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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PANKAJ MITHAL; J., S.V.N. BHATTI; J.

CIVIL APPEAL NO. 9041 OF 2019; May 27, 2026

JAGDISH PRASAD AND OTHERS *versus* **P.M. MANOJ KUMAR AND OTHERS**

Service Law – Promotion – Applicable Rules – Date of Vacancy vs. Date of Consideration – Recruitment Rules – Amendment by Substitution – Meaning and Effect - Held that the right to be considered for promotion is governed exclusively by the statutory rules in force at the time the actual consideration for promotion takes place, and not by the rules that existed when the vacancies originally arose - Public servants do not possess a vested right to be considered under the old or repealed rules - Held that the term "substitution" used in amending or subordinate legislation ordinarily has the effect of deleting the old provision and bringing the new provision into existence in its place - The old rule ceases to exist from the text, and subsequent consideration must be done under the newly substituted rules unless the legislature intended otherwise - Where promotions were granted on a purely ad-hoc basis subject to the outcome of a pending litigation, they do not constitute a "completed act" or create a vested right to protection under the repealed rules - Allowing the Civil Appeal, the Supreme Court set aside the High Court's judgment - The Apex Court held that the legal foundation applied by the High Court was incorrect in view of the three-Judge bench decision in *State of Himachal Pradesh v. Raj Kumar (2022)*, which explicitly overruled the *Y.V. Rangaiah* doctrine - Supreme Court ordered that all existing vacancies must be filled strictly in accordance with the 2016 Rules. [Relied on *State of Himachal Pradesh & Others v. Raj Kumar & Others*, 2022 SCC OnLine SC 680; *State of Odisha & Ors. v. Sreepati Ranjan Dash*, 2026 INSC 505; *Gottumukkala Venkata Krishnamraju v. Union of India & Others*, (2019) 17 SCC 590; *Zile Singh v. State of Haryana & Others*, (2004) 8 SCC 1; Paras 20- 30]

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For Intervenor Mr. John Mathew, AOR (argued by) Mr. Sachin Mana, Adv.

J U D G M E N T

S.V.N. BHATTI, J.

1. We have heard Mr. P.C. Das, learned Counsel appearing for the Appellants; Mr. Debajyoti Basu, learned Senior Counsel, Mr. Vikramjeet Banerjee, ASG, for the Respondents; and Mr. John Mathew for the Intervenor.

2. The Appellants assail the Judgment dated 10.08.2016 in WPCT No. 127 of 2016, passed by the High Court at Calcutta, Circuit Bench at Port Blair. The parties to the *lis* are employees of the Union Territory Administration of Andaman & Nicobar ("the Administration").

3. The Appellants, Respondent Nos. 1 to 28, and the Intervenor were born in the cadre of Constables under the Andaman & Nicobar Police Department. Thus, they are brothers with camaraderie. In due course, the Constables were promoted to Head Constables. The service

conditions are governed by the Andaman & Nicobar Police Manual, 1963 ("Police Manual, 1963"). At the entry level as a Constable, they satisfied the minimum educational qualification. A few possess higher qualifications, such as matriculation. On 31.03.2008, the Andaman & Nicobar Administration (Police Department) Group 'C' Post Recruitment Rules, 2008 ("2008 Rules") were notified. On 04.10.2008, the Office of the Director General of Police issued Standing Order No. 9091 ("Standing Order") to promote Head Constables to the post of Assistant Sub Inspector-Executive ("ASI-Executive") who had completed 5 years of service, have a minimum educational qualification of matriculation (10th pass) or its equivalent from a recognized Board/University, and have successfully undergone the prescribed training course for Head Constables (Lower School Course) at any Police Training Institute. Rules 2008 and Standing Order changed the relationship from brothers to cousins. On 28.06.2010, the Administration issued the Andaman & Nicobar Administration (Police Department) Group 'C' Post Recruitment Rules, 2010 ("Rules 2010"), amending the 2008 Rules. On 06.06.2014, the Office of the Director General of Police issued a Circular ("2014 Circular") inviting applications from eligible candidates for promotion to the post of ASI-Executive.

