

BHAKTA RAME GOWDA AND ORS. ETC.

v.

STATE OF KARNATAKA AND ANR. ETC.

JANUARY 24, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Service Law :

Karnataka Civil Services (General Recruitment) Rules, 1977 :

Rule 8—Reservation in promotion—Retrospectivity of the Rule—Backlog vacancies—Filling up of—Guidelines not provided—Held : Whatever promotions given, they would remain valid subject to laying down guidelines and working out of backlog vacancies in the light of guidelines—State Government directed to complete the exercise within three months.

B.S. Vadera v. Union of India, AIR (1969) SC 118; Chief Secretary to Government of Andhra Pradesh & Anr. v. V.J. Cornelius Etc., AIR (1981) SC 1099; P.D. Aggarwal & Ors. v. State of U.P. & Ors., AIR (1987) SC 1676; Supreme Court Employees Welfare Association v. Union of India & Ors., AIR (1990) SC 334; R.L. Bansal & Ors. v. Union of India & Ors., AIR 1993 SC 978 and V.K. Sood v. Secretary, Civil Aviation & Ors., AIR (1993) SC 2285, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 490-91 of 1997 Etc.

From the Judgment and Order dated 29.4.94 of the Karnataka Administrative Tribunal, Bangalore in A. Nos. 3727/92 and 822 of 1993.

Ms. T. Sudha, Ms. Bina Gupta, Ramesh Singh and D.K. Garg for the Appellants.

V.N. Ganpule, P. Mahale, A.K. Panda, R.P. Wadhvani, K.R. Nagaraja and S.N. Bhat for the Respondents.

The following Order of the Court was delivered :

A Leave granted. We have heard learned counsel on both sides.

These appeals by special leave arise from the order of the Karnataka Administrative Tribunal, made on April 29, 1994 in Application Nos. 3727/82 and batch.

B The admitted position is that under the Karnataka Civil Services (General Recruitment) Rules, 1977, the Government exercising the power under proviso to article 309 of the Constitution has amended Rule 8 and introduced proviso thereto. It reads as under :

C "8. Provision for reservation of appointments or posts : Subject to provisions of sub-rule (3) of Rule 9, appointments or posts shall be reserved for the members of the Scheduled Castes, Schedule Tribes, Backward Tribes and other Backward Classes to such extent and in such manner as may be specified by the Government under clause (4) of Article 16 of the Constitution of India."

D As a result thereof, the Government is empowered, in consistency with Article 335 of the Constitution, to appoint by promotion by way of reservation of the members belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes to such extent and in such manner as may be specified by the Government under clause (4) of Article 16 of the Constitution. By another order dated April 1, 1992, the second proviso was introduced which reads as under :

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F "Provided that, notwithstanding anything in the rules of recruitment specially made in respect of any service or post, the backlog vacancies in the promotional quota shall be determined and implemented with effect from 27th April, 1978.

G Note : The backlog vacancy means the extent of the number of vacancies available under the roster system upto the level of lowest category in group-A posts calculated from 27th April, 1978. "

H Under this proviso, the Government has introduced the principle of filling up of the posts reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes including the backlog vacancies in promotional quota effective from April 27, 1978. These rules came to be challenged in

the Tribunal. The Tribunal had held that the first proviso cannot be made with retrospective effect. The view taken by the Tribunal is wholly unsustainable.

A Constitution Bench of this Court had held in *B.S. Vadera v. Union of India*, AIR (1969) SC 118 that rules made under the proviso to Article 309 of the Constitution are legislative in character and, therefore, they could be made with retrospective effect. The same principle was reiterated in several decisions, viz., *Chief Secretary to Government of Andhra Pradesh & Anr. v. V.J. Cornelius Etc.*, AIR (1981) SC 1099, *P.D. Aggarwal & Ors. v. State of U.P. & Ors.*, AIR (1987) SC 1676, *Supreme Court Employees Welfare Association v. Union of India & Ors.*, AIR (1990) SC 334, *R.L. Bansal & Ors. v. Union of India & Ors.*, AIR (1993) SC 978 and *V.K. Sood v. Secretary, Civil Aviation & Ors.*, AIR (1993) SC 2285. The view of the Tribunal that the rules cannot be made with retrospective effect is *ex-facie* illegal and unsustainable. The rule also were struck down on yet another ground, namely, until the guidelines have been provided for working out the rules, the rules are *non est* and, therefore, the second proviso is *ultra vires*. This view also is not correct. The operation of the rules does not depend on the guidelines to be laid. Merely because the guidelines have not been provided in the manner in which the backlog vacancies are required to be filled up, the second proviso to Rule 8 made in exercise of the power under proviso to Article 309 does not become *non est*. At best, it remains unworkable. The Government is required to formulate the guidelines under Article 16(4) of the Constitution as to the manner in which the backlog vacancies are required to be filled up. Admittedly, such guidelines have not been provided including preparing the roster, identifying the backlog vacancies and the placement of the officers between the general and reserved categories which were annexed for the first time along with the counter-affidavit filed in the Tribunal. Under these circumstances, the view of the Tribunal is not correct. It may be construed to the extent the second proviso remains unworkable until the guidelines under Article 16(4) have been issue by the State Government. Under these circumstances, whatever promotions have been given, they would remain valid subject to laying down of the guidelines and working out of the backlog vacancies in the light of the guidelines provided thereunder and adjustment of the 11 officers promoted under the second proviso. All the promotions will be subject to the above fitment and adjustment between general candidates

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A and the reserved candidates in the respective categories, namely, Scheduled Castes and Scheduled Tribes and other Backward Classes in accordance with the guidelines and the law laid down by this Court. The State Government is directed to complete the exercise within a period of three months from the date of the receipt of the order.

B The appeals are allowed to the above extent. No costs.

G.N

Appeals are allowed.