

T. R. Kapur and Others

Vs

State of Haryana and Others

Writ Petition Nos. 630-32 of 1984

(A. P. Sen, S. Natarajan JJ)

17.12.1986

JUDGMENT

A. P. SEN, J. :-

1. These petitions under Article 32 of the Constitution assail the constitutional validity of a notification issued by the State Government of Haryana in the Public Works Department (Irrigation Branch) dated June 22, 1984 purporting to amend Rule 6 (b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964 (for short "the Class I Rules") with retrospective effect from July 10, 1964 as violative of Articles 14 and 16 (1) of the Constitution and also ultra vires the State Government by reason of the proviso to Section 82 (6) of the Punjab Reorganisation Act, 1966. The purport and effect of the impugned notification is to nullify the decision of this Court in A. S. Parmar v. State of Haryana holding that a degree in Engineering was not essential for such promotion. By the impugned notification, a degree in Engineering is made an essential qualification for promotion of Assistant Engineers in the Irrigation Branch, a Class II service under Rule 6 (b) of the Class I Rules and thereby the petitioners have been rendered ineligible for promotion to the post of Executive Engineer in Class I service.

2. The circumstances which led to the issuance of the impugned notification are these. A controversy had arisen on the construction of Rule 6 of the Class I Rules as to whether a degree in engineering was necessary when the post of Executive Engineer, which is a post in Class I service, was to be filled by promotion by members of Class II service and this was settled by the decision of this Court in A. S. Parmar case. The court on as consideration of the relevant rules came to the conclusion that a member of Class II service, namely, Assistant Engineer or Sub-Divisional Officer did not require to have a University degree for promotion to the post of Executive Engineer in Class I service. On February 24, 1984, the Additional Solicitor-General gave an undertaking on behalf of the State Government that it would consider the cases of all eligible persons including the petitioners for regular appointment to the Class I service in accordance with the rules and complete the process within four months from that day. The court, accordingly, in Ashok Gulati v. State of Haryana and the connected matters as also in these petitions under Article 32 of the Constitution passed an order to the effect :

Mr. K. G. Bhagat, learned Additional Solicitor-General says that the State Government will consider the cases of all the eligible persons including the appellants/petitioners and respondents for regular appointments to Class I service in accordance with the law and complete the process of appointments within 4 months from today. The government is permitted to do so. But all appointments made pursuant to this order will be subject to the final result of these cases.

In the meanwhile the appellants will continue in the posts held by them.

These matters will stand adjourned for a period of 6 months from today.

Just two days before the expiry of the period within which promotion of eligible persons including the petitioners was to be completed, the State Government purported to effect an amendment of Rule 6 (b) retrospectively w. e. f. July 10, 1964. The impugned notification was in these terms :

Haryana Government

Public Works Department (Irrigation)

Notification

June 22, 1984

No. G. S. R. 47/Cons. /Art. 309/Amend. (1) 84 - In exercise of the powers conferred by the proviso of the Article 309 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Haryana, hereby makes the following rules further to amend the Punjab Service of Engineers, Class I, PWD (Irrigation Branch) Rules, 1964, namely.

1. (1) These rules may be called the Punjab Service of Engineers, Class I, PWD (Irrigation Branch), Haryana, (Second Amendment) Rules, 1984.

(2) These rules shall be deemed to have come into force with effect from July 10, 1964.

2. In the Punjab Service of Engineers, Class I, PWD (Irrigation Branch) Rules, 1964 in Rule 6, in clause (b), after the words "eight years service", the words, "in addition to the qualifications prescribed in clause (a) " shall be inserted.

3. Presumably, the State Government adopted this unfortunate course of action taking cue of the observations made by this court in the concluding part of the judgment in A. S. Parmar case saying that if the government wish to appoint only persons having a degree in Engineering to Class I service, it was free to do so by promulgating appropriate rules and that the power to frame such a rule was beyond question. But the court never laid down that such a rule may be framed under Article 309 of the Constitution with retrospective effect so as to render ineligible Class II officers like the petitioners who were diploma holders for further promotion as Executive Engineers in Class I Service. In view of the clear formulation of law interpreting Rule 6 (b) of the Class I Rules holding that a degree in Engineering was not an essential qualification for promotion of Class II officers to the cadre of Executive Engineers in Class I service, there was no occasion for the State Government to issue the impugned notification unless it was with the object of nullifying the decision of this Court in A. S. Parmar case.

