# S. Rangaswamy Naik and H.R. Bhagwandas Vs B.R. Ravikanthe Gowda and Others <BR> Sri B.S. Marthurkar and Sri B.Y. Malagatti Vs B.R. Ravikanthe Gowda and Others

**Court:** Karnataka High Court

**Date of Decision:** April 19, 2013

**Hon'ble Judges:** B. Manohar, J.; N. Kumar, J.

**Bench:** Division Bench

**Final Decision:** Dismissed

## Judgement

@JUDGMENTTAG-ORDER

N. Kumar, J.
In all these Writ Petitions the interpretation to be placed to the proviso added to column No. 4 in the Schedule to the

Karnataka State Police Services including Ministerial Services (Recruitment) Rules, 1994 which was inserted by the Karnataka State Police

Services including Ministerial Services (Recruitment) (Amendment) Rules, 2000 is involved. Therefore, they are taken up for consideration

together and disposed of by this order. The petitioners in all these Writ Petitions joined the services of the State as Sub-Inspector of Police on

20.10.1975 and in the year 1979. Subsequently, they were promoted as Inspector of Police in the year 1983-84 and 1989. By an order dated

21.10.1995, these petitioners were placed in independent charge as Deputy Superintendent of Police on a temporary basis under Rule 32 of the

Karnataka Civil Services Rules, 1957 (hereinafter for short referred to as the "KCSRs"). It was issued by the Director General of Police.

Similarly, by yet another order dated 16.6.1997 some of the petitioners were placed in independent charge as Deputy Superintendent of Police.

By an order dated 22.7.1998 passed under sub-rule (3) of Rule 2 of the Karnataka Civil Services (Regulation of Promotion, Pay and Pension)

Rules, 1978, the petitioners who were working under independent charge in the cadre of Deputy Superintendent of Police (Civil) were accorded

retrospective promotion in the cadre of Deputy Superintendent of Police in substantive vacancies and their date of retrospective promotion was

shown in column No. 6 against their names. However, in the order dated 20.6.2002, 15 officers who were working as Deputy Superintendent of

Police (Civil) under Rule 32 of the KCSRs were immediately promoted to the cadre of Deputy Superintendent of Police (Civil) till further orders

and continued in the posts in which they were presently working. After they were so promoted and appointed to the said post, the Government of

Karnataka made the Karnataka State Police Services including Ministerial Services (Recruitment) (Amendment) Rules, 2000 which came into

effect from 16.6.2001. By the said amendment a proviso was inserted after column No. 4 to the Schedule to the Karnataka State Police Services

including Ministerial Services (Recruitment)) Rules, 1994. The proviso stated that all direct recruitment vacancies existing on the date of

commencement of the Karnataka State Police Services including Ministerial Services (Recruitment)) Rules, 1994 and arising thereafter and existing

on 31.12.1998 shall be filled by promotion from the cadre of Police Inspector except the vacancies filled by direct recruitment made in notification

dated 7.1.1993, 14.7.1996 and 15.3.1997. There were in all 91 posts to be filled up by direct recruitees being the share of 33 1/3% out of the

total number of posts namely 274. Only 10 persons were recruited under the aforesaid notifications and 81 posts remained vacant. It is that 81

vacancies which were freezed and converted as the vacancies to be filled by promotees and accordingly these petitioners were promoted to the

said posts. Some of the respondents to the Writ Petitions preferred Application Nos. 6997 and 6999 to 7003/2001 and Application No.

4632/2002 challenging the validity of this amendment.

2. In terms of the aforesaid amendment, a provisional list of Deputy Superintendent of Police was prepared and published on 25.6.2002. In the

said list these petitioners were placed above the direct recruitees, i.e., private respondents herein. The private respondents filed objection to the

said list. On consideration of the said objections, a final list came to be published on 20.12.2007 over-ruling their objections. The said final list

came to be challenged by the private respondents-direct recruitees before the Karnataka Administrative Tribunal in Application No. 149/2008 and

other connected matters.

3. The Tribunal clubbed both the batches of applications, heard all the learned counsel appearing for the parties and by an order dated 26.5.2009

allowed the applications. The Tribunal held that, by the impugned Rules the accrued rights of the applicants are taken away. Though the

appointment of the applicants to the cadre of DSP are saved by the impugned Rules, by freezing all direct recruitment vacancies and treating them

as promotional vacancies, the petitioners who were subsequently promoted to the cadre of DSP have been given deemed dates of eligibility for

promotion to the cadre of DSP much earlier to the date of direct recruitment of the applicants to the cadre of DSP. Retrospectivity of the

impugned Rules is a camouflage for promotion of the petitioners from a back date. The impugned Rules operate viciously against all those DSPs

who were directly recruited between 1994 and 2001. Therefore, the impugned Rules to the extent of its retrospectivity are liable to declared as

illegal and set aside as being violative of Article 16 of the Constitution of India. Therefore, it declared that the impugned Rules are prospective in

nature and operate only from the date of their publication in the official gazette, i.e., 12.6.2001. The impugned seniority list pertaining to the cadre

of Deputy Superintendent of Police published by the Government on 20.12.2007 to the extent it relates to the applicants/private respondents was

set aside. A direction was issued to the authorities to re-draw the seniority list of DSP by placing the direct recruits above the promotees with

reference to the date of their regular appointment/promotion to the cadre of DSP in the light of the observations made in the order.

RIVAL CONTENTIONS

4. Sri D. Pavanesh, the learned counsel appearing for the petitioners assailing the impugned order contended that, as the service conditions of these

applicants are in no way affected by the impugned Rules or their seniority, they have no locus standi to prefer these applications before the

Tribunal. In the first batch of applications filed, only the Government was made a party. None of the petitioners were made parties to the

proceedings. Therefore, the application is not maintainable. Further it was contended that, admittedly these petitioners were placed in independent

charge in the post of Deputy Superintendent of Police under Rule 32 of the KCSRs. As all of them were duly qualified, subsequently they were

given promotion. While giving such promotion, by virtue of the power conferred under Rule 2(3) of the Karnataka State Civil Services (Regulation

of Promotion, Pay and Pension) Rules, 1978 which authorized them to give retrospective promotion, they were all given retrospective promotion.

The said retrospective promotion dates back to the date on which they were placed in independent charge under Rule 32. If that date is taken into

consideration it is anterior to the date on which these direct recruitees were appointed, i.e., 15.3.1997. Therefore, these petitioners are seniors to

the direct recruitees and therefore the seniority list prepared by the authorities was in accordance with law. In fact, when the number of vacancies

earmarked for direct recruitees was not filed up for want of hands, public interest was suffering, the Government came up with the aforesaid

amendment by which all direct recruit vacancies existing on the date of commencement of the Rules of 1994 and arising thereafter and existing on

31.12.1998 were freezed and the same shall be filled up by promotion from the cadre of Police Inspector. Therefore, the State legislature has the

jurisdiction to pass a law, giving promotions retrospectively. As such, the aforesaid Rules are valid. Acting on the said Rules the seniority list is

prepared which is also valid. The Tribunal committed a serious error in holding that the Rules in so far as providing for retrospective promotion as

invalid and it is prospective in nature and consequently setting aside the seniority list is illegal and requires to be set aside.

5. Sri Rajagopal, learned senior counsel, supporting the said argument contended retrospectivity of promotion is permissible in law. Therefore, the

retrospective promotion given as per seniority list is in accordance with law and in particular it is in pursuance of the Rules framed as amended and

therefore he submits the order passed by the Tribunal is erroneous and requires to be set aside. In the earlier proceedings, the Tribunal had

directed that the petitioner ought to have been promoted from 27.1.1996 under Rule 32 in place of V.B. Kittali which order has been confirmed

by the Supreme Court and therefore the seniority of his client is to be calculated from 27.1.1996. If it is so done, the direct recruitees who

recruited subsequent to that date therefore they are juniors to him. In that view of the matter, he submits the orders passed is unsustainable.

6. Professor Sri Raviverma Kumar, the learned senior counsel supporting the impugned order contended that, as a rule no retrospective promotion

is permissible in law. Only in exceptional cases as contained in Rule 2 of the KCS (RPPP) Rules same is permissible. However, it is the date of

entry into the cadre which is the basis and then the length of services in the cadre which should be taken note of in fixing the seniority. A person

who is appointed to officiate as an in charge arrangement drawing a pay scale of the lower cadre is only entitled to charge allowance and therefore

his services during that period cannot be counted to determine the seniority vis-a-vis the direct recruitees. By the impugned Rules all that the

Government is trying to do is to fill up the unfilled vacancies in the stream of direct recruits and therefore the persons who are appointed to fill up

those vacancies after appointment of direct recruitees can never be seniors to them. This aspect has been appreciated by the Tribunal and rightly it

set aside the seniority list and therefore it does not call for any interference.

