

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION Nos. 4636, 4816, 5181, 7083, 7430, 7513,
8009, 8947 & 22850 of 2018; 22835 of 2020

COMMON ORDER: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by this Common Order, they are being disposed of by this Court.

2. The petitioners before this Court who are serving on the post of Constables under the Telangana Police (Civil) are aggrieved by the G.O.Ms.No.19, Home (Legal) Department, dated 06.02.2018, issued by the State Government by which the recruitment rules, known as the Special Rules for the Telangana Police (Civil) Subordinate Service Rules issued in G.O.Ms.No.374, Home (Pol.C) Department, dated 14.12.1999, have been amended.

3. In the State of Telangana, the police force is having three broad divisions: a) Special Police b) Armed Reserve Police and c) Telangana Civil Police. The undisputed facts of the case reveal that the recruitment of three limbs of the Police Department is done on the basis of a

common examination conducted by the Police Recruitment Board and based upon the option given by the candidates and the percentage of the marks obtained in the process of examination, they are allotted to one of the three divisions. The recruitment rules governing the recruitment to all three divisions provide for transfer from Special Police to Armed Reserve as well as from the Armed Reserve to Telangana Civil Police. In the present case, the petitioners were appointed on account of selection in the Special Police division and earlier all three divisions were governed under the Rules known as the Andhra Pradesh Police Subordinate Service Rules. Meaning thereby, the members of all three divisions were subjected to the aforesaid rules in the matter of promotion from the post of Constable to Head Constable as well as to the post of Inspector. There was no dispute till the Andhra Pradesh Police Subordinate Service Rules, 1953, were in force. The State Government in its wisdom enacted three set of rules for all three divisions and the Recruitment Rules governing the recruitment and service conditions for the Armed Reserve Police came into effect vide G.O.Ms.No.69, dated 07.04.1997, known as the Andhra Pradesh Police (Special Police Battalions) Sub-ordinate Service Rules. The State Government, for

the Civil Police, also issued another Government Order, known as the Andhra Pradesh Police (Civil Police) Subordinate Service Rules i.e., G.O.Ms.No.374, Home (Police.C), dated 14.12.1999. Meaning thereby, for all three divisions, three separate recruitment rules were framed and the aforesaid facts are not in dispute. The petitioners before this Court have stated that they were initially appointed in the Special Police battalions and the recruitment rules relating to Armed Reserve provided for transfer after completion of ten years of service as Constable under the Special Police, they have opted for transfer after completion of service and became member of Armed Reserve Police, as there was a provision for recruitment by way of transfer to the post of Constable. Similarly, under the Andhra Pradesh Police (Civil Police) Subordinate Service Rules which came into effect from 14.12.1999, as there was 10% quota fixed for appointment by transfer from Constables belonging to Armed Reserve and Special Police, the petitioners again applied for transfer under the Andhra Pradesh Police (Civil Police) Subordinate Service Rules.

4. G.O.Ms.No.374, Home (Police.C), dated 14.12.1999, provides for such transfer under Rule 3 on the post of Constable and the same is reproduced as under:-

“Rule 3. Method of appointment and appointing authority:-

Subject to the other provisions in these rules, the method of appointment and appointing authority for the several classes and categories shall be as follows:

<i>Class & Category</i> (1)		<i>Method of appointment</i> (2)		<i>Appointing authority</i> (3)
Class-A:				
1.	Sub Inspector of police (Civil)	(i)	Direct recruitment from open market <u>Special categories defined in G.O.Ms.No.315, Home (Police. CI Department dated 13.01.1999.</u>	In the mufasil the Inspector General of Police/Dy. Inspector General of Police concerned or the Deputy Inspector General of Police nominated by the Director General and Inspector General of Police and in the Hyderabad City, the Commissioner of Police, Hyderabad City.
		(ii)	Direct Recruitment from police executive	
		(iii)	Direct recruitment from Police Ministerial	
		(iv)	Direct recruitment from Meritorious Sports Men	
		(iv)	Direct recruitment from Meritorious Sports Men	
		(v)	Direct recruitment from children of police personnel	
		(vi)	Direct recruitment from children of deceased/ incapacitated police personnel	
		(vii)	Direct recruitment from National Cadet Corps	
		(viii)	Appointment by promotion of Assistant Sub-Inspectors of Police/ Head Constables	
		(ix)	Appointment by transfer from Reserve Sub-Inspector of Police (AR/APSP)	
			(G.O.Ms.No.98, Home (Legal II), dt. 01.05.2005)	
2.	Assistant Sub-Inspector of Police (Civil)		By promotion of Head Constables	--do--
3.	Head Constable (Civil)		By promotion of Police Constables	In the mufasil the Superintendent of Police of concerned and in the Hyderabad City, the Deputy Commissioner of Police (Admn.), Hyderabad.
4.	Police Constable (Civil)	(i)	By direct recruitment.	In respect of other Urban Police Units of the State the Head of such a Unit or Commissioner of Police or Superintendent of Police or Superintendent of Railway Police as the case may be.
		(ii)	By transfer of Constables from District Armed Reserve, City Armed Reserve and Special Armed Reserve.	
		(iii)	By direct recruitment by selection from among children of serving and retired police personnel.	

	(iv)	By direct recruitment by selection from among eligible Home Guards	
	(v)	By direct recruitment by selection from among eligible meritorious sportsmen.	
Class-B: (Women Police)			
1.	Sub-Inspector of Police (Women)	(i) By promotion of a Head Constable (Women) (ii) If no qualified or suitable candidate is available for appointment by method (i) above by direct recruitment. (iii) By direct recruitment by selection from among the dependents of police personnel killed or incapacitated while performing duties.	In the mufasil Inspector Genl./Deputy Inspector General of Police concerned or the Deputy Inspector General of Police nominated by the Director General & Inspector General of Police and in the Hyderabad City the Commissioner of Police, Hyderabad.
2.	Head Constable (Women)	By promotion of Police Constable (Women)	In the mufasil the Supdt. of police concerned and in the Hyderabad City the Deputy Commissioner of Police (Admn), Hyderabad. In respect of other Urban Police Units of the State, the Head of such a Unit or Commissioner of police or Superintendent of Police or Superintendent of Railway Police as the case may be.
3.	Police Constable (Women).	(i) By direct recruitment (ii) By direct recruitment by selection from among eligible Home Guards (Women). (iii) By direct recruitment by selection from among eligible meritorious sports women. (iv) By selection from among children of serving/retires police men or women.	In the mufasil, the Supdt., of police concerned and in the Hyderabad City the Deputy Commissioner of Police (Admn), Hyderabad. In respect of other Urban Police Units of the State, the Head of such a Unit or Commissioner of Police or Superintendent of Police or Superintendent of Railway Police as the case may be.

Note (1):- The percentage of the number of vacancies in the categories of Sub Inspectors of Police (Civil), Police Constables (Civil), Sub-Inspector of Police (woman) and Police Constables (women) in the matter of appointments by different methods shall be as given below :-

((a) Sub-Inspector of Police (Civil)	
(i) Direct recruitment from open market	50%

Special categories defined in G.O.Ms.No.315, Home (Police.C) Department, dated 13.10.1999

(ii)	Direct recruitment from Police Executive	5%
(iii)	Direct recruitment from Police Ministerial	1%
(iv)	Direct recruitment from Meritorious Sports Men	2%
(v)	Direct recruitment from children of police personnel	2%
(vi)	Direct recruitment from children of deceased/ Incapacitated police personnels.	2%
(vii)	Direct recruitment from National Cadet Corps	2%
(viii)	Appointment by promotion of Assistant Sub-inspector/ Head Constables.	30%
(ix)	Appointment by transfer from Reserve Sub-Inspector Of Police (AR/APSP)	5%

*[Reserve Sub Inspectors of Police (AR/SAR CPL/APSP) (Men) shall be eligible for appointment by transfer as Sub Inspector of Police (Civil) (Men), provided that they must not have completed the age of 40 years as on 1st July of the year in which selections are made and have served in DAR/CAR/SAR/APSP for not less than 5 years of service with clean and commendable record of service and has also done commendable work over and above the call of duty relating to the control of Naxalite, Maoist and terrorist activities and possess the educational qualification prescribed for Sub Inspector of Police (Civil) which is treated as selection post to filling up the same through appointment by transfer].

*[Subs., by G.O.Ms.No.497, Home (Legal II), dt. 29.12.2009, w.e.f. 1.07.2008]

The Selection for appointment by transfer shall be done by the Chairman, State Level Police Recruitment Board, Andhra Pradesh, Hyderabad. The Chairman, State Level Police Recruitment Board will prepare the guidelines relating to clean record of service and finalize the selection procedure from time to time.

The vacancies arising in each zone under this category shall be filled up by Reserve Sub-Inspector of Police (DAR/CAR/SARCPL/APSP) of that zone who satisfy the definition of local candidature under the Presidential Order in respect of that zone. Thereafter, the vacancies which remain unfilled for want of eligible local candidates will be added to the vacancies to be filled by Direct Recruitment of Stipendiary Cadet Trainee Sub Inspector's (Civil).

[Subs, by G.O.Ms.No.143, Home (Legal II), dt. 30.06.2008]

(b)	Police Constables (Civil)	
[(i)	Direct Recruitment	71%
(ii)	HG	8%
(iii)	MSP	2%
(iv)	CPP	4%
(v)	CDI	2%
(vi)	NCC	3%
(vii)	Appointment by transfer from Armed Reserve/Special Armed Reserve Central Police Line Police Constables	10%

Explanation-I:- The definition and eligibility (criteria) of the categories "HG, MSP, CPP, CDI and NCC" shall apply the provisions of the Andhra Pradesh Police (Stipendiary Cadet Trainee) Rules issued in G.O.Ms.No.315, Home (Pol.C) Department dated 13.10.1999 and the amendments thereon.]