4. In order to appreciate the points involved, it is necessary to state a few facts. Three petitioners T. R. Kapur, Mohinder Singh and V. D. Grover who are diploma holders hold the posts of Sub-Divisional Officers, Public Works Department (Irrigation Branch), Haryana, a Class II service, governed by the Haryana Service of Engineers, Class II PWD (Irrigation Branch) Rules, 1970. They joined Class III PWD (Irrigation Branch) Rules 1970. They joined Class III service as Overseers in the Irrigation Branch on September 18, 1953, October 6, 1949 and November 8, 1952 respectively

in the erstwhile State of Punjab. At the time when they were appointed to the Overseers Engineering Service, Punjab, Rule 3 (c) of the Punjab Service of Engineers, Class II PWD (Irrigation Branch) Rules 1941 enjoined that no person shall be appointed to the service unless he possessed one of the University degrees or other qualifications prescribed in Appendix "A" to the Rules. Note beneath clause (c), however, provided that the requirements of clause (c) could be waived in the case of members of the Overseers Engineers Service (Irrigation Branch) Punjab to be promoted in the service under the proviso to Rule 5 of the Rules. The term "service" was defined in Rule 1 (2) (g) to mean the Punjab service of Engineers, Class II (Irrigation Branch). Proviso to Rule 5 of Part II - Appointments Rules, reads as follows :

Provided that this rule may be relaxed by government on the recommendations of the Chief Engineers in order to admit the promotion of a member of an Overseer Engineering Service (Irrigation Branch), Punjab of outstanding merit who may not possess the qualifications specified in Rule 3.

In due course, the petitioners were promoted as Offg. Sub-Divisional Officers in the Class II service in November 1969, July 1966 and January 1964 respectively. Subsequently, by notification dated October 27, 1985, the petitioners were appointed as Sub-Divisional Officers on a regular basis w. e. f. December 25, 1970. Under the unamended Rule 6 (b) of the Class I Rules, the petitioners were eligible for promotion as Executive Engineers in Class I service despite the fact that they did not possess a degree in Engineering. Rule 6 of Class I Rules insofar as relevant may be reproduced :

6. Qualifications. - No person shall be appointed to the service unless he -

(a) possesses one of the University degrees or other qualifications prescribed in Appendix B of these rules :

Provided that Government may waive this qualification in the case of a particular officer belonging to the Class II service.

(b) In case of appointment by promotion from Class II service, has completed in that class of service for a period of ten years from the commencement of these rules six years service and after that period eight years service.

5. Shri Shanti Bhushan, learned counsel for the petitioners has put forward a threefold contention. First of these submissions is that the impugned notification which purported to amend Rule 6 (b) of the Class I Rules with retrospective effect from July 10, 1964 making a degree in Engineering essential for promotion to the post of Executive Engineer in Class I service constitutes a variation in the conditions of service applicable to officers belonging to Class II service who are diploma holders like the petitioners prior to the appointed day i. e. November 1, 1966, to their disadvantage as it renders them ineligible for promotion to the post of Executive Engineer in Class I service was ultra vires the State Government having been made without the previous approval of the Central Government as enjoined by the proviso to Section 82 (6) of the Punjab Reorganisation Act, 1966. It is urged that any rule which affects the promotion of a person relates to his conditions of service, although mere chances of promotion may not be. The contention, in our opinion, must prevail. The second is that it was not permissible for the State Government to amend Rule 6 (b) of the Class I Rules with retrospective effect under the proviso to Article 309 of the Constitution so as to render ineligible for promotion to the post of Executive Engineer in Class I service, the members of Class II service who are diploma holders although they satisfy the condition of eligibility of eight years'

experience in that class of service. It is said that the unamended Rule 6 (b) conferred a vested right on persons like the petitioners which could not be taken away by retrospective amendment of Rule 6 (b). The third and the last submission is that the action of the State Government in issuing the impugned notification making retrospective amendment of Rule 6 (b) of the Class I Rules was wholly arbitrary, irrational and mala fide and thus violative of Articles 14 and 16 (1) of the Constitution. It is submitted that the impugned notification was calculated to circumvent the direction given by this Court in its order dated February 24, 1984 on the basis of the undertaking given by the learned Additional Solicitor-General that the State Government would consider the cases of all eligible officers belonging to Class II service for promotion to the Class I service.

