

R. S. Raghunath

Vs

State of Karnataka and Another

Civil Appeal No. 5617 of 1990

(Kuldip Singh, K. Jagannatha Shetty, Yogeshwar Dayal JJ)

04.10.1991

JUDGMENT

KULDIP SINGH, J.–

1. Even the General Law later in time, prevails over the earlier Special Law if it clearly and directly supersedes the said Special Law - is an unexceptionable proposition of law. K. Jayachandra Reddy, J. has interpreted Rule 3(2) of General Rules consistently with Rules 1(3)(a), 3(1) and 4(2) of the same Rules, Giving harmonious construction to various provisions of the General Rules the learned Judge has held that the General Rules do not supersedes the Special Rules. Yogeshwar Dayal, J. on the other hand has focused his attention on the language of Rule 3(2) of the General Rules and has concluded that there is clear indication in the said rule to supersede the Special Rules.

2. I have given my thoughtful consideration to the reasoning adopted by the learned Judges in their respective judgments. Rule 1(3)(a) of the General Rules, which lays down the extent and applicability of the General Rules, specifically provides that the General Rules shall not be applicable to the State Civil Services for which there are express provisions under any law for the time being in force. When the General Rules were enforced the Special Rules were already holding the filed. The Special Rules being "Law" the application of the General Rules is excluded to the extent the field is occupied by the Special Rules. I do not agree that the non-obstante clause in Rule 3(2) of the General Rules has an overriding effect on Rule 1(3)(a) of the said Rules. With utmost respect to the erudite judgment prepared by Yogeshwar Dayal, J. I prefer the reasoning and the conclusions reached by K. Jayachandra Reddy, J. and agreed with the judgment propped by him.

K. JAYACHANDRA REDDY, J. –

This appeal is directed against the order of the Administrative Tribunal, Bangalore dismissing an application filed by the appellant. The principal question involved is whether sub-rule (2) of Rule 3 of Karnataka Civil Services (General Recruitment) Rules, 1977 ('General Rules' for short) has the overriding effect over the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1976 ('Special Rules' for short).

4. For a better appreciation of the question it becomes necessary to state few facts. The appellant was appointed initially Inspector of Motor Vehicles and was promoted as Assistant Regional Transport Officer in the year 1976 in which year the Special Rules were framed. In the year 1981 the appellant was promoted as Regional Transport Officer. Some of the General Rules of 1977 were amended in the year 1982 and sub-rule (2) of Rule 3 was inserted in the said Rules. In the year 1989 respondent 2 was promoted as Deputy Commissioner of Transport on seniority-cum-merit basis

alone as purported to have been provided in new Rule 3(2) of General Rules. Being aggrieved by the same the appellant filed an Application No. 3155 of 1989 before the Karnataka Administrative Tribunal questioning the promotion of respondent 2 on the ground that the promotion to the post of Deputy Commissioner of Transport should be by selection from the cadre of Regional Transport Officers and not merely on seniority-cum-merit basis. His application was dismissed by the Tribunal holding that Rule 3(2) of General Rules which was introduced later overrides the earlier Special Rules. It is this order which is questioned in this appeal.

5. Shri P. P. Rao, learned counsel appearing for the appellant contended that the Special Rules are exclusively meant to govern the recruitment and promotion of officers of various cadres of the Motor recruitment and promotion of officers of various cadres of the Motor Vehicle Department and the General Rules which generally regulate the recruitment of all State Civil Services broadly even though later in point of time cannot abrogate the Special Rules and that they are not meant to do so since the Special Rules also are very much in force inasmuch as they are not superseded. Shri P. Chidambaram, learned counsel for the State of Karnataka contended that the non-obstinate clause in Rule 3(2) of the General Rules which was introduced later clearly indicate the intention of the legislature of supersede the Special Rules and promotions from the cadre of Regional Transport Officer to that of Deputy Commissioner of Transport could only be on the basis of seniority-cum-merit and not by selection. From the rival contention it emerges that the real question involved is one of construction of non-obstinate clause in Rule 3(2) and its effect on the Special Rules providing for promotion to the post of Deputy Commissioner of Transport by selection from the cadre of Regional Transport Officers.