7. Sri K. Subba Rao, the learned senior counsel, supporting the impugned order contended that, as is clear from the wordings in the proviso which

is inserted by way of an amendment the said proviso cannot affect the recruitment made of direct recruitees. It is only after taking into

consideration the number of posts filled up by direct recruitees it is for the remaining posts this provision is applicable and if the petitioners are

appointed to the said post it is only subsequent to the date of appointment of direct recruitees and they have to be juniors to the direct recruitees

and therefore he submits the order passed by the Tribunal is just and proper and do not call for any interference.

8. Sri S.V. Narasimhan, the learned counsel appearing for some of the direct recruitees, adopted the aforesaid argument and contended that it is

the date of entry into the cadre, in other words the date on which they were born in the cadre is decisive in deciding the seniority and direct

recruitees were born earlier to the promotees and therefore the Tribunal was justified in setting aside the seniority list.

9. Sri N.B. Bhat, the learned counsel appearing for some of the direct recruitees, adopted the aforesaid submissions.

10. Smt. S. Susheela, the learned Government Advocate contended the Government has given effect to the order of the Tribunal and prepared a

seniority list in accordance with the directions issued. That again was the subject matter of challenge before the Tribunal by others in which also the

Tribunal issued some directions and disposed of the matter. In terms of the direction issued again they have prepared one more list dated

28.3.2013 and therefore the Government has acted upon the order of the Tribunal. Therefore, no case for interference with the said order is made

out.

11. In the light of the aforesaid facts and the rival contentions, the points that arise for our consideration are as under:-

(a) Whether the impugned Rules are prospective or retrospective?

(b) Whether the Tribunal was justified in holding it as retrospective and then quashing the same and declaring it has only prospective?

(c) Whether the Tribunal was justified in quashing the seniority list prepared on the basis of the said Rules?

STATUTORY PROVISIONS

12. In order to appreciate this point, first it is necessary to look into the relevant statutory provisions. The Government of Karnataka by virtue of

the power conferred on them under Sub-Section (1) of Section 3 read with Section 8 of the Karnataka State Civil Services Act, 1978 (Karnataka

Act 14 of 1978), made the Karnataka State Police Services including Ministerial Services (Recruitment) Rules, 1994 (for short hereinafter referred

to as the ""1994 Rules""). It provides for Constitution and Strength of Karnataka State Police Services. The schedule to the said 1994 Rules sets out

the Category of posts and scale of pay, the Number of Posts and Method of Recruitment and the Minimum Qualification prescribed for such

posts. Sl. No. 8 of the Schedule to the 1994 Rules deals with the post belonging to the category of Deputy Superintendent of Police. The number

of permanent posts is 205 and the temporary posts is 2.

13. The Government of Karnataka amended the aforesaid Rules by the Karnataka State Police Services including Ministerial Service

(Recruitment) Amendment Rules, 2000 (for short hereinafter referred to as the ""2000 Rules""). In the said 2000 Rules, the Schedule to the 1994

Rules relating to the category of posts of Deputy Superintendent of Police in Column No. 4 was amended by adding the proviso, which reads as

under:

Provided that all direct recruitment vacancies existing on the date of commencement of the Karnataka State Police Services (Recruitment) Rules,

1994 and arising thereafter and existing on 31st December 1998 shall be filled by promotion from the cadre of Police Inspectors except the

vacancies filled by direct recruitment made in Notification No. HD 80 PEG 91 dated 7.01.1993, No. HD 294 PEG 96 dated 14.07.1996 and

No. HD 294 PEG 86 dated 15.03.1997.

14. It is expressly stated that the said proviso shall be deemed always to have been inserted. The effect of the said amendment is the direct

recruitment vacancies existing on the date of commencement of 1994 Rules and arising thereafter and existing on 25th December 1998 were

freezed. They were permitted to be filled up by promotion from the cadre of Police Inspectors. However, it is made clear that the said amendment

would not affect the vacancies filled up by direct recruitment made in the notification dated 07.01.1993, 14.07.1996 and 15.03.1997. In other

words under the aforesaid notifications, vacancies earmarked for direct recruitment was filled up. However, substantial vacancies remained

unfilled. It is in these circumstances, this amendment was brought about to transfer the said vacancies of direct recruitees to the share of

promotees. Therefore, care was taken to see that the direct recruitees, who are already recruited as against the quota of these vacancies are in no

way affected by this amendment in any manner. Thereafter, by notification dated 24.06.2002 draft seniority list was prepared in the cadre of

Deputy Superintendent of Police (Civil). B.S. Marthurkar, Basavaraj Y. Malagatti, Muthuraya, Sri. Rangaswamy Naik and H.R. Bhagwandas are

appointed in the post of Deputy Superintendent (Civil) in independent charge on different dates. The relevant particulars are as hereunder:

15. By an order dated 22nd July 1998, in exercise of the powers conferred by Sub-Rule (3) of Rule 2 of the Karnataka Civil Service (Regulation

of Promotion, Pay and Pension) Rules, 1978 (for short hereinafter referred to as the 1978 Rules), the aforesaid persons, who had been placed on

independent charge in the cadre of Deputy Superintendent of Police (Civil) were accorded retrospective promotion in the cadre of Deputy

Superintendent of Police (Civil) in the substantive vacancies as on the date of retrospective promotion as shown in column 6 against their names. In

the end of the list, it was made clear that the above retrospective promotions are subject to the review of their date of eligibility to be assigned in

the gradation list of Deputy Superintendent of Police (Civil).

16. The applicants before the Tribunal, who are all direct recruitees, were appointed on 15.03.1997. As is clear from the aforesaid particulars

furnished, they entered the cadre of Deputy Superintendent of Police earlier to the date on which the petitioners were retrospectively promoted.

Now by virtue of the aforesaid amendment roughly about 81 posts, which were not filled up by direct recruitment became available to be filled up

by promotion from the cadre of Police Inspectors. As the said vacancies arose between 1994 and 1998, the number of vacancies to be filled up

by promotion from the cadre of Police Inspector got enlarged. These petitioners, who were given retrospective promotion in the quota meant for

them, when they were appointed against the vacancies of direct recruitees, went up the ladder and therefore, they were pushed above the direct

recruitees. It is in this background, the direct recruitees approached the Tribunal not only challenging the amendment but also the seniority list

where before the amendment, when they were above the petitioners were pushed below the petitioners.

17. In this context, it is necessary to look at the provision providing for retrospective promotion. The Apex Court in the case of Ajit Singh Vs.

State of Punjab and Another, and in the case of Income Tax Officer, Alleppey Vs. M.C. Ponnoose and Others, ruled that the appointment of Civil

Servants to office in which statutory functions are exercisable cannot be made with retrospective effect. Retrospective promotions involve payment

of large sums of money to persons, who have not worked in the promotional posts and Offices concerned in the Department of Finance of the

State besides involving retrospective reversions rendering invalid statutory functions discharged by the persons reverted. Moreover, retrospective

promotions precluded the determination of the suitability of the Civil servants to hold the promotional post or Offices and will enable them to

continue in such posts or Offices only on the ground of their liability to promotions resulting in the continuance of even unsuitable civil servants in

promotional posts or Offices to the detriment of public interest. Taking note of the law declared by the Apex Court in the aforesaid judgment, the

Karnataka Legislature enacted the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 (for short hereinafter

referred to as "the 1973 Act"). The said Act provides for prospective promotions of Civil Servants and to regulate the pay, seniority, pension and

other conditions of service of Civil Servants in the State of Karnataka including those that are allotted or deemed to be allotted to serve in

connection with the affairs of the State of Karnataka under or in pursuance of Section 115 of the States Reorganization Act, 1956. Section 3 of

the 1973 Act deals with promotions of Civil Servants which reads as under:

3. Promotions, etc., of civil servants.-

(1) No civil servant shall,-

(a) be entitled to promotion to any post or office with effect from retrospective date, except and to the extent specified in the rules made under this

Act.

(b) only on the ground of his seniority in a seniority list, be promoted to any post or office unless the authority competent to promote determines his

eligibility and promotes him by a written order to officiate in such post or office; and no such civil servant shall, save as provided in section 9, be

entitled to continue in such promoted post or office unless the said authority assesses the work of such civil servant in such post or office and

declares by a written order that he had satisfactorily completed his officiation;

(c) when promoted to officiate in any post or office save as provided in section 9, be entitled to be considered for promotion to the next higher

post or office unless he is declared to have satisfactorily completed his officiation in the first promoted post or office.

(2) In matters not specified in sub-section (1), the provisions contained in sections 4, 5, 6, 7 and 8 shall mutatis mutandis, be applicable.

18. The opening words of the aforesaid Section manifest the intention of the legislature. It declares that no Civil Servant shall be entitled to

promotion to any post or office with effect from a retrospective date, except to the extent specified in the Rules made under this Act. By virtue of

the power conferred under Section 9A read with Clause (a) of Sub-Section (1) of Section 3 of the 1973 Act, the Government of Karnataka has

made the Karnataka State Civil Services (Regularization of Promotion, Pay and Pension) Rules 1978 (for short hereinafter referred to as "the

1978 Rules"). This Rule provides for promotion from a retrospective date. Rule 2 reads as under:

2. Promotion. - Promotion of a civil servant may be made with effect from a retrospective date.-

(1) if his claim for promotion.-

(a) was withheld on account of disciplinary proceedings or criminal prosecution of both pending against him and he is exonerated or acquitted

subsequently, or

(b) was not considered on the ground that he was working in some other department on deputation or otherwise; or

(c) was not considered on the ground that he was wrongly or incorrectly described in the provisional or final inter-State Seniority List or gradation

list; or

(d) was passed over on account of adverse remarks in his Confidential Reports which were expunged subsequently.

