

P. Mahendran and Others

Vs

State of Karnataka and Others

And

Malteesh Y. Annigeri and Others

Vs

State of Karnataka and Others

Civil Appeal No. 3948 of 1987

(CJI E. S. Venkataramiah, K. N. Singh, N. M. Kasliwal JJ)

05.12.1989

JUDGMENT

SINGH, J. -

1. This appeal is directed against the judgment and order of the Karnataka Administrative Tribunal, Bangalore dated September 30, 1987 quashing Karnataka Public Service Commission's Notification dated September 28, 1983 inviting applications for recruitment of Motor Vehicle Inspectors and the select list prepared by it for appointment to the post of Motor Vehicle Inspectors and further directing the Public Service Commission to invite fresh applications in accordance with the amended Rules. Some of those candidates whose names were included in the select list prepared by the Public Service Commission for appointment to the post of Motor Vehicle Inspectors have filed a writ petition under Article 32 of the Constitution of India for the issuance of directions to the state Government of Karnataka for making appointments to the post of Motor Vehicle Inspectors from the select list prepared by the Commission. Since the question involved in the appeal by special level filed against the order of the State Tribunal and the writ petition are common, we consider it proper to dispose of the same by a common judgment.

2. The dispute involved in the present cases relates to the selection and appointment of Motor Vehicle Inspectors. Recruitment to the said post is regulated by the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1962 (hereinafter referred to as 'the Rules') framed under Article 309 of the Constitution. These Rules provide for direct recruitment to the post of Motor Vehicle Inspectors and it further lays down the minimum qualification requiring a candidate to be holder of Diploma in Automobile Engineering or Mechanical Engineering. In 1978 the Karnataka Public Service Commission held selections and about 200 posts of Motor Vehicle Inspectors were filled up from amongst the candidates holding Diploma in Mechanical Engineering and in Automobile Engineering. On September 28, 1983 the Public Service Commission issued an advertisement (published in the Karnataka Gazette on October 6, 1983) inviting applications for 56 posts of Motor Vehicle Inspectors which was later or increased to 102 posts. The advertisement specifically stated that the selection shall be made in the accordance with the Recruitment Rules,

1976 and it further stated that a candidate for selection must be holder of Diploma in Automobile Engineering or Mechanical Engineering. The appellants/petitioners (in writ petition) who were holding Diploma in Mechanical Engineering along with others applied for selection to the post of Motor Vehicle Inspectors. The Commission after scrutiny of the application forms issued letters for interview to the suitable candidates and the Commission commenced the holding of interviews in August 1984. It appears that the Commission refused to interview some candidates who were competing for selection against the reserved seats for 'local candidates' on the ground that they were not entitled to be treated as 'local candidates' as they had not actually worked as 'local candidates' in the post of Motor Vehicle Inspectors and further they had secured low percentage of marks, they were further not entitled to be interviewed against the seats earmarked for general pool as the marks secured by them were less than the percentage of marks obtained by the last candidate called for interview. The candidates claiming reserved seats as 'local candidates' filed a number of petitions under Article 226 of the Constitution before the High Court of Karnataka and obtained stay orders as a result of which the selection could not be completed. Later interim orders were modified by the High Court and the Commission was permitted to proceed with the selection reserving seats for the petitioner. The High Court further modified its order at a later stage permitting the Commission to make selection and appointment with a condition that the appointments so made will be subject to the decision of the writ petitions. Thereafter the Commission resumed interviews again and it completed the same by June 2, 1987 and declared the result of the selection on June 22, 1987 which was published in the Karnataka Gazette dated July 23, 1987. The selected candidates were given intimation of their selection and the State Government took steps from imparting them three months' training before appointing them as Motor Vehicle Inspectors.