6. We shall now refer to the relevant Special and General Rules. The Special Rules were framed in exercise of the powers conferred by the proviso to Article 309 of the constitution of India in the year 1976. The Special Rules of recruitment for the category of post of Deputy Commissioner of Transport reads thus :

"Category of Method of recruitment Minimum Qualification Posts 1 2 3 Deputy Transport By promotion by selection Must have put Commissioner from the cadre of in not less than five years Regional Transport Officers. of service in cadre of Regional Transport Officers."##

It can be seen that this part of Special Rules clearly provides for promotion to the post of Deputy Commissioner of Transport by selection from the cadre of Regional Transport Officers who have put in not less than five years of service. The General Rules were framed in the year 1977 and Rule 3 reads as under :

"3. Method of recruitment. - (1) Except as otherwise provided in these rules or any other rules specially made in this behalf, recruitment to any service or post shall be made by direct recruitment which may be either by competitive examination or by selection, or by promotion which may be either by selection or on the basis of seniority-cum-merit it. The methods of recruitment and qualifications shall be as specified in the rules of recruitment specially made in that behalf :

Provided that in respect of direct recruitment to any service or post when the method of recruitment is not specified in the rules of recruitment specially made, the method of recruitment be by selection after an interview by the Commission, the Advisory or Selection Committee or the Appointing Authority as the case may be :

Provided further that no person shall be eligible for promotion unless he has satisfactorily completed the period of probation or officiation, as the case may be, in the post held by him.

(2) Notwithstanding anything contained in these rules or in the rules of recruitment specially made in respect of any service or post -

(a) the promotion to the post of Head of Department or the post of an Additional Head of Department, if it is in a grade equivalent to that of the Head of Department concerned shall be by selection;

Provided that for the purpose of promotion by selection, the number of persons to be considered shall be such number of persons eligible for promotion in the order of seniority is equal to five times the number of vacancies to be filled.

(b) The promotion to all other parts shall be on the basis of seniority-cum-merit."

It may be noted that Rule 3(2) with which we are mainly concerned was inserted in the year 1982, Shri Chidambaram strongly relying on the nonobstante clause in Rule 3(2) with which this sub-rule begins, contended that this general rule clearly supersedes the special law and therefore, according to him, the Tribunal was right in holding that the promotion to the post of Deputy Commissioner of Transport could be only on the basis of seniority-cum-merit. It is true that a simple reading of Rule 3(2) appears to lay down that notwithstanding anything contained in the General Rules or in the special Rules, the promotion to the post of a Head or Additional Head of a Department only shall be by selection and that the promotion to all other posts shall be on the basis of seniority-cum-merit. This clause (b) of sub-rule (2) is in general terms and as already noted the General Rules indicate that they regulate general recruitment to all the Karnataka State Civil Services broadly. It is not in dispute that just like the Special Rules providing for recruitment of the Transport Department there are such special rules in respect of many other departments also. It is therefore clear that while General Rules broadly indicate that they regulate general recruitment including promotion to all the State Civil Services but at the same time each department has its own Special Rules of recruitment and they agree co-existing. Such Special Rules of recruitment and they are co-existing. Such Special Rules of recruitment for the Motor Vehicles Department are not repealed by any provision of the General Rules which ar later in point of time. As a matter of fact Rule 21 which provides for repeal does not in any manner indicate that any of the Special Rules stood repealed. It is in this background that we have to consider the interpretation of non-obstinate clause on Rule 3(2) of the General Rules.

7. At this juncture it is necessary to note that some of the rules of the General Rules also provide for promotion by way of selection and that Special Rules providing for such promotion by selection should be adhered to. They are Rule 1(3)(a), the first part of Rule 3 and Rule 4 which are existing. In sub-rule 1(3)(a) of the General Rules we find the following clause :

"1.(3)(a) These rules shall apply to recruitment to all State Services and to all posts in connection with the affairs of the State of Karnataka and to members of all State Civil Services and to the holders of posts whether temporary of permanent except to the extent otherwise expressly provided -

(i) by or under any for the time being in force; or

* *

This is the opening the rule of the General Rules and it abundantly makes it clear that the rest of the rules are subject to any other rules expressly providing for recruitment. Then in clause (1) of Rule 3 of the General Rules we find the words :

"Except as otherwise provided in these Rules or any other rules specially made in this behalf recruitment to any service or post shall be made by direct recruitment which may be either by competitive examination or by selection or by promotion which may be either by selection or on the basis of seniority-cum-merit. The methods of recruitment and qualifications shall be as specified in the rules of recruitment specially made in that behalf."