[Subs.by G.O.Ms.No.244, Home (Legal II), dt.18.09.2010, w.e.f. 01.05.2006]

(c)	Sub-Inspector of Police (Women)	
(i)	By direct recruitment from Open market	-65%

- (ii) By direct recruitment by selection from among the dependants of police personnel killed or incapacitated while performing duties -5%
 - (iii) By promotion of Head Constables (Women) -30%
- (d) Police Constables (Women)
- (i) By direct recruitment from Open market -84%
 - (ii) By direct recruitment by selection from among eligible Home Guards (Women) -10%
 - (iii) By direct recruitment by selection from among eligible meritorious sports women -2%
 - (iv) By direct recruitment by selection from among children of serving and retired police personnel -4%

Provided that notwithstanding anything contained in the notes in this rules, the seniority of persons appointed by direct recruitment and by other methods shall be fixed with reference to the provisions of General Rule 33 of the Andhra Pradesh State and Sub-ordinate Service Rules.

[Explanation-II :- The Police Constables (AR) (Men) and Police Constables (SAR CPL)(Men) will be eligible for transfer to Police Constables (Civil)(Men) provided that:

- (i) they are approved probationers;
- (ii) they have served in the AR/SAR CPL for not less than five years of service on the first day of July of the year in which they are considered for transfer.
- (iii) they have completed the age of forty (40) years on the first day of July of the year in which they are considered for transfer.
- (iii) they have not come under any for the following categories:
 - (a) Any major punishment in the entire service
 - (b) Minor punishments- three or more in the entire service
 - (c) Any punishment under operation
 - (d) Under suspension or facing an oral enquiry

Selection Procedure:

(i) The vacancies of 10% of Police Constables (Civil) (Men) shall be filled with local candidates only. The vacancies if any out of 10% of police constables (Civil) (Men) which remain unfilled for want of eligible candidates will be added to the vacancies to be filled by direct recruitment.

(ii) Order of selection in the preparation of the list: In each category, length of service in Armed Reserve/Special Armed Reserve will be taken into account and wherever the length of service in Armed Reserve/Special Armed Reserve is the same, then the date of birth of the candidate will taken into account i.e., the older person will be preferred].

[Added by G.O.Ms.No.244, Home (Legal II), Dt. 18.09.2010, w.e.f. 01.07.2005]

Explanation:- For definition of the word 'meritorious' sports men/sports women, Rule 2 of Andhra Pradesh State and Subordinate Service Rules shall be referred to.

Note (2):- Exercise of powers of appointing authority during training:- For the purposes of suspension, termination or extension of probation, at any time before expiry of the prescribed

period of institutional training the powers of the appointing authority shall, in the case of Sub Inspectors of Class-A and Class-B undergoing training at a college or school or academy shall be exercised by the Deputy Inspector General of Police (Training) in the case of Constables recruited direct or appointed by transfer, the Head of Police Training Institution or Superintendent of Police/Deputy Commissioner of Police/CMT concerned if the training is imparted at District/Battalion Head Quarters/school as the case may be.

Note (3):- The appointment of dependants of police personnel serving/killed or incapacitated while performing duties shall be made against the quota specified above only after the proposals of the Director General of Police are approved by Government in specific cases.

Note (4):- Promotions to the category of H.C. shall be given to the qualified and eligible Constables and promotion to the category of Sub-Inspectors shall be given to the qualified and eligible Assistant Sub-Inspectors and Head Constables. The promotion to the category of Assistant Sub-Inspector of Police shall be made purely on the basis of the seniority of the Head Constables.”

5. Meaning thereby, there was a provision only to the extent of 10% for transfer of Constables working in other divisions governed by independent set of rules. The undisputed facts of the case reveal that the Police Constables right from the date of establishment of three divisions were granted seniority from the initial date of appointment, irrespective of the division. Meaning thereby, the first date of appointment into Government service was taken into account for the purpose of grant of seniority enabling the Constable for promotion to the next higher post of Head Constable. The aforesaid fact also is not in dispute. The petitioners before this Court have argued that they would have now been promoted to the post of Constable in case the option was not exercised by them for transfer to Armed Reserve and then

to Civil Police in their parent organisation (the organisation in which they were initially recruited) and they were waiting for their turn for promotion in the Civil Police organisation. However, to their utter surprise, the respondent State has amended the recruitment rules by issuing G.O.Ms.No.19, dated 06.02.2018, and for the first time, a weightage formula has been introduced by the State Government under the recruitment rules governing the Civil Police. The amendment by the State Government in the recruitment rules is reproduced as under:-

**“GOVERNMENT OF TELANGANA,
ABSTRACT**

Home Department – Police – Public Services – Telangana Police
(Civil) Subordinate Service Rules – Amendment – Orders - Issued

HOME (LEGAL) DEPARTMENT

G.O.Ms.No.19.

Dated: 06-02-2018.

Read the following:

1. G.O.Ms.No.1263 G.A. (Rules) Department, dated: 26-8-1959
2. G.O.Ms.No.270 Home Department.Dated:2-4-1990.
3. G.O.Ms.No.299 Home (Police.D) Department, dated: 5-10-1999.
4. G.O.Ms.No.374 Home (Police.C) Department. dated: 14-12-1999.
5. Hon'ble APAT Orders Dated:23-8-2007 In O.A.No. 2352/2007 and batch cases.
6. G.O.Ms.No.329 Home (Legal.II) Department, dated: 28-12-2010.
7. G.O.Ms.No.54 Home (Legal.II) Department, dated: 18-2-2013.
8. Hon'ble High Court of A.P. Orders dated: 08-10-2013 in W.P.No.21610/2007 and batch cases
9. G.O.Ms.No.26 Home (Legal) Department, dated: 29-4-2015.
10. From the Director General of Police, Telangana State, Hyderabad, Lr.Rc.No: 417/E1/2017, dated: 04-01-2018.

* * *

The Director General of Police, Telangana State, Hyderabad in the letter 10th cited has requested the Government to amend the weightage formula for fixation of seniority in respect of the PCs of (Civil) appointed by transfer (Conversion) from PCs (AR/SAR CPL) duly issuing amendment to the Telangana Police (Civil) Sub-ordinate Service Rules issued in the G.O.Ms.No.374, Home (Police.C) Department dated: 14-12-1999, as amended from time to time keeping in view of the orders of the Hon'ble High Court dated:08-10-2013 in W.P.No.21610/2007 and batch cases.

2. Government after careful examination of the entire matter, hereby approve the formula as proposed by the Director General of Police, Telangana, Hyderabad for the fixation of the seniority in respect of the PCs of (Civil) appointed by transfer (Conversion) from PCs (AR/SAR CPL).

3. Accordingly the following Notification shall be published in the Telangana State Gazette:

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and of all others powers hereunto enabling, the Governor of Telangana hereby makes the following amendments to the Special Rules for the Telangana Police (Civil) Subordinate Service Rules issued In G.O.Ms.No. 374 Home (Pol.C) Department dt: 14.12.1999 as amended from time to time.

AMENDMENT

In the said rules, the existing rule relating to seniority, after Rule 10. Training, shall be substituted with the following, namely:

"Rule 10A. Seniority (i) The inter-se-seniority of Police Constables recruited directly in a particular batch in a particular District/Hyderabad City Police shall be fixed based on the total marks secured by them at the time of recruitment together with the marks secured in the examination conducted at the end of the training.

(ii) The Inter-se-seniority of directly recruited Sub-Inspectors shall be fixed on completion of training period in the training Institution, Instead of at the time of selection in accordance with the list which shall be arranged in the order of merit which shall be determined in accordance with the aggregate of marks obtained by each probationer.

(a) In respect of his marks secured in the first and second terminal examination and the marks in outdoor events like drill, revolver and musketry events and the marks secured in the passed subjects of the final examination. (The marks in the subjects in which they failed in the final examination need not be taken into account for fixation of seniority). The seniority so fixed shall be liable to revision by the Deputy Inspector General/ Commissioner of Police, Hyderabad if he considers it necessary before completion of probation for reasons to be recorded in writing.

The Seniority in respect of PCs of (Civil) appointed by transfer (Conversion) from PCs (AR/SAR CPL) shall be fixed giving weightage of one year for every completed two years of service rendered as PC (AR/SAR CPL), subject to a maximum of seven years.

Note: For the purpose of calculation of weightage under this cause, fractions, if any are to be ignored."

The Seniority of Assistant Sub-Inspectors and Head Constables in the respective categories shall be determined with reference to the dates of their appointment to the relevant categories."

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

RAJIV TRIVEDI
PRINCIPAL SECRETARY TO GOVERNMENT"

6. The aforesaid amendment does not reflect nor it has been stated anywhere in the amendment that it is with retrospective effect.

7. Learned counsel for the petitioners has vehemently argued before this Court that a right which has accrued in favour of the petitioners cannot be wiped out by an amendment, even though the amendment is not with retrospective effect and therefore, the amendment, as it is wiping out the accrued right for promotion to the post of Head Constable and other higher post, deserves to be declared as *ultra vires* and deserves to be quashed by this Court. Reliance has been placed upon the judgments in **Chairman, Railway Board and others v. C.R.Rangadhamaiah and others¹**, **K.Madhavan and another v. Union of India and others²**, **Sub-Inspector Rooplal and another v. LT.Governor, through Chief Secretary, Delhi and others³**, **Wing Commander J. Kumar v. Union of India and others⁴**, **State of Rajasthan and**

¹ (1997) 6 SCC 623

² (1987) 4 SCC 566

³ (2000) 1 SCC 644

⁴ (1982) 2 SCC 116

others v. Basant Agrotech (India) Limited⁵, Federation of Indian Mineral Industries and others v. Union of India and another⁶, B.S.Bajwa and another v. State of Punjab and others⁷, Naseem Bano (SMT) v. State of U.P and others⁸, Ashwani Kumar Singh v. U.P.Public Service Commission and others⁹, Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others¹⁰, G.Anantha Reddy v. Andhra Pradesh Admn. Tribunal, Hyderabad and others¹¹ and National Insurance Company Limited v. Pranay Sethi and others¹².