(2) If, while operating the gradation list or the provisional inter-State Seniority List or any other inter-State Seniority list not being a final one, he

was not considered for promotion for no justifiable reason; or

(3) It, while being eligible according to his seniority in the list that was in force and otherwise fit for promotion according to Cadre and Recruitment

Rules he had only been placed in independent charge of the post by the Competent Authority and has discharged the duties of the said post:

Provided that if a civil servant on deputation to some other department and placed in independent charge of a post in the parent Department was

prevented from discharging the duties of the post on the ground that his services on deputation are essential in public interest, he shall also be

considered under this sub-rule from the date his junior is considered for promotion.

19. In the instant case, we are concerned with sub-rule (3) of Rule 2 of the 1978 Rules. The said provision makes it clear under what

circumstances a promotion could be from the retrospective date. Under that provision the following conditions are to be satisfied:

(a) The name of the Civil Servant should find a place in the seniority list.

(b) He should be eligible for promotion or otherwise fit for promotion according to the Cadre and Recruitment Rules.

(c) Instead of giving him promotion he shall only be placed in independent charge of the post by the competent authority.

(d) He has discharged the duties of the said post.

If all these conditions are satisfied, the Civil Servant could be granted promotion with effect from a retrospective date.

20. Placing a Civil Servant in independent charge of the post is dealt under Rule 32 of the KCSR Rules. Rule 32 reads as under:

32. Instead of appointing a Government servant to officiate, it is also permissible to appoint him to be in charge of the current duties of a vacant

post. In such a case a "charge allowance" (additional pay) is payable as specified in Rule 68.

Note 1,- A Government servant can be appointed under this Rule to be in-charge of the current duties of a vacant post only if he is eligible to be

promoted to officiate in that post according to the Cadre and Recruitment Rules applicable to that post or if he is holding a post in an equivalent or

higher grade.

[Note 2 - The provisions of this Rule apply also to cases where a Government servant being relieved of his own appointment is appointed to be in

independent charge of a higher appointment as a temporary measure.

3

[Instructions

The following delegation of powers to the Secretaries to the Administrative Departments of the Government is hereby ordered to be given effect to

from 1st November 1977.

[Note 3:- The Authority competent to make incharge arrangements specified in column (1) of the table below, may make incharge arrangements

for vacant posts in respect of subordinate Government servants holding the posts in the scales of pay specified in column (2) thereof to the

maximum duration specified therein.

21. Rule 32 of the KCS Rules provides for appointment of a Government Servant to be in charge of the current duties in the vacant post instead of

appointing such Government Servant to officiate in the said post. If a promotion is given, he should be paid the pay attached to the said

promotional post. However, when he is not granted promotion but only placed to be in charge of current duties of the said post what he would be

entitled is only charge allowance (additional pay) as specified in Rule 68. Instead of promoting such Government Servant to officiate when he is

appointed to be in charge, he discharges only the current duties of the said post. Government of Karnataka has issued instructions explaining the

position of officers in charge of current duties of posts in the matter of exercise of financial powers attached to the post. It reads as under:

The question has been raised ""whether the Officer placed in charge of the current duties of a post either independently or in addition to the duties

of his regular course can exercise the financial powers delegating the regular improvement to the said post?

It is herein clarified that in all such cases, Officers placed incharge of the current duties of a post in the absence of specified directions to the

contrary shall be competent to exercise all administrative and financial powers vested in regular improvement of that post Such an officer should

not convert, modify or overrule the orders already passed by the regular incumbent of the Post, except in an emergency without obtaining the

orders of the next higher authority. Such an officer cannot exercise statutory powers conferred on the Regular incumbent of the posts whether

those powers are derived under an Act or Rules, Regulations or bye-laws made thereunder or under statutory Rules made under the various

articles of the Constitution of India viz., Karnataka Civil Services, Rules, KCS [CCA] Rules etc.

22. Therefore, in law, there is clear distinction between the current duties, administration and financial powers as well as the statutory powers. Only

when a government servant is appointed to officiate to a post, he can discharge all the duties of that vacant post. If he is appointed to be in-charge

of the said vacant post, he can only discharge current duties. As he is not discharging all the duties of the vacant post, he is not paid the pay meant

for the said post. He is paid only charge allowance (additional pay).

23. Note 1 to Rule 32 deals with the qualification of the person to be appointed to be in-charge of the current duties. The first requirement is such

government servant should be eligible to be promoted to officiate in that post according to the Cadre and Recruitment Rules applicable to that

post. Secondly, he must be holding a post in an equivalent or higher grade. In other words, a person to be appointed to be in-charge of the current

duties may come from three streams, (a) A person who is working in a lower grade who is eligible to be promoted to officiate that post, (b) A

person who is holding the post in an equivalent post; (c) A person who is holding a post in the higher cadre.

24. Note 3 to Rule 32 sets out the Authority Competent to make in-charge arrangements, may make in-charge arrangements for vacant posts in

respect of Group-A, B, C and D servants and the period for which in-charge arrangement to be made. There is no provision under Rule 32 to

extend the period of in-charge arrangement after the period stipulated has expired. In other words, the in-charge arrangement comes to an end

with the expiry of the period stipulated in the table. Even after expiry of the said period, if that person is continued in the said post to be in-charge

of the current duties, it has no legal sanction and it conferred no right in him.

25. Rule 32 further makes a distinction between a person appointed to be in-charge of current duties and a person who is appointed to be in

independent charge.

26. Note 2 to Rule 32 deals with the independent charge as opposed to in-charge. The condition precedent for appointment of a person to be in

independent charge is that a Government servant should be relieved of his own appointment, then he can be in independent charge of a higher post

as a temporary measure. The period for which, such independent charge as a temporary measure could be made is only six months as is clear from

the instructions to note-2. However, the column prescribed in the said instructions provides, if a Government Servant is to be continued in

independent charge beyond six months, it has to be done by the Secretary to the Government. If such an order extending the period is not made,

again it has no legal sanction and it confers no right in him.

27. Rule 7 of the Karnataka Civil Service Rules provides where the State Government is satisfied that the operation of these rules causes undue

hardship in any particular case, it may, by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as

it may consider necessary for dealing with any case in a just and equitable manner. Therefore, if the relaxation is to be made, it should be ""in any

particular case"" and ""it has to be by an order dispensing with or relaxing the requirements"". Therefore, if a person who is placed in independent

charge is to be continued beyond six months, it has to be by an order of the State Government. Otherwise, such continuation is impermissible in

law.

CASE LAW

28. The inter se seniority between direct recruits and promotees, the retrospective promotion and preparation of seniority list have been the subject

matter of interpretation by the Apex Court.

29. The Apex Court in the case of K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, , has held as under:

Finally, there is no substance in the contention that the amendment to the Fundamental Rules, whereby the proviso to Rule 2 was deleted, is

beyond the powers of the rule-making authority or the Legislature. The Fundamental Rules and the amendments thereto are issued by the State

Government under the powers delegated to it by the Civil Services (Governors'' Provinces) Delegates Rules, 1926, the Civil Services

(Classification, Control and Appeal) Rules, 1930, and under the proviso to Article 309 of the Constitution. The Fundamental Rules which came

into force with effect from January 1, 1922 were amended earlier by G.O. Ms. No. 128 dated April 29, 1969. By that amendment, a proviso was

added to Rule 2 which reads thus:

Provided that the ruled shall not be modified or replaced to the disadvantage of any person already in service.