3. Meanwhile the State Government of Karnataka amended the Recruitment Rules by a Notification dated May 4, 1987 published in the Gazette on May 14, 1987 omitting the qualification of Diploma in Mechanical Engineering for the post of Motor Vehicle Inspectors. Consequent to the amendment of Rules the holders of Diploma in Automobile Engineering became exclusively eligible for appointment to the post of Motor Vehicle Inspectors and the holders in Diploma in Mechanical Engineering ceased to be eligible for selection and appointment to the said post. Some of those candidates who were unsuccessful at the selection held by the Commission preferred applications before the Karnataka Administrative Tribunal at Bangalore for quashing the select list prepared by the Commission and also for quashing the Notification dated September 28, 1983 inviting applications for appointment to the post of Motor Vehicle Inspectors on the ground that after the amendment of Rules in 1987, no person holding the Diploma in Mechanical Engineering was qualified for appointment, therefore fresh selection should be made in accordance with the amended Rules. The State Government of Karnataka as well as the appellants both contested the applications and asserted that the 1987 amendment to the Recruitment Rules were not retrospective instead the amendments were prospective and the amended Rules did not affect the selections which were in the process of finalisation by the Commission. The Tribunal held that after the amendment of the Recruitment Rules in May 1987 the Commission could not make selection or determine the result on the basis of the Rules which existed prior to May 14, 1987 and as such the selection of candidates holding Diploma in Mechanical Engineering was illegal as holders of Diploma in Mechanical Engineering ceased to be eligible for appointment to the post of Motor Vehicle Inspectors with effect from the date of publication of the amending Rules. On these findings the Tribunal allowed the applications and quashed the advertisement issued under the Notification dated September 28, 1983 as well as the select list published by the Public Service Commission to invite fresh applications and to make selections in accordance with the amended Rules. Aggrieved, the appellants who had been selected by the Commission for appointment to the posts of Motor Vehicle

Inspectors have preferred appeal before this Court. Some of the selected candidates have directly approached this Court by means of writ petition under Article 32 of the Constitution for issue of mandamus directing the State Government to appoint the selected candidates.

4. There is no dispute that under the Recruitment Rules as well as under the advertisement dated October 6, 1983 issued by the Public Service Commission, holders of Diploma in Mechanical Engineering were eligible for appointment to the post of Motor Vehicle Inspectors along with holders of Diploma in Automobile Engineering. On receipt of the applications from the candidates the Commission commenced the process of selection as it scrutinised the applications and issued letters for interview to the respective candidates. In fact the Commission commenced the interviews on August 1984 and it had almost completed the process of selection by the selection could not be completed on account of interim order issued by the High Court at the instance of candidates seeking reservation for local candidates. The Commission completed the interviews of all the candidates and it finalised the list of selected candidates by June 2, 1987 and the result was published in the State Gazette on July 23, 1987. In addition to that the selected candidates were intimated by the Commission by separate letters. In view of these facts the sole question for consideration is as to whether the amendment made in the rules on May 14, 1987 rendered the selection illegal. Admittedly in the Rules do not contain any provision enforcing the amended Rules with retrospective effect. In the absence of any express provision contained in the amending Rules it must be held to be prospective in nature. The Rules which are prospective in nature cannot take away or impair the right of candidate holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment. In fact the entire selection in the normal course would have been finalised much before the amendment of Rules, but for the interim orders of the High Court. If there had been no interim orders, the selected candidates would have been appointed much before the amendment of Rules. Since the process of selection had commenced and it could not be completed on account of the interim orders of the High Court, the appellants' right to selection and appointment could not be defeated by subsequent amendment of Rules.

5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implications made to have retrospective effect. Unless there are words in the statute or in the Rule showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have not control over the subject matter.

6. In *A. A. Calton v. Director of Education* ((1983) 3 SCC 33 : 1983 SCC (L&S) 356) this Court considered the validity of appointment of Principal by the Director of Education made under Section 16-F of the U.P. Intermediate Education Act, 1921. The High Court quashed the selection of Principal on the ground that the appointment had been made by the Selection Committee and not by

the Director of Education as required by Section 16-F(4) of the Act. The High Court directed the Director Education to make selection and appointment. Pursuant to the direction of the High Court, the Director made appointment to the post of Principal by his order dated March 8, 1977, but before that date, Section 16-F(4) of the Act was amended on August 18, 1975 taking away the power of the Director to make appointment under Section 16-F(4) of the Act. In view for the amendment of Section 16-F(4) of the Act. In view of the amendment of Section 16-F of the Act, validity of the order of the Director of Education dated March 8, 1977 making appointment to the post of Principal was again questioned. The High Court dismissed the writ petition thereupon the unsuccessful party preferred appeal. This Court held as under : (SCC pp. 36-37, para 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 could 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 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 a 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."

7. In view of the above the appellants' selection and appointment could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection. The amended Rule could not be applied to invalidate the selection made by the Commission. Strangely the Tribunal did not follow the latest authority of this Court laid down in *Calton case* ((1983) 3 SCC 33 : 1983 SCC (L&S) 356), on the ground that the view taken in that case was contrary to the Constitution Bench decision of this Court in *State of Andhra Pradesh v. T. Ramakrishna Rao* ((1972) 4 SCC 830). We have carefully considered the

decision by we do not find anything therein contrary to the view taken in Calton case ((1983) 3 SCC 33 : 1983 SCC (L&S) 356).