6. Sub-section (6) of Section 82 of the Punjab Reorganisation act, 1966 provides :

82(6). Nothing in this section shall be deemed to affect on or after the appointed day 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 :

Provided 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 previous approval of the Central Government.

7. It is quite clear that the proviso to Section 82 (6) of the Punjab Reorganisation Act, 1966 is in the nature of a fetter on the power of the Governor of service applicable to all persons serving in connection with the affairs of the State. It interdicts that the conditions of service applicable to persons referred to in sub-section (1) or sub-section (2) thereof i. e. members of civil services affected by the reorganisation of the State. The conditions of service of any persons who immediately before the appointed day were serving in connection with the affairs of the existing State of Punjab and are as from that date allocated for service in connection with the affairs of the successor State i. e. allowed government servants cannot be varied to their disadvantage.

8. There is a long line of decisions starting from Mohammed Bhakar v. Y. Krishan Reddy down to Mohammad Shujat Ali v. Union of India while construing the analogous provision contained in the proviso to Section 115 (7) of the States Reorganisation Act, 1956 laying down that any rule made under the proviso to Article 309 of the Constitution which seeks to vary or alter the conditions of service without the previous approval of the Central Government would be void and inoperative being in violation of the proviso to sub-section (7) of Section 115 of the Act. It is a trite proposition 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. As laid down by this Court in A. S. Parmar case, the petitioners like other members of Class II service who are diploma holders and satisfy the eligibility test of eight years' service in that class, were eligible for being considered for promotion to the post of Executive Engineer in Class I service without having a degree in Engineering. Admittedly the impugned notification which seeks to amend Rule 6 (b) with retrospective effect from July 10, 1964 clearly operates to their disadvantage as its purports to make them ineligible for promotion being diploma holders.

9. In Mohammed Bhakar case, the court speaking through Mitter, J. said : "A rule which affects the promotion of a person relates to his conditions of service. " It was held that a rule which made the passing of certain departmental examinations a prerequisite for promotion having been made

without the previous approval of the Central Government was void by reason of sub-section (7) of Section 115. In Mohammad Shujat Ali case, a Constitution Bench of this Court speaking through Bhagwati, J. (as he then was) observed : (SCC p. 95, para. 15)

[A] rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service.

Under the Class I Rules as they existed immediately prior to the appointed day i. e. before November 1, 1966, a member of the Overseers Engineering Service in the Irrigation Branch, Punjab having a diploma was eligible for being promoted as Sub-Divisional Officer in the Class II service and then in due course to the post of Executive Engineer in the Class I service within the quota prescribed for them without having a degree in Engineering. It was not necessary to possess a degree in Engineering as held by this Court in A. S. Parmar case for purposes of promotion under the unamended Rule 6 (b) of the Class I Rules, as in the case of promotion to the post of Executive Engineer in Class I service under Rule 6 (b) what was essential was eight years' service in that class and not a degree in Engineering. The impugned notification which purports to amend Rule 6 (b) with retrospective effect, however, renders members of the Class II service like the petitioners who are diploma holders ineligible for promotion by making a degree in Engineering and essential qualification for such promotion which amounts to alteration of the conditions of service applicable to them to their disadvantage without the previous approval of the Central Government and is thus void by reason of the proviso to sub-section (6) of Section 82 of the Punjab Reorganisation Act, 1966.