By G.O Ms. No. 48 dated February 17, 1983 this proviso was deleted with retrospective effect from February 23, 1979. The contention of the

petitioners is that the proviso which conferred a benefit upon Government servants by protecting their conditions of service, cannot be amended so

as to empower the Government to alter those condition to their prejudice and, in any event, they cannot be amended retrospectively so as to take

away rights which had already accrued to them. The simple answer to this argument is that the amendment of February 17, 1983 to the

Fundamental Rules was made by the Government of Andhra Pradesh in exercise of the powers conferred by the proviso to Article 309 read with

Article 313 of the Constitution. It is well-settled that the service rules can be as much amended, as they can be made, under the proviso to Article

309 and that, the power to amend these rules carries with it the power to amend them retrospectively. The power conferred by the proviso to

Article 309 is of a legislative character and is to be distinguished from an ordinary rule-making power. The power to legislate is of a plenary nature

within the field demarcated by the Constitution and it included the power to legislate retrospectively. Therefore, the amendment made to the

Fundamental Rules in the exercise of power conferred by Article 309, by which the proviso to Rule 2 was deleted retrospectively, was a valid

exercise of legislative power. The rules and amendments made under the proviso to Article 309 can be altered or repealed by the Legislature but

until that is done, the exercise of the power cannot be challenged as lacking in authority. (See B.S. Vadera v. Union of India; Raj Kumar v. Union

of India)

30. A Constitutional Bench of the Apex Court in the case of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, :

16. An argument which found favour with Mufti Bahauddin J., one of the learned judges of the Letters Patent Bench of the High Court, and which

was repeated before us is that the "retrospective" application of the impugned Rules is violative of Arts. 14 and 16 of the Constitution. It is difficult

to appreciate this argument and impossible to accept it. It is wrong to characterize the operation of a service rule as retrospective for the reason

that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered

service before the framing of the rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in

service. The impugned Rules do not recall a promotion already made of reduce a pay scale already granted. They provide for a classification by

prescribing a qualitative standard, the measure of the standard being educational attainment. Where a classification founded on such a

consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the Rule cannot first be assumed to

be retrospective and then be struck down for the reason that is violates the guarantee of equal opportunity by extending its arms over the past. If

rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should

have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is

not the implication of Service Rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well

settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant

acquires a "status" on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional

authority which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally

and though in modern times consensus in matters relating to public services is often attempted to be achieved, consent is not a pre-condition of the

validity of rules of service, the contractual origin of the service notwithstanding.

31. The Apex Court in the case of K. Jagadeesan Vs. Union of India and others, has held as under:

7. In our opinion, no retrospective effect has been given to the said amended rule. It is not argued that the appellant has been reverted from the

post which he occupies on the ground of any lack of any qualification. The only effect is that his chances of promotion or his right to be considered

for promotion to the higher post is adversely affected. This cannot be regarded as retrospective effect being given to the amendment of the rules

carried out by the impugned notification and the challenge to the said notification on that ground must fail.

32. The Constitution Bench of the Apex Court in the case of The Direct Recruit Class-II Engineering Officers'' Association and others Vs. State of

Maharashtra and others, dealing with the quota it has been held as under:

21. It has, however, been rightly suggested on behalf of the appellants that when recruitment is from more than one source, there is no inherent

invalidity in introducing quota system, but as was observed in Subraman case, the unreasonable implementation of such a rule may attract the frown

of the equality clause. Further, if a rule fixing the ratio for recruitment from different sources is framed, it is meant to be respected and not violated

at the whims of the authority. It ought to be strictly followed and not arbitrarily ignored. This, of course, may not prevent the government from

making slight deviations to meet the exigencies. If it is discovered that the rule has been rendered impracticable, it should be promptly substituted

by an appropriate rule accordingly to the situation. The question, however, is as to what is the conclusion if the quota rules is not followed at all

continuously for a number of years, after it becomes impossible to adhere to the same. Admittedly in the present cases direct recruits were not

available in adequate number for appointment, and appropriate candidates in the subordinate rank capable of efficiently discharging the duties of

Deputy Engineers were waiting in their queue. The development work of the State peremptorily required experienced and efficient hands. In the

situation the State Government took a decision to fill up the vacancies by promotion in excess of the quota, but only after subjecting the officers to

the test prescribed by the rules. All the eligible candidates were considered and the opinion of the Public Service Commission was obtained. The

appointments were not limited to a particular period and as a matter of fact continued till 1970 when the fresh rules were introduced.

23. Mr. Tarkunde is right that the rules fixing the quota of the appointees from two sources are meant to be followed. But if it becomes impractical

to act upon it, it is no use insisting that the authorities must continue to give effect to it. There is no sense in asking the performance of something

which has become impossible. Of course, the government, before departing from the rule, must make every effort to respect it, and only when it

ceases to be feasible to enforce it, that it has to be ignored. Mr. Tarkunde is right when he says that in such a situation the rule should be

appropriately amended, so that the scope for unnecessary controversy is eliminated. But, merely for the reason that this step is not taken promptly,

the quota rule, the performance of which has been rendered impossible, cannot be treated to continue as operative and binding. The unavoidable

situation brings about its natural demise, and there is no meaning in pretending that it is still vibrant with life. In such a situation if appointments from

one source are made in excess of the quota, but in a regular manner and after following the prescribed procedure, there is no reason to push down

the appointees below the recruits from the other source who. are inducted in the Service subsequently. The later appointees may have been young

students still prosecuting their studies when the appointments from the other source take place - and it is claimed on behalf of the respondents that

this is the position with respect to many of the direct recruits in the present case - and, it will be highly inequitable and arbitrary to treat them as

senior. Further, in cases where the rules themselves permit the government to relax the provisions fixing the ratio, the position for the appointees is

still better; and a mere deviation therefrom would raise a presumption in favour of the exercise of the power of relaxation. There would be still a

third consideration relevant in this context: namely, what is the conclusion to be drawn from deliberate continuous refusal to follow an executive

instruction fixing the quota. The inference would be that the executive instruction has ceased to remain operative. In all these cases, the matter

would however be subject to the scrutiny of the court on the ground of mala fide exercise of power. All the three circumstances mentioned above

which are capable of neutralizing the rigours of the quota rule are present in the cases before us, and the principle of seniority being dependent on

continuous officiation cannot be held to have been defeated by reason of the ratio fixed by the 1960 Rules.

47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not

accordingly to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not accordingly to rules and made as a stop-gap

arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly

till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules

are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation.

In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible

that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following

the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source

inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such

relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the

executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the

single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than

scrutinized for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

33. The Apex Court in the case of Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others, while dealing with the stop

gap/adhoc/temporary service of a person appointed by transfer or by promotion and how seniority should be computed has held as under:

55. It is true that while Rule 15 permits probation to be commenced from an anterior date in the case of one ''appointed'' temporarily there is no

such clause in Rule 25 dealing with ''promotions''. That does not, in our opinion, mean that in respect of a person temporarily promoted or a

person temporarily appointed by transfer, probation can not be commenced from an anterior date. In our view, this power is implicit in Rule 23

itself when it speaks of a probationer being appointed as a member of a service with retrospective effect. Once a promotee or recruitee by transfer

is appointed on probation. It is permissible to appoint him under Rule 23 as a member of the service from an anterior date when a substantive

vacancy existed in his quota. It is then obvious that such power to make a retrospective appointment of a member implies a power to commence

probation of such person from an anterior date when a clear vacancy existed in his quota. We cannot imagine that the Rule-making authority did

not visualize delays in regularization of ad hoe or stop-gap or temporary service rendered by promotees or those recruited by transfer and kept in

mind delay only incases of appointments under Rule 14.

56. Thus, the stop-gap/ad hoe or temporary service of a person appointed by transfer as an Assistant Engineer or by promotion as an Assistant

Executive Engineer can be regularized through PSC/DPC from an anterior date in a clear vacancy in his quota, if he is eligible and found suitable

for such transfer or promotion, as the case may be and his seniority will count from the date.

Should the service proposed to be regularized have been rendered according to rules?

77. Summarising the position, we therefore hold that the ad hoe/stop gap service of the promotees cannot be treated as non-est merely because

P.S.C. was not consulted in respect of continuance of the ad hoc/stop gap service beyond six months. Such service is capable of being regularized

under Rule 23 of the J and K (CCA) Rules, 1956 and rectified with retrospective effect from the date of occurrence of a clear vacancy in the

promotion quota, subject to eligibility, fitness and other relevant factors. There is no "rota" rule applicable. The "auota" rule has not broken down.

Excess promotees occupying direct recruitment posts have to be pushed down and adjusted in later vacancies within their quota after due

regularization. Such service out side promotee quota cannot count for seniority. Service of promotees which is regularized with retrospective effect

from date of vacancies within quota counts for seniority. However, any part of such ad hoc/or stop gap or even regular service rendered while

occupying the direct recruitment quota cannot be counted. Seniority of promotees or transferees is to be fixed as per quota and from date of

commencement of probation or regular appointment as stated above. Seniority of direct recruit is from the date of substantive appointment.

Seniority has to be worked out between direct recruits or promotees for each year. We decide point 3 accordingly.

Point 4:

Direct recruits cannot claim appointment from date of vacancy in quota before their selection:

34. The Constitution Bench of Apex Court in the case of Prafulla Kumar Das and Others Vs. State of Orissa and Others,

33. Under Article 309 of the Constitution of India, it is open to the Governor of the State to make rules regulating the recruitment, and the

conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the legislature. As

has been rightly pointed out by the Court in Nityananda Kar case, the legislature, or the Governor of the State, as the case may be, may, in its

discretion, bestow or divest a right of seniority. This is essentially a matter of policy, and the question of a vested right would not arise, as the State

may alter or deny any such ostensible right, even by way of retrospective effect, if it so chooses (sic) in public interest.

