

(2014) 02 KAR CK 0084

In the Karnataka High Court

Case No : Writ Petition Nos. 35770-35775, 35943-35954/2009, 26-28, 190, 234-248, 6815-6831, 21643-21645/2010, 35293-35307/2010 (S-KAT)

B. Sunil Kumar, Pavan Nejjur and J. Gowtham

APPELLANT

Vs

State of Karnataka and Others
 The State of Karnataka
and The Director General and Inspector General of Police Vs
S.D. Shashidara and Others

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Constitution of India, 1950 — Article 13, 16(4), 32
Karnataka State Civil Services Act, 1978 — Section 3, 8

Citation : (2014) 3 AKR 259 : (2014) ILR 1767 : (2014) 6 KarLJ 491 : (2014) 2 KCCR 1807 : (2014) LabIC 2834

Hon'ble Judges : S. Abdul Nazeer, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : S. Susheela, A.G.A. in Writ Petition No. 1901, 6815-6831/2010, Sri M.N. Prasanna, Advocate for P.S. Rajagopal A/S, Advocate in W.P. Nos. 35770-35775, 35943-35954/2009, Sri Hegde A/S, Advocate in W.P. Nos. 26-28 and 234-248/2010, Sri M.H. Prakash, Advocate in W.P. Nos. 21643-21645 and 35293-35307/2010, Advocate for the Appellant; B.S. Vijayalakshmi, Advocate for R3 and R12 in Writ Petition Nos. 35770-35775, 35943-35954/2009, for R1 to R3, R8 to R10 in Writ Petition Nos. 1901, 6815-6831/2010, Sri V. Lakshminarayana, Advocate for R6, R11 and R12 in Writ Petition Nos. 1901, 6815-6831/2010, for R8, R10, R13 and R14 in W.P. Nos. 35770-35775, 35943-35954/2009 and for R8, R10, R12, R13 and R14 in W.P. Nos. 26-28 and 234-248/2010, Sri D.N. Nanjunda Reddy, Sr. Advocate in Writ Petition Nos. 35770-35775, 35943-35954/2009, 26-28 and 234-248, 1901, 6815-6831, 21643-21645 and 35293-35307/2010, Sri Deshraj and Sri P. Chengalaraya Reddy, Advocates for R7 in Writ Petition Nos. 1901, 6815-6831/2010, for R7, R9 and R15 in W.P. Nos. 35770-35775, 35943-35954/2009, 26-28 and 234-248/2010 and for R7, R9, R12 and R14 in W.P. Nos. 21643-21645 and 35293-35307/2010, Smt. S. Susheela, A.G.A. for R1 and R2 in W.P. Nos. 35770-35775, 35943-35954/2009, 26-28 and 234-248, 21643-21645 and 35293-35307/2010/2010, Sri Prashanth, Advocate for Ravivarma Kumar A/S, Advocates for R3 to R6, R11 and R12 in W.P. Nos. 35770-35775, 35943-35954/2009 and for R3 to R5 in W.P. Nos. 26-28 and 234-248/2010 and K.C. Shantakumar, Advocates for R3 and R12 in W.P. Nos. 35770-35775, 35943-35954/2009, Advocate for the Respondent

Judgement

S. Abdul Nazeer, J.—The State of Karnataka and the Director General and Inspector General of Police have filed W.P. Nos. 1901/2010 and 6815-6831/2010 challenging the legality of the order passed by the Karnataka Administrative Tribunal dated 23.11.2009 in application Nos. 5148/2008 connected with 5995, 5996, 5997, 5998 and 5999/2008.

2. All the other writ petitions have also been filed assailing the aforesaid order of the Tribunal. The petitioners in all these cases are referred to as "the petitioners" and the private respondents are referred to as "the applicants" for the sake of convenience.

3. Brief facts necessary for disposal of these writ petitions are as under:

The Police Sub-Inspectors Recruitment Committee issued a notification dated 7.2.1996 inviting applications to fill up by direct recruitment 147 posts of Police Sub-Inspectors (Civil). The applicants were candidates for selection pursuant to the said notification. The applicants claimed rural weightage under Rule 3-B of the Karnataka Civil Services (General Recruitment) Rules, 1976 (for short "the Rules"). One Basavaraj Nagoor challenged the constitutional validity of Rule 3-B in W.P. No. 13157/1998. Learned Single Judge of this Court by order dated 11.11.1998 held that Rule 3-B providing for weightage of marks to rural candidates is void in terms of clause (2) of Article 13 of the Constitution of India (reported in Basavaraj Nagoor Vs. State of Karnataka and Another,). This Court has held as under:

7. Neither, in the counter affidavit nor independently, any material has been placed before this Court to show that the entire population covered by the definition "Rural Candidate" constitutes socially and economically a backward class of citizens for the purposes of Article 16(4) or they are entitled for any weightage, relaxations, concessions or privileges in public appointments en masse forming a backward class of citizens which, in the opinion of the State, is not adequately represented in the services of the State. As a matter of fact, as extracted from the Government note, what to talk of at the time of taking initial decision in the year 1994 when the original impugned rules were incorporated, even till this day, no dates of whatsoever worth, are available on record either to justify the backwardness of the rural candidates or that persons coming from the rural areas do not have adequately representation in services under the State.

