

(2015) 07 KAR CK 0122

In the Karnataka High Court

Case No : Writ Petition No. 21216 of 2014, WP No. 108991/2014, WP No. 108986/2014, WP Nos. 109282/2014 and 109294-310/2014, WP Nos. 111162/2014 and 100853-858/2015, WP Nos. 111163/2014 and 100846-852/2015, WP No. 108979/2014, WP No. 109265/2014, WP No. 108992/2014,

B.K. Naik and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Central Sales Tax (Amendment) Act, 1969 — Section 2(j)
Central Sales Tax Act, 1956 — Section 2(j), 8, 8(2), 8(2-A), 8(5)
Constitution of India, 1950 — Article 13, 14, 16, 213(2)(a), 245
Education Act, 1983 — Section 145, 146(3), 4, 87

Citation : (2015) 07 KAR CK 0122

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Janardhana G., for the Appellant; A.G. Shivanna, A.A.G and Ravi V. Hosmani, AGA, Advocates for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—In all these petitions, the constitutional validity of the Act known and called as The Karnataka Private Aided Educational Institutions Employees (Regulation of Pay, Pension and Other Benefits) Act, 2014, (for short "Act No. 7/2004") is under challenge. Petitioners are also seeking for treating the employees of aided private educational institutions who have been admitted to grant-in-aid on par with employees working in Government Educational Institutions in providing service benefits.

2. I have heard the arguments of Sriyuths Janardhan G., Vittal S. Teli, J.S. Shetty, A.S. Patil, Sharmila M.Patil, learned counsel appearing on behalf of petitioners and Sri A.G. Shivanna, learned Additional Advocate General along with Sri Ravi V. Hosamani, learned Additional Government Advocate appearing on

behalf of respondent/State. In few of the writ petitions, the institutions in which the petitioners are working have also been arrayed as parties and notices issued to them either has been served, represented or unserved and yet to be served. Their presence or absence and their say in these writ petitions would have no bearing on the contentions raised by the petitioners in aid of the relief sought for by them in these writ petitions. Hence, by consent of learned advocates appearing for parties, these writ petitions are taken up together for hearing and disposed of by this common order since grounds urged and defence put-forth in all these writ petitions are common, similar and identical.

3. The grievance of the petitioners is they have been appointed as Lecturers, Teachers, Clerical Staff etc., by the Management of the aided institutions in which they are now at present working and their appointment was approved subsequently on various dates (in respect of different petitioners) by admitting them to grant-in-aid and the non-grant period was not considered for purposes of seniority and fixing the pay-scale. It is also contended that some of the petitioners working as teachers had undergone career advancement scheme as per the requirement of UGC guidelines and on fulfilling the said requirement, they are being paid salary accordingly, by extending all benefits. It is also contended that the petitioners have been granted the revised UGC pay-scales from time to time from the date of joining of service.

4. It is also contended that on account of the State undertaking to exclude the non-grant period for the purposes of reckoning seniority and other service benefits, some of the teachers had approached this Court seeking for a direction to the State to include the non-grant period also for service benefits and same came to be allowed which was later affirmed by the Division Bench and also by the Hon''ble Apex Court. It is contended that pursuant to the said order, first respondent extended the triple benefit scheme for non-grant period also and to over come the orders passed by this Court and the Hon''ble Apex Court, the present Act has been introduced with retrospective effect from 01.06.1995, whereby for the non-grant period extending the triple benefit scheme now stands excluded.

5. It is also the grievance of the petitioners that pursuant to the same, second respondent has issued Circulars to the institutions/colleges where the petitioners are working to implement the provisions of amended Act and accordingly re-fix their salaries by excluding the non-grant period and as such, these institutions/colleges are making attempts to re-fix the salaries of the petitioners.

6. It is contended by the petitioners that in doing so, it would amount to discrimination between the employees of State and employees of private institutions and all teachers will have to be treated equally and as such the impugned Act is violative of Article 14 of the Constitution. It is also contended that the State having been unsuccessful before all the Courts including the Apex Court in repudiating the claim of the petitioners for treating the non-grant period to be excluded has now sought to negate the dicta of the Courts by bringing the

present legislation retrospectively.

