO. 826-Edn.

Dated 13-3-50.

[Despatch Abstract.]

Colleges - Admission on Communal and Linguistic basis - Are whether the practice goes against the Constitution - Papers received.

IMMEDIATE.

Public (Separation-B) Department.

U.O.NOTE NO.43/50-2. Dated 10th January, 1950.

SECT. 12 JAN 1950 16 EDUCATION

New Constitution - Preparatory action to be taken by Provincial Government on provisions.

The preparatory action to be taken in connection with the coming into force of the new Constitution falls under three categories:-

3049

1) Action for obtaining orders under Article 372 of the Constitution by proposing adaptations to the existing laws of this Province /Madras Acts/ to bring them into line with the Constitutional provisions.

2) Immediate action under Article 392 for obtaining orders of Governor-General or President for removing difficulties in transition, etc., in any matter.

3) Other action on various matters covered by the Constitution, to be taken quickly.

NO.(1). This has been entrusted to a special branch of the Legal Department and work under this head is almost over.

P.T.O

IMMEDIATE.

A 2

Public (Separation-B) Department.

U.O.NOTE NO.43/50-2. Dated 10th January, 1950.

SECT. EDUCATION 12 JAN 1950 16

New Constitution - Preparatory action to be taken by Provincial Government on provisions.

The preparatory action to be taken in connection with the coming into force of the new Constitution falls under three categories:-

3049

1) Action for obtaining orders under Article 372 of the Constitution by proposing adaptations to the existing laws of this Province /Madras Acts/ to bring them into line with the Constitutional provisions.

2) Immediate action under Article 392 for obtaining orders of Governor-General or President for removing difficulties in transition, etc., in any matter.

3) Other action on various matters covered by the Constitution, to be taken quickly.

NO.(1).

This has been entrusted to a special branch of the Legal Department and work under this head is almost over.

P.T.O

Back Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Further Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

IMMEDIATE.

A

2

Public (Separation-B) Department.

U.O.NOTE NO.43/50-2. Dated 10th January, 1950.

SECT. EDUCATION D. 12 JAN 1950 16

New Constitution - Preparatory action to be taken by Provincial Government on provisions.

The preparatory action to be taken in connection with the coming into force of the new Constitution falls under three categories:-

3049

1) Action for obtaining orders under Article 372 of the Constitution by proposing adaptations to the existing laws of this Province /Madras Acts/ to bring them into line with the Constitutional provisions.

2) Immediate action under Article 392 for obtaining orders of Governor-General or President for removing difficulties in transition, etc., in any matter.

3) Other action on various matters covered by the Constitution, to be taken quickly.

NO.(1).

This has been entrusted to a special branch of the Legal Department and work under this head is almost over.

P.T.O

NO.(2). Matters which required immediate action were settled by this Department in consultation with the Departments concerned and with the concurrence of Legal, and India has been addressed on them.

NO.(3). The action considered necessary in respect of the various articles of the Constitution as a result of the scrutiny by this department are set out in the tabular statement appended. Departments of the Secretariat are requested to take on hand action on the various matters as suggested therein.

The Constitution had to be scrutinised and the list prepared with the greatest speed, and an effort has been made to make it as complete as possible. However, as every article requires careful study and comparison with the existing provisions in the Government of India Act, 1935, it is possible that action may be necessary on a few other matters. Departments of the Secretariat are requested to scrutinise the Constitution once again and initiate appropriate action in consultation with this Department. Legal should be consulted on all cases involving legal opinion.

They are also requested to note that it is not too late to invoke orders under Article 392 in respect of any matter, which has been overlooked.

S. Balakrishnan,
Assistant Secretary to Government.

To The Departments of the Secretariat (all sections).

Forwarded / By order.

T. Arsan 11/1/50
Superintendent.

GVP 11/1/50.

3

4

ACTION TO BE TAKEN IN CONNECTION WITH THE COMING INTO FORCE OF THE NEW CONSTITUTION ON 26TH JANUARY, 1950.