8. To my mind, the questions raised at the Bar are no more res integra since the law on these questions has already been settled by the Supreme Court long back but unfortunately, still the political executives in order to appease/lure the voters and enrich their vote banks, despite having the full knowledge about the declaration of law by the Apex Court, have ventured to incorporate a constitutionally invalid rule like the impugned one depriving many merited candidates of their fundamental rights to employment and livelihood. I feel that a

Government, acting under the solemn oath to preserve the supremacy of the Indian Constitution and rule of law, should have acted with little more care and restraint instead of being swayed away with unconstitutional populist measures.

14. For the aforesaid reasons and keeping in view the judgment of the Supreme Court in the above referred case of Suneel Jatley, it is difficult to accept that the students who had read in the rural schools have in any manner suffered any disadvantage in the matter of acquiring school level education. But, even otherwise, as held by the Supreme Court, such a classification per se is constitutionally impermissible.

4. At paragraph 18, the learned Single Judge has clarified that notwithstanding the declaration of law as above, the appointment of the persons already made on the basis of rural weightage and who are working on their posts will not be disturbed and their appointment will not be adversely affected because of the present judgment.

5. The State of Karnataka challenged the said order by filing W.A. No. 5807/1998. While admitting the appeal, the Division Bench granted an interim order as under:

Operation of the impugned order is stayed with the stipulation that hereinafter selections/appointments shall be made subject to the decision of the appeal. Appointing authority before giving "order of appointment" to a candidate having rural weightage, shall, obtain an undertaking from the candidate that the appointment given shall be subject to the decision of these proceedings and that the candidate shall have no right to the post in the event of the order of the Single Judge being upheld.

6. In the meanwhile, Ms. C.K. Hemalatha and others approached the Karnataka Administrative Tribunal in application No. 3167/1998 and other connected matters in respect of the recruitment of Police Sub-Inspectors initiated by notification dated 7.2.1996. The Tribunal by its order dated 27.11.1998 disposed of the applications with the following directions:

21. Hence, the following order is passed:

(a) The respondents shall publish the result of the written examination on merit along with the marks secured by the candidates. The entire result shall be published in the office of the Recruitment Committee. The select list pertaining to each area shall be published in the respective examination centres.

(b) Simultaneously, the marks obtained by the candidates at the time of interview shall also be furnished indicating the marks obtained in the written examination and also the marks obtained in the interview. After giving 15 days time to the candidates to file objections, the authorities shall consider the valid objections, if any, and thereafter finalize the select list.

(c) While finalizing the select list, the reservation in respect of N.C.C. candidates,

Ex-military Personnel and Sports Personnel shall be considered strictly in accordance with the Notification published.

(d) As regards the grant of Rural Weightage, the authorities shall take into consideration the decision of the High Court of Karnataka rendered in W.P. No. 13157 of 1998 or any other subsequent judicial pronouncement on the subject.

(e) The merit list pertaining to the written examination and the interview shall be published within 15 days from the date of receipt of this order. Thereafter, as already ordered, 15 days time be given to the candidates to file their objections and after considering the objections, the final list shall be published in the light of the aforesaid directions.

(f) The select lists which are impugned in these applications are set aside.

7. During the pendency of the writ appeals and in the light of the interim order dated 4.12.1998 passed therein, the selection committee published the select list by notification dated 28.12.1998 in which the applicants were included by virtue of rural weightage claimed and granted to them. Pursuant to the said select list, provisional orders of appointment dated 30.12.1998 were issued to the applicants and other similarly placed candidates stating as under:

This provisional appointment order is subject to the decisions of the Hon''ble Karnataka Administrative Tribunal, Hon''ble High Court of Karnataka and Hon''ble Supreme Court of India.

8. Applicants were also called upon to submit necessary undertakings. Accordingly, the applicants joined service pursuant to the provisional orders of appointment giving an unequivocal undertaking that the appointment given shall be subject to the decision in the pending writ appeals and other orders that may be passed by the Karnataka Administrative Tribunal, this Hon''ble Court and the Hon''ble Supreme Court of India and that they shall have no right to the post in the event of the order of the learned Single Judge being upheld.

9. The Division Bench dismissed the writ appeals and confirmed the order passed by the learned Single Judge (reported in State of Karnataka and Others Vs. Basavaraj Nagoor and Others,). The Division Bench extended the protection of saving also to the appointment of those candidates appointed on the basis of rural weightage during the pendency of the writ appeals as under:

22. For the foregoing reasons, we do not see any merit in the appeal. The learned Single Judge was right in striking down the impugned Rules. We affirm the observations made by the learned Single Judge that the candidates who have already been appointed by giving "rural weightage" should not be disturbed, and also the persons who have been appointed during the pendency of these appeals until now on the basis of Rural Weightage.

(emphasis supplied by us)

10. An application was filed in the writ appeals seeking clarification of the order.

The Division Bench on 16.12.1999 expanded the protection to save even the selections made during the pendency of the writ appeals as under:

At para. 22 of the judgment delivered by this Court on 26.11.1999 at line 5, in the place of "already been appointed" it has to be substituted as "already selected and appointed" and also at lines 6 and 7, in place of "who have been appointed", it has to be substituted as "appointed or selected" during the pendency of these appeals.