35. In the case of S.S. Bola and others Vs. B.D. Sardana and others, while dealing with the nature of rights of an employee in respect of the

promotion, the Apex Court has held as under:

188. Thus in Raman Lal the Amending Act had the effect of depriving the ex-municipal employees of their status of membership under the State

without any option to them which was considered to be unconstitutional In the case in hand the impugned Act and its retrospectivity merely alters

the seniority within a cadre and such an alteration neither contravenes any constitutional provision nor does it affect any right under Part III of the

Constitution. In this view of the mater the aforesaid decision is of no assistance to the direct recruit petitioners who have assailed the legality of the

Act. In K.C. Arora case the amended provisions being given retrospective effect were found to have affected the accrued fundamental rights of the

parties. Following the earlier judgment of this Court in State of Gujarat v. Raman Lal Keshav Lal Soni this Court held that the Government cannot

take away the accrued rights of the petitioners and the appellants, by making amendment to the rules with retrospective effect. In the aforesaid

case under the rules in force the seniority had been determined by counting the period of military service. Under the amended rules by giving it

retrospective effect the aforesaid benefit had been taken away. This Court, therefore, held that in view of the rules in force and the assurances

given by the Government the accrued right of considering the military service towards seniority cannot be retrospectively taken away. In the case in

hand no such accrued rights of the direct recruits are being taken away by the Act On the other hand on account of gross iniquitous situation the

legislature has enacted an act in consonance with the normal service jurisprudence of determining the seniority on the basis of continuous length of

service in a cadre. The aforesaid decision, therefore, cannot be said to be a decision in support of the contention that legislature has usurped the

judicial power nor is it a decision in support of the contention that by the impugned Act any fundamental rights of the direct recruits have been

infringed. In the case of T.R. Kapur v. State of Haryana when the validity of the Punjab Service of Engineers, Class I, PWD (Irrigation Branch)

Rules, 1964 as amended by the State of Haryana by notification dated 22-6-1984 came up for consideration this Court found that the said rule is

violative of Section 82(6) of the Punjab Reorganisation Act, 1966, as the prior approval of the Central Government had not been taken. On the

question of power of the Governor to frame rules under proviso to Article 309 and to give it retrospective effect the Court held that though the

rules can be amended retrospectively but any benefits accrued under existing rule cannot be taken away. In other words a promotion which has

already been held in accordance with the rules in force cannot be nullified by the amended rules by fixing an additional qualification for promotion.

By the impugned Act the Haryana Legislature has not purported to nullify any promotion already made under the 1961 Rules which was in force

prior to being repealed by the impugned Act. Even Mr. Tulsi, appearing for the State, submitted that no promotion already made under the pre-

amended rules will be altered in any manner by giving effect to the provisions of the Act. In this view of the matter, the aforesaid decision is also of

no assistance to the direct recruits. In Madan Mohan Pathak v. Union of India a seven-judge. Bench of this Court considered the question of the

power of the legislature of annual a judgment of the court giving effect to rights of a party. There have been some observations in the aforesaid case

which may support the contention of Mr. Sachar inasmuch as this Court observed that the rights which had passed into those embodied in a

judgment and became the basis of a mandamus from the High Court could not be taken away in an indirect fashion. The main plank of Mr.

Sachar"s argument is that after the judgment of this Court in Sehgal and Chopra interpreting the rules of seniority between the direct recruits and

promotees, the direction of this Court to re-draw the seniority list according to the principle laid down by this Court had been taken away by the

enactment of the legislature and thus there has been an inroad of the legislature into the judicial sphere. But a deeper scrutiny of the decision of this

Court in Pathak case will not sustain the arguments advanced by Mr. Sachar. In Pathak case in accordance with Regulation 58 a settlement had

been arrived at for payment of bonus to Class III and Class IV employees on 24-1-1974 and the said settlement had been approved by the

Central Government. Notwithstanding the settlement when the Life Insurance Corporation did not pay bonus, the employees approached the

Calcutta High Court. The High Court, therefore, issued a writ of mandamus on 21-5-1976 calling upon the Life Insurance Corporation to pay the

bonus in accordance with the settlement in question. Against the judgment of the learned Single Judge a letters patent appeal was preferred and

while the said appeal was pending, the Life Insurance Corporation (Modification of Settlement) Act, 1976, came into force on 29-5-1976 and

Section 3 thereof purported to nullify the judgment of the Calcutta High Court by the non obstante clause in relation to provisions of the Industrial

Disputes Act. In other words the Calcutta High Court while issuing mandamus had held that the settlement has a binding effect once approved by

the Central Government and the same cannot be rescinded. But the impugned Act purported to nullify the rights of the employees working under

Class III and Class IV to get annual cash bonus in terms of such settlement. It is in this context in the majority judgment of the Court delivered by

Bhagwati, J., it was observed: (SCC Headnote. p. 58)

(T)he judgment given by the Calcutta High Court.... Is not merely a declaratory judgment holding an impost or tax to be invalid so that a validation

statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. It is a

judgment giving effect to the right of the petitioners to annual cash bonus under the settlement by issuing a writ of mandamus directing the LIC to

pay the amount (of such bonus). If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the

remedy may be by way of appeal or review but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the

LIC. Therefore, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the LIC is bound to obey the writ of

mandamus issued by the Calcutta High Court and pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to the Class III and Class

IV employees.

197. A similar view has been expressed by this Court in the case of State of Orissa v. Gopal Chandra Rath. In view of the aforesaid legal position

when the impugned Act is examined the conclusion is irresistible that the said Act cannot be said to be an Act of usurpation of the judicial power of

the Haryana Legislature, but on the other hand it is a valid piece of legislation enacted by the State Legislature over which they had legislative

competence under Entry 41 of List II of the seventh Schedule and by giving the enactment retrospective effect the earlier judgments of this Court in

Sehgal and Chopra have become ineffective. But since this does not tantamount to a mere declaration invalidity of an earlier judgment nor does it

amount to an encroachment by the legislature into the judicial sphere the Court will not be justified in holding the same to be invalid. Needless to

mention that the impugned Act has neither been challenged on the ground of lack of legislative competence nor has it been established to have

contravened any provisions of Part III of the Constitution. Consequently Mr. Sachar"s contention has to be rejected and the Act has to be

declared intravires. Necessarily, therefore the seniority list drawn up on different dates in accordance with the earlier Rules of 1961 will have to be

annulled and fresh seniority list has to be drawn up in accordance with the provisions of the Act since the Act has been given retrospective effect

with effect from 1-11-1966. In may, however, be reiterated that any promotion already made on the basis of the seniority list drawn up in

accordance with the Recruitment Rules of 1961 will not be altered in any manner.

200. Thus to have a particular position in the seniority list within a cadre can neither be said to be accrued or vested right of a government servant

and losing some places in the seniority list within the cadre does not amount to reduction in rank even though the future chances of promotion get

delayed thereby. It was urged by Mr. Sachar and Mr. Mahabir Singh appearing for the direct recruits that the effect of redetermination of the

seniority in accordance with the provisions of the Act is not only that the direct recruits lose a few places of seniority in the rank of Executive

Engineer but their future chances of promotion are greatly jeopardized and that right having been taken away the Act must be held to be invalid. It

is difficult to accept this contention since chances of promotion of a government servant are not a condition of service. In the case of State of

Maharashtra v. Chandrakant Anant Kulkarni this Court held: (SCC p. 141, para 16)

16. Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount

to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not.

205. In the aforesaid premises, it must be held that the direct recruits did not have a vested right nor had nay right accrued in their favour in the

matter of getting a particular position in the seniority list of Executive Engineers under the pre-amended Rules which is said to have been taken

away by the Act since such a right is neither a vested right of an employee nor can it be said to be an accrued right. Thus there is no bar for the

legislature to amend the law in consequence of which the inter se position in the rank of Executive Engineer might get altered. Consequently, we

see no invalidity in the enactment of the Haryana Service of Engineers, Class I, Public Works Department (Buildings and Roads Branch), (Public

Health Branch) and (Irrigation Branch) Respectively Act, 1995. Though the Act in question is a valid piece of legislation but it is difficult to sustain

Section 25 of the Act in toto since a plain reading of the said provision does not make out any meaning. Section 25 of the Act is quoted

hereinbelow in extenso:

25. The Haryana Service of Engineers, Class I, Public Works Department (Buildings and Roads Branch), (Public Health Branch) and (Irrigation

Branch) Respectively Ordinance, 1995 (Haryana Ordinance No. 6 of 1995), is hereby repealed. The Punjab Service of Engineers, Class I, Public

Works Department (Buildings and Roads Branch) Rules, 1960, the Punjab Service of Engineers, Class I, Public Works Department (Public

Health Branch) Rules 1961, the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964, in their

application to the State of Haryana, are also hereby repealed to the extent that these rules shall continue to apply to the persons who were

members of the Service before 1st day of November, 1966;

Provided that such repeal shall not affect-

(a) any penalty or punishment imposed as a result of disciplinary proceedings

(b) any disciplinary action or proceedings initiated or pending under the rules so repealed;

(c) any relaxation in qualifications granted to any member of the service under the rules so repealed:

(d) the benefits accrued to the persons who have retired from service during a period commencing from the 1st day of November, 1966 and

ending with the date of promulgation of the Haryana Service of Engineers, Class I, Public Works Department (Buildings and Roads Branch),

(Public Health Branch) and (Irrigation Branch) Respectively Ordinance, 1995.

and the Punjab Service of Engineers, Class I, Public Works Department (Buildings and Roads Branch) Rules, 1960, the Punjab Service of

Engineers, Class I, Public Works Department (Punjab Health Branch) Rules, 1961 and the Punjab Service of Engineers, Class I, Works

Department (Irrigation Branch) Rules, 1964, shall continue to be in force as if the same had not been repealed.