4. The crux of the matter is the percentage of promotional posts under the merit-cum-seniority and seniority-cum-fitness methods. We take a glimpse at the relevant Rules and Standing Orders, and the method of Promotion:

DATE	RULE / REGULATION / STANDING ORDER / MANUAL	PURPOSE
1963	Chapter 5, Andaman and Nicobar Police Manual 1963	Provided the foundational rules for promotions within the Police Administration. It established the preparation of "List B", which governed the promotion from Head Constable to Assistant Sub-Inspector (Executive). Rule 5.4(c): This rule allowed the Director General of Police to make promotions based on outstanding performance without a formal selection process.
02.08.1999	Standing Order No. 5349	A. Issued by the Inspector General of Police, this order governed the preparation of "List B". B. The only requirement for a Head Constable to be promoted to ASI (Executive) was the successful completion of the Police Training College ("PTC") Course
31.03.2008	Andaman and Nicobar Administration (Police Department) Group 'C' Posts Recruitment Rules, 2008.	A. Rules framed under the proviso to Article 309 of the Constitution. Specifies the post of ASI as a selection post and sets the broader method of recruitment to "Promotion failing which by deputation". B. It maintained the 66-2/3% selection track and 33-1/3% non-selection track, but introduced a new mandate requiring a minimum educational qualification of Matriculation (10th standard pass) for the selection pool.
04.10.2008	Standing Order No. 9091	A. Issued by the Director General of Police. This order laid out the examination procedure for the 66-2/3% selection quota created by the 2008 Rules. B. It introduced a 200-mark test comprising a written exam (100 marks), outdoor drill & leadership (30 marks), musketry (20 marks), physical fitness (15 marks), service records (20 marks), and an interview (15 marks).

28.06.2010	2010 Recruitment Rules (Notification No. 7-11/2002-Home)	A. This notification superseded previous recruitment rules. B. Continued the framework of the 2008 rules, retaining the Matriculation requirement and the 66-2/3% selection vs. 33-1/3% seniority-cum-fitness quota bifurcation C. Clarified the primary recruitment channel to “100% by promotion” from amongst Head Constables, instead of “promotion failing which by deputation” as per 2008 rules. B. Preserved the 66-2/3% selection track (Matriculation + test) and 33-1/3% senioritycum-fitness track.
06.06.2014	Circular No. DGP/Estt/Hc to ASI/Prom/2013/3478	This circular called for eligible Head Constables to submit applications for the promotion test under the 2008 Standing Order 9091 and initiate the promotion selection test to fill active vacancies within the 66-2/3% quota
21.03.2016	Amended Recruitment Rules of 2016 (Gazette Notification)	A. Abolished the selection test and dissolved the Matriculation requirement. B. Changed the recruitment method to 100% on a non-selection basis (seniority-cumfitness).

5. Rules 2010 and the 2014 Circular made the cousins adversaries in the long-drawn litigation commenced with the filing of O.A. No. 351/00078/AN/2014 (“O.A. No. 351/2014”) before the Central Administrative Tribunal, Calcutta Bench, Circuit Bench at Port Blair (“Tribunal”). The claim and counter-claim for promotional posts as ASIExecutive, taken up in 2014, continue to date. The narrative is brief but has been rendered a quagmire, much ado about nothing. The adjudication aims to resolve another journey by sea, air, and road from the island to the mainland to settle disputes over promotion from Head Constable to ASIExecutive.

6. Revisiting the case details, we observe that both the admitted and disputed circumstances are consistently outlined in the impugned Orders. A few circumstances are referred to by ensuring brevity.

7. The Appellants entered the service of ‘Constable’ in Group C with the eligible qualification of 8th Standard. The case of the Appellants in O.A. No. 351/2014 is summarised as follows:

A. The 2008 Rules, which introduced a matriculation (10th standard) requirement for promotion to ASI, are unjustified because the department never previously advised them to upgrade their education for promotional prospects.

B. As per the Delhi Police Manual, promotion to ASI is based entirely on 100% seniority-cum-fitness after five years of service and completion of a Police Training Course, without any examination or higher educational requirements.

C. The Competent Authority failed to consult the Union Public Service Commission (“UPSC”) prior to notifying the 2008 Rules, violating Section 2.5 of the general guidelines for framing Recruitment Rules.