Serial No.	No. of Article.	Subject.	Nature of action to be taken.	When action is to be taken.	Secretariat Department concerned.	Remarks.
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	13(1)	Laws inconsistent with Fundamental Rights - Void.	All Acts, Rules, bye-laws, notifications, usage, etc., to be examined and steps taken to effect changes.	To be taken on hand immediately.	All Departments.	Action under Articles 372, & 392 taken in respect of certain Acts. Other matters to be examined quickly.
2.	15(1)	Discrimination on grounds of class, religion, etc.	How far the existing provisions in certain Acts like the Madras Local Boards Act, etc., reserving seats for certain communities, are valid.	-do-	Local Administration Department.	Legal have proposed suitable adaptations under Article 372 and have also moved for an order under Article 392, in respect of certain Acts. Other Departments to examine the Acts, Rules, etc. they are concerned with containing similar provisions.

P.T.O.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
3.	16.	Equality of opportunity in matters of public employment.	The service Rules for the various services to be examined & suitable amendments made.	To be taken on hand immediately.	Mainly Public (Services).	Action under Article 372 taken in respect of Acts II of 1894 & III of 1895. Examination of other questions taken on hand.
4.	22.	Protection against arrest and detention in certain cases.	How far the Madras Maintenance of Public Order Act, 1949 requires modifications.	-do-	Public (S.C.) and Public (General).	Adaptations already proposed under Article 372. Order under Article 392 also sought for. Order of President under Article 22(7) read with Article 373 expected.
5.	23(2)	Prohibition of compulsory labour.	Existing provisions in regard to Prison laws to be examined.	-do-	Home and Revenue.	Action under Article 372 initiated in respect of Madras Compulsory Labour Act. It is presumed that the 'forced labour' exacted from convicts in jails is covered by clause (2) exempting service for 'public purposes'.
5-A.	29(2)	Admission into Government educational institutions.	Whether the existing rules regarding reservation on communal basis are valid.	Expeditiously.	Education & Public Health Dept.	Action initiated. See also Article 46.
6.	31(2)	Compensation for property acquired.	Existing Acts, Rules, etc., to be examined for adaptations or action for certification to be taken wherever necessary.	Very expeditiously.	Almost all the Departments.	Adaptations proposed under Article 372 in respect of certain Acts. Action for certification under clause (6) taken in respect of the Madras Estates Abolition Act, 1949. Order under Article 392 also sought for in respect of Madras Maintenance of Public Order Act, 1949.

P.T.O.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
7.	~~Xxxx~~ 33.	Restriction of Fundamental Rights in their application to the police force.	Provision should be made by law to cover those matters which are at present governed by non-statutory instructions.	As soon as possible.	Home.	It is presumed that India will take the necessary action analogous to their action in respect of Army, Navy & Air Force. Attention is invited to Article 35(6) for continuing existing law. Action if any to be taken only by India.
8.	36-51.	~~Xxxxxxxxxx~~ Directive Principles of State Policy.	No immediate action is needed in respect of these unlike the provisions under Fundamental Rights.	As and when necessary.	All Departments.	These should be kept in view in initiating laws. Such action as is considered necessary to be taken by the administrative Departments concerned.
9.	40.	Organisation of Village Panchayats.	-do-	-do-	Local Administration Dept.	Legislation already undertaken.
10.	45.	Provision of free and compulsory education for children.	Early steps in that regard.	Within a period of ten years.	Education & Public Health.	It should be noticed that a maximun period of 10 years is fixed in this Directive Principles.
11.	50	Separation of Judiciary from the Executive.	Steps to be taken.	..	Public (Separation).	Reforms already effected in this Province.
12.	73.	Extent of Executive Powers of Union and State.	Changes necessary consequent on the differences between the lists of the Constitution and those of Government of India Act, 1935.	As quickly as possible.	All Departments.	Attention is invited to clause (2) providing for transitory powers in concurrent subjects, and also to Article 277 relating to existing taxation measures.