8. A counter affidavit has been filed by the State Government and the contention of the State Government is that the issue relating to seniority of Constables transferred from one service to another was a cause for heartburn for the Constables working in Civil Police and various representations were received from time to time. Even Court cases were filed in respect of *inter se* seniority and the Division Bench of this Court in W.P.No.21610 of 2007 and other connected matters has delivered a judgment on 08.10.2013 directing the State Government to evolve a formula in respect of grant of weightage of service rendered by the persons who have come on transfer, while considering cases for promotion to the

⁵ (2013) 15 SCC 1

⁶ (2017) 16 SCC 186

⁷ AIR 1999 SC 1510

⁸ 1993 Supp (4) SCC 46

⁹ (2003) 11 SCC 584

¹⁰ (2003) 2 SCC 111

¹¹ 2002 (1) ALD 4 (FB)

¹² (2017) 16 SCC 680

post of Head Constables keeping in view the interest of the direct recruits, who were appointed as Constables in the Civil Police. The said decision of the Division Bench is reproduced as under:-

“In this batch of writ petitions, as common questions of fact and law are involved, they can be disposed of through common order.

The genesis for these proceedings is an order dated 23.08.2007 passed by the A.P. Administrative Tribunal (for short, “Tribunal”) in O.A.No.2352 of 2007. That, in turn, was filed questioning the seniority list of the post of Police Constables in the District Armed Reserve (for short, “DAR”), Medak District, communicated through a memo dated 20.09.2006 and consequential memo dated 07.10.2006.

W.P.No.24847 of 2007 is filed by the Government challenging the orders in O.A.2352 of 2007 and W.P.No.21610 of 2007 is filed by the third parties to O.A., O.A.No.8213 of 2008 and O.A.No.10126 of 2008 and others were filed by the persons working in the Armed Reserve (for short, “AR”) of other districts. Those O.As. were allowed through common order dated 09.09.2011, following the order in O.A.No.2352 of 2007 by DAR of Warangal. O.A.7233 of 2012, filed on the same lines was allowed by the Tribunal on 03.10.2012. While W.P.No.33217 of 2012 is filed by the Government against the order in O.A.No.8312 of 2008, W.P.No.26765 of 2011 is filed by the 7th respondent onwards in O.A.No.10216 of 2008. Similarly, W.P.No.18254 of 2013 is filed by the Government against the orders in O.A.No. 7233 of 2012, other respondents in that O. A. filed W.P.No.31595 of 2013.

The AR Wing of A.P. Police and other connected Wings used to be governed by the special rules of the Andhra Pradesh State Police Subordinate Service Rules, 1996 (for short, ‘Rules’) framed in G.O.Ms.No.1263GA/(Rules)/Department, dated 26.08.1959. In the year 1997, the AR Special Armed Wing was carved out of it, through Rules framed in 1997. The Civil Wing of the police was constituted as separate entity through Rules framed in G.O.Ms.No.270 dated 02.04.1990.

The appointment to the post of Constables in the AR used to be through various methods. While for sometime, it was exclusively through direct recruitment, during the other times, it

was partly by direct recruitment and partly through appointment by transfer from different sources, at the stipulated percentages.

The Government issued G.O.Ms.No.299, Home, (Pol. D) Department, dated 05.10.1999, providing for the recruitment of constables in the AR exclusively by transfer from A.P. Police battalions. Through the said G.O., the Rules in G.O. Ms. No.1263 GA/(Rules)/Department, dated 26.08.1959 were amended. The Constables from the Special Armed Reserve Battalions, on completion of ten years of service in that category, were made eligible to be appointed by transfer as Constables in the AR.

Consequent on such appointments, seniority lists were published in the respective districts. The Constables that were transferred or received from the battalions were interpolated in the seniority list, by taking into account, the date of their initial appointment, in the respective battalions. Thereby all of them were shown *en bloc*, as seniors to the Constables in the AR, appointed through direct recruitment. Therefore, the Constables, directly recruited to AR in the respective districts, filed the O.As. challenging the seniority list. Their contention was that the *inter se* seniority among the constables is to be determined according to Rule 15-e of the Rules, which directs that the Constables, that are appointed on transfer from special battalions, shall take their seniority from the date of confirmation in the vacancies in the AR Service and not from the date of their initial appointment in that special battalions.

The O.As. were opposed by the constables who were appointed by transfer from the special battalions. The plea of the respondents was that their appointment to the AR was not on the basis of any individual proceedings, but on the basis of policy decision taken by the Government. Their contention was that they have been appointed as Constables in the ordinary course, but were drawn to the special battalions without their consent; and taking into account onerous nature of duties performed by them in the combing operations etc., the Government has taken a policy decision through G.O.Ms.No.299, dated 05.10.1999, providing for their shifting to the AR. The Government has also made an attempt to sustain action taken by them.

The Tribunal allowed O.A.No.2352 of 2007 through its order dated 23.08.2007, taking the view that the seniority of the Constables of the special battalions transferred to AR must be determined, with reference to Rule 15-e of the Rules and not 15-c thereof. Other O.As. filed by the Constables, directly recruited to the A.R. from various districts, were allowed, following the order in O.A.No.2352 of 2007, dated 23.08.2007.

The arguments, on behalf of the petitioners, are advanced by the learned Government Pleader for Services I and II, Sri G. Vidhyasagr, C. Srinivasa Baba and Sri M. Pandu Ranga Rao, learned counsel. According to them, the circumstances that warranted the issuance of G.O.Ms. No.299 are mentioned in the G.O. itself and a special mechanism was evolved by the Government, to compensate the constables, who worked in the special battalions, by making them part of AR. They contend that since the Constables were drawn to the battalions for certain special purposes, they are entitled to be extended the benefit of that service, when they are shifted to AR. It is also pleaded that the placement of the Constables in the battalions, at the relevant point of time, was not on the basis of any options exercised by the Constables or through any specific process and realizing that the Constables drawn to special battalions have undergone hardship, a compensatory step was taken. They plead that Rule 15-c of the Rules gets attracted on the facts of the case, since it is not appointment on transfer in the ordinary parlance but *en bloc* shifting of a category of Constables to the AR, and that such move cannot be said to have caused prejudice to the constables appointed to AR through direct recruitment. It is also pleaded that taking into account, the potential of Rule 15-e of the Rules to cause hardship to the Constables of the special battalions, the Government has repealed the said provision in the recent past.

The learned counsel for the respondents, on the other hand, submits that the AR is a separate service by itself and specific rules are framed, prescribing method of recruitment to it and providing it for other conditions of service. They contend that the entry into service can be only through the modes prescribed under Rule 6 of A.P. Special Subordinate Service Rules namely direct recruitment, promotion or recruitment by transfer, and there cannot be any other method of entry into service. They submit that the appointment by transfer from other departments is not alien to the AR service. They contend that it was only for certain period, that the appointment of Constables in AR was exclusively through direct recruitment and for rests. According to them, even if the appointment as Constables is exclusively through transfer of Constables from special police battalions, it partakes the character of appointment by transfer and the service of the persons, who appointed in the AR, has to be counted from the date of entry into that organization/service.

Learned counsel submits that whatever may have been the intention in issuing G.O.Ms.No.299, dated 05.10.1999, it cannot nullify or redefine the principles of reckoning the seniority.

He submitted that the Tribunal has taken the view, in holding that the situation is governed by Rule 15-e of the Rules and not Rule 15-c.

As observed in the preceding paragraphs, the appointment to the post of Constables in the AR was not uniform, over the period. It ranged from the appointment exclusively through direct recruitment, to one of exclusively appointment by transfer. In between, there was admixture of both. Relevant rule was amended many times. Contesting respondents in the respective writ petitions i.e. applicants in the O.As. were the Constables who were appointed through direct recruitment, from time to time. The petitioners herein (except in the writ petitions filed by the Government), on the other hand, were initially appointed as Constables and were drawn to the special battalions. Earlier, certain percentages of posts of Constables in the A.R. were earmarked for appointment by transfer from A.P. special battalions and other organizations.

The Government issued G.O.Ms.No.299, dated 05.10.1999 providing for appointment of Constables to A.R. exclusively by transfer of the Constables in the special battalions, subject to their having ten years of service and fulfilling eligibility criterion. Necessary amendments were carried out to Annexures - I and II, appended to the Rules. Appointment on transfer of the Constables of special battalions is the only method of recruitment is stipulated as the only method. The G.O. stipulates the qualifications as under;-

AMENDMENTS

1. In the said Rules, in Annexure -I, under "Class - I, Category 6(b) Constables (District Armed Reserve, City Armed Reserve, Head quarters and Special Armed Reserve, Central Police Lines) in column (1) and the corresponding / in Col.No.2, 3, there of, the following shall be substituted namely:

Class and Category	Method of Appointment	Limitation	Appointing Authority
1	2	3	4
<u>Class - I</u> <u>Category 6 (b)</u> Constables (District Armed Reserve, City Armed Reserve, Head quarters and Special Armed Reserve, Central Police Lines)	By Transfer from Andhra Pradesh special police Battalions	Nil	In mufasil, the Superintendent of Police concerned in Visakhapatnam and Vijayawada cities, the Commissioner of Police concerned and Hyderabad city the Deputy Commissioner of Police, City Armed Reserved Head quarters Hyderabad on allotment from State Level Recruitment Board.

2. In the said rules, in Annexure – II under Class – II in Column (1) for entries against Category 6(b) Constables (District Armed Reserve), City armed Reserve, Head quarters and Special Armed Reserve, Central Police Lines) for the corresponding entries in Col. Nos. 1,2 and 3 thereof, the following shall be substituted, namely:

Class and Category	Age limit for appointment otherwise than promotion	Qualifications
1	2	3
<u>Class – I</u> <u>Category 6(b)</u> Constables (District Armed Reserve, City Armed Reserve, Head quarters and Special Armed Reserve, Central Police Lines)	-Nil-	Police Constables of Andhra Pradesh Special Police who have completed ten years of service are eligible for appointment as Police Constables in District Armed Reserve/City Armed Reserve/Special Armed Reserve/Central Police Lines by transfer based on the recommendations of the Inspector General of Police, Andhra Pradesh Special Police, Battalions and subject to fulfilling the local candidature of the respective District or Units.