D. The 66-2/3% selection quota forced the Appellants to work under junior officers, causing them professional stigma.

E. Since the Appellants’ current pay scale is already higher than the ASI pay scale, promoting them based on seniority would not cause any financial burden to the Administration.

8. The Appellants prayed for the following reliefs:

“8. RELIEF(S) SOUGHT FOR.

A. (I) An order be passed permitting the applicant No.1 to 10 to file the instant original application jointly under Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987, as the cause of action and the nature of relief prayed for is same having common interest in the matter.

(II) An order be passed directing the respondent No.2 to amend the recruitment rule of Assistant Sub-Inspector of Police (Executive) notified on 31/03/2008 by amending schedule -12 of the said recruitment rule to the extent that 100% promotion will be made on the basis of seniority - cumfitness and to expunge the requirement of educational qualification of matriculation or its equivalent for the said post and also to set aside the standing order No.9091 dated 04/10/2008 which was prepared on the basis of the said recruitment rule for conducting examination.

(III) An order be passed setting aside the Circular dated 06/06/2014 for preparation of List-B for promotion to the rank of Assistant Sub-Inspector(Executive) from Head Constable (Executive) by conducting promotional test as the same is unreasonable infringing the right of the applicants.

B. An order be passed directing the respondent authorities to transmit the original records of the case before this Hon'ble court, so that after perusing the same conscionable justice may be rendered to the applicant.

C). Any other relief or reliefs, order or orders, direction or directions as your Honor deem fit and proper.

9. INTERIM ORDER IF ANY PRAYED FOR:

Pending final decision of the application, the applicant seeks the following interim relief.

An interim order be passed restraining the respondent No.3 from giving any effect or further effect to Circular dated 06/06/2014 for preparation of List-B for promotion to the rank of Assistant Sub-Inspector (Executive) from Head Constable (Executive) by conducting promotional test till disposal of the instant Original Application.”

9. On 23.04.2015, the Tribunal allowed O.A. No. 351/2014, quashed the Circular dated 06.06.2014, and directed the Administration to properly frame the Recruitment Rules and undertake promotions. The Tribunal also directed that, until then, the ASI-Executive posts be filled from Head Constables on a seniority-cum-fitness basis. The gist of the findings of the Tribunal is summarised hereunder:

A. When the Appellants were inducted, the minimum educational qualification for Constables was 8th Standard, and not 12th Standard as wrongly claimed by the Administration.

B. Official communications revealed that the Police Department itself had already proposed reverting to a 100% seniority-cum-fitness model in 2011, acknowledging the issues with the 2008 Rules. Since internal deliberations were still ongoing, the Executive's intent remained unclear, making enforcement of the 2008 Rules premature.

C. The Administration provides benefits to its police personnel on a par with those of the Delhi Police. As per the Delhi Police Manual, promotion to ASI is based entirely on 100% seniority-cum-fitness after five years of service and completion of a Police Training Course, without any examination or higher educational requirements. There was no clear reason to deviate from the Delhi Police Manual's 100% promotional model or to restrict promotion of non-matriculate Head Constables.

D. The 2008 and 2010 Recruitment Rules were introduced without proper consultation with the Department of Personnel and Training (“DoPT”), Government of India and the UPSC. Hence, the service rules framed under Article 309 of the Constitution cannot be altered or superseded by administrative instructions without prior consultation with the Competent Authorities.

10. The said decision of the Tribunal resulted in the filing of WPCT No. 235 of 2015 at the instance of the Administration and WPCT No. 241 of 2015 at the instance of Respondent Nos. 1 to 28.

11. On 26.11.2015, both WPCT Nos. 235 of 2015 and 241 of 2015 were ordered, the Tribunal's Order dated 23.04.2015 was set aside, O.A. No. 351/2014 was restored to the file and remanded to the Tribunal for a fresh decision, and the Petitioners in WPCT No. 241 of 2015, i.e., Respondent Nos. 1 to 28, were directed to be added as Respondents to the petition before the Tribunal.

12. During the pendency of the subject O.A. No. 351/2014, the Administration issued the Andaman and Nicobar Police Department Group ‘C’ posts of Assistant Sub-Inspector

(Executive) and Head Constable (Executive) Recruitment (Amendment) Rules, 2016 ("2016 Rules"). The Rules 2016 have the effect of substituting and restoring the position to what it was prior to 31.03.2008.