11. One S. Sreedhara and 13 others were the candidates for the self same recruitment of Police Sub-Inspectors. The recruitment was initiated by notification dated 7.2.1996 in which the applicants had been selected. Aggrieved by the orders dated 26.11.1999 and 16.12.1999 passed by the Division Bench, they approached the Hon"ble Supreme Court. The Hon"ble Supreme Court by its decision rendered on 11.10.2001 (reported in AIR 2002 SC 2459) allowed the appeals, set aside the extended protection given by the Division Bench of this Court and affirmed the order of the learned Single Judge in the following terms:

9. Having considered the rival submissions and on examining the facts and circumstances of the present case as also the orders which had been passed by the Division Bench while entertaining the appeal against the judgment of the learned Single Judge, we find sufficient force in the contention of Mr. Rama Jois and we are unable to persuade ourselves to agree with the submissions made by Mr. Bhat appearing for the respondents. Ordinarily, the Rule having been struck down, all selections on the basis of such invalid Rule should have been nullified. The learned Single Judge however protected the appointments already made till the Rule was struck down. The ambit of that direction cannot be however amplified and extended as has been done by the Division Bench in the case in hand while passing the final judgment. The Division Bench committed an error in not considering the interim order that had been passed while entertaining the appeals. In that interim order, it was unequivocally indicated that any appointments to be made thereafter would be subject to the final decision in the appeals and the State Government would obtain an undertaking from the appointees so that they cannot claim any equity on the basis of such appointments. In fact, it is conceded that such undertakings have been obtained by the State Government from all those who were appointed subsequent to the order passed by the learned Single Judge. In that view of the matter, the two directions of the Division Bench referred to earlier i.e. dated 26.11.1999 and 16.12.1999 must be held to be unsustainable in law. We, therefore, set aside those directions of the Division Bench of the High Court of Karnataka in relation to appointments made during the pendency of appeal and also the selection made. These appeals are accordingly allowed.

10. We make it clear that if any of these appointees are otherwise entitled to be appointed even after excluding the weightage given under Rule 3(B), this judgment will not operate to debar them from being appointed.

12. A reading of the above order would make it clear that the State became obliged to terminate the services of the applicants on 11.10.2001 when the Hon"ble Supreme Court quashed the protection given to them by the Division Bench of this Court and upheld the order of the learned Single Judge. On and from 11.10.2001, the applicants could not have been continued in office and their appointment even prior to that were void.

13. However, the State Government did not implement the decision in S. Sreedhara's case (supra). It restricted only to the parties before the Hon"ble Supreme Court in the said appeals. Aggrieved by the inaction of the State Government, one Sri G. Mahantesh, who was co-appellant along with S. Sreedhara approached the Hon"ble Supreme Court in Contempt (Civil) Petition No. 370/2002. On receiving the notice in the contempt proceedings, the State Government by communication dated 16.4.2002 directed the Director General and Inspector General of Police as under:

However, in its judgment dated 26.11.2001, the Supreme Court has clarified that its judgment dated 11.10.2001 would bind the parties in the proceedings before the Supreme Court. In the instant case, only 14 persons had filed appeals before the Supreme Court challenging the judgment of the Division Bench of the Supreme Court. Therefore, to comply with the judgment of the Supreme Court, it is necessary to examine whether the 14 persons (the parties to the proceedings) are eligible to be appointed as PSIs.

14. Pursuant to the said direction dated 16.4.2002, the Director General and Inspector General of Police made a partial review of the select list and on such partial review, found some of the applicants not eligible to be included in the select list and terminated the services of such applicants.

15. By persisting that the judgment in S. Sreedhara's case (supra) applies only to those who are parties to the proceedings before the Hon"ble Supreme Court and not others when the State Government was continuing with the appointment of persons appointed with the benefit of rural weightage, certain writ petitions came to be filed before the Hon"ble Supreme Court under Article 32 of the Constitution of India. Allowing the said writ petitions by its judgment dated 6.5.2003 (reported in (2004) 10 SCC 162 between Vithal and Others), the Hon"ble Supreme Court declared as under:

14. We are unable to accede to the submissions of the State Government, the High Court and the "interim appointees". The decision of this Court rendered on 11.10.2001 cannot be rendered nugatory by allowing the very persons in respect of whose appointment this Court has held that the Division Bench should not have allowed them to continue in service. If the subsequent clarification has been misunderstood by the High Court and the State, we can only say that it was unfortunate and surprising as it could not reasonably be accepted that on a review application which was being dismissed the Court had in fact allowed the review and re-decided the matter in a diametrically opposite manner. Where the

rule has been declared to be unconstitutional, the consequences must apply to all the services. The rule could not be taken to be good in part and bad in part. Therefore, only to the extent that appointments had been specifically and expressly protected by this Court, the striking down of the rule would operate against all persons who were otherwise not so, protected. The question of continuing the "interim appointees" in service, therefore, does not arise. The second notification is therefore quashed.

15. xxxx xxxx xxxx xxxx

16. As far as the other services are concerned, if the State has not complied with the Court's order dated 11.10.2001 they have done so at their peril. If indeed what the writ petitioners in the writ petitions filed in respect of the police service have said is correct, the State Government is directed to take immediate action to rectify this situation and comply with this Court's direction as contained in the order dated 11.10.2001 within a period of eight weeks from date. This only leaves the relief that can be granted to the writ petitioners. As far as they are concerned, if their case for appointment had not been considered only because otherwise unqualified candidates had been appointed by virtue of Rule 3(B) and if as a result of the decision of this Court on 11.10.2001, any vacancies have been created in the year in which these writ petitioners had successfully qualified and been named in the merit list, they shall, against the vacancies so created, be entitled to be appointed in their turn and in accordance with the merit list. This exercise shall also be carried out within a period of eight weeks from the date. However, we make it clear that if any of the writ petitioners is so appointed his/her appointment will be taken (sic take effect) from the date of the issuance of the order of the appointment.