G.O.Ms.No.299 cannot be found fault with, insofar as it has made an appointment by transfer, as the exclusive method of recruitment of Constables in AR. That in fact, was not questioned by any one. The whole dispute is about fixation of seniority of the Constables of the battalions, on their transfer to the AR. Rule 15 of the Rules deals with the seniority within the service of AR. Important among them are the Clauses are Clause- c and e. They read:

15(c):

The transfer of a person from one class or category of the service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of person so transferred shall be determined with reference to the date of his first appointment to class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority.

15(e):

The seniority of qualified Special Policemen appointed by transfer as Constables in this service shall be determined by the date of their first appointment in this service for purposes of confirmation in vacancies in this service.

Clause-c of Rule 15 deals with the situation, where a person in the same service i.e., AR is transferred from one category in the service to another category, or one class in the category to another class in the category. In such an event, the seniority has to be determined, with reference to the date of first

appointment of the employee to the class or category from which he was transferred. For example, in category-4 of the AR service, one of the post is Sub Inspector. In category-6 also, the post of Sub Inspector figures. If a Sub Inspector appointed in category-4 is transferred, either on request or administrative grounds to category-6, his seniority in Category-6 has to be determined, with reference to the date of his appointment as Sub Inspector, in Category -4. This facility is created, on account of the fact that the employee continues to remain in the same service.

Rule 15-e of the Rules, however, deals with a situation, where a constable is appointed in the AR on transfer from another service or organization. A constable appointed on transfer from special battalion or any other organization or service, becomes part of the AR only, when he comes to be appointed to that service. What Rule 15-e of the Rules mandates is that the service of the persons so appointed shall be reckoned from the date of first appointment in "this service", meaning thereby AR Service. The literal and strict interpretation of this rule would to the conclusion that the seniority of the petitioners herein must be reckoned from the date, on which they entered into "this service" i.e. A.R., no matter, what, the length of service they had to their credit, in the special battalions, has been.

Seniority list prepared by the respondents was, admittedly, in derogation to Rule 15-e of the Rules. Though an attempt is made to impress this Court that special battalions are part of the AR, or that there was no qualitative change in services, except that they have been shifted from one wing to other; the fact that the AR is a separate service and they entered into it, only through transfer from another service, cannot be ignored.

In the seniority lists that were published in the respective districts, Constables in the AR were assigned places, taking into account, the date of their initial appointment in the special battalions as the basis. For example, in Srikakulam district, the final seniority list was published on 22.08.2007. The constables that were appointed by transfer from 5th battalion on 06.05.2000 in terms of G.O.Ms.No.299, dated 05.10.1999, were placed immediately after the Constables appointed on 17.07.1976. The dates of their initial appointment in the battalion were taken into account. For example, though the 1st petitioner in W.P.No.26765 of 2011 was appointed on transfer to the A.R. on 17.03.2004, his date of initial appointment i.e.05.04.1997 was taken as basis for reckoning his seniority. In that process, he was placed above the Constables appointed in AR, in the year 1994, through direct recruitment. The petitioners were extended the benefit of decades of service, over the direct recruit Constables. Same pattern was

repeated in other direction. This has naturally resulted in gross injustice to the respondents. In a particular seniority list, a person, who was to figure at serial No.3, was pushed down to serial No.41. The effect on the persons, a bit lower in the list, was far more devastating.

Even according to the procedure contemplated under G.O.Ms.No.299, the appointment of the petitioners is only through transfer. It is, certainly, otherwise than through direct recruitment. Once the transfer is from one service to another, it is fundamental that the person, who enters through such a procedure, must take the seniority, immediately after the direct recruits of the contemporary period, or at least from the date of their entry into that service. The service rendered by such persons in their parent organization can, certainly, be counted towards pension and other benefits. In a given case, even Pay protection can be extended. However, the seniority of the persons, who were already working in the service to which those appointed in other service are transferred, cannot be adversely effected.

True, the Government may have definite purpose in its mind, when it issued G.O.Ms.No.299. The making of appointment by transfers of constables from battalions, as the only means of recruitment of Constables in the AR, would certainly have the effect of relieving the constables of the special battalions, of the arduous duties. However, if the Government wanted to confer any benefit on them, it could have provided for weightage on the basis of service, subject to certain limit, that too, duly taking into account the interests of the persons, who are already working as Constables in the AR and awaiting promotions. Such practice is in vogue in the engineering wings of the various departments of the Government of A.P.; Wherever the Assistant Engineers (Supervisors) are upgraded as Deputy Executive Engineers on acquiring the prescribed qualifications, the benefit of service in the post of A.E. subject to certain limit is extended. This would bring about a sort of balance between the conflicting interests. The placement of hundreds of Constables above the Constables, who are already working in the AR for decades together, cannot be countenanced either in law or on logic.

It is not in dispute that Rule 15-e of the Rules was very much in force, when the seniority lists were prepared. The fact that it came to be repealed in the recent past, does not rectify the serious infirmity, that has crept into the seniority lists. The petitioners are not able to convince us to take a different view, from the one that was taken by the Tribunal. This much,

however, can be said that instead of extending benefit of the entire service rendered by the Constables of the special battalions, on being appointed on transfer as ARs, feasibility of extending the benefit of weightage, subject to certain limit, can be considered. This, however, is a matter that needs to be examined by the Government, without any further loss of time. A balanced approach would keep the morale of the petitioners on one hand, the respondents on the other, intact. Any one sided decision in favour of either of them, would not at all promote the efficiency in the service.

Hence, we dispose of the writ petitions a) upholding the orders passed by the Tribunal in the respective O.A., b) directing that the Government shall consider the feasibility of evolving a formula to extend the benefit of weightage of service rendered by the petitioners i.e., the Constables appointed to AR by transfer from special battalions, subject to certain limit, duly taking into account the interests of the Constables appointed through direct recruitment and other modes over the period.

This exercise shall be completed within a period of four (04) months from today. Till such time, the reversions, that are warranted on account of the implementation of the orders passed by the Tribunal, shall stand stayed. There shall be no order as to costs.

The Miscellaneous petitions, filed in these Writ Petitions shall stand disposed of.”

9. Learned Advocate General stated before this Court that the Recruitment Rules have been amended keeping in view the aforesaid Judgment.

10. Reply has been filed by the private respondents also. They have adopted the arguments canvassed by the learned Advocate General. They have placed reliance upon the judgments delivered in **E.Shankar Reddy v. Government of Andhra Pradesh, represented by Commissioner of Police, Hyderabad City and others**¹³, **Palure Bhaskar Rao v.**

¹³ 2001 (4) ALT 626 (DB)

P.Ramaseshaiah¹⁴ and Prafulla Kumar Das and others v. State of Orissa and others¹⁵.

11. Heard the learned counsel for the parties at length and perused the record. The matters are being disposed at the admission stage itself with the consent of the parties.

12. The undisputed facts of the cases reveal that in the State of Telangana, the police force is having three broad divisions:- a) Special Police, b) Armed Reserve Police and c) Telangana Civil Police. The source of recruitment is a common competitive examination to three wings of the Police and depending upon the percentage of marks obtained by an individual in the above examination, an individual is allocated to one of the wings of the police. The undisputed facts also make it very clear that the petitioners were initially appointed in the Special Police and as the Rules permitted for transfer to Armed Reserve Police and also to Telangana Civil Police, the petitioners keeping in view the G.O.Ms.No.374, Home (Police.C), dated 14.12.1999 opted for transfer on the post of constable. Rule 3 of the aforesaid Rules, which have been reproduced earlier, provides for filling up the posts of

¹⁴ (2017) 5 SCC 783

¹⁵ (2003) 11 SCC 614

constables by virtue of transfer from the other limbs of the Police Department to the extent of 10% of the vacancies.

13. The counterparts of the petitioners, who have not opted for transfer to Telangana Civil Police, have been promoted to the next higher post in the Parent organisation in which they were initially appointed and the petitioners are waiting for their turn of promotion in the Civil Police Organisation. The State has amended the Recruitment Rules governing the Telangana Civil Police by issuing G.O.Ms.No.374, Home (Police.C) Department, dated 14.12.1999 and Rule 10A of the Rules, which has been reproduced earlier, provides for *inter se* seniority of police constable recruited in a particular batch in a particular District/Hyderabad City Police and those who have been transferred by way of transfer by giving weightage of one year for every completed two years of service rendered as constable in the other wings of the Police Department, subject to a maximum of seven years. Meaning thereby that those persons, who are under 10% quota, have joined Telangana Civil Police will not get the benefit of complete past seniority. The amendment nowhere reflects that it is with retrospective effect.

14. The core issue before this Court is whether the persons who have come on transfer prior to amendment under the Rules, can be denied the benefit of their past seniority or not keeping in view the Amendment?

15. The undisputed facts make it very clear that Rule 3B of the Rules provides for a percentage of recruitment for different sources for the post of police constable (civil) and it provides for 10% of police constable (civil) shall be filled up by appointment by way of transfer from police constables of armed reserved/special armed reserve. Explanation I to Rule 3 of the Rules provide for eligibility criteria for appointments on the posts of police constable (civil) and under Rule 10(ii), the police constables who have come on transfer from armed reserve/special armed reserve are entitled to count their seniority of their parent organisation. The petitioners were originally appointed as police constables (Armed Reserve) on 16.08.1990 and 31.12.1993 and after putting in about 10 years and 7 years respectively, they were transferred to police constable (Civil) on 12.10.2010 and 12.10.2010 respectively. Meaning thereby, they are entitled to be promoted as head constables after taking into account their entire service, including the services rendered by them in the armed reserve police force from 1990 and

1993 respectively. The State Government by amending the Recruitment Rules has now evolved a formula of giving weightage of one year for every completed two years of service rendered as police constable armed reserve/special armed reserve subject to maximum of seven years. Meaning thereby, the past seniority of the petitioners stands forfeited.