This part of General Rule 3 provides for recruitment by way of promotion either by selection or on the basis of seniority-cum-merit as specified in the said rules of recruitment specially made. Further the opening words of clause (1) "Except as otherwise provided in these rules or any other rules specially made" give a clue that the Special Rules would govern and regulate the method of recruitment including promotion by way of selection. Further Rule 4 of the General Rules which lays down the procedure of appointment contains sub-rule (2) which reads as under :

"4. Procedure of appointment. - (1) Subject to the provisions of these rules, appointments to any service or post shall be made -

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(2) In the case of recruitment by promotion -

(a) if it is to a post to be filled by promotion by selection by selection of a person on the basis of merit and suitability in all respects to discharge the duties of the post with due regard to seniority from among persons eligible for promotion;

(b) if it is to a post other than that referred to in sub-clause (a) by selection of a person on the basis of seniority-cum-merit, that is seniority subject to fitness of the candidates to discharge the duties of the post, from among persons eligible for promotion."

Though Rule 3(2) of the General Rules is inserted later, the abovementioned rules remain undisturbed and they co-exist. They provide for recruitment and promotion by selection to certain categories of posts and for others on the basis of seniority-cum-merit. From a combined reading of these provisions of General Rules it follows that recruitment to any service by promotion as regulated by Special Rules can be by way of selection. Then the question is whether Rule 3(2) of the General Rules which is introduced in 1982 particularly providing the method of promotion by selection to the post of heads and additional heads of departments has altogether dispensed with the promotion by selection to all other posts and whether, the non-obstante clause in this rule, in these circumstances can be interpreted as to have the overriding effect as contended by the learned counsel for the respondent. The non-obstantes clause is sometimes appended to a section or a rule in the beginning with a view to give the enacting part of that section or rule in case of conflict, an overriding effect over the provisions or Act mentioned in that clause. Such a clause is usually used in the provision to indicate that the said provision should prevail despite anything to the contrary in the provision mentioned in such non-obstante clause. But it has to be noted at this stage that we are concerned with the enforceability of special law on the subject in spite of the general law. In

Maxwell on The Interpretation of Statutes, this principle of law is stated as under : (11th edn. page 168)

"A general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, or, in other words, 'where there are general word in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation you are to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general word, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act."

In *Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey* (AIR 1966 SC 1931 : (1966) 3 SCR 663) applying this principle it is held that general law does not abrogate earlier special law by mere implication. In *Eileen Louise Nicolle v. John Winter Nicolle* ((1922) 1 AC 284), Lord Phillimore observed as under :

"It is no doubt a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one. This as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute ... or be the underlying common or customary law of the country.

... 'Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation ... that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so'. (Ed. : Quoting from *Vera Cruz case*, (1884) 10 AC 59, 68)"

In *Justiniano Augusto De Piedade Barreto v. Antonio Vicente Da Fonseca* ((1979) 3 SCC 47 : AIR 1979 SC 984) this Court observed that a law which is essentially general to nature may contain special provisions on certain matters and in respect of these matters it would be classified as a special law. Therefore, unless the special law is abrogated by express repeal or by making provisions which are wholly inconsistent with it, the special law cannot be held to have been abrogated by mere implication.

8. I have already noted that even in the General Rules the promotion by selection is provided for and in the are any Special Rules in that regard they are not abrogated except by an express repeal.

9. I shall now examine whether the interpretation of non-obstinate clause in Rule 3(2) of the General Rules as given by the Tribunal is warranted. The Tribunal has held that the non-obstinate clause which was introduced in the General Rules clearly indicates the intention to supersede the special law. The Tribunal has also noted even a later general law provision can override earlier special law if it clearly indicates the intention to supersede the special law. As a proposition of law one cannot dispute this part of the finding but I am not able to agree with the finding of the Tribunal that the non-obstinate clause in Rule 3(2) clearly abrogates earlier special law.

10. This very question was considered by Karnataka High Court in *Muniswamy v. Superintendent of Police* (ILR (1986) 36 Kant 344). In that case also the same General rules and particularly Rule 3(2) inserted later came up for consideration. The Special Rules were that of Karnataka State Police State (Recruitment) Rules, 1967. The Director General of Police issued a circular for the purpose of recruitment of Head Constables on purely seniority-cum-merit basis. It was contended that the posts of the Head Constables have to be filled up by promotion by selecting as provided in the Special Rules and Rule 3(2) of the General Rules cannot have an overriding effect in spite of a non-obstante clause. The Division Bench of the Karnataka High Court held that sub-rule (2) of Rule 3 which is an amendment to the General Rules cannot be treated as an amendment to the Special Police Rules and that Rule 3(2) cannot be read as amending all other special rules of recruitment of all other departments of government in general. It also further observed that this amendment to the General Rules must be read as subordinate to the application of Rules declared by Rule 1(3) of the Rules and cannot be read as enlarging the scope. This judgment rendered by the High Court in the year 1986 has become final. The fact that the State did not appeal or repeal the Special Rules suitably in spite of the decision clinchingly shows that it accepted this position.