13. On 19.04.2016, the Tribunal ordered the O.A. No. 351/2014, and the findings are summarised as follows:

A. The ad hoc promotions, particularly those with explicit riders denying seniority, do not confer any permanent rights on the employee once the term lapses. Consequently, the ad-hoc promotees are reverted to the rank of Head Constable, placing them back on par with the original applicants.

B. Any future promotions must be governed by the Rules prevailing when a recruitment notification is issued. Therefore, the newly amended 2016 Rules will govern future promotions.

C. The argument that old rules should apply to old vacancies was rejected because private respondents' ad hoc terms had expired without conferring any legal rights on them. Hence, they were on equal footing with the original applicants and were required to abide by the newly amended 2016 Rules.

D. Since the 2016 Rules fully addressed the changes the Original Applicants sought, the Original Application was dismissed as being infructuous.

14. The Respondent Nos. 1 to 28, aggrieved by the Order of the Tribunal dated 19.04.2016, filed WPCT No. 127 of 2016 before the High Court at Calcutta, Circuit Bench at Port Blair. By the impugned Judgment, the Tribunal's Order dated 19.04.2016 has been set aside. The Appellants, who have been assailing the method and mode of promotion, are assailing the Order dated 10.08.2016. The High Court held that the accrued vacancies must be filled in accordance with the regular Recruitment Rules prevailing when the vacancies accrued, i.e., the old 2010 Rules, which required matriculation for the 66-2/3% quota, rather than the newly amended 2016 Rules. The findings of the High Court in the impugned judgment are summarised as follows:

A. It rejected the claim to regularise the ad hoc appointees because the said appointments were made for a fixed period after the legal proceedings had been initiated.

B. The ad hoc appointments can be made in exigencies, but in this case, they were made after the initiation of proceedings before the Tribunal and were meant to exist only for a specified period, i.e., three months, as per an earlier High Court Order that was never challenged.

C. Vacancies had accrued prior to 2008, between 2008 and 2010, and from 2010 till the framing of the new Rules in 2016, but were not filled until the Original Application was filed.

D. Regarding the applicability of the Rules, the Supreme Court decision in *Marripati Nagaraja and Others v. Government of Andhra Pradesh and Others*¹ was applied, holding that vacancies must be filled in accordance with the rules prevailing when those vacancies accrued. Consequently, candidates' eligibility must also be considered based on those corresponding dates.

E. The Tribunal's direction to apply the 2016 Rules to old vacancies was deemed incorrect and set aside, and thus modified the Tribunal Order and directed the Administration to fill all accumulated vacancies through regular recruitment within a three-month timeframe, using the Rules that prevailed when each specific vacancy arose.

15. Hence, the Civil Appeal at the instance of the Applicants in O.A. No. 351/2014.

¹ (2007) 11 SCC 522

16. Before we proceed further, ancillary or incidental happenings in the matter are also noted. During the pendency of O.A. No. 351/2014, the Office of the Director General of Police, on 13.11.2014, published List 'B' to promote 44 Head Constables to the rank of ASI-Executive on an ad hoc basis initially for six months, which was extended from time to time until the Order dated 16.08.2016 was issued, reverting them to the post of Head Constable. The reversion Order has been the subject of another round of litigation, and the ad hoc promotees' prayer to continue the ad hoc promotion did not result in favourable orders. The Office of the Director General of Police again issued a Circular dated 24.08.2016, calling for applications from eligible candidates for promotion to ASI-Executive in terms of the 2016 Rules.