16. The Hon'ble Supreme Court in the case of **State of Andhra Pradesh v. Ch.Gandhi**¹⁶, in paragraphs 21 to 28, has held as under:-

“21. At this juncture, we may state with profit that the amended Rule has not been given any retrospective effect. In *Tejshree Ghag v. Prakash Parashuram Patil* [(2007) 6 SCC 220 : (2007) 2 SCC (L&S) 451] it has been ruled that: (SCC p. 224, para 12)

“12. ... the State has the power to alter the terms and conditions of service even with retrospective effect by making rules framed under [the] proviso appended to Article 309 of the Constitution of India, but it is also well settled that the rules so made ordinarily should state so expressly.”

“22. In *Marrupati Nagaraja v. Govt. of A.P.* [(2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , this Court has ruled that: (SCC pp. 526-27, para 16)

“16. The State, in exercise of its power conferred upon it under the proviso appended to Article 309 of the Constitution of India, is entitled to make rules with retrospective effect and retroactive operation. Ordinarily, in absence of any rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied. But if some rule has been given a retrospective effect which is within the domain of the State, unless the same is set aside as being unconstitutional, the consequences flowing therefrom shall ensue. In such an event, the applicable rule would not be the rule which was existing but the one which had been validly brought on the statute book from an anterior date.”

¹⁶ (2013) 5 SCC 111

23. Presently, we shall deal with the contention of the learned counsel for the State who has laid emphasis on the fact that the said Rule has been substituted by the amendment dated 16-12-2003 and, therefore, it has to be treated to have retrospective effect. At this juncture, we may fruitfully refer to a passage from *Maxwell on the Interpretation of Statutes*, 12th Edn., wherein it has been stated thus:

“Perhaps no rule of construction is more firmly established than thus — ‘that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.’ The rule has, in fact, two aspects, for it, ‘involves another and subordinate rule, to the effect that a statute is not to be construed so as to have greater retrospective operation than its language renders necessary’.”

24. In *Francis Bennion's Statutory Interpretation*, 2nd Edn., while emphasising on the concept of retrospective legislation and rights, the learned author has stated thus:

“The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of *ex post facto* law is enshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that *lex prospicit non respicit* (law looks forward not back). As Willes, J. said retrospective legislation is ‘contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law’ [*Phillips v. Eyre*, (1870) LR 6 QB 1 at p. 23].”

25. In *Hitendra Vishnu Thakur v. State of Maharashtra* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] this Court dwelled upon the ambit and sweep of the amending Act and the concept of retrospective effect and, eventually, ruled thus: (SCC p. 633, para 26)

“(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly

or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(i) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(ii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not, generally speaking, be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

26. From the aforesaid analysis of law, it is graphically clear that there is a presumption against the retrospective operation of a statute, and further a greater retrospectivity cannot be conferred on a statute than the language makes it necessary.

27. In the case at hand, the notification uses the phraseology that clause (vi) shall be substituted with the amending clause. The provision which is substituted by the amending Rules, does not obliterate the rights of the parties as if they never existed. A substituted provision is the resultant factor of the amendment in the Rules and it shall guide the consequences that follow from the amended Rules.

28. In *Bhagat Ram Sharma v. Union of India* [1988 Supp SCC 30 : 1988 SCC (L&S) 404 : (1988) 6 ATC 783 : AIR 1988 SC 740] a two-Judge Bench, while dealing with the Punjab Public Service Commission (Conditions of Service) Regulations, 1958, making a distinction between two regulations, opined that in the absence of any provision giving Regulation 8(3) a retrospective operation, the same cannot prima facie bear a greater retroactive effect than intended. In this context, the Court proceeded to state as follows: (SCC pp. 40-41, paras 17-19)

“17. It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between ‘repeal’ and an ‘amendment’. In *Sutherland's*

Statutory Construction, 3rd Edn., Vol. 1 at p. 477, the learned author makes the following statement of law:

The distinction between repeal and amendment as these terms are used by the courts, is arbitrary. Naturally the use of these terms by the court is based largely on how the legislatures have developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision is added to a section, the legislatures commonly entitle the Act as an amendment.... When a provision is withdrawn from a section, the legislatures call the Act an amendment, particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, legislatures label the Act accomplishing this result a repeal. Thus as used by the legislatures, amendment and repeal may differ in kind—addition as opposed to withdrawal or only in degree—abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree—addition of a provision to a section to replace a provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the courts, and they have developed separate rules of construction for each. However, they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal—the abrogation of an existing statutory provision—and have therefore applied the term “implied repeal” and the rules of construction applicable to repeals to such amendments.”

18. Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred.

19. For the sake of completeness, we wish to add that the mere use of the word ‘substitution’ does not imply that Regulation 8(3) must relate back to 1-11-1956, the appointed day.”

17. Keeping in view the aforesaid judgment, a right which has accrued in favour of the petitioners cannot be wiped out by amending the statute especially when the applicability of the statute is not with retrospective effect. In the present case, the amending notification uses the phraseology “*shall be substituted*” which clearly indicates that the amendment is prospective and therefore, in the

considered opinion of this Court, the question of making the Rules applicable with retrospective effect does not arise. The amendment in the Rules shall be applicable to all those persons who are now joining the Telangana Civil Police after the amendment only.

18. The High Court of Andhra Pradesh in the case of **Md. Saiduddin v. K.Venkatesam**¹⁷, in paragraphs 16 to 20 has held as under:-

“16. Rule 15-e of the Rules, however, deals with a situation, where a constable is appointed in the AR on transfer from another service or organization. A constable appointed on transfer from special battalion or any other organization or service, becomes part of the AR only, when he comes to be appointed to that service. What Rule 15-e of the Rules mandates is that the service of the persons so appointed shall be reckoned from the date of first appointment in “this service”, meaning thereby AR Service. The literal and strict interpretation of this rule would (sic.lead) to the conclusion that the seniority of the petitioners herein must be reckoned from the date, on which they entered into “this service” i.e. A.R., no matter, what, the length of service they had to their credit, in the special battalions, has been.

17. Seniority list prepared by the respondents was, admittedly, in derogation to Rule 15-e of the Rules. Though an attempt is made to impress this Court that special battalions are part of the AR, or that there was no qualitative change in services, except that they have been shifted from one wing to other; the fact that the AR is a separate service and they entered into it, only through transfer from another service, cannot be ignored.

18. In the seniority lists that were published in the respective districts, Constables in the AR were assigned places, taking into account, the date of their initial appointment in the special battalions as the basis. For example, in Srikakulam district, the final seniority list was published on 22.08.2007. The constables that were appointed by transfer from 5th battalion on 06.05.2000

¹⁷ 2014 (1) ALT 675 (DB)

in terms of G.O. Ms. No. 299, dated 05.10.1999, were placed immediately after the Constables appointed on 17.07.1976. The dates of their initial appointment in the battalion were taken into account. For example, though the 1st petitioner in W.P. No. 26765 of 2011 was appointed on transfer to the A.R. on 17.03.2004, his date of initial appointment i.e. 05.04.1997 was taken as basis for reckoning his seniority. In that process, he was placed above the Constables appointed in AR, in the year 1994, through direct recruitment. The petitioners were extended the benefit of decades of service, over the direct recruit Constables. Same pattern was repeated in other direction. This has naturally resulted in gross injustice to the respondents. In a particular seniority list, a person, who was to figure at serial No. 3, was pushed down to serial No. 41. The effect on the persons, a bit lower in the list, was far more devastating.

19. Even according to the procedure contemplated under G.O. Ms. No. 299, the appointment of the petitioners is only through transfer. It is, certainly, otherwise than through direct recruitment. Once the transfer is from one service to another, it is fundamental, that the person, who enters through such a procedure, must take the seniority, immediately after the direct recruits of the contemporary period, or at least from the date of their entry into that service. The service rendered by such persons in their parent organization can, certainly, be counted towards pension and other benefits. In a given case, even Pay protection can be extended. However, the seniority of the persons, who were already working in the service to which those appointed in other service are transferred, cannot be adversely affected.

20. True, the Government may have definite purpose in its mind, when it issued G.O. Ms. No. 299. The making of appointment by transfer of constables from battalions, as the only means of recruitment of Constables in the AR, would certainly have the effect of relieving the constables of the special battalions, of the arduous duties. However, if the Government wanted to confer any benefit on them, it could have provided for weightage on the basis of service, subject to certain limit, that too, duly taking into account the interests of the persons, who are already working as Constables in the AR and awaiting promotions. Such practice is in vogue in the engineering wings of the various departments of the Government of A.P.; Wherever the Assistant Engineers (Supervisors) are upgraded as Deputy Executive Engineers on acquiring the prescribed qualifications, the benefit of service in the post of A.E. subject to certain limit is extended. This

would bring about a sort of balance between the conflicting interests. The placement of hundreds of Constables above the Constables, who are already working in the AR for decades together, cannot be countenanced either in law or on logic.”

19. In the aforesaid judgment, as the Division Bench has considered the issue of seniority under the Recruitment Rules governing the field, i.e., the Recruitment Rules vide G.O.Ms.No.374, dated 14.12.1999, the benefit of past seniority cannot be wiped out by amending the Rules and by making the Rules applicable with retrospective effect.