36. The Hon''ble Supreme Court in the case of K. Narayanan and others Vs. State of Karnataka and others, has held as under:

5. Demarcation of cadres or gradation in the same cadre on higher and lower qualification is a common phenomenon for fixing hierarchy in

services. It is a valid basis of classification as held by this Court in State of Mysore and Another Vs. P. Narasing Rao, , The Union of India (UOI)

and Others Vs. Dr. (Mrs.) S.B. Kohli and Another, , The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , P. Murugesan

and Others Vs. State of Tamil Nadu and Others, . Engineering services throughout the country, normally, maintain distinction between Junior and

Assistant Engineer on diploma and degree. It existed in the State of Karnataka right from the day the rules were framed. It has been done away

with on assumption by the Cabinet that some of the duties performed by the two were common. The Tribunal did not agree with it, and in our

opinion rightly. But that along is not sufficient to strike down the rule. A policy decision taken by the Government is not liable to interference, unless

the Court is satisfied that the rule making authority has acted arbitrarily or in violation of the fundamental right, guaranteed under Arts. 14 and 16.

appointment by transfer in the same service or from the different cadre or service but equal in rank and status is well known. But transfer from

lower to higher cadre not by promotion but direct appointment only because the incumbent became eligible without any selection, test or criteria

may not be in consonance with service discipline. What the rules contemplate is that once a junior engineer acquires a degree qualification the he

automatically should be deemed to have become an Assistant Engineer. An employee occupying a higher post in different cadre may on

regularization be entitled to claim his seniority from the date he was holding the post but giving a higher post in different cadre in which the

employee has never worked either as officiating or temporary or even ad hoc because the employee became eligible earlier would be violative of

the right of equality. The methodology adopted in the rules by transferring such a person and placing him in the category of direct recruits from the

date of acquiring the degree the Government in our opinion violated the basic norms of appointment and recruitment to any particular service. The

Government may appoint all the Junior Engineers en bloc after framing of the rule and place them below all those who were working as Assistant

Engineers on that date but they cannot be so appointed as to get precedence over these who are working from before. It would result in artificially

making unequals as equals. Any person entering the service can justly feel secure of equality in continuance, promotion etc. Any executive action

violating it cannot be upheld. Seniority is an incident of service which cannot be eroded or curtailed by a rule which operates discriminately. The

purpose of opening evening classes and permitting diploma holders to study was to improve efficiency in service and provide better service

conditions. When rules were framed and provision for appointment by transfer was made both these objectives were achieved. But operation of

the rule with retrospective effect has no nexus with either except that it may result in undue benefit to one class of employees over the other. The

impugned rules having been framed in 1985 with effect from 1976 result in entry of diploma holders as Assistant Engineers only because they

became qualified as against those who entered in service before or after 1976 by competitive process. Devi Prasad and ors Vs. Government of

Andhra Pradesh and ors, was upheld by this Court because it was found, "as reasonable and in the circumstances fair." The dispute was between

non graduate diploma holders working as supervisor etc., and graduates working as Junior Engineer. Since the Court found that there was

functional parity between Supervisors and Junior Engineers the rule framed by the Government giving weightage of four years to Supervisors to

make them eligible for appointment as Assistant Engineer was not invalid. But there can be no functional parity between employees of two different

cadres. It would be too dangerous to accept such assumption. In R.N. Nanjundappa Vs. T. Thimmiah and Another, this Court struck down a rule

for violation of Art. 14 as it had attempted to by pass the regular method of recruitment by competitive examination or by selection or by

promotion and provided for regularization of a Government servant working on deputation as deemed to have been appointed. In State of Andhra

Pradesh and another Vs. K.S. Muralidhar and others, the temporary supervisor who had succeeded before this Court in Devi Prasad"s case

claimed seniority from the date of academic qualification. It was repelled and it was held that it could be from the date of appointment only.

6. Art. 309 of the Constitution empowers appropriate legislature to frame rules to regulate recruitment to public services and the post.

"Recruitment" according to dictionary means "enlist". It is comprehensive term and includes any method provided for inducting a person in public

service. Appointment, selection, promotion, deputation are all well known methods of recruitment. Even appointment by transfer is not unknown.

But any rule framed it subject to other provisions of the Constitution. Therefore is has to be tested on rule of equality. Transfer is normally resorted

in same cadre. But when it is made in a different and higher cadre is must not be violative of constitutional guarantee and the rule of fairness.

Providing for appointment of a diploma holder from the cadre of Junior Engineer to Assistant Engineer from back date without any test or selection

on eligibility only does not sound reasonable and fair. Why was it done is apparent from the following notings by the Secretary.

The most important issue was regarding the date of transfer of the Junior Engineer acquiring graduate qualifications, the weightage of past service

had to be taken into consideration. In the proposals submitted to the cabinet this crucial aspect was not outlined specifically and the impression that

was created was that the transfer would take place with prospective effect. In such an event the weightage of previous service would have to be

confined only up to date of graduation and this would not have been of any advantage to most of the Junior Engineers who have acquired the

degree qualification several years ago. Even if the weightage of past service after graduation and up to the date of appointment as Junior Engineers

was given the transferees would not have gained any significant advantage in the matter of notional seniority. The Karnataka Graduate Engineers

have strongly represented on this issue and have urged that their transfer to the Assistant Engineer''s cadre should be with retrospective i.e., from

the date they have acquired graduate qualification. In-support of their arguments they have pointed out that even in Andhra Pradesh a similar step

was taken in that the transfer was allowed with retrospective effect. The points raised by the Graduate Engineers Association have been examined

and it is felt that their demand to have to the transfer effected with retrospective effect has some justification in view of the long years of service

rendered by the Junior Engineers before the after acquiring graduate qualification. If this benefit is not given, the amendment to the C and R Rules

allowing for their transfer would be of little use for many of the senior members of the Graduate Engineers Association who have been fighting for

this change for many years. Therefore, taking an overall sympathetic view it is proposed that we may allow for the transfer of Junior Engineers who

acquired graduate qualifications with retrospective effect from the date of acquisition of such qualification subject to the availability of vacancies at

that time in the Assistant Engineer''s cadre. It is seen that the first batch of the in-service Junior Engineers took their graduate degree in 1976 and

hence the Notification amending the rules would have to be effective from 1-1-1976.

Rules were thus bent and made retrospective as a sympathetic consideration as many Junior Engineers who were working since long would not

have derived any benefit otherwise. May be true but if the extension of such benefit impinges upon the constitutional guarantee of equality then it

cannot be upheld. And that does stand disturbed. No further need be said. Nor it is necessary to pronounce on validity of a rule which in the class

of appointment by direct recruitment includes appointment by transfer resulting in entry of one class by competition or selection and other by

acquisition of minimum qualification as the appellants die not challenge the rule of appointment by transfer but confined their claim to its operation

retrospectively.

7. Rules operate prospectively. Retrospectively is exception. Even where the Statutes permits framing of rule with retrospective effect the exercise

of power must not operate discriminate or in violation of any constitutional right so as to affect vested right. The rule making authority should not be

permitted normally to act in the past. The impugned rule made in 1985 permitting opportunity by transfer and making it operative from 1976

subject to availability of vacancy in effect results in appointing a Junior Engineer in 1986 with effect from 1976. Retrospectivity of the rules is a

camouflage for appointment of Junior Engineers from a back date. In our opinion the rule operates viciously against all those Assistant Engineers

who were appointed between 1976 to 1985. In Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, and P.D. Aggarwal and

Others Vs. State of U.P. and Others, it was held by this Court that the President or Governor cannot make such retrospective rules under Art.

309 of the Constitution as contravene Art. 14, 16 or 311 and affect vested right of an employee. Even in B.S. Yadav and Others Vs. State of

Haryana and Others, where the power to frame rules retrospectively was upheld it was observed (para 76 of AIR):

Since the Governor exercises a Legislative power under the proviso to ""Art. 309 of the Constitution, it is open to him to give retrospective

operation to the rules made under the provision. But the date from which the rules are made to operate must be shown to bear, either from the face

of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends

over a long period as in this case.

As seen earlier there is no nexus between framing a rule permitting appointment by transfer and making it retrospective with effect from 1976.