P.T.O.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
13.	159	Oath of Office by Governor.	Arrangements for taking oath on 26-1-1950.	Immediately.	Public (Special) Dept.	Action initiated by this Department.
14.	164(3)	Oath of Office by Ministers.	-do-	-do-	-do-	-do-
15.	166(3)	Rules regarding Conduct of Government business.	Revision of Business Rules to make it consistent with Constitution.	To be taken on hand at once.	Public (Services) Dept.	There appears to be nothing, so far as this Province is concerned, in which the Governor is to act 'in his discretion'.
16.	171(1)	Strength of Houses of Legislature.	Whether any change is necessary.	Before the Constitution of Legislature.	Public (Elec. and Legislature Secretariat.	Await action by India. The existing strength of 55 in the council exceeds 1/4th the strength in the Assembly. Article 382 however would appear to save existing members.
17.	176.	Special address by Governor to the Legislature.	Preparations for the address for the first sitting after 26-1-1950.	Immediately.	Public (Elections).	Action already initiated by this Department. Attention is also invited to clause (2) and steps should be taken immediately to provide in Rules of business for the discussion referred to..
18.	187.	Rules regarding conditions of service of staff of Legislature.	Consequences of altered provisions in this behalf.	-do-	-do-	To avoid all /Complications, existing rules may be reissued by Governor in accordance with clause (3). Action initiated by this Department.
19.	188.	Oath of office by members of Legr.	Arrangements for taking oath on 26-1-1950.	-do-	-do-	Action initiated by this Department.

P.T.O.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
20.	196-213.	Legislative Procedure.	Revision of existing Assembly and Council Rules.	As quickly as possible.	Legislature Secretariat and Public (Elections.)	See also Article 176(2) for which provision should be made.
21.	216.	Fixation of the number of High Court Judges.	Action necessary in view of the altered provisions in this behalf.	Immediately.	Public (Special) Dept.	Absence of provision for temporary additional Judges makes it necessary to take steps regarding existing temporary posts. Action appears to have been taken already.
22.	219.	Oath of Office by Judges of High Court.	Arrangements for taking oath on 26-1-1950.	-do-	-do-	Action already initiated by this Department.
23.	225.	Jurisdiction of High Court in Revenue matters.	Provisions in existing law denying such jurisdiction to be examined and modified.	As quickly as possible.	All Departments.	Action initiated by this Department.
24.	234.	Rules of recruitment to Civil Judicial Service.	Consequences of absence of detailed provisions in this behalf.	-do-	Home Dept.	The existing detailed Statutory provisions should be provided for otherwise. Action initiated by this Department.
25.	236.	Definition of "District Judge".	Inclusion of Judge of City Civil Judge in the definition. Consequent amendment to Rules.	As soon as possible.	Home.	
26.	237.	Control, recruitment and conditions of service of magistrates.	Need for a notification by Governor to be considered.	Soon after 26-1-1950.	Home and Public (Seperation-A).	Action already initiated.

P.T.O.

8

4

(1)	(2)	(3)	(4)	(5)	(6)	(7)
27.	244.	Administration of Scheduled and Tribal areas.	Constitution of Tribes Advisory Council and Rules under Section 4 (3) of Schedule V.	To be taken on hand at once.	Public (miscellaneous).	
28.	261.	Execution of decrees of Court.	Existing restrictions if any relating to erstwhile Indian States to be examined and removed.	Very expeditiously.	Home Dept.	The "Reciprocal arrangements" now in force ~~xxx~~ appear to be redundant. Position to be examined.
~~xxx~~						
29.	266 & 267.	Constitution of consolidated Fund and Contingency Fund and Public Account.	Action, if any, to be taken in respect of the Budget for the next Financial year.	Expeditiously.	Finance Dept.	See also Article 390 which saves current financial year.
30.	276.	Taxes on profession, Trade, etc.	Action consequent on the fixation of the maximum limit of Rs.250.	Immediately.	Local Administration Department.	Action already taken in consultation with Legal. See also Article 277.
31.	283 (2).	Custody, etc. of consolidated Fund, etc.	Rules to be made by Governor.	Between 26-1-50 and ~~xx~~ 1-4-1950.	Finance.	Action initiated.
32.	286.	Restriction on imposition of Sales Tax in certain cases.	Existing provisions in Madras Act to be examined.	Immediately.	Revenue and Finance.	Action for an order under proviso to clause (2) taken. Adaptations to the Act also found necessary and action is being taken by Legal in this behalf. An order under Article 392 in respect of clause (1) has also been sought for by this Department in consultation with Legal.