20. The Hon’ble Supreme Court in the case of the **Union of India v. Tushar Ranjan Mohanty**¹⁸, was dealing with the case of provision for reservation with retrospective effect and the Hon’ble Supreme Court in paragraphs 9 to 14 has held as under:-

“9. We take up the first and the second contentions together for consideration. It is obvious from the plain language of Rule 8(1)(b)(i) that all Grade-IV officers who have completed four years of service on regular basis are entitled to be considered for promotion to Grade-III on the basis of their seniority provided they are not found unfit by the Controlling Authority. The rule gives a statutory right to Grade-IV officers to be considered for promotion in the order of their seniority. The said right is further strengthened by the proviso to Rule 8(1)(b)(i). The proviso makes it obligatory that when a junior officer in Grade-IV is eligible and is considered for promotion all officers senior to him in that grade shall also be considered for promotion. Even otherwise, “to be considered for promotion” is a guaranteed right under Article 16(1) of the Constitution of India. It is, therefore, clear that Mohanty and other senior general category Grade-IV officers had a vested

¹⁸ (1994) 5 SCC 450

right under the Rules — as also under Article 16(1) of the Constitution — to be considered for promotion when persons junior to them were being considered and in fact promoted. Respondents 2 to 9 were admittedly junior to Mohanty and as such they could not be promoted, without considering the case of Mohanty. Rule 13 of the Rules — before its amendment — did not permit any reservation in respect of appointments to be made by way of promotion. There can, therefore, be no dispute that on 24-11-1987 when Respondents 2 to 9 were promoted to Grade-III, Mohanty and other general category candidates senior to him had a vested right to be considered for promotion. Whether such a right can be rendered nugatory by retrospective legislation? The question is not *res integra*. There are several pronouncements of this Court on the subject.

10. In *State of Gujarat v. Raman Lal Keshav Lal Soni* [(1983) 2 SCC 33 : 1983 SCC (L&S) 231] this Court had an occasion to deal with the question as to whether the status as civil servant conferred on the Panchayat employees could be taken away by retrospective operation of amended law. The Gujarat Panchayats Act, 1961 aimed at democratic decentralisation of important governmental functions by vesting such functions in Gram, Nagar, Taluqa and District Panchayats and by enabling the State Government to transfer other powers, functions and duties to the Panchayat institutions. The dispute having arisen regarding the status of the Panchayat employees, some of them filed a writ petition before the Gujarat High Court seeking various reliefs. The High Court allowed the writ petition holding that the members of the Panchayat service belonging to the local cadre were government servants and issued consequential directions for equating of posts, revision of pay scales and payment of salaries. The State Government filed appeal against the judgment of the High Court before this Court, but during the pendency of the appeal, the Gujarat Panchayats (Third Amendment) Act, 1978 was enforced with a view to nullify the basis of the decision of the High Court. The employees filed writ petitions under Article 32 of the Constitution of India before this Court challenging the constitutional validity of the Amending Act. The State appeal and the writ petitions were heard together by a Constitution Bench of this Court. This Court held that the Gujarat Panchayats (Third Amendment) Act, 1978 was arbitrary, unreasonable and unconstitutional on the following reasoning: (SCC p. 62, para 52)

“The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no

rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 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 v. State of Haryana* [1980 Supp SCC 524 : 1981 SCC (L&S) 343 : (1981) 1 SCR 1024] . Chandrachud, C.J., speaking for the Court held: (SCC headnote)

'Since the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that 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.'

Today's equal cannot be made unequal by saying that they were unequal 20 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."

11. This Court in *Ex-Capt. K.C. Arora v. State of Haryana* [(1984) 3 SCC 281 : 1984 SCC (L&S) 520 : (1984) 3 SCR 623] declared ultra vires retrospective amendments made to the Punjab National Emergency (Concessions) Rules, 1965 as applicable to Haryana. Under the Punjab National Emergency (Concessions) Rules, 1965 ex-emergency commissioned officers were entitled to the benefit of their military service on their reappointment in the State Civil Service against the vacancies reserved for ex-army officers. The Haryana Government by a notification dated 9-8-1976 amended the definition of the expression "Military Service" in the 1965 Rules thereby restricting the benefit of military service only up to 10-1-1968 with the result that the petitioners before this Court were deprived of their army service for the purpose of fixation of seniority in the civil service for the period 1969-1971. The amendment was challenged on the ground that it was ultra vires the Constitution insofar as it

affected prejudicially persons who had acquired vested rights. This Court following the Constitution Bench in *State of Gujarat v. Raman Lal Keshav Lal Soni* [(1983) 2 SCC 33 : 1983 SCC (L&S) 231] struck down the amendment on the following reasoning: (SCC p. 292, para 22; p. 295, para 23)

“The question, however, has been pointedly considered recently by a Constitution Bench of this Court in *State of Gujarat v. Raman Lal Keshav Lal Soni* [(1983) 2 SCC 33 : 1983 SCC (L&S) 231] In view of this latest pronouncement by the Constitution Bench of this Court, the law appears to be well settled and the Haryana Government cannot take away the accrued rights of the petitioners and the appellants by making amendment of the rules with retrospective effect.

For the foregoing discussion the writ petitions as well as the appeals are allowed and the orders of the High Court dated 10-10-1980 are quashed and the impugned Rule 4(ii) of the Punjab Government National Emergency (Concessions) Rules, 1965, as amended by the Haryana Government Gazette Notification No. GSR 77/Const./Art. 309/Amend/(1)/76 dated 22-3-1976 and the Notification No. GSR 182/Const./Art. 309/Amend/(2)/76 dated 9-8-1976 amending the definition of the expression ‘military service’ in Rule 2 are declared to be ultra vires the Constitution, insofar as they affect prejudicially persons who had acquired rights as stated above.”

12. In *T.R. Kapur v. State of Haryana* [1986 Supp SCC 584 : (1987) 2 ATC 595 : (1987) 1 SCR 584] three petitioners T.R. Kapur, Mahinder Singh and V.D. Grover, who were diplomaholders, were working as Sub-Divisional Officers on regular basis under the unamended Rule 6(b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964. They were eligible for promotion as Executive Engineers in Class I service despite the fact that they did not possess a degree in engineering. By the notification dated 22-6-1984, Rule 6(b) was amended and it was provided that a degree in engineering was an essential qualification for promotion of Assistant Engineers (Irrigation Branch) to Class I service and thereby the petitioners were rendered ineligible for promotion to the post of Executive Engineer in Class I service. The amendment was challenged in this Court by way of a petition under Article 32 of the Constitution of India. This Court came to the conclusion that the retrospective effect given to the amendment was violative of Articles 14 and 16 of the Constitution of India on the following reasoning: (SCC p. 595, para 16)

“It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules

with a retrospective effect: *B.S. Vadera v. Union of India* [(1968) 3 SCR 575 : AIR 1969 SC 118 : (1970) 1 LLJ 499] , *Raj Kumar v. Union of India* [(1975) 4 SCC 13 : 1975 SCC (L&S) 198 : (1975) 3 SCR 963] , *K. Nagaraj v. State of A.P.* [(1985) 1 SCC 523 : 1985 SCC (L&S) 280] and *State of J & K v. Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771] . It is equally well-settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well-recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights.”

13. Finally this Court considered the effect of retrospective legislation on the vested rights of the affected persons in *P.D. Aggarwal v. State of U.P.* [(1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 272] Under the U.P. Service of Engineers (Buildings & Roads Branch) Class II Rules, 1936, the Assistant Engineers substantively appointed against temporary vacancies became members of the service and were entitled to seniority on the basis of continuous length of service. The Rules were amended in the years 1969 and 1971 wherein it was provided that the Assistant Engineers would only become members when they are selected and appointed against the quota meant for them and their seniority would be determined only from the date of order of appointment in substantive vacancies. These amendments were made with retrospective effect thereby taking away the vested rights of the Assistant Engineers appointed against temporary posts. The High Court held the retrospective amendment of the rules to be arbitrary and unconstitutional. This Court upheld the judgment of the High Court on the following reasoning: (SCC p. 637, para 16; p. 638, para 18; p. 639, para 18)

“It has been urged that Government has the power to amend rules retrospectively and such rules are quite valid. Several decisions have been cited of this Court at the bar. Undoubtedly, the Government has got the power under proviso to Article 309 of the Constitution to make rules and amend the rules giving retrospective effect. Nevertheless, such retrospective amendments cannot take away the vested rights and the amendments must be reasonable, not arbitrary or discriminatory violating Articles 14 and 16 of the Constitution As has been stated hereinbefore, the

Assistant Engineers who have already become members of the Service on being appointed substantively against temporary posts have already acquired the benefit of 1936 Rules for having their seniority computed from the date of their becoming member of the service. 1969 and 1971 Amended Rules take away this right of these temporary Assistant Engineers by expressly providing that those Assistant Engineers who are selected and appointed in permanent vacancies against 50 per cent quota provided by Rule 6 of the Amended 1969 Rules will only be considered for the purpose of computation of seniority from the date of their appointment against permanent vacancies. Therefore the temporary Assistant Engineers who are not only deprived of the right that accrued to them in the matter of determination of their seniority but they are driven to a very peculiar position inasmuch as they are to wait until they are selected and appointed against permanent vacancies in the quota set up for this purpose by the amended Rule 6.... These amendments are not only disadvantageous to the future recruits against temporary vacancies but they were made applicable retrospectively from 1-3-1962 even to existing officers recruited against temporary vacancies through Public Service Commission. As has been stated hereinbefore that the Government has power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and not reasonable then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution.”

14. The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.”

21. In the aforesaid case, the Rule to the extent it was made to operate retrospectively was held to be unreasonable and arbitrary, and as such, violative of Articles 14 and 16 of the Constitution of India as it was

taking away the vested right accrued in favour of the employee therein and the retrospective operation of the Rule was struck down. In the present case, the Rules do not provide for their applicability with retrospective effect, and therefore, by no stretch of imagination, the Rules can be made applicable with retrospective effect. However, for new entrants, who are coming on transfer after the Amendment will be governed by the amendment only.

22. The apex Court in the case of **A.A.Calton v Director of Education**¹⁹, in paragraph 5 has held as under:-

“5. It is no doubt true that the Act was amended by U.P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under Section 16-F(4) of the Act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under Section 16-F of the Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under Section 16-F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection under Section 16-F(4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16-F of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the

¹⁹ (1983) 3 SCC 33

Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned counsel for the appellant that the law as amended by the U.P. Act 26 of 1975 should have been followed in the present case.

23. In the aforesaid case also, the Hon'ble Supreme Court has held that the existing rights cannot be taken away by giving retrospective effect to a statutory provision unless it expressly or by necessary implication provide so. Therefore, the Amendment cannot be given effect to retrospectively to wipe out the right accrued in favour of the petitioners.