16. In view of the judgment of the Apex Court in Vithal's case (supra), the State Government by circular dated 2.7.2003 directed selection and the appointing authorities as under:

(a) Review the selection of all candidates appointed after 11.11.1998 on the benefit of rural weightage and to publish revised select list after reviewing their select list excluding the benefit of rural weightage.

(b) Take steps to terminate the services of those candidates who do not find place in the revised selected list published as per direction (a).

(c) Appoint candidates who get included in the revised select list in place of removed candidates prospectively.

17. Pursuant thereto, the Director General and Inspector General of Police issued a notification dated 5.7.2003 publishing the revised select list by redrawing the select list excluding rural weightage. In the said select list, the applicants because of their low merit were found to be ineligible for selection and accordingly, did not find a place. Consequently, in implementation of the law declared by the Hon'ble Supreme Court in Vithal's case (supra) and the

applicants whose services had till then been not terminated were terminated between 5.7.2003 and 21.7.2003.

18. The Recruitment Committee for Selection of Police Sub-Inspectors (Civil) by notification dated 4.9.2002 invited applications to fill up 360 posts of Police Sub-Inspectors by direct recruitment of which 36 posts were earmarked for in-service candidates. The petitioners applied for selection from the open market category and came out successfully. Pursuant to the selection, the petitioners were all appointed by order dated 27.8.2003. Pursuant to the said order, petitioners joined service within the time stipulated and due to their satisfactory performance, their probation period has also been declared as satisfactory. They were eligible for promotion to the next higher cadre of Police Inspectors (Civil). The Director General and Inspector General of Police by communication dated 11.5.2009 called for service records and recommendation rolls to consider their cases for promotion to the cadre of Police Inspectors (Civil).

19. The State Government terminated the services of the persons, who had been appointed on the basis of rural weightage. Thereafter, the State Government issued a notification dated 12.11.2003 making Rules called "The Karnataka Civil Services (Absorption of the persons appointed to the State Civil Services with the benefit of Rural Weightage) (Special) Rules, 2003 (for short "Special Rules"). The applicants were absorbed under these Rules by order dated 21.11.2003 categorically stating in those orders that the service rendered by each of them prior to their termination shall not be considered for the purpose of pay and seniority. One such appointment order issued pursuant to the Rules in favour of Bhat Vinod Manja (applicant No. 9) dated 21.11.2003 is extracted hereunder:

No. 05/ERCT/1995-96

Date: 21.11.2003.

ORDER

Sub: Absorption of eligible candidates to the Post of PSI (Civil).

Ref: 1. Termination order No. 05/RECT/1995-96 dated 11.7.2003 as per the order of the Hon"ble Supreme Court of India in Civil Appeal Nos. 519 & 560/2002.

2. Govt. Notification No. DPAR. 58. SRR. 2003 dated 12.11.2003.

After reviewing the select list excluding rural weightage vide reference-1, it was found that you were not eligible to be continued in the service of PSI (Civil) and hence your service from the PSI (Civil) was terminated on 11.7.2003.

Now, the Government of Karnataka in exercise of the powers conferred by sub-section (1) of Section 3 read with Section 8 of Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990) has issued a rule called the Karnataka Civil Services (Special) Rules, 2003 cited at reference-2.

As per this rule, you are absorbed for the post of PSI (Civil) with the following conditions:

- 1) The service rendered by you prior to your termination shall be considered for determining your leave and pension but shall not be considered for the purpose of pay and seniority.
- 2) The pay shall be fixed at the minimum of the time scale of pay of the post to which you are absorbed.

Therefore, you are directed to report before the Director General and Inspector General of Police, Karnataka State, Bangalore on or before 1st December, 2003.

Sd/- (S. RAMAKRISHNA) Dy. Inspector General of Police, (Head Quarters-1) & Member Secretary, PSIs Recruitment Committee, Bangalore.

20. By a notification dated 10.12.2007, the Director General and Inspector General of Police published the provisional reviewed gradation list of Police Sub-Inspectors (Civil) for the period from 1.11.1956 to 1.1.2005. In the said provisional list, the petitioners were below the applicants showing their date of appointment as 27.8.2003. In the same list, the date of appointment of the applicants is shown as 12.11.2003 i.e. the date of coming into force of the Special Rules. The notification publishing the provisional gradation list invited from the concerned persons objections, if any, within 30 days from the date of its publication. Some of the applicants have filed objections to the provisional gradation list within the time stipulated and some did not. Before consideration of the objections and publication of the final gradation list, the applicants filed application No. 5140/2008 and other connected matters before the Tribunal on 25.9.2008 seeking a declaration that the provisional gradation list published by notification dated 10.12.2007 is bereft of reasons and opposed to law and contending that the service rendered by them prior to absorption pursuant to their appointment to be counted for seniority.

21. On service of notice, the State and the Director General and Inspector General of Police filed reply statement dated 27.7.2009 opposing the applications.

22. As noticed above, the Tribunal has allowed the applications on 23.11.2009 by holding as under:

ORDER

- (1) The Applications are allowed;
- (2) The DGP is directed to finalize the seniority list of PSI and assign proper rankings to the applicants in the said list by counting their service from the date of their initial appointment as PSI in the year 1998/1999 and by treating them as seniors to those who were appointed subsequent to their initial appointment in the year 1998/1999 and to grant them all consequential benefits;
- (3) We make it clear that the impugned provisional seniority of PSI shall not be

acted upon for the purpose of according promotions to the cadre of Inspectors of Police. Promotions may be accorded from the cadre of PSI to the cadre of Police Inspectors after publication of the final seniority list of PSI in terms of this order.