P.T.O.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
33.	287 & 288.	Exemption from taxation in respect of Electricity and water.	Adaptations to existing laws.	Immediately.	Public Works Department.	Action under Article 372 taken by Legal.
34.	299.	Execution of contracts by Governor.	Authorisation to execute contracts.	-do-	Public (Services) Dept.	It is presumed that the existing delegations and forms will be valid, after 26-1-1950 also. Position to be examined.
35.	309.	Rules relating to recruitment and conditions of Service of persons serving the State.		-do-	-do-	It is presumed that in view of Article 313, there is no need for having all the existing rules reissued by Governor under this Article, pending Acts of Legislature. Position being examined in consultation with Legal.
36.	311 (2).	Dismissal, etc. of persons in Government service.	Consequences of the sanction to dispense with the formalities in certain cases (contained in the proviso).	As early as possible.	-do-	Suitable amendments should be made to the Madras Civil Service (C.C.A.) Rules.
37.	316.	Term of office of Members of Service Commission.	Amendment of Regulations consequent on the new provisions.	Expeditiously.	-do-	Attention is also invited to Article 378(1) line 8.
38.	317.	Removal of a Member of the Commission.	-do-	-do-	-do-	

P.T.O.

10

(1)	(2)	(3)	(4)	(5)	(6)	(7)
39.	335.	Representation in Government service of Scheduled Castes and Tribes.	Consequential amendments to Service Rules, if any.	Immediately after 26-1-1950.	Public (Services) Dept.	Only the President can define who come under these classes.
40.	341 & 342.	Specification of Scheduled Castes and Tribes.	To be done by President in consultation with States.	On 26-1-50.	Public (Miscellaneous).	Action taken already.
41.	372.	Adaptation of existing laws to bring it into accord with the Constitution.	Examination of all the Statutes and proposing adaptations to India.	Immediately.	All Departments.	A separate section of the Legal Department has been doing the work and proposals have already been sent to India.
42.	392.	Removal of difficulties by orders of Governor-General of President.	Examination of all Acts, Rules, etc., and taking action where necessary.	-do-	-do-	Steps taken by this Department to suggest action to other Departments wherever necessary and to consolidate proposals.
43.	171, to 173, 190, 191, 324, 326, 327 & 388.	Various matters relating to Elections and Legislatures of States.	Steps to be taken in accordance with the Constitution.	Expeditiously.	Public (Elections).	India is taking action. No action needed here except to attend to orders and rules to be now and then received from India.

GVP 10/1/50.

T Arsan 11/1/50
Superintendent.

Public (Separation/B) Department.

U.O.Note No.52/50-1. Dated 11th January, 1950.

12 JAN 1950
16

3045

NEW CONSTITUTION - Preparatory measures - Fundamental Rights - Equal rights in respect of admission to educational institutions maintained by the State.

The attention of Education & Public Health Department is invited to Article 29(2) of the Constitution to the effect that no citizen shall be denied admission into any educational institution maintained by the State or receiving State aid on grounds only of religion, race, caste, langaage or any of them. The question arises whether the existing orders of Government, in regard to the admission of candidates to the professional colleges on communal and linguistic basis, are constitutional. On the one hand, it may be said that no citizen is being 'denied' admission on such grounds and as such the orders are not against the terms of the Constitution. Added support to the validity of the existing orders is also to be had from Article 46 of the Constitution directing that the State shall promote the educational and economic interests of the "weaker sections of the people". But this Article is among the "Directive Principles" only and not under the "Fundamental Rights" which are justiciable. On the other hand, it may be urged that the orders in so far as they reserve seats in the Colleges on communal and linguistic proportions run counter to the spirit of the Constitution. In this connection it may be noted that similar provisions occur in Article 15(1) dealing with general rights. In examining the question whether reservation of seats in the Local Bodies under the various Acts are valid, the Legal Department have taken the view that such provisions are against the Constitution and they have accordingly addressed Government of India for adaptations of the relevant Acts by removing such reservations on communal grounds.

Education & Public Health Department may examine this question expeditiously and take such action as they consider necessary.

Food & Agriculture and Development Departments are also requested to examine the question in relation to the Colleges and institutions they are concerned with.

S. Balakrishnan,
Assistant Secretary to Government.

To The Education & Public Health Department.
Copy to Legal Department.
Copy to Food & Agriculture and Development Departments.

Forwarded / By order.

T. [illegible] 11/1/50
Superintendent.

GVP 11/1/50.