11. In *Aswini Kumar Ghose v. Arabinda Bose* (1953 SCR 1 : AIR 1952 SC 369) it was observed as under : (SCR pp. 21-22)

"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment."

It was further held that; (SCR p. 24)

"Nor can we read the non-obstante clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the Original Side Rules of the Calcutta and Bombay High Courts. If, as we have pointed out the enacting part of Section 2 covers all advocates of the Supreme Court, the non-obstante clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of statute must where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously; for even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. Posteriori ledges prioris contraries abrogant (Broom's Legal Maxims, 10th edn. p. 347)."

In Dominion of India (now the Union of India) v. Shrinbai A Irani (AIR 1954 SC 596 : (1955) 1 SCR 206), it was observed as; under; (AIR pp. 599-600, para 10)

"While recognising the force of this argument it is however necessary to observe that although ordinarily there should be a close approximation between the non-obstante clause and the operative part of the section, the non-obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the affect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical

construction of the words thereof a non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment."

In *Union of India v. G. M. Kokil* (1984 Supp SCC 196 : 1984 SCC (L&S) 631), it was observed as under (SCC p. 203, para 11)

"It is well-known that a non obstante clause is legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment that is to any to avoid the operation and effect of contrary provisions."

In *Chandavarkar Sita Ratna Rao v. Ashalata s. Guram* ((1986) 4 SCC 447) the scope of non-obstante clause is explained in the following words; (SCC p. 477-78, para 67)

"A clause beginning with the expression 'notwithstanding anything contained in this act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned in the enactment following it will have its full operation or that the provisions undercoated in the non-obstante clause would not be an impediment for an operation of the enactment."

On a conspectus of the above authorities it emerges that the non-obstante clause is appended to a provision with a view to give the enacting part of the provision a overriding effect in case of a conflict. But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying in the enactment by the legislation by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.

12. Further, the influence of a non-obstante clause has to be considered on the basis of the context also in which it is used. In *State of W. B. v. Union of India* ((1964) 1 SCR 371 : AIR 1963 SC 1241) it is observed as under : (SCR p. 435)

"The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

It is also well settled that the Court should examine every word of a statute in its context and to use context in its widest sense. In *Reserve Bank of India v. Peerless General Finance and Investment*

Co. Ltd. ((1987) 1 SCC 424) it is observed that : "That interpretation is best which makes the textual interpretation match the contextual." In this case, Chinnappa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of statutes held thus : (SCC p. 450, para 33)

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section, by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

If we examine the scope of Rule 3(2) particular along with other General Rules, the context in which Rule 3(2) is made is very clear. It is not enacted to supersede the Special Rules.

13. As already noted, there should be a clear inconsistency between the two enactments before giving an overriding effect to the non-obstante clause but when the scope of the provisions of an earlier enactment is clear the same cannot be cut down by resort to non-obstante clause. In the instant case we have noticed that even the General Rules of which Rule 3(2) forms a part provide for promotion by selection. As a matter of fact Rules 1(3)(a) and 3(1) and 4 also provide for the enforceability of the Special Rules. The very Rule 3 of the General Rules which provides for recruitment also provides for promotion by selection and further lays down that the methods of recruitment shall be as specified in the Special Rules, if any. In this background if we examine the General Rules it becomes clear that the object of these Rules only is to provide broadly for recruitment to services of all the departments and they are framed generally to cover situations that are not covered by the Special Rules of any particular department. In such a situation both the Rules including Rules 1(3)(a), 3(1) and 4 of General Rules should be read together. If so read it becomes plain that there is no inconsistency and that amendment by inserting Rule 3(2) is only an amendment to the General Rules and it cannot be interpreted as to supersede the Special Rules. The amendment also must be read as being subject to Rules 1(3)(a), 3(1) and 4(2) of the General Rules themselves. The amendment cannot be read as abrogating all other Special Rules in respect of all departments. In a given case where there are no Special Rules then naturally the General Rules would be applicable. Just because there is a non-obstante clause, in Rule 3(2) it cannot be interpreted that the said amendment to the Central Rules though later in point of time would abrogate the special rule the scope of which is very clear and which coexists particularly when no patent conflict or inconsistency can be spelt out. As already noted Rules 1(3)(a), 3(1) and 4 of the General Rules themselves provide for promotion by selection and for enforceability of the Special Rules in that regard. Therefore there is no patent conflict or inconsistency at all between the General and the Special Rules.

