



required to be filled in on account of urgent basis, the proposal is required to be forwarded through the concerned Administrative Department to the General Education Department for approval for filling up the said post on temporary basis. It can thus be seen that a special care is taken by the Government Resolution dated 5.12.1994, wherein a particular post reserved for a particular reserved category, cannot be filled in on account of non-availability of a candidate from that particular category, but on account of certain exigency, the post is required to be filled in.

3. By the impugned circular, the right which is created by substantive provisions of sub section (1) of Section (6) of the said Act of keeping the post vacant for a period of three years, in case of promotion on account of non-availability of a candidate from that category, is being taken away.

4. It can thus be seen that though the substantive provision mandates the post to be kept vacant for about three years and the Government Resolution dated 5.12.1994 permits in case of certain



exigencies, the said post to be filled in only on temporary basis, and that too after the approval of the General Administration Department, the impugned Circular permits the post to be inter-changed on the permanent basis, thereby taking away the substantive right as provided under sub-section (1) of section (6) of the said Act.

5. We, therefore, find that prima facie the Circular whittles down the protection granted under sub-section (1) of section 6 of the said Act and the Government Resolution dated 5.12.1994. We are therefore inclined to stay the said circular.

6. Rule. Rule returnable early. There shall be interim relief in terms of prayer clause (C).

Sd/-

Sd/-

[M. T. JOSHI, J.]

[B. R. GAVAI, J.]

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