7. The contentions raised in these writ petitions by the petitioners can be crystalised as under:

"i) State cannot deny the service benefits to the employees working in institutions admitted to grant-in-aid though same is extended to the employees working in Government colleges/institutions and it would amount to discrimination since both are discharging same duties;

ii) When Section 87 of Karnataka Education Act, has fixed same parameters for both the employees namely employees working in educational institutions receiving grant from the State will be the same as those applicable for corresponding category of employees in any State institutions, same cannot be whittled down by the amending Act that too, retrospectively and particularly when the provisions of existing Act has been interpreted by the Courts to the benefit of the petitioners and as such, taking away the benefit accrued by such orders of the Court through legislation would be violative of Article 14 of the Constitution.

iii) When Section 87 of the Karnataka Education Act, 1983, along with Rules (1), (3), 2 (d), 3, 3(1)(a), (b), (c), 3(2)(a) and Rule 17 (1) of Karnataka Education Rules, has been examined, interpreted and held by the Courts that employees working in private institutions are entitled for the triple benefit scheme on par with the employees working in institutions run by Government, State cannot shrug off its responsibility in complying with such orders by taking recourse to nullify the said orders through impugned retrospective legislation.

iv) When petitioners and similarly placed employees have been granted all service benefits with prior approval of the State, such benefits already granted cannot be taken away by impugned retrospective legislation.

v) Any attempt by the State to nullify the effect of judicial pronouncement amounts to encroachment of judicial power,

vi) When Hon"ble Supreme Court has held that claim of teachers in aided schools for parity in the matter of pay and pension to be the same granted to teachers working in Government schools/colleges and has granted such parity, same cannot be denied on the ground of financial burden to the State as it would not be a valid ground for denying the pay parity.

vii) It is also contended that statement and objects of the Act would clearly indicate that to avoid financial burden to the State, impugned legislation is being brought in retrospectively and same would amount to taking away the fundamental right of the petitioners.

viii) The principle of equal pay for equal work would apply in all force to the petitioners and as such, there cannot be any discrimination between them and the employees working in institutions run by Government."

8. The learned advocates appearing for the parties having reiterated the above raised contentions and have also supplemented their contentions which can be summarised as under:

"i) When judgments have been passed by the Courts holding that petitioners are entitled for equal pay on par with Government teachers/staff from the date of appointment or initial entry into service and not from the date they were admitted to grant-in-aid same cannot be nullified by the Act in question that too, with retrospective effect.

ii) The impugned Act attempts to nullify the judgments of this Court and Hon"ble Apex Court and same is impermissible and is violative of Articles 13, 14 and 16 of the Constitution of India since these issues which have been concluded by the judgments and the object with which the Act impugned is being brought in is not for a bonafide reason but tainted with malafides.

iii) By the impugned Act a reasonable classification between two classes of employees is not brought about but it discriminates between two classes of employees who are similarly placed and who have put in equal service and it further discriminates between same class of teachers i.e., between the teachers of aided institutions and teachers of Government colleges.

iv) The Education Act being in concurrent list, impugned Act in question overrides the Central Act and same is beyond legislature competence of the State legislation.

v) Pension and salary is not a bounty given by the State but it is a property right and same is being taken away by impugned legislation.

vi) Even teachers who were working in Government colleges as stop-gap lecturers have been extended benefit from the date of initial entry into service and by the impugned Act, benefit granted to them would not be taken away but on the other hand such benefit extended to petitioners and similarly placed persons would be taken away and as such there would be discrimination between petitioners and stop-gap lecturers working in Government colleges.

vii) Provisions of Section 3 of Act 7 of 2014 is ultra vires the powers of the State Legislature as it encroaches upon judicial field and over rule the judicial pronouncements which is binding between inter se parties. Thus, any action to take away the power of the judicial pronouncements would be ultra vires of the power of the Legislature and binding judicial pronouncement between the parties cannot be made ineffective with the aid of legislative power by enacting a statute which in substance over rules such judgments and it would not be in the realm of legislative enactment which displaces the basis or foundation of such judgments.

viii) It is contended that in the instant case, Courts have not struck down any legislation so as to enable the Legislature to remove the defect in the statute pointed out in the judgment so as to bring in the impugned legislation retrospectively and as such the legislature have no power or competency to

nullify the binding effect of the judgments rendered by Courts which are binding inter se parties."

9. In support of their submissions they have relied upon the following judgments:

"i) S.R. Bhagwat and others, Vs. State of Mysore, AIR 1996 SC 188 : AIR 1995 SC 188 : (1995) 71 FLR 753 : (1995) 6 JT 444 : (1995) LabIC 2809 : (1995) 5 SCALE 270 : (1995) 6 SCC 16 : (1995) 3 SCR 545 Supp

ii) The State of Karnataka and Others Vs. Sri. I. Rudrayya and Others

iii) I.N. Saksena Vs. State of Madhya Pradesh, AIR 1976 SC 2250 : AIR 1967 SC 1264 : (1976) LabIC 1446 : (1976) 2 LLJ 154 : (1976) 4 SCC 750 : (1976) 3 SCR 237 : (1976) 8 UJ 223