10. Faced with the difficulty, learned counsel for the respondents strenuously contends that the proviso to Section 82 (6) of the Act is not attracted in the present case. It is argued that one the appointed day i. e. November 1, 1986 the petitioners were not members of Class II service. It is said that the petitioners on the appointed day being Supervisors belonged to the Class III service and therefore were not governed by the unamended Rule 6 (b). Reliance is placed on the notification issued by the State Government dated October 27, 1985 constituting the Class II service w. e. f. December 25, 1970 and it is said that the petitioners are not shown as belonging to Class II service. It was then contended that under Rule 3 (c) of the Punjab Service of Engineers, Class II PWD (Irrigation Branch) Rules, 1941, a degree in Engineering was essential till the Punjab Service of Engineers, Class II, PWD (Irrigation Branch) Rules, 1970 brought about a change. Inasmuch as none of the petitioners had the requisite qualification, they could not become members of the Class II service. We are unable to accept this line of reasoning.

11. Undoubtedly, at the time when the petitioners were recruited as Supervisors in the Irrigation Branch, a Class III service, Rule 3 (c) of the Punjab Service of Engineers, Class II, PWD (Irrigation Branch) Rules, 1941 laid down that no person shall be appointed to the service unless he possessed one of the University degrees or other qualifications prescribed in Appendix "A" to the Rules. Note beneath Rule 3 (c) however provided that the requirements of clause (c) could be waived in the case of members of the Overseers Engineering Service, Irrigation Branch, Punjab for promotion to the service under the proviso to Rule 5 of the Rules. The term "service" as defined in Rule 1 (2) (g) meant the Punjab Service of Engineers, Class II (Irrigation Branch). Proviso to Rule 5 of the Rules, however, empowered the State Government to relax the condition. It is clear from the terms of the proviso to Rule 5 quoted above that the State Government could relax the requirements of Rule 3 (c) on the recommendation of the Chief Engineering in order to admit the promotion of a member of the Overseers Engineering Service, Irrigation Branch, Punjab if he was an officer of outstanding merit although he did not possess the qualifications specified were officers of outstanding merit and

they were promoted as Offg. Sub-Divisional Officers in Class II service in January 1964, July 1966 and November 1969. Eventually, the State Government by notification dated October 27, 1985 appointed them on a regular basis in that post w. e. f. December 25, 1970. Further, it is wrong to suggest that on the appointed day i. e. on November 1, 1966 they were all Overseers belonging to the Class III service and were therefore not governed by the unamended Rule 6 (b). Two of them V. D. Grover and Mohinder Singh had already been promoted as Offg. Sub-Divisional Officers prior to the appointed day i. e. in January 1964 and July 1966 and were therefore governed by the unamended Rule 6 (b) of the Class I Rules and the third petitioner T. R. Kapur was also promoted to that post subsequently in November 1969. Upon such promotion to the post of Offg. Sub-Divisional Officers they had not only the legitimate expectation that they would in due course be considered for confirmation but also had the right on such confirmation to be considered for promotion. It is also not quite accurate to say that the petitioners were not shown as belonging to the Class II service. A bare look at the notification dated October 27, 1985 would show that the petitioners figure at Sr. Nos. 246, 254 and 369.

12. It is not suggested that the State Government ever moved the Central Government seeking it prior approval to the proposed amendment to Rule 6 (b) of the Class I Rules. In that connection, it is necessary to recall that prior to the reorganisation of the States under the States Reorganisation Act, 1956, a conference of the Chief Secretaries of the States that were to be affected was held at Delhi on May 18 and 19, 1966 for the purpose of formulation of the principles upon which integration of services was to be effected. The Government of India by its circular dated May 11, 1957 to all the State Governments stated inter alia that it agreed with the views expressed on behalf of the States' representative that it would not be appropriate to provide any protection in the matter of departmental promotion. This circular has been interpreted as a prior approval of the Central Government in terms of the proviso to sub-section (7) of Section 115 of the Act in the matter of change of the conditions of service relating to departmental promotions. These considerations however do not arise in the present case. Admittedly, there was no Chief Secretaries Conference as was held prior to the reorganisation of the States under the States Reorganisation Act, 1956. Nor was there any communication issued by the Central Government conveying its previous approval of the changes in the service conditions which the States of Punjab and Haryana might make in terms of the proviso to Section 82 (6) of the Punjab Reorganisation Act, 1966. Under the States Reorganisation Act, 1956 so also under the Punjab Reorganisation Act, 1966, the power of the Governor to make rules under the proviso to Article 309 of the Constitution had been controlled by the proviso to Section 115 (7) of the former Act and Section 82 (6) of the latter. It follows that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-sections (1) or (2) of Section 82 of the Act could not be varied to his disadvantage except with the previous approval of the Central Government. That being so, the impugned notification issued by the State Government purporting to amend Rule 6 (b) of the Class I Rules w. e. f. July 10, 1964 which rendered members of Class II service who are diploma holders like the petitioners ineligible for promotion to the post of Executive Engineer in Class I service making a degree in Engineering essential for such promotion, although they satisfied the condition of eligibility of 8 years' experience in that class of service, must be struck down as ultra vires the State Government being contrary to Section 82 (6) of the Punjab Reorganisation act, 1966.