Edn and P.H.Dept

Please see the papers from page 1 ante. The question to be examined is whether the existing orders of the Govt in regard to the admission of Students to the professional colleges on communal and linguistic basis are inconsistent with the articles in the new constitution and therefore not constitutional. The very same question was examined when the constitution was in the draft stage and the decision that was arrived at was that these orders were ~~void~~ consistent with the articles in the constitution. - please see the letter to the Govt of Madras on pp 72-75 ante and the notes leading to it. This Govt may uphold the view that their orders regarding admission to colleges are quite constitutional with reference to article 46 of the Constitution. The file may be sent to Legal through Edn and Food and ~~Agri~~ depts.

pp 3-4, 8, 9 & (5, 7)-12 N P 48 (B)

(B)

in G.O.No: 1517 Edn dt 9.6.48.

Art 29(2) corresponds to article 23(2) in the notes and article 46 corresponds to article 37 in the notes

Here is a difference

22/1/50.

20/1/50

23/1/50

23/1/50

AS IV

OS

Addl Secy

S

1 37 (B)

The discussions in the notes to G.O. at (B) were on the basis of clause 23(2) of the Draft Constitution of India which runs as follows:

"23(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State."

It was held ~~to allow~~ Thus the above Draft read with clause 37 of the Draft Con-

Public (Certification) Department.

D.O. Note No. PE/50-L. Dated 11th January, 1950.

NEW CONSTITUTION - Preparatory measures - Fundamental Rights - Equal rights in respect of admission to educational institutions maintained by the State.

The attention of Education & Public Health Department is invited to Article 29(2) of the Constitution to the effect that no citizen shall be denied admission into any educational institution maintained by the State or receiving State aid on grounds only of religion, race, caste, language or any of them. The question arises whether the existing orders of Government, in regard to the admission of candidates to the professional colleges on communal and linguistic basis, are constitutional. Save on the one hand, it may be said that no citizen is being 'denied' admission on such grounds and as such the orders are not against the terms of the Constitution. Added support to the validity of the existing orders is also to be had from Article 46 of the Constitution directing that the State shall promote the educational and economic interests of the weaker sections of the people". But this Article is among the "Directive Principles" only and not under the "Fundamental Rights" which are justiciable. On the other hand, it may be urged that the orders in so far as they reserve seats in the Colleges on communal and linguistic proportions run counter to the spirit of the Constitution. In this connection it may be noted that similar provisions occur in Article 15(3) dealing with general rights. In examining the question whether reservation of seats in the Local Bodies under the various Acts are valid, the Legal Department have taken the view that such provisions are against the Constitution and they have accordingly addressed Government of India for adaptations of the relevant Acts by removing such reservations on communal grounds.

Education & Public Health Department may examine this question expeditiously and take such action as they consider necessary.

Food & Agriculture and Development Departments are also requested to examine the question in relation to the Colleges and institutions they are concerned with.

S. Ramakrishnan,
Assistant Secretary to Government.

To The Education & Public Health Department.
Copy to Legal Department.
Copy to Food & Agriculture and Development Departments.

Forwarded / By order.

Section Officer.

on p.15 n,f. of the G.O. permitted communal and linguistic representation in the matter of admission to Engineering and Medical Colleges. Clause 23(2) as modified is Section 29(2) of the Draft Constitution of India which runs as follows:

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of the State funds on grounds only of religion, race, caste, language or any of them."

Section 46 corresponds to the old clause 37.

The present position is that if the existing instructions regarding ~~the~~ admission on the communal and linguistic basis are continued, no citizen will be denied admission on the grounds of caste, and language but there will, nevertheless, be a restriction in admission.. The point is whether this restriction is admissible under Section 46 of the Constitution of India. Section 15(1) relating to Fundamental Rights states that the State shall not discriminate against any citizen on grounds of communal, religion, race, caste, sex, place and birth or any of them. Again Section 16(1) provides that there shall be equality of opportunity for all citizens in matters relating to the employment or appointment to any office under the State. If it is held that, in the absence of the existing instructions regarding ~~the~~ admission on the basis of communal representation and linguistic basis, all communities will not have equality of opportunity it has to be held that the existing instructions can continue to be in force. This however results in some kind of discrimination against certain castes or against persons belonging to a particular place of birth. On the whole it seems that, unless there is a ruling by a competent court of Law to the contrary, the existing instructions in the matter of admissions can be continued. The question depends upon the interpretation of the provisions referred to above.

23/11/50

Addl.Secy/ Secy.

The important words in Art.29(2) of the Constitution in my opinion are "on grounds only of .. ..".