(4) Time for compliance: One month.

23. It is clear from the order that the Director General and Inspector General of Police was directed to finalize the seniority list of the applicants and assign proper ranking to them in the said list by counting their service from the date of their initial appointment as Police Sub-Inspector in the year 1998/1999 and by treating them as seniors to those who were appointed subsequent to their initial appointment in the year 1998/1999 and to grant them all consequential benefits. The State as also the petitioners have challenged the said order in these writ petitions.

24. I have heard Sri Nagaprasanna, learned Counsel for the petitioners, Sri V. Lakshminarayana, learned Counsel for the applicants and Smt. S. Susheela, learned AGA for the State.

25. Sri Nagaprasanna, learned Counsel would contend that after the decision of the Apex Court in Vithal's case (supra) the applicants have been terminated from service. Special Rules have been framed on 12.11.2003. He has taken us through these Rules and submits that Rule 2 was intended to absorb in the State Civil Services those whose services have been terminated pursuant to the judgment in Vithal's case (supra) as one time measure on humanitarian consideration. Rule 4(1) states that the services rendered by the persons absorbed under the Rules prior to the date of such absorption shall not be considered for the purpose of pay and seniority. It is argued that the pay of the absorbed persons shall be fixed at the minimum of the time scale of pay of the post to which they are absorbed. For all purposes and intent, except for determining leave entitlement and pension, persons absorbed under the Rules have to be treated as if they entered service for the first time on issuance of the order of appointment under Rule 3 of the Special Rules and not a day earlier. The applicants have not challenged the validity of the Special Rules nor have they challenged their order of appointment which was conditional. The petitioners have been regularly appointed on 27.8.2003. The applicants were absorbed by order on 21.11.2003 categorically stating in those orders that the services rendered by them prior to their termination shall not be considered for the purpose of pay and seniority. Therefore, by no stretch of imagination they can be treated as seniors to the petitioners. He further contended that seniority is not a fundamental right. It is only a civil right.

26. Learned AGA appearing for the State has supported the argument of the learned Counsel for the petitioners. It is her submission that the Rules dated 12.11.2003 is not a curative legislation. It has come into force only from 12.11.2003 and the appointment of the applicants is subject to the terms and conditions stated in the Rules as also stipulated in the order of appointment.

Therefore, they cannot claim seniority over and above the petitioners. It is further argued that Rule 3 cannot be read in isolation. The entire Rules have to be read together in order to arrive at a correct conclusion. She reiterates that Rules have not been challenged by the applicants nor the order of termination and their appointment. Therefore, question of placing them over and above the petitioners in the select list does not arise.

27. On the other hand, Sri V. Lakshminarayana, learned Counsel appearing for the applicants sought to justify the impugned order. He has taken us through the Special Rules and in particular Rule 3. According to the learned Counsel, the applicants have been absorbed into service. The rule of absorption is an attempt by the legislature to cure the defect as pointed out by the learned Single Judge, which has been upheld by the Division Bench. It is further argued that Special Rules are in the nature of absorption extending the benefit right from the date of their initial appointment. Rule 3 enables two categories of absorption. The first category is absorption as against the post held by them prior to the date of termination. The second category is persons absorbed as against the supernumerary post. The applicants fell under the first category. Rule 4(1) regulates only the second category of absorption, which has nothing to do with the case on hand. Rule 4(1) cannot destroy the benefit conferred upon the applicants under Rule 3. Even if there was termination pursuant to the order of the Apex Court in Vithal's case (*supra*), they were continued in service till they were absorbed. The applicants continued in service even after the date of so called termination pursuant to the interim order passed by the Karnataka Administrative Tribunal till they were actually absorbed. The service rendered by the applicants pursuant to the interim order cannot be erased. He prays for dismissal of the writ petitions.

28. Sri D.N. Nanjunda Reddy, learned Senior Counsel appearing on behalf of respondent Nos. 7, 9 and 15 in W.P. Nos. 35770 to 35775/2009 and 35943 to 35954/1999 submits that at any rate, the applicants should not be kept below the petitioners in the final select list. He submits that atleast their seniority should be counted from the date the Supreme Court dismissed Sreedhara's case (*supra*) i.e. from 11.10.2001.

29. We have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

30. The Tribunal while allowing the applications has held that the applicants were selected and appointed by the competent authority in accordance with the Rules then in force. By the time the Supreme Court declared the rule relating to rural weightage as unconstitutional, the applicants were already selected and appointed and their probationary period of service was also declared as satisfactory. For the fault of the Government in framing an unconstitutional Rule, it is unjust to penalize the persons like the applicants who are beneficiaries of the Rules. Penalising employees for the fault of their employer amounts to arbitrary action. It has been further held that termination of service of the applicants was

only notional and hence, not only the service rendered prior to absorption but also the interregnum period has to be counted for the purpose of seniority. The normal rule consistent with equity is that officiating service, even before confirmation in service has relevancy to seniority if eventually no infirmities in the way of confirmation exists. The officiating service in a post is as good as service on a regular basis.

31. Learned Counsel for the petitioners and the learned AGA do not agree with this reasoning having regard to the factual background of this case.