24. The Apex Court in the case of **National Agricultural Cooperative Marketing Federation of India Limited v. Union of India**²⁰ in paragraph 15 has held as under:-

“15. The legislative power either to introduce enactments for the first time or to amend the enacted law with retrospective effect, is not only subject to the question of competence but is also subject to several judicially recognized limitations with some of which we are at present concerned. The first is the requirement that the words used must expressly provide or clearly imply retrospective operation. [S.S. *Gadgil v. Lal & Co.*, AIR 1965 SC 171, 177; *J.P. Jani v. Induprasad Devshanker Bhatt*, AIR 1969 SC 778, 781] The

²⁰ (2003) 5 SCC 23

second is that the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional. [*Rai Ramkrishna v. State of Bihar*, AIR 1963 SC 1667 : (1964) 1 SCR 897, 915; *Jawaharmal v. State of Rajasthan*, AIR 1966 SC 764 : (1966) 1 SCR 890, 905; *Ujagar Prints (II) v. Union of India*, (1989) 3 SCC 488, 517 : 1989 SCC (Tax) 469] The third is apposite where the legislation is introduced to overcome a judicial decision. Here the power cannot be used to subvert the decision without removing the statutory basis of the decision. [*Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality*, (1969) 2 SCC 283; *Lalitaben v. Gordhanbhai Bhaichandbhai*, 1987 Supp SCC 750; *Janapada Sabha Chhindwara v. Central Provinces Syndicate Ltd.*, (1970) 1 SCC 509; *Indian Aluminium Co. v. State of Kerala*, (1996) 7 SCC 637]"

25. In the light of the aforesaid Judgment, as the legislative power has not been used to make the statute applicable with retrospective effect, the natural corollary is that the amending statute is prospective in nature and the petitioner's past seniority as they have joined the Telangana Civil Police prior to the Amendment cannot be wiped out and they cannot be subjected to the weightage formula, which has been introduced under the Amendment.

26. The Hon'ble Supreme Court in the case of **State of Madhya Pradesh v. Yogendra Shrivastava**²¹, in paragraphs 15 and 19 has held as under:-

“15. It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. (See *N.C.*

²¹ (2010) 12 SCC 538

Singhal v. Armed Forces Medical Services [(1972) 4 SCC 765] ; *K.C. Arora v. State of Haryana* [(1984) 3 SCC 281 : 1984 SCC (L&S) 520] and *T.R. Kapur v. State of Haryana* [1986 Supp SCC 584 : (1987) 2 ATC 595] .) Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay having accrued to the respondents under the unamended Rules, it follows that respondent employees will be entitled to non-practising allowance @ 25% of their pay up to 20-5-2003.

Conclusion

19. The appeals are allowed in part as follows:

(i) We uphold the decision of the Tribunal, affirmed by the High Court that the respondents are entitled to 25% of their pay, as NPA.

(ii) The respondents will be entitled to NPA @ “25% of pay” only up to 20-5-2003. Thereafter, the amended Rules will apply.

(iii) Insofar as arrears are concerned, the respondents are entitled to recover the difference in NPA only in regard to the salary which accrued due during the three years prior to the date of filing of the original applications by the respondents before the Tribunal and not from the date of their appointments.

(iv) As a consequence, if the appellants, in pursuance of the orders of the Tribunal/High Court, had paid the difference in NPA, for any period beyond three years before the date of the respective original applications, they will be at liberty to recover the same from the respective respondents in twenty-four monthly instalments.”

27. In the light of the aforesaid Judgment, the rights which have already accrued cannot be taken away by amending the Rules with retrospective effect.

28. The Hon’ble Supreme Court in the case of **B.S.Yadav v. State of Haryana**²², in paragraphs 76, 78 and 79 has held as under:-

²² 1980 (Supp) SCC 524

“76. The amended Rule 12, as in force in Punjab, lays down the length of continuous service in a cadre post as the guiding criterion for fixing seniority. That rule was notified by the Governor on December 31, 1976 and was given retrospective effect from April 9, 1976. Since the Governor exercises a legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that 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. No such nexus is shown in the present case on behalf of the State Government. On the contrary, it appears to us that the retrospective effect was given to the rules from April 9, 1976 for the mere reason that on August 25, 1976 the High Court had issued a notification fixing seniority of the promotees and direct recruits appointed to the Superior Judicial Service of Punjab. The notification issued by the Governor on December 31, 1976, will, therefore, operate on future appointments or promotions made after that date and not on appointments or promotions made before that date. The seniority of all officers appointed or promoted to the Superior Judicial Service, Punjab, before December 31, 1976 will be determined by the High Court according to the criterion of the dates of confirmation, without applying the rule of rotation. The seniority of those promoted or appointed after December 31, 1976 will be determined in accordance with the rules promulgated under the notification of that date. Insofar as we see, judicial officers from Serial Nos. 1 to 36 mentioned in Annexure ‘P-I’ to the Punjab writ petition, that is, beginning with Shri J.S. Chatha and ending with Shri Hardev Singh were appointed or promoted prior to December 31, 1976. Those from Serial No. 37 to Serial No. 43, that is beginning with Shri G.S. Kalra and ending with Shri H.L. Garg, were appointed or promoted after December 31, 1976. The validity of the notification dated December 31, 1976 was not seriously challenged before us, apart from its retrospectivity. We do not also see any constitutional or legal objection to the test of continuous officiation introduced thereby.

78. We must express our concern at the manner in which the Rules of the Superior Judicial Service have been amended by the Governor of Punjab and, particularly, by the Governor of Haryana. In Punjab, the High Court was never consulted on the question whether the amendments made on December 31, 1976 should be given retrospective effect and, if so, from what date. The

amendments were made despite the opposition of the High Court. In Haryana, the amendment of April 21, 1972 was made just in order to spite a single judicial officer who is a direct recruit. Fortunately, that amendment was withdrawn by the successor Government on September 2, 1977. A long retrospective effect was given to that amendment from April 1, 1970 because the amendment of April 21, 1972 was given retrospective effect from April 1, 1970 and that amendment had to be effectively superseded. We do hope that the State Governments will apply their mind more closely to the need to amend the Service Rules of the Superior Judiciary and that the rules will not be tinkered with too often. It should also be realised that giving retrospective effect to the rules creates frustration and discontentment since the just expectations of the officers are falsified. Settled seniority is thereby unsettled, giving rise to long drawn-out litigation between the promotees and direct appointees. That breeds indiscipline and draws the High Court into the arena, which is to be deprecated.

79. Punjab and Haryana have a peculiar problem since they have a common High Court. But they are blessed, not cursed, with a common High Court. Today we find the strange spectacle of the High Court being called upon to determine the seniority of officers in one State by one test and that of officers in the other State by an opposite test. In Punjab, continuous officiation on a post in the service is the criterion of seniority. In Haryana, the date of confirmation is the governing factor. Can the two Governors not come together and take a joint decision applying a uniform test of seniority of their judicial officers who are under one common High Court? And though that is not the requirement of the proviso to Article 309 of the Constitution, we hope that whatever amendments are going to be made hereafter to the Rules will be made in consultation with the High Court. Nothing will be lost thereby and there is so much to gain : Goodwill, expert advice and the benefit of the experience of a body which has to administer the rules since the control over the subordinate courts is vested in it by Article 235. It is sad that the promotees and direct recruits have to dissipate their time and energy in litigation which they can ill-afford and which arises largely because of the lack of coordination between the High Court and the State Governments. It is time enough now to turn a new leaf.”

29. In the aforesaid case also, the Hon'ble Supreme Court has held that Notifications issued by the Governor will operate on future appointments and promotions.

30. The Hon'ble Supreme Court in the case of **P.Sudhakar Rao v. U.Govinda Rao**²³, in paragraphs 44 to 47 has held as under:-

“Answering the questions

44. As far as the impact of the retrospective operation of the executive instructions or statutory rules on the seniority of employees is concerned (including the Junior Engineers before us), this issue is now settled by a few recent decisions of this Court. There is no doubt that retrospective operation can be given to statutory rules such as the Andhra Pradesh Engineering Service Rules. But, the retroactivity must still meet the test of Article 14 and Article 16 of the Constitution and must not adversely trench upon the entitlement of seniority of others.

45. Without intending to multiply precedents on this subject, reference may be made to a decision rendered by this Court more than two decades ago. In *State of Bihar v. Akhouri Sachindra Nath* [1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070 : (1991) 16 ATC 936] it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre. So also, seniority cannot be given with retrospective effect so as to adversely affect others. Seniority amongst members of the same grade must be counted from the date of their initial entry into the grade. It was held : (SCC pp. 342-43, para 12)

“12. In the instant case, the promotee Respondents 6 to 23 were not born 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 affect 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

²³ (2013) 8 SCC 693

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.”

46. This decision was cited with approval, a few years ago, along with the decision rendered in *Keshav Chandra Joshi v. Union of India* [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545] . This Court held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in his/her quota and not from any anterior date of promotion or subsequent date of confirmation. It was observed that injustice ought not to be done to one set of employees in order to do justice to another set. It was said in *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.* [(2006) 10 SCC 346 : (2007) 1 SCC (L&S) 116] , on referring to these judgments that : (SCC p. 364, paras 37-38)

“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* [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545] 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 that 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. ...

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime.”

47. However, the mere existence of a vacancy is not enough to enable an employee to claim seniority. The date of actual appointment in accordance with the required procedure becomes important in such a case. This was so held in *State of Uttaranchal v. Dinesh Kumar Sharma* [(2007) 1 SCC 683 : (2007) 1

SCC (L&S) 594] (followed in *Nani Sha v. State of Arunachal Pradesh* [(2007) 15 SCC 406 : (2010) 1 SCC (L&S) 719] , SCC p. 414, para 15) wherein it was said : (SCC pp. 691-92, para 34)

“34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-1996 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in *Jagdish Ch. Patnaik v. State of Orissa* [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156] .”