13. On the view that we take, there is no need for us to deal in detail with the other points raised. We shall only touch upon them.

14. One should have thought that the controversy whether a degree in Engineering was an essential qualification for promotion of Sub-Divisional Officers in class II service to the post of Executive

Engineer in Class I service under Rule 6 (b) of the Class I Rules has ended with the decision of this Court in A. S. Parmar case. Curiously enough, learned counsel for the respondents strenuously contends that the decision of this Court in A. S. Parmar case was incorrect. He presses into service for our acceptance the decision of the High Court in O. P. Bhatia v. State of Punjab taking a view to the contrary. It is urged that in the erstwhile State of Punjab a degree in Engineering was essential for recruitment of Assistant Engineers in Class II service under Rule 3 (c) of the 1941 Rules as held by the High Court in O. P. Bhatia case and that view was in consonance with the departmental instruction of the relevant rules in the State of Punjab and the State of Haryana as also in the erstwhile State of Punjab that Rule 6 (b) required the promotees to have the essential qualification of a degree in Engineering. We do not think that it is open to question the correctness of the decision in A. S. Parmar case which expressly overrules the view taken by the High Court in O. P. Bhatia case. That apart, the proviso to Rule 5 of the 1941 Rules conferred power on the State Government to relax the requirement of Rule 3 (c) on the recommendation of the Chief Engineer in order to admit the promotion of a member of the Overseers Engineering Service (Irrigation Branch), Punjab if he was an officer of outstanding merit although he did not possess the qualification prescribed in Rule 3 (c) i. e. the educational qualification of a degree in Engineering. The requirement of a degree in Engineering for recruitment to the Class II service was done away with in the 1970 Rules. The contention also fails to take note of the fact that the requirement of a degree in Engineering which was an essential educational qualification for purposes of direct recruitment of Assistant Executive Engineers in Class I service under Rule 6 (a) of the Class I Rules could not be projected for promotion of Sub-Divisional Officers belonging to Class II service to the posts of Executive Engineers in Class I service under Rule 6 (b) as they from two distinct sources from which the appointments to the posts of Executive Engineers could be made. As laid down in A. S. Parmar case, what was of the essence for purposes of promotion of Sub-Divisional Officers who were members of Class II service to the post of Executive Engineer under Rule 6 (b) of the Class I Rules was not a degree in Engineering, but 8 years' experience in that class of service i. e. Class II service.

15. More fundamental is the contention that the impugned notification issued by the State Government purporting to amend Rule 6 (b) with retrospective effect from July 10, 1964 which rendered members of Class II service who are diploma holders like the petitioners ineligible for promotion to the post of Executive Engineering although they satisfied the condition of eligibility of 8 year's experience in that class of service was unreasonable, arbitrary and irrational and thus offended against Articles 14 and 16 (1) of the Constitution. It is urged that they were eligible for promotion under the unamended Rule 6 (b) of the Class I Rules and had a right to be considered for promotion to the post of Executive Engineer, and a retrospective amendment of Rule 6 (b) seeking to render them ineligible was constitutionally impermissible. It is said that the reason for this was obvious inasmuch as immediately prior to the reorganisation of the State of Punjab i. e. prior to November 1, 1966 even a member of the Overseers Engineering service, a Class III service, having only a diploma was eligible for being promoted as Executive Engineering in Class I service in due course since in the matter of promotion under the unamended Rule 6 (b) it was not necessary to possess a degree in Engineering as held by this Court in A. S. Parmar case. It follows therefore that every member of the Overseers Engineering Service was eligible for promotion first as Assistant Engineer or Sub-Divisional Officer in Class II service and thereafter, in due cause, to the post of Executive Engineer in Class I service even without the educational qualification of a degree in Engineering. In substance, the submission is that a retrospective amendments of Rule 6 (b) by the impugned notification which seeks to take away the eligibility of members of Class II service who are diploma holders for purposes of promotion to the posts of Executive Engineers in Class I service from a back date ranging over 20 years and thereby renders invalid the promotions already made is

constitutionally impermissible.