32. As noticed above, the learned Single Judge in W.P. No. 13157/1998 disposed of on 11.11.1998 while holding that Rule 3-B is unconstitutional, has further held that notwithstanding the declaration made in the said order, the appointment of the persons already made on the basis of the rural weightage and who are working on their posts will not be disturbed and their appointment will not be adversely affected because of the said judgment. This view of the learned Single Judge has been upheld by the Division Bench. However, pursuant to the interim orders by the Division Bench, the applicants have been appointed on different dates. The Division Bench has saved their appointments also. However, the Hon''ble Supreme Court in Sreedhara's case (supra) has set aside the said order of the Division Bench in so far as saving the appointments made pursuant to the interim order in the writ appeal.

33. It is well settled that where a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void. Once Rule 3-B has been declared as unconstitutional, the consequences must apply to all the services. Thus, all selections made on the basis of such Rules are void except the appointments already made till the Rule was struck down as they are protected by the learned Single Judge. The Hon''ble Supreme Court in Sreedhara's case (supra) has upheld the view of the learned Single Judge while setting aside the directions of the Division Bench in relation to appointments made during the pendency of the appeal. In Vithal's case (supra), the Hon''ble Supreme Court has reiterated the said view. The Director General and Inspector General of Police therefore issued a notification dated 5.7.2003 publishing the revised select list by redrawing the select list excluding the rural weightage. The applicants were found to be ineligible for selection. That is why their name did not find a place in the said list. The petitioners were appointed to the post in question pursuant to a notification dated 4.9.2002 and the appointment order was issued on 27.8.2003. In spite of the declaration of law in Sreedhara's case (supra), the State Government took two years to annul the void appointments and issued orders of termination of the applicants, who have been illegally appointed on the basis of the rural weightage. The applicants were absorbed pursuant to the said Rules dated 12.11.2003. The appointment orders of the applicants clearly indicate that they were appointed subject to the condition that the services rendered by them prior to their termination shall be considered for determining leave and pension and shall not

be considered for the purpose of pay and seniority. The applicants have accepted these orders of appointment without any demur. They were absorbed on 21.11.2003 categorically stating that the services rendered by them prior to their termination shall not be considered for the purpose of pay and seniority. In this background, the Tribunal is not justified in holding that since the applicants are not at fault and their appointment has been made in accordance with the Rules then in force, they should not be penalized

34. That brings us to the next question as to whether the Special Rules are curative in nature and extends benefit to the applicants right from the date of their initial appointment?

35. For ready reference, the said Rules are extracted, which is as under:

Personnel and Administrative Reforms Secretariat Notification No. DPAR 58 SRR 2003, Bangalore, dated 12th Nov. 2003

Whereas the draft of the Karnataka Civil Services (Absorption of the persons appointed to the State Civil Services with the benefit of Rural Weightage) (Special) Rules, 2003 was published as required by clause (a) of sub-section 2 of Section 3 of the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990) in Notification No. DPAR. 58. SRR. 2003 dated 28th August 2003 in part IV-A of the Karnataka Gazette Extra-ordinary No. 1016 dated 28th August, 2003 inviting objections and suggestions from persons likely to be affected thereby within 15 days from the date of publication of the draft in the Official Gazette.

Whereas, the said Gazette was made available to the public on 28th August 2003.

And, whereas the objections and suggestions have been received and considered by the State Government.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 read with Section 8 of the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990) the Government of Karnataka makes the following rules namely:

RULES

1. Title and commencement: (1) These rules may be called the Karnataka Civil Services (Absorption of the persons appointed to the State Civil Services with the benefit of Rural Weightage) (Special) Rules, 2003.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Absorption of persons appointed to the State Civil Services with the benefit of Rural Weightage:

Notwithstanding anything contained in the Karnataka Civil Services (General Recruitment) Rules, 1977 or the rules of recruitment specially made in respect of any service, cadre or post or any other rules made or deemed to have been made under the Karnataka State Civil Services Act, 1978, persons:

(i) (a) who were selected with the benefit of rural weightage under the then existing Rule-3B of the Karnataka Civil Services (General Recruitment) Rules, 1977 and were appointed after the eleventh day of November, 1998; and

(b) who were in service on the Sixth day of May, 2003; and

(c) whose services have been terminated in pursuance to the judgment dated Sixth May, 2003 of the Supreme Court in Writ Petition No. 463 of 2002 with Writ Petition Nos. 519 and 560 of 2002 and 111 of 2003; or

(ii) who were selected with the benefit of rural weightage under the then existing Rule 3B of the Karnataka Civil Services (General Recruitment) Rules, 1977 and were appointed after 11.11.1998 and whose services were terminated as a result of the revision of the select lists in the light of the Order of the Supreme Court dated 26.11.2001 in I.A. No. 2-15 in C.A. No. 7105/2001 in Sridhar S. Vs. State of Karnataka.

shall be absorbed in the Civil Services of State in accordance with these rules, as a one time measure on humanitarian considerations.

Provided that a person who was in service on the Sixth day of May, 2003 but has died during the period between the Sixth day of May, 2003 and the date of commencement of these rules shall not be eligible for absorption under these Rules.

3. Order of appointment: The Appointing Authority shall issue the order of appointment to such of the persons who fulfill all the conditions mentioned under Rule 2. The appointment shall be made against the posts held by the persons absorbed immediately before the termination of their services. In the event of there being no vacant posts in the Department in which the persons were working immediately before the date of termination of their services, adequate number of supernumerary posts shall be created by the administrative department presuming concurrence of the Finance Department.

4. Leave, Seniority Pay and Pension of the persons absorbed:

(1) The service rendered by the persons absorbed under these rules prior to the date of such absorption shall be taken into consideration for determining their leave and pension but shall not be considered for the purpose of pay and seniority.