8. In Ramakrishna Rao case ((1972) 4 SCC 830) the State Public Service Commission of Andhra Pradesh had invited applications in 1968 for the posts of District Munsifs. Rule 5 of the Recruitment Rules empowered the Commission to prepare a list of persons considered for the appointment to the posts of District Munsifs after holding such an examination as the government would consider necessary. On a challenge made by some of the candidates the High Court held that Rule 5 was void as it empowered the government to determine whether an examination was necessary or not, and also the pattern or such examination, in contravention of Article 234 of the Constitution. The High Court further held that the government orders, pursuant to the said rule for holding of examination by the Commission was also void, having been issued under invalid Rules. Pursuant to the judgment of the High Court the Governor amended Rule 5 after consultation with the High Court and the Commission as enjoined by Article 234 of the Constitution. The Commission thereafter issued advertisement inviting fresh applications to hold examination for the purpose of filling vacancies in the post of District Munsifs, thereupon some of the candidates who had made applications in pursuance to the advertisement issued in 1968 challenged the validity of the holding of the fresh examination on the ground that since they had applied in response to the advertisement of 1968 they could not be subjected to written examination under the amended rule as it was prospective in nature. They further asserted that the amended rule prescribing 200 marks for the written test and equal number of marks for oral test was contrary to the earlier Rules and since they had acquired right to be considered in accordance with Rule 5 before its amendment, they should not be subjected to written examination and oral test as required by the amended Rules. The High Court partly allowed the petition and directed the Commission to hold a separate examination for those who had applied in 1968 in accordance with the unamended Rules and further to hold a separate examination for the subsequent vacancies in accordance with the amended Rule 5. On appeal by the State Government, a Constitution Court held that since Rule 5 as it stood in 1968 had been declared void the advertisement issued by the Commission inviting applications and all proceedings taken by the Commission including the examination held thereunder was rendered void. In this context this Court made observation that those candidates who had made applications in 1968 had not acquired any right as their applications had been made under a rule which had been declared invalid. The court further held that in the facts of that case the question whether amended Rule 5 was retrospective or prospective did not arise. The court observed as under : (SCC p. 833, para 12)

"Secondly the respondents had not acquired any right by merely applying for the posts either under that rule or otherwise, to be selected for the posts. The Commission, therefore, was perfectly justified in treating the earlier applications for the respondents as invalid on the grounds that they had been invited under an illegal rule and calling for fresh applications and holding a fresh examination in respect of all the 200 vacancies. There was thus no question of any breach of Article 16, nor of any violation of any right of the respondents as none was acquired by them. Equally, there was no question of the amended Rule 5, being prospective or retrospective as the Commission had to act afresh under the amended rule, the unamended rule having been struck down and there being, therefore, no basis on which the applications of the respondents made in 1968 could be treated as valid applications."

9. The above observations as relied by the Tribunal do not apply to the facts of the instant case as the advertisement issued by the Commission on September 28, 1983 was in accordance with the Recruitment Rule of 1976, validity of those Rules was not in question. The rule prescribing

qualification was amended after four years of the advertisement, therefore the laying laid down in Ramakrishna Rao case ((1972) 4 SCC 830) does not apply. The Tribunal committed error in ignoring the law laid down in Calton case ((1983) 3 SCC 33 : 1983 SCC (L&S) 356) by placing reliance on the observations of this Court in Ramakrishna Rao case ((1972) 4 SCC 830). In our view the principles laid down in Calton case ((1983) 3 SCC 33 : 1983 SCC (L&S) 356) are fully applicable to the instant case.