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, Raj Kumar v. Union of India, K. Nagaraj v. State of A. P. and State of J&K v. Triloki Nath Khosa. 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 change the 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 on impairs vested rights. Therefore, unless it is 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, B. S. Yadav v. State of Haryana, State of Gujarat v. Raman Lal Keshav Lal Soni and Ex-Captain K. C. Arora v. State of Haryana.

17. A Constitution Bench of this Court in State of Gujarat v. Raman Lal Keshav Lal Soni had to consider the constitutional validity of the proviso to Section 102 (1) (a) of the Gujarat Panchayats Act, 1961 as introduced by the Gujarat Panchayats (Third Amendment) act, 1978 with retrospective effect and sought to extinguish the status of secretaries, officers and servants of the Gram and Nagar Panchayats who became members of a service under the State on being allocated to the panchayat service. The court speaking through Chinnappa Reddy, J. observed : (SCC p. 61, para. 51)

Now, in 1978 before the Amending Act was passed, thanks to the provisions of the principal Act of 1961, the ex-municipal employees who had been allocated to the panchayat service as Secretaries, officers and servants of Gram and Nagar Panchayats, had achieved the status of government servants. Their status as government servants could not be extinguished, so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Article 311 of the Constitution. Nor was it permissible to single them out for differential treatment. That would offend Article 14 of the Constitution.

The learned Judge observed that the Amending Act was sought to be given retrospective effect to get over the constitutional safeguards of Articles 311 and 14 by reverting to a situation that existed some 17 years ago. He said that there was no power to do so and observed : (SCC p. 61-62, para. 52)

The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law can be made so as to contravene fundamental rights. 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 and 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 negation of history.

The learned Judge relied with approval on the following observations of Chandrachud, C. J. speaking for a Constitution Bench in *B. S. Yadav v. State of Haryana* : (1980 Supp SCC p. 557, para. 76 quoted in (1983) 2 SCC p. 62, para. 52)

Since the Governor exercise 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 as in this case.

and summed up : (SCC p. 62, para. 52)

Today's equals 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.

18. Following the view the count in *K. C. Arora* case referred with approval to the observations of the Punjab & Haryana High Court in *Harbhajan Singh v. State of Punjab* to the effect :

Now the rule-making authority must have been aware that a competitive examination for appointment to the service had been held under the old rules and appointments were yet in the offing. Surely, the rule-making authority did not intend to exclude from appointment candidates who were eligible under the old rules but became ineligible by reason of an amendment of the rules made after the process of selection had almost reached a final stage.

And then queried :

Are they to be penalised by barring their entry into the Punjab Civil Service (Judicial Branch) because they accepted employment at a time when acceptance of such employment was not a bar to appointment to the service? We do not think that we will be justified in attributing such an unreasonable intention to the rule-making authority. In our view, the only reasonable interpretation of the amended rule, consistent with the prevailing situation, is to hold that only those persons who having joined the service of the Union or the State or a post under the Union or the State previously continued to hold the post on the date of the coming into force of the rules, or who joined a post after the coming into force of the rules, are excluded from appointment to the Punjab Civil Service (Judicial Branch). The expression "joined or joins" must be given a reasonable interpretation in the context of the situation and we think our interpretation does not strain the language or attribute unreasonableness to the rule-making authority. In that view, the petitioner cannot be said to be ineligible

for appointment.

The view expressed by the High Courts has received the imprimatur of the Court in K. C. Arora case. That appears to be the present trend.

19. In the result, the petitions must succeed and are allowed with costs. The impugned notification dated June 22, 1984 issued by the State Government of Haryana purporting to amend Rule 6 (b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964 with retrospective effect from July 10, 1964 is declared to be ultra vires the State Government.

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