14. Shri P. Chidambaram, in this context, however, submitted that the intention of the legislature is to do away with promotion by selection and instead of amending every special rule, the general rule in the form of Rule 3(2) is inserted and therefore by virtue of non-obstante clause all other Special Rules governing the recruitment to all departments stand abrogated. I am unable to agree. If such was the intention of the amendment then I see no reason as to why even in the General Rules as noted above the promotion by selection is recognised and provided for and these Rules remain unaffected. This is also from the fact that government did not even appeal against the High Court decision rendered in Muniswamy case (ILR (1986) 36 Kant 344).

15. Shri P. Chidambaram, however further submitted that a plain reading Rule 3(2) which is later in point of time would clearly indicate that the special rule providing for promotion by section is repealed at least by implication. There is no doubt that a later statute may repeal an earlier one either expressly or by implication. In the instant case we have already noted that there is no express repeal of the special rule providing for promotion by selection. The courts have not favoured such repeal by implication. On the other hand it is indicated by the courts that if earlier and later statutes can reasonably be construed in such way that both can be given effect to, the same must be done. In *Chance, In Re* ((1936) 1 Ch D 266) Farewell, J. observed that : "If it is possible it is my duty so to read the section ... as not to effect an implied repeal of the earlier Act."

16. In *Kunter v. Phillips* ((1891) 2 QB 267) it is held that : "It is only when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one then only the two cannot stand together and the earlier stands abrogated by the later." In *Municipal Council, Palai v. T. J. Joseph* (AIR 1963 SC 1561 : (1964) 2 SCR 87) this Court has observed that there is a presumption against a repeal by implication and the reason of this rule is based on the theory that the legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter and therefore, when it does not provide a repealing provision it gives out an intention not to repeal the existing legislation. It is further observed that such a presumption can be rebutted and a repeal by necessary implication can be inferred only when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act, that the two cannot stand together. I am satisfied that there is no patent inconsistency between the General and Special Rules but on the other hand they co-exist. Therefore, there is no scope whatsoever to infer the repeal by implication as contended by the learned counsel Shri Chidambaram.

17. In the result the appeal is allowed and the government is directed to consider the case of the appellant for promotion to the post of Deputy Commissioner of Transport on the basis of promotion by selection, as provided in the Special Rules namely Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1976. In the circumstances of the case there will be no order as to costs.

The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. (dissenting) –

I have had the pleasure of going through the judgment prepared by my learned brother, Justice K. J. Reddy. However with due respect I regret I have not been able to persuade myself to agree to either his reasoning or the conclusion. There is no quarrel that general principle is that special law prevails over general law but the learned Judge has failed to note that even there there is an exception to such a general law, namely - it is a later general law which prevails over the earlier special law if it clearly indicates the intention to supersede the special law.

19. This appeal by special leave has been filed by Shri R. S. Raghunath against the order of the Karnataka Administrative Tribunal, Bangalore, dated August 9, 1990. Before the Tribunal the appellant sought a declaration that the promotion of Shri I. K. Devaiah, respondent 2 herein, was illegal and to direct respondent 1 to consider the case of the appellant for promotion to the cadre of Deputy Transport Commissioner with all consequential benefits. The Tribunal dismissed the application filed by the appellant. The Tribunal was called upon to construe Rule 3(2) of the Karnataka Civil Services (General Recruitment) Rules 1977 as amended in June 1982 (hereinafter referred to as 'the General Rules') The Tribunal after considering the General Rules took the view that the non-obstante clause in Rule 3(2) of the General Rules which was introduced after framing of the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1976 (in short 'the Special Rules') clearly indicates the intention to supersede the special law. The Tribunal took the view that the general principle that the special law prevails over the general law has one exception and that is a later general law prevails over earlier special law if it clearly indicates the intention to supersede the special law. The Tribunal held that a non-obstante clause in Rule 3(2) of the General Rules, which was enacted after the Special rules clearly indicates the intention to supersede the special law. The controversy rises in the following circumstances.

20. The Special Rules came into force on or about December 10, 1976 on the publication of the same in the Karnataka Gazette (Extraordinary) It consisted of only two Rules - (I) and (II) The first rule gave the 'title and commencement' and the second rule dealt with the 'method of recruitment and minimum qualification'. There was a schedule attached to Rule II. In the schedule for the post specified in column 1 thereof the method of entire in column 2 and 3 thereof. It dealt with roughly 35 categories of posts. I may mention that there was only one post, namely - the post of Deputy Transport Commissioner for which the method of recruitment was by selection from the cadre of Regional Transport Officers who must have put in not less than five years of service of that cadre. For all the rest of the posts in the schedule there was no provision for recruitment by way of promotion by selection. For all the posts the method of recruitment was either by promotion or by deputation or by direct recruitment or both by direct recruitment and promotion or by merely posting a suitable officer or by direct recruitment through employment exchange etc. Only the recruitment to the post of Deputy Transport Commissioner was by method of promotion by selection.