(2) The pay of the absorbed persons shall be fixed at the minimum of the time scale of pay of the post to which they are absorbed.

5. Application of other rules: The Karnataka Civil Service Rules, the Karnataka Civil Services (Conduct) Rules, 1966 and all other rules regulating the conditions of service of Government servants made or deemed to have been made under the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990) shall in so far as they are not inconsistent with the provisions of these rules, be applicable to persons absorbed under these rules.

6. Powers to issue directions: If any difficulty arises in giving effect to the provisions of these rules, the State Government may, by general or special order made such provisions as appears to it to be necessary or expedient to remove the difficulty;

Provided that no such order shall be made after expiry of a period of three years from the date of commencement of these rules.

By Order and in the name of the Governor of Karnataka

P.K. BABURAO, Under Secretary to Government-I, Department of Personnel and Administrative Reforms (Service Rules)

36. It is settled that a legislature cannot directly overrule a judicial decision. But when a competent legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the said exercise is a valid legislative exercise provided it does not transgress any other constitutional limitation. Such legislative device which removes the vice in previous legislation is not considered an encroachment on judicial power. The power of the sovereign legislature to legislate within its field, both prospectively and retrospectively cannot be questioned. It would be permissible for the legislature to remove a defect in earlier legislation. This defect can be removed both retrospectively and prospectively by legislative action and the previous actions can be validated. But where there is a mere validation without the defect being legislatively removed the legislative action will amount to overruling the judgment by a legislative fiat and that will be invalid.

37. In Meerut Development Authority, etc. Vs. Satbir Singh and others, etc., , the Apex Court has held as under:

10. It is well settled by a catena of decisions of this Court that when this Court in exercise of power of judicial review, has declared a particular statute to be invalid, the legislature has no power to overrule the judgment; however, it has the power to suitably amend the law by use of appropriate phraseology removing the defects pointed out by the Court and by amending the law inconsistent with the law declared by the Court so that the defects which were pointed out were never on statute for effective enforcement of the law. This Court has considered in extensor the case law in a recent judgment in Indian Aluminium Co. Vs. State of Kerala and had held that such an exercise of power to amend a statute is not an incursion on the judicial power of the Court but is a statutory exercise of the constituent power to suitably amend the law and to validate the actions which have been declared to be invalid.

38. In State of Tamil Nadu Vs. M/s. Arooran Sugars Ltd., , the Apex Court has reiterated the aforesaid principle after analyzing several cases on the point as under:

16.....It is open to the legislature to remove the defect pointed out by the Court or to amend the definition or any other provision of the Act in question

retrospectively. In this process, it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A Court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect.

39. It is thus clear that where the legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed.

40. In *State of Bihar and Others Vs. Bihar Pensioners Samaj*, , the Apex Court has held that it is always open to the legislature to alter the law retrospectively as long as the very premise on which the earlier judgment declared a certain action as invalid is removed. The situation would be one of a fundamental change in the circumstances and such a validating Act was not open to challenge on the ground that it amounted to usurpation of judicial powers.

41. In *Vijay Mills Company Limited etc., etc. Vs. State of Gujarat and others*, , the Apex Court has held that there are different modes of validating the provisions of the Act retrospectively depending upon the intention of the legislature in that behalf. Where the legislature intends that the provisions of the Act themselves should be deemed to have been in existence from a particular date in the past and thus to validate the actions taken in the past as if the provisions concerned were in existence from the earlier date, the Legislature makes the said intention clear by the specific language of the validating Act. It is open for the legislature to change the very basis of the provisions retrospectively and to validate the actions on the changed basis.

42. With this background, let us examine as to whether the Special Rules is curative in nature?

43. As has been stated above, the learned Single Judge has held that Rule 3-B providing 10% marks to the rural candidates in giving public employment under the State Civil Services is unconstitutional. Learned Single Judge found that no materials have been produced to show that the entire population covered under the definition "rural candidate" constitutes socially and economically backward class of citizens for the purposes of Article 16(4) or they are entitled for any weightage relaxations, concessions or privileges in public appointments en masse

forming a backward class of citizens which, in the opinion of the State, is not adequately represented in the services of the State. The Court further observed that no dates are available on record either to justify the backwardness of the rural candidates or that persons coming from the rural areas do not have adequately representation in services under the State. While holding so, this Court followed the decision of the Apex Court in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, *Suneel Jatley and Others Vs. State of Haryana and Others*, and *State of Maharashtra Vs. Raj Kumar*, .

44. In *Pradip Tandon's* case (supra), the Apex Court has observed that 80% of the population in the State of Uttar Pradesh in rural areas cannot be said to be a homogeneous class by itself. They are of the same kind. Their occupation is different. The standards are different. Their lives are different. Population cannot be a class by itself. Rural element does not make it a class. To suggest that the rural areas are socially and educationally backward is to have reservation for the majority of the State.

45. Relying on this decision, this Court held that it is difficult to accept that the students, who had read in the rural schools have in any manner suffered any disadvantage in the matter of acquiring school level education. But, even otherwise, such a classification per se is constitutionally impermissible.

46. Perusal of the Special Rules would clearly indicate that it has not been made to cure the defect in Rule 3-B. The Special Rules does not even contain a validation clause. As can be seen from Rule 2 of the Special Rules, it was intended to absorb in the State Civil Services those whose services have been terminated pursuant to the judgment dated 6.5.2003 passed by the Hon''ble Supreme Court as one time measure on humanitarian consideration. Rule 4(1) specifically states that the service rendered by the persons absorbed under the said Rules prior to the date of such absorption shall be taken into consideration for determining their leave and pension but shall not be considered for the purpose of pay and seniority.