17. The ad hoc promotee Officers who were reverted participated in the selection process for promotion to ASI-Executive; a few were successful, while a few were not, in the last exercise undertaken by the Administration in 2017. This administrative effort has opened up another controversy for resolution

within the cadre of Head Constables. Sword has been unsheathed in competing fashions, and the parties are contending with utmost tenacity. In the process, the law, precedent and rules are interpreted to suit one's claims. That is why we have prefaced this with the phrase "much ado about nothing."²

18. The Appellants' case and arguments are that this Court's three-Judge bench Judgment in *State of Himachal Pradesh & Others v. Raj Kumar & Others*³ expressly overruled the principle in *Y.V. Rangaiah's*⁴ case, by holding that promotions must be governed strictly by the statutory rules in force at the time selection is initiated, not when the vacancies occurred. Thus, promotions must be governed by the statutory rules in force at the time of selection or at the initiation of the Notification process. Because the 2016 Rules were already notified and in effect, the High Court's Order to revert to the repealed 2010 Rules is legally unsustainable. Since the 2016 Rules have never been challenged, they remain in full statutory force and must therefore be the sole legal basis for all regular promotions. Further, the private Respondents, i.e., the 2017 promotees, cannot claim any "vested rights" or equity to retain their positions.

19. The contesting Respondents argue that the 2016 Rules, which replaced the 2010 Rules to abolish the 66-2/3% selection channel in favour of a 100% non-selection (seniority-cum-fitness) promotion basis, operate prospectively and cannot disturb "past and closed" transactions. The 2014 selection process is a "past and closed" transaction. The Departmental Promotion Committee ("DPC") convened on 12.11.2014, and List-B was published on 13.11.2014, sixteen months before the 2016 amendment took effect. Section 6 of the General Clauses Act, 1897, independently safeguards rights that have accrued and proceedings that have commenced under a repealed or reenacted provision, unless there is a clear and contrary intention in the legislation. Furthermore, under the "consideration-date test", it is contended that a selection process must be governed by the rules in force on the actual date of consideration. Because the DPC met and finalised "List-B" while the 2010 Rules were still in force, subsequent amendments, i.e., the coming into force of the 2016 Rules, cannot be applied "in reverse" to undo consideration that has already been completed. Therefore, the 2016 amendment does not apply to the completed, regular 2014 "List-B" selection process.

20. We have taken note of the submissions and perused the record.

21. As of date, the position is that the prayer of the Appellants in O.A. No. 351/2014 is substantially accepted and answered by the Administration by issuing the 2016 Rules. Since the 2016 Rules came into force, there has been no successful challenge to them. Respondent

² Much Ado about Nothing (William Shakespeare)

³ 2022 SCC OnLine SC 680

⁴ Y.V. Rangaiah and others v. J. Sreenivasa Rao and others, (1983) 3 SCC 284

Nos. 1 to 28 were the ad hoc promotees, and they contend that, notwithstanding the 2016 Rules, promotions made on the basis of merit as per the 2008 Rules shall not be disturbed, and that the Order of reversion is completely illegal and arbitrary.

22. Pursuant to the Circular Notification issued on 24.08.2016, ad hoc promotees participated in the selection for promotion as ASI-Executive. As noted earlier, a few were successful, and a few were not. The successful candidates in the latest promotion exercise do not want their promotions disrupted, and this is yet another complication the Administration has invited.

23. In the above multi-dimensional claims for promotion, after examining the record in detail, the following points arise for consideration:

A. The impugned Judgment directs that the ad hoc promotees be considered, as per the extant Rules, when vacancies have arisen for the posts of ASI-Executive, while relying on *Marripati Nagaraja*.⁵ So, with the amendment by substitution, what would be the applicable Rule for promotion to the post of ASI-Executive?

B. The view in the impugned Judgment is that the arising of vacancies and applicable Rules are contemporaneous as per *Marripati Nagaraja (supra)*. The relevant portion is reproduced here under:

"As regards the applicability of the Rules under which vacancies are to be filled up, we are in conformity with the view already been taken by the Hon'ble Apex Court in the case of Marripati Nagaraja and others Vs. Government of Andhra Pradesh and others, 2007 (11) SCC 522, and as such we direct that all those posts are to be filled in accordance with the provisions of the Rules which are prevailing at the time of accrual of the vacancies and the persons so eligible for consideration on such date"

24. The right to apply the rule in force on the day the vacancy arises has been the view taken in the *Y.V. Rangaiah (supra)*, i.e., the Rule applies as of the date the vacancy arises. A series of decisions, while considering and applying the view in the *Y.V. Rangaiah (supra)*, have produced divergent opinions. A three-Judge Bench of this Court in *Raj Kumar (supra)* considered the case law and examined the principle of *Y.V. Rangaiah (supra)*, which held that vacancies arising prior to the amendment of the Recruitment Rules must be governed by the old Rules. This Court overruled this principle, holding that public servants do not possess a vested right to be considered under the old Rules. Instead, the right to be considered for promotion is governed exclusively by the Rules in force at the time the promotion is considered. The findings of this Court in *Raj Kumar (supra)* are reproduced as follows:

"Analysis

82. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah case must be understood in the context of the rules involved therein.