Appointing a person to a higher post in a different cadre in which he has never worked is violative of constitutional guarantee of those who are

working in the cadre. It is against basic principle of recruitment to any service. Even in Mohammad Shujat Ali and Others Vs. Union of India

(UOI) and Others, where the Constitution Bench while reiterating that distinction in qualification was valid criteria for determining eligibility for

promotion except where both held the same post and perform same duty did not strike down the rules as the differentiation in same class of

persons was not brought about for the first time but existed from before and the two were treated as distinct and separate class. The retrospective

operation of the impugned rule attempts to disturb a system which has been existing for more than twenty years. And that too without any rationale.

Absence of nexus apart no rule can be made retrospectively to operate unjustly and unfairly against other. In our opinion the retrospective

operation of the rule with effect from 1st January 1976 is discriminatory and violative of Arts. 14 and 16.

37. Yet another Constitution Bench of the Apex Court in the case of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others,

has held as under:

The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is

undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws

are made under a written Constitution, and have to conform to the dos and don''ts of the Constitution; neither prospective nor retrospective laws

can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the

accused or acquired rights of the parties today. The law cannot say twenty years ago the parties had no rights, therefore, the requirements of the

Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today''s rights and not yesterday''s. A Legislature

cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights

accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a

Constitution Bench of this Court in B.S. Yadav and Others Vs. State of Haryana and Others, . Chandrachud, C.J., speaking for the Court, ""Since

the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to given retrospective operation

to the rules made under that provision. But that date from which the rules are made to operate must be shown to bear either from the face of the

rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a

long period as in this case."" Today''s equals cannot be made unequal twenty years ago and we will restore that position by making a law today and

making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law

which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by

being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We

are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional, as it offends Articles 311 and 14

and is arbitrary and unreasonable. We have considered the question whether any provision of the Gujarat Panchayat (Third Amendment) Act,

1978 might be salvaged. We are afraid that the provisions are so intertwined with one another that it is well nigh impossible to consider any life

saving surgery. The whole of the Third Amendment Act must go. In the result the Writ Petitions Nos. 4266-70 are allowed with costs quantified at

Rs. 15,000/-. The directions given by the High Court, which we have confirmed should be complied with before June 30, 1983. In the meanwhile,

the employees of the Panchayats covered by the appeal and the Writ Petitions will receive a sum of Rs. 200/- per month over and above the

emoluments they were receiving before February 1, 1978. This order will be effective from February 1, 1983. The interim order made on

February 20, 1978 will be effective up to January 31, 1983. The amounts paid are to be adjusted later. Ordered accordingly.

38. The Apex Court in the case of Haribans Misra and Others Vs. Railway Board and Others, has held as under:

The Rules must be framed with certain objects in view and must not be arbitrary. The Court is always entitled to examine whether a particular rule

which takes away the vested right of a railway employee or seriously affects him with retrospective effect, has been made to meet the exigencies of

circumstances or has been made arbitrarily without any real objective behind it.

39. In the case of Uttaranchal Forest Rangers" Asson. (Direct Recruit) and Others Vs. State of U.P. and Others, , the Apex Court has held as

under:

37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in

the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in Keshav Chandra Joshi v. Union

of India held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the

previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be

counted from the date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would

not be proper to do injustice to the direct recruits. The rule of quota being a statutory one, it must be strictly implemented and it is impermissible for

the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees

appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise would be illegal, nullifying the force

of the statutory rules and would offend Articles 14 and 16(1) of the Constitution.

38. This Court has consistently held that no retrospective promotion can be granted nor any seniority can be given on retrospective basis from a

date when an employee has not even borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed

validity in the meantime. In State of Bihar v. Akhouri Sachindra Nath this Court observed that: (SCC pp.342-43, para 12)

12. In the instant case, the promotee Respondents 6 to 23 were not borne in the cadre of Assistant Engineer in the Bihar Engineering Service,

Class II at the time when Respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in

the service of Assistant Engineers over Respondents 1 to 5. It is well settled that no person can be promoted with retrospective effect from a date

when he was not borne in the cadre so as to adversely effect others. It is well settled by several decisions of this Court that amongst members of

the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant

Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This

being the position in law Respondents 6 to 23 cannot be made senior to Respondents 1 to 5 by the impugned government orders as they entered

into the said service by promotion after Respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court

quashing the impugned government orders made in Annexures 8, 9 and 10 is unexceptionable.

40. The Apex Court in the case of N. Nagaraja Vs. Vasant K. Gudodagi and others, has held as under:

7. The Tribunal has found that under Kamataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973, no retrospective

promotion is admissible unless the situation comes within the various clauses of R.2. The instant case, according to the Tribunal, was not covered

by R.2 and, therefore, the order of 22nd of December, 1978, giving a retrospective promotion from 27-3-1978 was not justified. Once that

notification goes, Gudodagi being a direct recruit from 7-8-1978 would be entitled to seniority.

8. We have analytically examined the judgment of the Tribunal with reference to the submissions made at the Bar. We have also seen the

provisions of the 1973 Act, referred to above and see no justification to take a view different from what has been taken by the Tribunal From the

sequence of events with reference to the dates, an impression is available to be formed that attempt was made to place Nagaraja above Gudodagi

by making shifting orders between 27-3-1978 and 22-12-1978. Nagaraja was Editor Youth Karnataka even when he was confirmed as Assistant

Director and the Tribunal has recorded that he never worked as Assistant Director. Taking the board aspects of the matter into consideration we

are satisfied that the conclusion reached by the Tribunal cannot be said to be wrong and, therefore, does not call for any interference.

41. Article 309 of the Constitution empowers appropriate legislature to frame rules to regulate recruitment to public services and the post.

''Recruitment'' according to dictionary means ''enlist''. It is a comprehensive term and includes any method provided for inducting a person in public

service. Appointment, selection, promotion, deputation are all well known methods of recruitment. But any rule framed is subject to other

provisions of the Constitution. Therefore it has to be tested on rule of equality. The Rules must be framed with certain objects in view and must not

be arbitrary. The Court is always entitled to examine whether a particular rule which takes away the vested right of an employee or seriously

affects him with retrospective effect, has been made to meet the exigencies of circumstances or has been made arbitrarily without any real objective

behind it. Rules operate prospectively. Retrospective is an exception. The legislature is undoubtedly competent to legislate with retrospective effect

to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform

to the do''s and don''ts of the Constitution; neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The

law must satisfy the requirements of the Constitution. A Legislature cannot legislate today with reference to a situation that obtained twenty years

ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary,

unreasonable and a negation of history. A law which if made today would be plainly invalid as offending constitutional provisions in the context of

the existing situation and cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice

(constitutional) by making retrospective laws. Even where the Statutes permit framing of rule with retrospective effect the exercise of power must

not operate discriminately or in violation of any constitutional right so as to affect vested right. The rule making authority should not be permitted

normally to act in the past. Since the Governor exercises a Legislative power under the proviso to Art. 309 of the Constitution, it is open to him to

give retrospective operation to the rules made under the provision. But the date from which the rules are made to operate must be shown to bear,

either from the face of the rules or by extrinsic evidence, having reasonable nexus with the provisions contained in the rules, especially when the

retrospective effect extends over a long period. It is wrong to characterize the operation of a service rule as retrospective for the reason that it

applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered

service before the framing of the rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in

service.

42. When recruitment is from more than one source, there is no inherent invalidity in introducing quota system. The rule of quota being a statutory

one, it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or

expediency. Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after

following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the

other source inducted in the service at a later date. Once an incumbent is appointed to a post according to rule, his seniority has to be counted

from the date of his appointment and not according to the date of his confirmation. Where the initial appointment is only ad hoc and not according

to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. Excess

promotees occupying direct recruitment posts have to be pushed down and adjusted in later vacancies within their quota after due regularization.

Such service outside promotee quota cannot count for seniority. Service of promotees which is regularized with retrospective effect from date of

vacancies within quota counts for seniority. However, any part of such ad hoc/or stop gap or even regular service rendered while occupying the

direct recruitment quota cannot be counted.

43. Seniority of direct recruit is from the date of substantive appointment. Seniority is an incidence of service which cannot be eroded or curtailed

by a rule which operates discriminatory. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. The

result of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction

otherwise would be illegal, nullifying the force of the statutory rules and would offend Articles 14 and 16(1) of the Constitution. Seniority has to be

worked out between direct recruits or promotees for each year. Thus to have a particular position in the seniority list within a cadre can neither be

said to be accrued or vested right of a government servant and losing some places in the seniority list within the cadre does not amount to reduction

in rank even though the future chances of promotion get delayed thereby. Mere chances of promotion of a government servant are not a condition

of service. The fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be

considered for promotion is a fundamental right but mere chances of promotion are not. Any person entering the service can justly feel secure of

equality in continuance, promotion etc. Any executive action violating it cannot be upheld. But operation of the rule with retrospective effect has no

nexus with either except that it may result in undue benefit to one class of employees over the other. No retrospective promotion or seniority can

be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the

meantime. Promotion outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service

fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that

date and not from the date of his earlier promotion or subsequent confirmation. Therefore no retrospective promotion can be granted nor any

seniority can be given on retrospective basis from a date when an employee has not even borne in the cadre particularly when this would adversely

affect the direct recruits who have been appointed validity in the meantime.