The present position is that, thanks to the usual plea of financial stringency which unfortunately has been invoked by the Government of Madras, without interruption, for decades, the number of seats available in educational institutions maintained by the State represent only a fraction of the no. of applications for such seats and, in the circumstances quite a large number of applicants had to be denied admission. Such denial is not on grounds only of religion, caste etc., but on a multiplicity of grounds including the paucity of seats, the necessity for regional and linguistic representation, the necessity for promoting with special care the interest of the backward communities with reference to Art.46 of the Constitution and other factors.

The ideal of course is that there should be no question of any application of communal and other restrictions in matters relating to admissions, but so long as the number of seats are limited and so long as we fail to be a united race forgetting caste and creed, the communal rules will have to be applied, whether one likes it or not.

In the circumstances there is nothing illegal, unlawful or inexpedient in continuing the existing arrangements and rules regarding admissions to Govt. educational institutions.

23/1/50

Secretary.

Even accepting the important words in Article 29 to be "on grounds only of" the fact remains that under our existing rules, prospective candidates are denied admission only on grounds of religion, caste

and language. The whole system of admission to Medical and Engineering Colleges is based on caste, linguistic, religious and regional basis. Merit, as represented by the marks, is subject to these considerations and many a candidate eligible on merit is denied admission because he does not come within the quota allotted on caste, religious, linguistic or regional basis. This appears to be strictly a legalistic interpretation though it cannot be accepted for obvious practical reasons.

E.P.H.u.o.3044-1/50A
dated 24-1-50
in sealed cover

Legal.

Public(Separation)

LEGAL DEPARTMENT.

Article 15 (1) of the Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 29 (2) lays down that no citizen shall be denied admission into any educational institution on grounds only of religion, race, caste, language or any of them. Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled castes and Scheduled Tribes who will be notified by the President under Article 341.

Reading Article 29 (2) along with Article 15 (1) and Article 46, it is clear —

(1) that admission cannot be denied solely on the ground of religion, race, caste or language, but

(2) that the State may show some preference in the matter of admission to the "weaker sections of the people" referred to in Article 46.

ASSISTANT SECRETARY 12020 24 JAN 1950 4 P.M. LEGAL DEPARTMENT

Sealed cover
Legal u.o no. 1202 C/50-1
31-1-50.

DEPUTY SECRETARY 31 JAN 1950 PUBLIC DEPARTMENT

Pub (Sep.) 115
115/50-1
1/2/50.

Box

2 FEB 1950 7323A CONFIDENTIAL

Which classes of the people can be regarded as "weaker sections" within the meaning of Article 46, is a matter primarily for the State.

31.1.50 u no. 31/1/50. 10

Public (Sep.)

Pub(Sep).

ASSISTANT SECRETARY 115 31 JAN 1950 1/2/50 PUBLIC (SEPARATION) DEPARTMENT

Public (Separation (B) Deptt.

Please see this Dept u.o. note on p11 ante and the notes of E to P.H and Legal on pp 13-12 above. This Dept may agree with the views of the Legal Deptt. The file may be returned to E to P.H.

1/2/50. 1.2.50

This deptt is concerned only with the coordination of the work of other depts relating to the constitn. & Suggestions for action wherever possible. The matter is therefore purely for the Administrative Deptt. concerned to decide. The final decision taken may kindly be communicated to this deptt for record

1/2/50 (E & P.H.)

A

Dev and Food and Hpi may also see before circulation as these dept also have educational institutions under them

2/2/50

2/2/50.

As the matter is one of general policy and may have repercussions on the application of the Communal rule in making recruitment to the Services, it seems essential to have the views of the Chief Secy to Public Deptt as such before the case can be circulated.

Dev., Fin & Agriculture and Pub & Law may be informed of this. Secy need not be consulted at this stage before Govt.

Pub 2/2/50.

Dev.

Fin & Agr

Public.

E. P. H. a. o. 3044-2/50 A
dated 2-2-50.
(in sealed cover)

Dev No 9575(A) D.I/50
2-2-50

Development Deptt D.I

The notes of the E&P.H and Legal at ff 13-18 above may be perused. A copy of the Govt. note at f. 11. above has been received in this Deptt and the matter has been referred to the D.I.E and the D.A.H. in regard to the admissions into the Polytechnics and the Madras Veterinary College. Their remarks are awaited. The file may be passed on to Food & Agri after perusal.