21. At the time when the aforesaid Special Rules were enacted the Karnataka State Civil Services (General Recruitment) Rules, 1957 (in short the General Rules at 1957) were in operation which were repealed by the General Rules. So long as the General Rules of 1957 continued the Special Rules contained to govern the method of recruitment of the posts as specified in the schedule attached to the said Special Rules.

22. The General Rules of 1957, as stated earlier, were repealed by the General Rules which came into force on June 25, 1977 Rule 1(3)(a) of the General Rules provided thus :-

"1.(3)(a) These rules shall apply to recruitment to all State Services and to all posits in connection with the affairs of the State of Karnataka and to members of all State Civil Services and to the holders of posts whether temporary or permanent except to the extent otherwise expressly provided -

(i) by or under any law for the time being in force; or

(ii) in respect of any member of such service by a contract or agreement subsisting

between such member and the State Government."

It is this clear from the provision of Rule 1(3)(a) that the General Rules were applicable for all purposes to members of all State Civil Services including the Motor Vehicles Branch except to the extent otherwise expressly provided by the Special Rules. The Special Rules as mentioned earlier dealt with the method of recruitment and qualification for the Motor Vehicles Branch and so far as the post of Deputy Transport Commissioner was concerned the method of recruitment was "promotion by selection". The Special Rule dealt with nothing else. It is also clear from Rule 1(3) of the General Rules itself as to what is the scope of its applicability. It was applicable to all posts except to the extent otherwise expressly provided for by the Special Rules. Rule 3(1) of the General Rules, before the insertion of sub-rule (2), read as follows :

"3. Method of recruitment - (1) Except as otherwise provided in these rules or any other rules specially made in this behalf, recruitment to any service or post shall be made by direct recruitment which may be either by competitive examination or by selecting or by promotion which may be either by selection or on the basis of seniority-cum-merit. The methods of recruitment and qualifications shall be as specified in the rules of recruitment specially made in that behalf :

Provided that in respect of direct recruitment to any service or post when the method of recruitment is not specified in the rules of recruitment specially made, the method of recruitment shall be by selection after a interview by the Commission, the Advisory or Selection Committee or the Appointing Authority as the case may be :

Provided further that no person shall be eligible for promotion unless he has satisfactorily completed the period of probation or officiation, as the case may be in the post held by him."

The substantive part of Rule 3(1) described various methods of recruitment but stated that the methods of recruitment and qualifications shall be as specified in the rules of recruitment specially made in that behalf. The first proviso described that when in the Special Rules for recruitment no provision is made for direct recruitment the method of recruitment shall be by selection after an interview by the Commission, the Advisory or Selection Committee or the Appointing Authority, as the case may be. The second proviso to Rule 3(1) contemplated that no person shall be eligible for promotion unless he has satisfied three completed years of probation or officiation as the case, may be, in the post held by him. The second proviso is by way of abundant caution in view of the Karnataka Civil Services (Probation) Rules, 1977 (hereinafter referred to as 'the Probation Rules') because the Probation Rules contemplated that the period of probation shall be 'as may be provided for in the rules of recruitment specially made for any service or post, which shall not be less than two years'. The Probation Rules also contemplated declaration of satisfactory completion of probation at the end of the prescribed period of probation as extended or reduced by the appointing authority. It may be useful to note that Rule 19 of the General Rules also dealt with probation and appointments by promotion. It is clear from reading of Rules 1, 2, and 3 as originally enacted to the General Rules that so far as the Special Rules expressly provided to any particular branch of the State Service that was to prevail over the General Rules. Rule 3-A, as amended, provided for qualification in respect of exservicemen, irrespective of the provisions of the Special Rules. Rule 4 provided the procedure of appointment. It also provided that if the appointment is by way of selection, how a selection has to be conducted and if the recruitment is by way of promotion, how it has to be done. Rule 5 provided for disqualification for appointment. Rule 6 provided the agree

limit for appointment. Rule 8 provided for reservation of appointments for scheduled castes, scheduled tribes, backward tribes etc. Rule 9 contained provision for ex-servicemen and physically handicapped notwithstanding anything contained in the Special Rules. Rule 10 contemplated conditions relating to suitability and certificates of character Rule 11 provided for procedure how the applications have to be made by the government servants for recruitment. Rule 16 provided for relaxation notwithstanding the provisions contained in the General Rules or the Special Rules. Rule 16-A provided for appointment by transfer. Rule 17 dealt with appointment by direct recruitment or by promotion in certain cases notwithstanding anything contained in the General or Special Rules. All these rules are applicable to all the posts except to the extent as contemplated by Rule 1(3) of the General Rules. This was the position at the time of enactment of General Rules in 1977.