10. In *Y. V. Rangaiah v. J. Sreenivasa Rao* ((1983) 3 SCC 284 : 1983 SCC (L&S) 382) the question was whether appointment could be made out of the list of approved candidates prepared by the appointing authority against the vacancies which had occurred prior to the amendment of the rules. The Andhra Pradesh Registration and Subordinate Service rules made provision for the preparation of a list of approved candidates for appointment and promotion in the month of September every year. In 1976 the list of approved candidates was not prepared meanwhile in 1977 the original rule were amended providing for promotion or transfer to the category of LDCs for appointment as Sub-Registrars Grade II from amongst UDCs employed in the Registration and Stamp Department. A list of approved candidates for promotion was made in accordance with the amended Rules and appointments were made as a result of which some of the juniors in the category of LDCs were promoted as Sub-Registers Grade II. The Andhra Pradesh Tribunal set aside the appointments and directed the State Government to draw a fresh panel for the year 1976-77 in respect of vacancies arising during that year in accordance with the rules as they existed at that stage and to make appointments in the vacancies pertaining to that period on the basis of the panel so drawn. On appeal this Court held that the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules. The decision does not lay down anything which may be contrary to the view taken in Calton case ((1983) 3 SCC : 1983 SCC (L&S) 356).

11. We would now consider the view taken by this Court in *I. J. Divakar v. Government of Andhra Pradesh* ((1982) 3 SCC 341 : 1983 SCC (L&S) 14), as the Tribunal has placed strong reliance on the observations made in that decision in setting aside the selection made by the Public Service Commission. It is necessary to ascertain the facts involved in Divakar case ((1982) 3 SCC 341 : 1983 SCC (L&S) 14). The Andhra Pradesh Public Service Commission invited applications for filling posts of Junior Engineers. In response to the advertisement several candidates applied for the said post and appeared at the viva voce test. While the Commission was in process of finalising the select list, the Government of Andhra Pradesh issued a government order under the proviso to Article 320(3) of the Constitution excluding the posts of Junior Engineers from the purview of the Public Service Commission. The government regularised the services of all those who were appointed by direct recruitment to the post of ad-hoc Junior Engineers and were continuing in service on August 9, 1979 without subjecting them to any test written or oral. The candidates who had applied in response to the advertisement issued by the Commission challenged validity of the government order excluding the post of Junior Engineers from the purview of the Commission and also the validity of the decision by the government to regularise the services of temporary employees. Before this Court the government's power of framing regulations excluding any post from the purview of the Commission under that proviso to Article 320(3) was conceded. It was however, urged that since the advertisement had been issued by the Commission inviting applications for the posts of Junior Engineers and as the Commission was in process of selecting candidates the power under the proviso to clause (3) of Article 320 of the Constitution could not be exercised. This court rejected the contention with the following observations : (SCC p. 344, para 4)

"The only contention urged was that at the time when the advertisement was issued the post of Junior Engineer was within the purview of the Commission and even if at

a later date the post was withdrawn from the purview of the Commission it could not have any retrospective effect. There is no merit in this contention and we are broadly in agreement with the view of the Tribunal that inviting the applications for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application. He only offers himself to be considered for the post. His application only makes him eligible for being considered for the post. It does not create any right in the candidate to the post."

After making the aforesaid observations the court further held that the relevant service Rules conferred power on the government to fill emergently the vacancies to the post borne in the cadre of service otherwise than in accordance with the rules and therefore the government had power to regularise temporary appointments made without the consultation of the Public Service Commission. Even after upholding the government order, the court directed the Commission to consider the case of all those candidates who had applied for the post of Junior Engineers in response to the advertisement issued by the Commission and to finalise the select list on the basis of viva voce test and to forward the same to the government. The court further directed the government to make appointments from the select list before any outsider was appointed to the post of Junior Engineers. Thus, the observations made by this Court as quoted earlier were made in the special facts and circumstances of the case, which do not apply to The facts of the instant case. In Divakar case ((1982) 3 SCC 341 : 1983 SCC (L&S) 14) since the jurisdiction of the Public Service Commission had been denuded by the government in exercise of its constitutional power the Commission had no jurisdiction to conduct selection or prepare select list. In this background the court made observations that a candidate merely by making applications does not acquire any right on the post. It is true that a candidate does not acquire any right to the post. It is true that a candidate does not get any right to the post by merely making an application for the same, but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment rules. If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment Rules he acquires right to be considered for selection in accordance with the then existing Rules. This right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. In the instant case the Commission had acted in accordance with the then existing rules and there is no dispute that the appellants were eligible for appointment, their selection was not in violation of the recruitment Rules. The Tribunal in our opinion was in error in setting aside the select list prepared by the Commission.

12. In view of the above discussions, we allow the appeal and set aside the order of the Tribunal dated September 30, 1987. We further direct the State Government to make appointments to the posts of Motor Vehicles Inspectors on the basis of the select its prepared and finalised by the Commission. The writ petition also disposed of accordingly. There will be no order as to costs.

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