2/2/50 2/2/50

So far as Fisheries Deptt. are is concerned there are a number of fisheries elementary schools, one High School at Nadapalli and a Fisheries Technological Institute at Tuticorin under the control of that deptt. The fisheries elementary schools are of intended for the benefit of the fisherchildren and are located in places where the fishermen are in a majority. But there are non-fisherchildren also studying in these schools and there are no orders denying or restricting admission to non fisher children in any of the institutions mentioned above. The fisherchildren are however given free education in the fisheries schools. In view of Legal's view on GB 16-17 above no action seems called for in regard to the institutions under the control of the Fisheries Deptt. For orders.

3.2.50

Dev No E/ 2/2/50 b/325 F

3.2.50

Dev No 3643 DI/50

(19)

I see it is legal but to constitute permits is to make special provisions for backward weaker sections of the people, which would presumably mean Tribal people, Harijans etc. whether to present communal f.o.s which allocate distl. proportions for each community and operate to restrict the number of candidates from the communities where the number of applicants from that community exceeds the quota, can be held to be ultra vires and spirit of the law is a matter of grave doubt. One only way in which it can be done is to define the Scheduled Castes, Tribes, backward classes, Muslims, Xians, and if so considered, other non-brahmin Hindus, as 'weaker sections' leaving the quota for the 'Stronger sections on a residuary basis after the definite allocation.

Dev Deptt No. No 9575(A) D.I/50-1
6-2-50.

Qs
5.2.50.

(In Sealed cover)

THIRD ASSISTANT SECRETARY TO GOVERNMENT
8537 M/50
6 FEB 1950
FOOD AND AGRICULTURE DEPARTMENT

8537 M/50
7.2.50.

CW 03012 M/50

Food Agri Deptt.

The Pub. Deptt U.O note on p 11 above and the notes of E&P.H, Legal and Dev. Deptt. thereon may be perused. A copy of the U.O. note on p 11 above has been received in this Deptt. for action in regard to the admission of students into the Agrl. Colleges at Coimbatore and Bapatla. It has been noted in that file that as this is a general question of policy and as much as the rules for admission into Agrl. Colleges are more or less uniform with the rules for the Govt. Professional Colleges in the matter of communal and population basis, it is for Legal and Constitutional Pandits to say

whether the existing rules do in fact constitute a denial under Sec. 29 (1) of the Constitution. The matter can only be taken up in the Supreme Court.

I have therefore connected file has been sent to E & P. H. U.O with this Deptt. U.O. No. 3012 M/50-1 dt 6.2.50.

2. At present the seats available for students from within this Province have been distributed among the various dts. on a population basis. Subject to this, the communal proportion ~~for~~ fixed for appointment in Public Services is observed as far as possible. In view of the Legal Deptt's views in their notes on pp 16-17 above, there seems to be nothing illegal in continuing the existing rules regarding admission of students into the Agrl. Colleges. For orders.

The case may be passed on to Pub(Sep) Deptt.

[This Deptt. file referred to at 'Z' above is linked below]

7.2.50

9.2.50

I has been received back from Supreme Court. 20 8/2/50

Published 9/2

D.S. D.S. / Pub(Sep) Deptt.

10.2.50

Pub(~~Sep~~ Sepn) Deptt. Sealed Covers Clerk

Public (Separation. B) Deptt.

(Previous note of this deptt is at p 17 ante). NAU0.8537M/50-1

The further notes of E to P.H. Rd and Food and 11-2-50

Agrl. Deptt ~~at the top of~~ item p 17 ante may be perused. W.I.T. E to P.H note at p 18 ante the file may be passed on to Pub (Ser). for necessary action.

13.2.50. 13.2.50. Pub(Ser).

in abr made 3.2.50

ASSISTANT SECRETARY 157 11 FEB 1950 PUBLIC SERVICES DEPARTMENT

CHIEF SECRETARIAT ASSISTANT SECRETARY TO GOVERNMENT Pub. (A) 597 10/2/50.

Public (Services) Deptt

The file has been sent to this Deptt. with reference to 'A' on page 18 ante. The question whether the existing rule of communal allocation of appointments is inconsistent with the provisions of Article 16(2) read with Article 16(4) of the Constitution of India has already been considered in this Deptt. Legal Deptt suggested that it would be safer to address the Govt of India for clarification in the matter. It has however been held in circulation that our communal rule is not in any way inconsistent with Art 16(2). The rule has not therefore been cancelled or amended.