31. The Hon'ble Supreme Court in the aforesaid case has held that retrospective operation can be given to statutory rules, but the retroactivity must still meet the test of Articles 14 and 16 of the Constitution of India and must not adversely trench upon the entitlement of seniority of others.

32. The Hon'ble Supreme Court in the case of **K.V.Subba Rao v. Government of Andhra Pradesh**²⁴, in paragraph 8 has held as under:-

“8. Indisputably many of the promotees on the basis of seniority already assigned to them have been holding posts of Tehsildars, Deputy Collectors and Special Grade Deputy Collectors. Many have retired from service having enjoyed those promotional benefits. Promotions between 1961 and 1971 on the basis of the seniority assigned under Rule 33(a) of the General Rules is under challenge. That period is a distant one from now varying between 17 to 27 years. To allow the amendment to have retrospective operation is bound to create problems. The State Government while amending the rule should have taken into consideration the practical problems which would arise as a

²⁴ (1988) 2 SCC 201

consequence of retrospectivity. It should have taken into account the far-reaching adverse effect which the rule, if given such retrospective effect, would bring about in regard to services of scores of employees and the disquiet it would result in by disturbing settled situations. We are, therefore, not of the view that the rules should be given retrospective effect from 1961. It would, however, be wholly justified and appropriate to give the rules prospective operation by fixing October 9, 1980 as the date from which it should take effect. We accordingly direct that Rule 4(e) as amended on October 9, 1980, shall not have any retrospective effect and would operate prospectively.”

33. The Hon’ble Supreme Court in the aforesaid case has again held that the applicability of Rules with retrospective effect is bad in law.

34. The Hon’ble Supreme Court in the case of **T.R.Kapur v. State of Haryana**²⁵, in paragraph 16 has held as under:-

“16. It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect: *B.S. Vadhera v. Union of India* [AIR 1969 SC 118 : (1968) 3 SCR 575 : (1970) 1 Lab LJ 499] , *Raj Kumar v. Union of India* [(1975) 4 SCC 13 : 1975 SCC (L&S) 198 : (1975) 3 SCR 963] , *K. Nagaraj v. State of A.P.* [(1985) 1 SCC 523 : 1985 SCC (L&S) 280] and *State of J&K v. Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771] . It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is

²⁵ 1986 (Supp) SCC 584

specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the tests of Articles 14 and 16(1) of the Constitution: *State of Mysore v. M.N. Krishna Murty* [(1973) 3 SCC 559 : 1973 SCC (L&S) 190 : AIR 1973 SC 1146 : (1973) 2 SCR 575] , *B.S. Yadav v. State of Haryana* [1980 Supp SCC 524 : 1981 SCC (L&S) 343 : (1981) 1 SCR 1024] , *State of Gujarat v. Raman Lal Keshav Lal Soni* [(1983) 2 SCC 33 : 1983 SCC (L&S) 231 : (1983) 2 SCR 287] and *Ex-Captain K.C. Arora v. State of Haryana* [(1984) 3 SCC 281 : 1984 SCC (L&S) 520 : (1984) 3 SCR 623].”

35. In the light of the aforesaid Judgment, the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect.

36. The Hon’ble Supreme Court in the case of **Chairman, Railway Board v. C.R.Rangadhamaiah**²⁶, in paragraph 24 has held as under:-

“24. In many of these decisions the expressions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon* [AIR 1967 SC 1889 : (1968) 1 SCR 185 : (1968) 1 LLJ 576] , *B.S. Vedera* [AIR 1969 SC 118 : (1968) 3

²⁶ (1997) 6 SCC 623

SCR 575 : (1970) 1 LLJ 499] and *Raman Lal Keshav Lal Soni* [(1983) 2 SCC 33 : 1983 SCC (L&S) 231 : (1983) 2 SCR 287] .”

37. In the light of the aforesaid Judgment, the vested rights or accrued rights cannot be taken away by making the Amendment applicable with retrospective effect.

38. On the other hand, the learned Advocate General appearing on behalf of the official respondents have relied upon the judgment in the case of **S.S.Bola v. B.D.Sardana**²⁷.

39. Learned counsel appearing for the respondents 5 to 11 have placed reliance upon the Judgment delivered by the High Court of Andhra Pradesh in the case of **E.Shankar Reddy** (supra). He also placed heavy reliance upon the Judgments delivered by the Apex Court in the case of **Prafulla Kumar Das** (supra).

40. Learned counsel appearing for the respondents 18 to 43 have placed reliance upon the Judgment delivered by the Apex Court in the case of **K.Jagannadha Rao v. State of Andhra Pradesh**²⁸, **K.Rajaiah v. State of Andhra Pradesh**²⁹ and **Palure Bhaskar Rao** (supra).

41. Learned Advocate General relying on the case of **S.S.Bola** (supra) has vehemently argued that the

²⁷ (1997) 8 SCC 522

²⁸ (1981) 3 SCC 604

²⁹ 1987 (Supp) SCC 345

amendment to the statute can be done with retrospective effect. The Hon'ble Supreme Court in the case of **S.S.Bola** (supra) was dealing with an issue of *inter se* seniority of direct recruits and promotes in each of the services, namely the PWD Branch, the Public Health Branch and the Irrigation Branch. The seniority lists were already drawn up on account of earlier litigation and the Hon'ble Supreme Court has not disturbed the right which accrued in favour of the persons so promoted on the basis of earlier drawn seniority lists. In the present case, no such contingency is involved. It is a case of transfer from one wing to the other wing and the State Government wants the seniority of employees who came on transfer to be forfeited by making the Rules applicable with retrospective effect. The Judgment relied upon by the learned Advocate General is distinguishable on facts.

42. Learned counsel for the respondents 5 to 11 has placed reliance upon the Judgment delivered in the case of **E.Shankar Reddy** (supra) delivered by a Division Bench of this Court. In the aforesaid case, the dispute was of *inter se* seniority of Reserve Sub-Inspectors appointed by transfer as Civil Sub-Inspectors and Direct Recruit Civil Sub-Inspectors belonging to 1985, 1989 and 1991 Batches. The seniority list was prepared contrary to the

statutory provisions as contained in Rule 15(c) of the Andhra Pradesh Police Subordinate Service Rules (as amended by G.O.Ms.No.35, dated 11.02.1999) and the Division Bench has held that right to seniority has to be determined in accordance with the provisions of the statutory rules and the Courts cannot interfere with seniority so fixed.

43. The dispute involved in the present case is altogether different and the amendment to the recruitment rules has to be prospective in the absence of any such specific provision and the right accrued in favour of the employees who have come on transfer prior to amendment cannot be wiped out.

44. Learned counsel for the respondents 5 to 11 has also placed reliance upon the Judgment delivered in the case of **Prafulla Kumar Das** (supra). In the aforesaid case, the writ petitioners and the respondents were members of Orissa Subordinate Service Class III, which was designated as Orissa Administrative Service (Junior Branch) following its proposed and partial merger on 07.01.1972 with the Orissa Administrative Service II, which, in turn, came to be known as the Orissa Administrative Service (Senior Branch). Meaning thereby,

there was a complete and final merger of the aforesaid branches by Government Resolution dated 21.12.1973 resulting in a single integrated Orissa Administrative Service Class II. The dispute arose in respect of *inter se* seniority in the integrated services by putting the first name of the Junior Branch immediately below the last name of the Senior Branch. It is true that in the aforesaid case, it has been held that an ostensible right to seniority, can be altered or denied by the State Government with retrospective effect at its discretion in the public interest.

45. In the present case, the State Government has not been able to point out the public interest involved in the matter, on the contrary the benefit of seniority was granted to the persons who come on transfer from branch to another branch and are now being deprived of their accrued right of their past seniority and their accrued right for consideration of promotion and therefore, the Judgment relied upon by the learned counsel is distinguishable on facts.

46. Learned counsel for the respondents 18 to 43 has placed reliance upon the Judgment delivered in the case of **K.Jagannadha Rao** (supra). In the aforesaid case, the

Division Bench has held that the benefit of past service rule is a matter of policy for the Government, however, past service must be of an equivalent post. In the present case, the past service is an equivalent post and the right accrued already in favour of the employees cannot be wiped out by making the Rules applicable to the retrospective effect.

47. Learned counsel for the respondents 18 to 43 has also placed reliance upon the Judgment delivered in the case of **K.Rajaiah** (supra). This Court has carefully gone through the aforesaid Judgment. It was a case relating to direct recruitment and recruitment by transfer for the purpose of Sub Inspector of Police. There was no such issue of retrospective applicability of the Recruitment Rules involved in the aforesaid case and therefore, the Judgment relied upon does not help the respondent respondents 18 to 43.

48. Lastly, he has also placed reliance upon the Judgment delivered in the case of **Palure Bhaskar Rao** (supra). In the aforesaid case also, the issue of retrospective applicable of the Rules was not in question and therefore, the Judgment is distinguishable on facts.

49. In the considered opinion of this Court, as the Recruitment Rules provided for transfer only to the extent of 10% posts, the petitioners at the relevant point of time opted for transfer to Civil Police and they would have certainly received promotions by now in the parent organisation. The Amendment in the Recruitment Rules, i.e., G.O.Ms.No.19, dated 06.08.2018 has been introduced and for the first time, a weightage formula has been introduced by the State Government under the Recruitment Rules governing the field, meaning thereby, wiping the past seniority and therefore, once a right which has accrued in favour of the petitioners, cannot be wiped out by the impugned Amendment and the Amendment is certainly not at all applicable with retrospective effect. The question of depriving the petitioners by making the Amendment applicable with retrospective effect does not arise. Therefore, this Court is of the considered opinion that all those constables who have come prior to 06.02.2018 are certainly entitled for grant of seniority and all those constables who have come on transfer after 06.02.2018 shall be governed by the Amended Recruitment Rules.

50. With the aforesaid, the Writ Petitions stand disposed of. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

N. TUKARAMJI, J

25.01.2022
Pln/Vs