44. By virtue of power conferred by the proviso to Article 309 of the Constitution of India, the Governor of Karnataka made Karnataka

Government Servants (Seniority) Rules, 1957. The said Rules apply to a candidate whose appointment is treated as regularized from any date, his

seniority in the service shall be determined in accordance with the said rules as if he had been appointed regularly as per the rules of recruitment to

the post held by him on that day. Rule 3 of the said Rules declares that where officers are recruited to any service or a class of post by promotion

and by direct recruitment, the officers directly recruited will take precedence over the promoted officers is case where the date of appointment is

the same. Rule 5 of the said Rules provides that the decision regarding the seniority of direct recruits to a service or to a class of post shall be made

by the appointing authority at the time of their first appointment in one of the modes mentioned in the provision. Further, it provides that the

decision once taken shall be final and shall not be open to revision. Rule 2 of the Rules provides that subject to the provision contained in the said

Rules the seniority of a person in a particular cadre of service or class of post shall be determined as mentioned therein. Clause (a) provides that

the Officers appointed substantively in clear vacancies shall be senior to all persons appointed on officiating or any other basis in the same cadre of

service or class of post.

45. A conjoint reading of Section 3 of the 1973 Act, Rule 2(3) of the Rules 1978, Rule 32 of the KCSR, Rule 3 of Rules 1957 and clause (a) of

Rule 2 of KCS (Seniority) Rules, 1957 makes it clear that No Civil Servant shall be entitled to promotion from the retrospective date except and

to the extent specified in the Rules made under the Act. Where ever Civil Servants are recruited to any service or class of post by promotion and

direct recruitment, the Civil Servant directly recruited will take precedence over the promoted officers in case where the date of the appointment is

the same. Civil Servants appointed substantively in clear vacancies shall be seniors to all persons appointed on officiating or any other basis in the

same cadre of service or class of post. Though 1978 Rules provides for promotion of civil service w.e.f. retrospective date, the said Rules being an

exception to the Act, it has to be construed strictly. The sub-Rules (1) and (2) of Rule 2 of 1978 Rules sets out the circumstances under which the

said retrospective effect could be given under the circumstances set out therein. However, when it comes to sub-Rule (3), stringent conditions are

prescribed for giving benefit of retrospective promotion. Firstly, a civil servant must be eligible according to his seniority list that is in force.

Secondly, he must be fit for promotion according to the Cadre and Recruitment Rules. Thirdly, he should have been placed in independent charge

of the post by a Competent Authority. Fourthly, he should have discharged duties in the said post. It has no application to a civil servant placed in-

charge and it applies only to the person who is in independent charge of the post. When the said rule deals with the promotion from retrospective

date, we have to necessarily refer to the statutory provisions dealing with the placing of a civil servant in independent charge and the period for

which he can be so placed. Rule 32 provides for appointment to be in independent charge. It is an appointment as a temporary measure for a

period of six months and it is the Competent Authority alone who can place a Civil servant in independent charge. If he is to be continued beyond

the period of six months, then the period could be extended by an order of the Government. Mere continuation and payment of charge allowance

would not result in continuation. If a person is continued beyond six months without an order being passed to that effect by the State Government,

it has no legal effect. Consequently, he cannot claim any benefit of promotion from the retrospective date. Therefore, a person who is appointed to

a vacant post and placed in independent charge can claim benefit of promotion from the retrospective date for a period of six months or from the

extended period, in accordance with law and nothing beyond.

46. Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made following the

procedure prescribed by the Rules for the appointment, the promotees should not be pushed down below the direct recruitees from the other

service inducted in the service at a later date. However, in order to do justice to the promotees, it would not be proper to do injustice to the direct

recruitees. Excess promotees occupying direct recruitment posts have to be pushed down and adjusted in later vacancies within their quota after

due regularization. The result of pushing down the promotees appointed in excess of the quota may workout hardship, but it is unavoidable. No

retrospective promotion can be given nor any seniority can be given on retrospective basis from a date when an employee has not been born.

ON FACTS

47. In this background, if we look at amendment to 1994 Rules by 2000 Rules and in particular keeping in mind the background of the said

amendment under 1994 Rules, the post of Deputy Superintendent of Police has to be filled up by 33 1/3% by direct recruitment and 66 2/3% by

promotion from the cadre of Police Inspector. The total number of posts in the said cadre is 274. 91 posts are to be filled up by direct recruitment.

As against 91 posts in the notifications issued on 7-1-1993, 14-7-1996 and 15-3-1997, only 10 persons were directly recruited. Therefore, 81

posts remained unfilled. It is in those circumstances, 1994 Rules were amended by introducing the provision to the effect that all direct recruitment

vacancies exist on the date of 1994 rules and arising thereafter and exists on 31st December 1998, shall be filled by promotion from the cadre of

Police Inspector i.e. 81 posts had to be filled by promotion from the cadre of Police Inspector. The date, on which the amendment came into

force, already 10 posts had been filed by direct recruitment. All these 10 persons were appointed substantially in clear vacancies. As the

Department could not fill the remaining 81 vacancies in the quota meant for direct recruitees, the promotees were appointed to the said posts by

way of independent charge. The said posts were filled up by promotion from the cadre of Police Inspector. The said promotion can only be

subsequent to the date of appointment of direct recruitees. Admittedly, those posts were vacant from 1994. Taking advantage of the same, the

seniority list was prepared giving seniority to these petitioners over the direct recruitees, which was totally impermissible in law. As admittedly these

direct recruitees were appointed even prior to the petitioners were retrospectively promoted from the date on which they were placed on

independent charge under Rule 32. Therefore, the Tribunal was justified in setting aside the said seniority list and pushing the petitioners below to

these direct recruitees.

48. However, the Tribunal proceeds on the assumption that if these provisions are given retrospective effect, the petitioners would get benefit and

they would be seniors to the direct recruitees. In the first place, there is no question of those provisions being given retrospective effect vis-a-vis

the direct recruitees. As is clear from the amendment, these provisions shall be deemed always to have been inserted. In other words the proviso is

in existence on the date when 1994 rules came into existence. That by itself would not make it retrospective and give benefit of seniority to the

persons who were appointed as per the said proviso. The said proviso makes it clear that promotion given by virtue of proviso would in no way

effect the vacancies filled by the direct recruitees made under the Notifications dated 7-1-1997, 14-7-1996 and 15-3-1997. Under the said three

notifications, the direct recruitees were appointed to the substantive post. It is only those posts, which remained vacant after they being so

appointed are sought to be filled up. The filling up of the said posts could be done only after the amendment and therefore any persons who were

appointed in pursuance to these amended provisions have to be junior to the persons who were already appointed in substantive posts. The reason

is simple. These posts were not available to the promotees for being filled up within their quota. It became available only after the impugned

amendment. Seniority has to be reckoned from the date of vacancy within the quota. The vacancy arose after the appointment of the direct

recruitees. On the date, when the direct recruitees were born in the cadre, the persons who were given the benefit of retrospective promotion were

not born at all. Subsequent to the birth of the direct recruitees, these petitioners were born in the said cadre. In that view of the matter, the finding

of the Tribunal that if these proviso is held to be retrospective, it would affect the interest of the direct recruitees and therefore, it requires to be

struck down is not correct. The provision as is stands today would in no way affect the direct recruitees. Clause (a) of Rule 2 of 1957 Rules

categorically declares that officers appointed substantively in clear vacancies shall be senior to all persons appointed on officiating or an any other

basis in the same cadre of service or class of post. Therefore, in the 91 posts to be filled up by direct recruitment, 10 persons were directly

recruited during the period 07.01.1993 to 15.03.1997. They were appointed substantively in clear vacancies. It is only in respect of the remaining

81 posts, which were unfilled, rule is amended making provision for filling up the said posts by promotees in the year 2000. It is only after the said

posts became available in 2000, the promotees were filled in the said post. By virtue of the said rule, direct recruitees shall be senior to them. That

is the reason why in the amended rule it was made clear that the filling up of the unfilled vacancies by promotees would not in any way affect the

recruitment made earlier to the said post. The said amendment is in consonance with the aforesaid rules. However, while preparing the seniority

list, these provisions have been ignored. It is the wrong interpretation placed by the State Government, giving benefit to the promotees is the cause

for the dispute. What is required to be done is to place an appropriate interpretation and not to strike down the proviso. Therefore the seniority list

is to be struck down as being contrary to law. In fact, after the order of the Tribunal, the Government has understood the purpose of the provision

in proper perspective and has implemented the order by publishing fresh gradation list. The said seniority list was also the subject matter of the

challenge before the Tribunal by the other applicants and again further directions were given. As per the said directions, yet another seniority list

was prepared. In this seniority list, the direct recruitees are placed above the promotees, which is inconsonance with the amendment and in

accordance with law. In the light of our above discussion, we do not see any justification to interfere with the order of the Tribunal, for the reasons

which we have assigned in this order. Hence, we do not see any merit in these writ petitions. Accordingly, these writ petitions are dismissed.

Parties to bear their own costs.