23. It appears that Rule 3 of the General Rules was amended and sub-rule (2) was added to Rule 3. Rule 3(2) of the General Rules, so added in June 1982, reads thus :

"3.(2) Notwithstanding anything contained in these rules or in the rules of recruitment specially made in respect of any service or post -

(a) the promotion to the post of Head of Department or the post of as Additional Head of Department, if it is in a grade equivalent to that of the Head of Department concerned, shall be by selection :

Provided that for the purpose of promotion by selection, the number of persons to be considered shall be such number of persons eligible for promotion in the order of seniority, as is equal to five times the number of vacancies to be filled.

(b) The promotion to all other posts shall be on the basis of seniority-cum-merit."

24. We are really concerned with the scope of Rule 3(2) of the General Rules for proper decision of this case. Both the General Rules and the Special Rules have been framed by the Government of Karnataka in exercise of powers under Article 309 of the Constitution of India.

25. It is clear from Rule 1(3)(a) of the General Rules that the General Rules apply to recruitment to all State Services and to all posts in connection with the affairs of the State. A perusal of different rules in the General Rules makes it clear that the general provision which apply to recruitment to all posts under the government are specified in those Rules instead of repeating them in each and every Special Rules of recruitment relating to different departments. For example, provisions relating to age limit for recruitment, disqualification for recruitment, joining time etc. should find place in Special Rules and normally they should be uniform for all categories of posts. Instead of repeating them in all Special Rules of each department they have been put in one set of rules known as the General Rules. It would be impossible to limit the application of the General Rules only recruitment to posts for which no Special Rules have been made. If that was so, what are the provisions relating to disqualification, age joining time etc. for posts for which Special Rules governing recruitment have been made ? There are no other rules governing the subject except the General Rules.

26. By the wording of Rule 3(2) of the General Rules it is clear that the Government took conscious and deliberate policy decision and gave a mandate to make only posts of Heads of Departments, Additional Heads of Departments as selection posts and all other posts on promotion will be filled by the criterion of "seniority-cum-merit".

27. To give effect to that policy decision instead of amending every Special Rules of recruitment relating to different State Civil Services, the government made a provision in the General Rules by incorporating a non-obstante clause stating that it would apply to all serves and posts notwithstanding the provision in the General Rules or in the Special Rules of the State. This aspect is absolutely clear by a mere reading of Rule 3(2) of the General Rules.

28. In the case of Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey (AIR 1966 SC 1931 : (1966) 3 SCR 663) the Supreme Court approved the following quotation from Maxwell on Interpretation of Statutes :

"A general later law does not abrogate an earlier special one but mere implication. Generalia specialibus non derogant, or, in other words, 'where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.' In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act."

29. It is stated therein that for the general principle that the special law prevails over general law there is one exception and that is a later general law prevails over earlier special law if it clearly indicates the intention to supersede the especial law. The non-obstante clause introduced by amending Rule 3 of the General Rules by adding Rule 3(2) which was enacted after the Special Rules indicates the clear intention to supersede the Special Law to the extent that for the posts which are not Heads of the Departments or Additional Heads of Departments the promotion, if provided for by way of selection, would be not basis of seniority-cum-merit and not on the basis of merit only.

30. As I have noticed earlier if we look at the Special Law it contained various methods of recruitment to about 35 posts mentioned in the Schedule annexured thereto but there is only one post for which the promotion was proposed by selection. Surely it would have been flimsy way of drafting if one particular clause of a particular Special Law was sought to be individually repealed by enacting a repealing clause for that purpose. To get over that the non-obstante clause is introduced later on by the same authority which enacted both the General and Special Laws to give its latest mandate. The latest mandate cannot be ignored.

31. Rule 1(3) of the General Rules which accepted the applicability of Special Rules is itself a part of General Rules and the non-obstante clause is not merely to what is mentioned to the contrary in the Spatial Rules but it is also notwithstanding anything contained in the General Rules itself.

