

SUPREME COURT OF INDIA

State of Mysore

Vs.

K. Venkatachalapathy

C.A.Nos.278 of 1968

(Y. V. Chandrachud, P. K. Goswami and S. Murtaza Fazl Ali, JJ.)

12.11.1976

JUDGEMENT

CHANDRACHUD, J.:-

1. Section 115 (7) of the States Reorganisation Act, 1956 provides that nothing contained therein shall be deemed to affect the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State. The proviso to this sub-section which imposes a limitation on the exercise of the powers contained in the sub-section says that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government. The controversy in these appeals relates to the question whether the memorandum issued by the Central Government on May 11, 1957 constitutes "previous approval" of the Central Government within the meaning of the proviso. The Mysore High Court accepted the contention of the writ petitioners (who are respondents before us) that the Memorandum does not constitute such previous approval. In coming to that conclusion the High Court relied upon a judgment of this Court in *Mohammad Bhakar v. Krishna Reddy*, 1970 LR 768 (SC).

2. The judgment in Mohammed Bhakar's case having been expressly disapproved and overruled on the relevant point by a Constitution Bench of this Court in Shujat Ali v. Union of India, (1975) 1 SCR 449 = (AIR 1974 SC 1631) these appeals filed by the State of Mysore have to be allowed.

3. To the extent therefore to which the judgment of the High Court is based on the decision in Mohammed Bhakar's case, the judgment shall stand set aside. There may be other questions surviving in the writ petitions, particularly questions which may have to be considered in view of the passing of the Karnataka Service Examination Act. 40 of 1976. In order to enable the High Court to consider these questions, it is necessary to remand the Writ petitions to it with a direction that it shall decide such questions as may properly arise in the Writ Petitions including the question arising under Act 40 of 1976.

4. Accordingly we allow the appeals, set aside the judgment of the High Court and remand the Writ Petitions to it for disposal in the light of the observations made above. In view of the order passed by this Court while granting special leave, the State of Mysore shall pay the costs of these appeals to the respondents. The High Court will treat respondent No. 3 in C. A. No. 2136/1970 as properly impleaded to the Writ Petition out of which that appeal arises. Respondent No. 3 will not be entitled to his costs.

Appeals allowed.