SUPREME COURT OF INDIA

M. A. Murthy

Vs.

State of Karnataka

C.A.Nos.6913-6914 of 2003

(Doraiswamy Raju and A. Pasayat JJ.)

02.09.2003

JUDGEMENT

Arijit Pasayat, J.

1. Leave granted.

2. Both these appeals have common factual matrix, and legal panorama and, therefore, are dealt with by this common judgment.

3. Factual backdrop in a nutshell is as follows:

> "Karnataka State Financial Corporation (hereinafter referred to as the 'Corporation') invited applications for recruitment to two posts of Manager (Finance and Accounts) by advertisement dated 18-7-1995. The advertisement inviting applications for the two posts of Manager (Finance and Accounts), one post for general and one post of scheduled caste, prescribed the requisite educational qualification. It was stipulated in the advertisement that the age and other qualifications were to be reckoned as of 31-7-1995. It was also indicated that the applications in the prescribed format with complete information should reach the prescribed authority before 29th July, 1995 and incomplete applications and applications without necessary enclosures were to be rejected."

4. Appellant and respondent Nos. 4 and 5 were applicants in response to the advertisement. Though respondent No. 4 was not qualified on the last date of submission of application, he was permitted to attend and appear for the written test. However, on the date of interview he was eligible. The written test was conducted on 1-10-1995 and the viva voce was conducted on 25-11-1995. Similar was stated to be the position vis-a-vis respondent No. 5. When respondent No. 4 was selected, appellant challenged his selection to be not in accordance with law. It is to be noted that waiting list is prepared and respondent No. 5 was placed in the waiting list.

5. A writ application was filed before the Karnataka High Court at Bangalore challenging the selection of respondent No. 4 and placing respondent No. 5 in the waiting list. Though, learned single Judge of the High Court held that respondent No. 4 was ineligible as on the date of employment, he held that in public interest the selection was to be maintained.

6. A reference was made to the decision of this Court in *Ashok Kumar Sharma and another v. Chander Shekher and another*[1] (described hereinafter as Ashok Kumar Sharma case No. I) where it was held that if the applicant had acquired qualification by the time of interview that is sufficient.

7. A writ appeal was filed before the Division Bench. The view of the learned single Judge was affirmed by the Division Bench. A review application was filed inter alia taking the stand that the view in Ashok Kumar Sharma's case No. I has been later on overruled in *Ashok Kumar Sharma and others v. Chander Shekhar and another*[2] (described hereinafter as Ashok Kumar Sharma case No. II). Therefore, a review of the judgment of the Division Bench was necessary. The High Court by the impugned judgment held that though admittedly on 18-7-1995 i.e. on the date of advertisement the respondent No. 4 was not qualified to make an application, yet few dates and facts are relevant. He had appeared for the M.B.A. examination in April, 1995 and the results were declared on 4-9-1995. The written examination was held on 1-10-1995 and viva voce was conducted on 25-11-1995. At least by the time the written examination and the viva voce tests were held, he had acquired the requisite qualification. Judgement in Ashok Kumar Sharma's case No. I was delivered on 18-12-1992 and decision in the review petition in the said case was rendered on 10-3-1997. The appointment of respondent No. 4 was made when the earlier decision of Ashok Kumar Sharma's case No. I held the field. It was, therefore, held that on the date of selection, the first judgment held the field; and, therefore, by applying logic of that decision the selection of respondent No. 4 cannot be questioned.

8. Learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *L.C. Golak Nath and others v. State of Punjab and another*[3]. In *Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others*[4] the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See *Ashok Kumar Gupta v. State of U. P.*[5], *Baburam v. C. C. Jacob*[6]). It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in

a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma's case No. II. All the moreso when the subsequent judgment is by way of Review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside.

9. That brings us to the ticklish question as to how the reliefs can be moulded. It is not in dispute that subsequently the appellant has also been appointed on 9-11-2002. Though it was permissible for this case to set aside the appointments of respondent No. 4 and respondent No. 5, on the peculiar facts of this case, we consider it to be not called for and the rights of parties instead could be adjusted by working out equities, in the interests of substantial justice by adopting a different course. The appellant shall rank senior to respondent No. 4 by treating his appointment to be with effect from the date of selection of respondent No. 4. This shall be only for the purpose of fixing the seniority and continuity of service only not for entitlement to any salary or other financial benefits. As respondent No. 5 was only in the waiting list, and it is stated that he has been subsequently appointed, he will also rank below the appellant and respondent No. 4. The appeals are accordingly allowed. There shall be no order as to costs.

Appeals allowed.

[1]*(1993 Supp (2) SCC 611)*
[2]*(1997 (4) SCC 18)*
[3]*(AIR 1967 SC 1643)*
[4]*(1993 (4) SC 727)*
[5]*(1997) 5 SCC 201*
[6]*(1999) 3 SCC 362)*