32. In present case respondent 2 herein was promoted after the amendment of Rule 3 of the General Rules and there is no dispute about his recruitment by way of promotion on the basis of seniority-cum-merit and that the earlier Special Rules which contemplated the promotion by selection were not followed in view of the latest intention clearly given by a positive mandate.

33. The learned counsel for the appellant strongly placed reliance on the decision of the Karnataka High Court in the case of Muniswamy v. Superintendent of Police (ILR (1986) 36 Kant 344) dated July 18, 1986 (Annexure 'F' pages 66 to 108 of the paperbook). That decision dealt with the General Rules and the Special Rules in relation to Karnataka State Police Service (Recruitment) Rules, 1967.

34. We have to construe the meaning of Rule 3(2) for ascertaining the object and purpose which the legislature had in view in enacting the said provision and the context thereof, it appears to me that the Special Rules for recruitment to come of the services had been in force providing a particular method of either selection or promotion. It appears that because of experience the government had of its working, it was thought proper to change this policy, namely-instead of providing selection on the basis of merit to every post, in certain posts, it thought it fit to give due weightage to seniority and merit instead of having 'best'. The selection of 'best' very often has an element of chance which may not be very conducive to proper climate and harmony in service. It appears that because of that experience the rule making authority thought it fit that the process of promotion by selection should be confined only to top posts and for rest of the posts the method should be promotion by adopting the principle of seniority-cum-merit. I find that there is a clear mandate of latest intention of the rule making authority contained in Rule 3(2) of the General Rules and this must be respected by the court. The courts are not expert boy in knowing what is the best method for selection and to assume, that the purest method must be found by the court and implemented even by violation of the rule, will not be sound rule of construction of statute.

35. I am afraid I have not been able to persuade myself to agree with the reasoning of the learned Division Bench in the aforesaid case of *Muniswamy v. Superintendent of Police* (ILR (1986) 36 Kant 344).

36. The learned Division Bench had restricted the scope of Rule 3(2) to only such officers whose "service or post is not regulated by any Special Rules, then and then only the post of Head of Departments of government as defined in 1982 Rules had to be filled by promotion by selection and all other posts in such department have to be filled by promotion on seniority-cum-merit basis". The Division Bench also examined the merits and demerits of various forms of selection at great length and took the views in paragraph 41 of the judgment as under :

"We were shocked and surprised when the learned Government Advocate submits before us that he was supporting the stand urged by Sri Bhatt and the circular issued by the Director under instructions from government. We have no doubt that the government had not really reflected on the untenable stand it was urging before this Court which, if accepted would have meant death knell to efficiency in the services of State."

37. I am surprised with this type of approach. It is not the function of the court to examine the efficacy of one form of selection or the other. It is for the recruiting authority, namely the government to examine it and enforce it in the way it likes. To use such an expression "death knell to efficiency" really gives the kind of the court that it wants to enforce the particular policy even though the latest mandate is for change of the policy in the name of efficiency. This type of reasoning really ignores the specific provisions of the non-obstante clause applying to even "in the rules of recruitment specially made in respect of any service or post".

38. In *Ajoy Kumar Banerjee v. Union of India* ((1984) 3 SCC 127, 153 : 1984 SCC (L&S) 355) Sabyasachi Mukharji, J. (as His Lordship then was) observed thus : (SCC p. 153, para 38)

"As mentioned hereinbefore if the scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the principle "*generalia specialibus non derogant*". The general rule to be followed in

case of conflict between the two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied :

- (i) The two are inconsistent with each other.
- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail."

39. It is thus clear that both the conditions mentioned by Mukharji, J., speaking for the bench are fulfilled. In this case whether the promotion has to be the method of selection or simpliciter promotion on the basis of seniority-cum-merit, is the contest. The Special Law contemplates promotion by 'selection' whereas the later law contemplates promotion by the method of seniority-cum-merit. The two are inconsistent with each other. This fulfills the first condition. So far as the second condition is concerned there is an express reference in the later general law "in the earlier enactment". But as per the proposition of Mukharji, J. if either of the two conditions are fulfilled the later law, even though general, would prevail. Surely the provision of recruitment contemplated in the Special Police Rules is inconsistent with the latest general provision applicable to all posts in Karnataka. In the present case the later general law prevails over the earlier special law because the nonobstante clause specifically mentions its efficacy in spite of the Special Law. It was for the legislature to choose the method to indicate its intention. The courts should not defeat heir intention by overlooking it. Respondent 2 has been selected for promotion by following the General rules amending the Special Rules and I find it was strictly in accordance with law. I am, therefore, of the considered view the at the appeal deserves to be dismissed with parties to bear their own costs.

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