82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old Rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

82.4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

82.5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases. xxx

⁵ *Marripati Nagaraja and others v. Government of Andhra Pradesh and others*, (2007) 11 SCC 522

84. The decision in *Deepak Agarwal* is a complete departure from the principle in *Rangaiah* inasmuch as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of *Union of India v. Krishna Kumar*. In fact, in *Krishna Kumar* Court held that there is only a “right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion takes place”. xxx

85.1. The statement in *Y.V. Rangaiah* that, “the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules”, does not reflect the correct proposition of law governing services under the Union and the States under Part XIV of the Constitution. It is hereby overruled.”

25. A Division Bench of this Court in *State of Odisha & Ors. v. Sreepati Ranjan Dash*⁶ again had occasion to decide the applicable rule, namely, whether the rule in force on the date of consideration or the rule in vogue when the vacancy arose, and referred to and relied on *Rajkumar & Ors. (supra)*. The findings of this Court in *Sreepati Ranjan (supra)* are summarised as follows:

A. The government, acting as the appointing authority, has the prerogative not to fill vacancies by promotion, especially during a change in cadre or restructuring of posts. In such policy matters, the State cannot be compelled to carry out appointments.

B. There is no universal rule that vacancies must be filled in accordance with the rules that existed on the date the vacancies arose.

C. An employee only has the right to be considered for promotion based on the statutory rules in force on the date the actual consideration for promotion takes place, not retrospectively.

D. There is a difference between an automatic “promotional post” and a “selection post”. For a “selection post”, promotion is not automatic merely based on seniority or ranking in a Gradation List; merit is the primary criterion. Since it is a selection post, the Government is competent to change the selection method for the “selection post”.

E. When new rules supersede old instructions “except as respects things done or omitted to be done,” the protection only applies to completed acts. Merely writing a letter to request the convening of a DPC is not a completed act.

26. In light of the precedents on the point, we are of the view that the basis in the impugned Judgment by referring to *Marripati Nagaraja (supra)* is incorrect and needs to be interfered with and set aside accordingly.

27. The above conclusion does not give quietus to the keenly contested right of the Head Constable cousins for promotions, inasmuch as the thrust of the argument on behalf of Respondent Nos. 1 to 28 is that the Rules 2008 have been notified and the 2014 Circular was issued. The selection process for promotional posts was based on merit and minimum educational qualification. The meritorious and eligible candidates were shortlisted, and the Office of the Director General of Police issued Order Book No. 8726, publishing List ‘B’ to promote 44 Head Constables to the rank of ASIExecutive. Therefore, even with the advent of Rules 2016, their promotion to the post of ASI-Executive cannot be challenged or disturbed. In other words, the promotions made between 31.03.2008 and 21.03.2016 are protected, and the Rules 2016 operate prospectively. To wit, the Rules 2016 are not retrospective, even if it is an amendment by substitution, promotions in their favour are protected.

28. Before we advert to the implication of the word “substituted” used through an amendment, we would refer to the very Promotion Order on which the argument is developed by Respondent Nos. 1 to 28. The Promotion Order dated 13.11.2014 reads as follows:

“On the recommendation of the Departmental Promotion Committee held on 12.11.2014, the following. Head Constable are promoted to the rank of Assistant SubInspector (Executive) on ad-hoc basis in the pay band

⁶ 2026 INSC 505

Rs.5200-20,200 + Grade pay of Rs.2800 with immediate effect, for a period of six months. This promotion being purely ad-hoc, they can be reverted to their substantive rank of Head constable at any time and will not have any claim or right to seniority in the rank of Assistant Sub-Inspector.

xxx

The above promotions are subject to the outcome of OA No. 351/00078/AN/2014 (Shri Jagdish Prasad and Others Vs. Union of India & others)."