It may be mentioned in this connection that the M.P.S.C. has also raised the same question in connection with the ensuing selections. It is proposed to inform the Commission, in accordance with the decision in para 1 above, that it may continue to advertise notifications as hitherto. The file is in circulation.

In these circumstances, the existing arrangements and rules regarding admission to Govt institutions may continue.

With these remarks the file may be returned to E. P. H.

16.2.50 A.S.I 16/2

A.

16 FEB 1950 11870 A

Pub (Ser A) U.O. No. 597/50-1 16.2.50.

The question dealt with in this file is whether the Govt orders regulating admissions to Government Colleges on communal and linguistic basis should be cancelled in view of equal rights guaranteed by the new

3044/50

constitution. Notes from page 13 ante may be read. The conclusion arrived at is that the existing orders do not contravene the provisions of any of the Articles in the constitution and that they may continue. The file may be circulated to ~~H.Dept. (P.W.)~~ H. dept. (E&L), H. dept. (P.W.) ~~H. dept. (Pub)~~ ~~Works Dept~~, H. dept. (P.H), H. dept. (Agri), H. dept (Indus), Hon'ble Chief Minister and H. E.

Hon. 19/2/50 — 20/2/50 — 27/2/50

S

The point is that the existing arrangements can be defended on the grounds that they are not based only on grounds of religion, race, caste etc and that it is not impossible to designate certain communities as 'weaker' within the meaning of Art. 46 of the Constitution. But the matter will be settled once for all only when it is taken up to the Supreme Court for an authoritative interpretation and there is little doubt somebody or other will do so. Till then it seems the existing arrangements may continue.

27/2/50

Secy)

As the file on communal representations in services has been closed, leaving the interpretation of the constitution to the Court of Law, this file also may be closed

23/2

1-d. T (E&L) — 1-d. C.T

Yes. May be closed. This goes up everytime like King Charles Head.!

3.2

Hon. 17/2/50

C

D

Under (W)

SECRETARY, EDN. AND C.H. DEPT. GOVERNMENT OF MADRAS — 21 FEB 1950

The orders in circulation at the bottom of p 22 ante may be perused. Pub. (Secys), Dev. and Food & Agriculture may see, before the papers are recalled.

B

Hon. 28/2/50 — 27.2.50 — 27/2/50

28/2/50 Pub (Secs) Dev Food & Agr.

G.P.H.(E.O.) 3044-4/50A dated 28.2.50. (in sealed Cover)

Not Secret

ASSISTANT SECRETARY — Mar 1 1950 — 268 — PUBLIC (SLP RATION) DEPARTMENT

Pub (Sel. B) Dept.

[Previous notes on p 20 ante].

The notes and orders in circulation on pages 21. 22 ante may be perused and the file passed on to Development.

1.3.50. — 1.3.50.

Dev - D.I

(This Dept previously noted on pp 15-19 above).

Dev. 16274(A) D.I/50 — 1 MAR 1950 — ASSISTANT SECRETARY TO GOVERNMENT — DEVELOPMENT DEPARTMENT

Pub (Sel. B)

No. 268/50-1. 1/3/50.

The further notes and the orders in circulation at pp 21-22 above may be perused and the file passed on to Food and Agri.

Hon. F. — 1/3/50 — 1.3.50.

2.3.50

Dev 2360 — DS/8 — 3.3.50 — Food & Agr — 3.3.50

Development No. No/16274(A)·D.I/50-1 — 4-3-50. (in sealed Cover)

THIRD ASSISTANT SECRETARY TO GOVERNMENT — No. 15080(A) — MAR 1950 — FOOD AND AGRICULTURE DEPARTMENT

F&A Dept.

To A.S

This Dept. last noted on pp 19-20 above.

1363A

2. The further notes thereon and the orders in circulation at p 22 above may be perused and the file returned to E&P Dept.

F&AUO 15080(A)/50 — D781/50 — 4.3.50.

6/3/50 — 27.3.50 mail 8/3/50 — D.S/8 — E&P.

Edn. (g).

The papers may now be recorded.

1.3.50

13/3/50

G.O. 826 Edn.
13-3-50.

~~18/93/KH/S-1~~