47. Rule 3 states that the appointing authority shall issue order of appointment to such persons who fulfill all the conditions mentioned in Rule 2. The appointment shall be made against the post held by the persons absorbed immediately before the termination of their services. The applicants were absorbed in the post held by them immediately before the termination of their services. Even if they continue in service pursuant to an interim order of the Tribunal after their termination pursuant to the order of the Hon''ble Supreme Court, that will not assist them in any manner.

48. Learned Counsel for the applicants submits that since the applicants have been absorbed pursuant to Special Rules, there is assimilation between the service rendered by them prior to their termination and after their absorption under the Special Rules. By such assimilation, there is coalescence and fusion of the two services.

49. A Division Bench of this Court has considered the expression "absorb" in *R. Manjunath Vs. State of Karnataka* - 2012 (5) KCCR 3657. It has been held thus:

80. The term "absorb" in service jurisprudence with reference to a post in the very nature of things implies that, an employee who has not been holding a particular post in his own right by virtue of either recruitment or promotion to that post, but is holding a different post in a different department is brought to that post either on deputation or by transfer and is subsequently absorbed in that post whereafter he becomes a holder of that post in his own right and loses his lien on his parent post. The surplus staff which was to be "absorbed" should be treated as having been transferred from one post to another so that there may be no break in their service. On several occasions, on account of the taking over of the establishments or institutions belonging to local or other authorities or even private organizations along with the members of the staff, the employees of such non-governmental bodies are absorbed in the Government service. For a permanent absorption, a formal order of the absorbing body is necessary. Similarly, where employees of a sick Government company are deployed in the Government service pursuant to a scheme settled by the BIFR, it would amount to absorption of such employees and the scheme would be as good as statute and cannot be defeated by the State Legislation. Where a private educational institution is taken over by the State Government subject to the condition that the services rendered by the members to the staff in such institution will be treated as public service, an officer who is absorbed by that process in Government service is entitled to count his previous service in the equivalent cadre for purposes of seniority. In such a case, it is not competent for the Government to treat him as a fresh recruit in the service. Similarly, where an enactment provides that servants of the erstwhile district boards should be absorbed in Government service, the clear meaning of the word "absorption" is continuation of service of an employee without interruption. The consequence emanating from such absorption is continuity in service without any break. The true position in such a case is that services under the erstwhile district board become united with the services under the Government and such an absorption excludes the concept of termination of previous service and the commencement of service in the Government. In such a case, it is not competent for the Government to exclude the whole or part of the previous service for purpose of seniority in the State service. Similar is the effect where a private organization is taken over by a Government order. The antecedent service has to be taken into account for consideration of seniority under the Government. Such taking over excludes the concept of fresh appointment. A deputationist has no enforceable right to absorption in deputed department. The employer always has a right to repatriate the deputationist to the parent organization. That means consent of the parent authority as well as the authority under which deputation takes place is necessary.

81. Therefore, absorption pre-supposes that the person absorbed is recruited to service in a legal manner. When he is absorbed it is not a fresh appointment.

Absorption ensures continuity without intermission. The person absorbed must be holding a permanent post in service in his own right by virtue of either recruitment or promotion to the post. The consequence emanating from such absorption is continuity in service without any break. Service rendered under the old post unites with the service under the new post, which excludes the concept of termination of previous service and the commencement of service under the new post. The thread which connects the old employment from new employment is the legality of employment. If this link is missing, there cannot be absorption. Normally the absorption is resorted to after a transfer or deputation. The absorbed should be treated as having been transferred or deputed from one post to another, so that there may be no break in their service.

50. It is clear that for the purpose of absorption, the person absorbed is recruited to service in a legal manner. In the instant case, after the order of the Hon''ble Supreme Court, they were terminated from service though they were continuing pursuant to an interim order. Therefore, question of taking into consideration their antecedent service does not arise because Rule 3-B was struck down as unconstitutional. It cannot be said that their appointment under Rule 3-B and service rendered pursuant thereof is lawful. The applicants have not challenged the validity of the Special Rules. They have neither challenged the termination order nor have they challenged their appointment order which clearly states that the service rendered by them shall not be considered for the purpose of pay and seniority.

51. To sum up, the Special Rules are made with an intention to absorb in the State Civil Services those whose services have been terminated pursuant to the judgment in *Vithal's* case (*supra*) as one time measure on humanitarian consideration. It is not a curative legislation as contended by the applicants. They are not in the nature of absorption extending the benefit right from the date of their initial appointment. There is no assimilation between the service rendered by them prior to their termination and after their absorption under the Special Rules. Their recruitment prior to the absorption was not valid. The appointment of the applicants in terms of the Special Rules is a fresh appointment and it does not ensure continuity from the date of their initial appointment. Therefore, except for determining leave entitlement and pension, persons absorbed under Special Rules have to be treated as if they had entered service for the first time on issuance of the order of appointment under Special Rules and not a day earlier.

52. For the reasons stated above, we are of the view that the order of the Tribunal is not sustainable in law. The writ petitions are accordingly allowed. The order passed by the Tribunal in Application No. 5140/2008 connected with Application Nos. 5995, 5996, 5997, 5998 and 5999/2008 dated 23.11.2009 are hereby quashed. No costs.