(emphasis supplied)

29. Therefore, the reading of the ad hoc Order of promotion as ASIExecutive does not permit the conclusion that the promotions in favour of Respondent Nos. 1 to 28 either became final or create a vested right in them. Hence, it cannot be treated as a "completed act". The Administration, keeping in view the pendency of O.A. No. 351/2014, issued an ad hoc promotion Order, making it subject to the outcome of that case. This raises the question of the outcome of O.A. No. 351/2014. To appreciate the analysis, we will very briefly recap the Appellants' journey since the filing of O.A. No. 351/2014. On 23.04.2015, O.A. No. 351/2014 was allowed in the terms already noted. Consequently, the Appellants' prayer was accepted, but the Order dated 23.04.2015 was intervened by the High Court through the Order dated 29.06.2015 in WPCT Nos. 235 of 2015 and 241 of 2015, which again relegated the Appellants to the position they held at the time of filing of O.A. No. 351/2014. In the interregnum, on 21.03.2016, the Administration accepted the Appellants' prayers in all respects and has substantially made the prayer in O.A. No. 351/2014 no longer subsisting for consideration. In this background, in our view, the Tribunal was correct in disposing of O.A. No. 351/2014, as indicated above. It is fairly well settled by a catena of decisions of this Court that the word "substituted" used in amending legislation or subordinate legislation is to be construed in a particular manner. For emphasis, we refer to the following judgments: Gottumukkala Venkata Krishnamraju v. Union of India & Others⁷:

"18. Ordinarily wherever the word "substitute" or "substitution" is used by the legislature, it has the effect of deleting the old provision and make the new provision operative. The process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an "amendment" having a prospective effect. Therefore, we do not think that it is a universal rule that the word "substitution" necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. However, the aforesaid general meaning is to be given effect to, unless it is found that the legislature intended otherwise."

(emphasis supplied)

Zile Singh v. State of Haryana & Others⁸:

"24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.

25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P. [(2002) 2 SCC 645] , State of Rajasthan v. Mangilal Pindwal [(1996) 5 SCC 60] , Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. [(1969) 1 SCC 255] and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael [AIR 1963 SC 933] . In West U.P. Sugar Mills Assn. case [(2002) 2 SCC 645] a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case [(1996) 5 SCC 60] this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute

⁷ (2019) 17 SCC 590

⁸ (2004) 8 SCC 1

which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case [(1969) 1 SCC 255] a threeJudge Bench of this Court emphasised the distinction between “supersession” of a rule and “substitution” of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.”

(emphasis supplied)

30. The *Raj Kumar (supra)* case held that the law in force as of the date of consideration is applicable to the filling of vacancies or promotional posts. Keeping in perspective, the law declared by this Court, and reverting to the circumstances of the case at hand, we note that the word “substituted”, even if given its logical and consistent effect, means that the consideration for promotion took place only under the 2016 Rules. The consideration initiated in 2014 is the subject matter of litigation, and further steps would be in accordance with the outcome in O.A. No. 351/2014. Therefore, the Appellants cannot also claim for consideration of their cases for the vacancies available between 2010 and 2014. At best, the consideration under the applicable Rules occurred in 2016; a few were selected, and a few were not. Thus, the cases of all eligible candidates, including Appellants and Respondents No. 1 to 28, will have to be considered strictly in accordance with the 2016 Rules immediately.

31. For the above reasons and considerations, the irresistible conclusions can be summed up as follows:

A. The impugned Judgment is unsustainable and accordingly liable to be interfered with and is set aside.

B. The Rules 2016 restored the status quo ante requirement for promotion to the post of ASI-Executive in the U.T. of the Andaman & Nicobar Islands.

C. The Administration issued a Circular in 2016 calling for applications from eligible candidates for promotion, and, by following the procedure, promotions have been made and given effect to. Those promotions are not the subject matter of this O.A. No 351/2014.

D. The existing vacancies of ASI-Executive are to be filled under the Rules 2016, within two months from today.

32. For the above consideration and reasons, the Civil Appeal is allowed.

Pending application(s), if any, stand disposed of accordingly.

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