iv) Indian Aluminium Co. etc. etc. Vs. State of Kerala and others, (1996) 2 AD 137 : AIR 1996 SC 1431 : (1996) 2 JT 85 : (1996) 1 SCALE 780 : (1996) 7 SCC 637 : (1996) 2 SCR 23

v) Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, (1994) 4 JT 397 : (1995) LabIC 1768 : (1994) 3 SCALE 273 : (1994) 5 SCC 450 : (1994) 1 SCR 651 Supp : (1995) 1 SLJ 111

vi) Virender Singh Hooda and Others Vs. State of Haryana and Another, AIR 2005 SC 137 : (2005) 1 ESC 19 : (2004) 9 JT 293 : (2004) 9 SCALE 120 : (2004) 12 SCC 588 : (2005) SCC(L&S) 1044 : (2005) 3 SLJ 421 : (2005) AIRSCW 6386 : (2005) 1 Supreme 589

vii) Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, AIR 1970 SC 192 : (1971) 79 ITR 136 : (1969) 2 SCC 283 : (1970) 1 SCR 388

viii) Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another, AIR 1971 SC 57 : (1970) 1 SCC 509 : (1970) 3 SCR 745

ix) State of Mysore Vs. B. Basavalingappa, AIR 1987 SC 411 : (1987) 54 FLR 332 : (1986) 1 JT 1090 : (1987) LabIC 234 : (1994) 3 LLJ 771 : (1986) 2 SCALE 1095 : (1986) 1 SCC 661 Supp : (1986) SCC 661 Supp : (1987) 1 SCR 579 : (1987) 1 UJ 77

x) Purshottam Lal and Others Vs. Union of India (UOI) and Another, AIR 1973 SC 1088 : (1973) LabIC 604 : (1973) 1 LLJ 407 : (1973) 1 SCC 651

xi) AIR 1969(2) Unreported Judgment 616 (SC) Mahal Chand Sethia v. State West of Bengal

xii) Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, AIR 1997 SC 3828 : (1997) 7 JT 180 : (1997) 5 SCALE 209 : (1997) 6 SCC 623 : (1997) SCC(L&S) 1527 : (1997) 3 SCR 63 Supp : (1997) 2 UJ 610 : (1997) AIRSCW 3747 : (1997) 7 Supreme 408

xiii) The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others, AIR 2000 SC 634 : (2000) 1 JT 159 : (2000) 1 SCALE 101 : (2000) 2 SCC 42 : (2000) SCC(L&S) 247 : (2000) 1 SCR 158 : (2000) AIRSCW 153 : (2000) 1 Supreme 135 ."

10. Per contra, Sri A G Shivanna, learned Additional Advocate General appearing along with Sri Ravi V. Hosamani, learned Additional Government Advocate would reiterate the contentions raised in the statement of objections in W.P. No. 21216/2014 and contends that said plea put forward by the State would hold good as the defense of the State in respect of all other writ petitions and elaborates his submission by contending that grant-in-aid is not a right and same is a matter of policy of the State and as such, first respondent taking into account its economic capacity and development of the State has taken a conscious decision not to consider the non-grant period for pay, pension and other benefits and decisions rendered by this Court to consider the non-grant service period for same would amount to amendment of the existing Government policy by way of judicial order and it also amounts to extension of benefits to persons to whom the policy was not intended to apply and as such, the Karnataka Private Aided Educational Institutions Employees (Regulation of Pay, Pension and other benefits) Act, 2014 was brought in and it satisfies the three tenets prescribed by catena of judgments of the Hon''ble Apex Court namely, (1) impugned Act satisfies the test of legislative competence; (2) defect pointed out by the Courts in the judgments is cured by complying with legal and constitutional requirements; and (3) there is no violation of rights guaranteed in part III of the Constitution.

11. He would also further contend that Section 87 of the Education Act having been amended by Ordinance 1 of 2004, the defect or deficiency in the statutory provision which was pointed out by the Courts in various earlier judgments which have been relied upon by the petitioners has been sought to be removed by the impugned legislation and Legislature is fully empowered to prescribe the conditions for excluding the non-grant period. He would also contend that pension of Government employees are governed by Karnataka Civil Services Rules and none of the petitioners fit into the category of a Government employee i.e., they do not satisfy the three conditions prescribed under Chapter XVI of Karnataka Civil Services Rules so as to claim equality with employees working in institutions run by Government. He would also submit by way of alternate submission that law which was already found in Section 87 of the Education Act has been clarified by Act 7 of 2014 and the impugned legislation is a clarificatory legislation and to exclude the non-grant period for extending pay and pension, new law has been framed. It is also contended that State of Andhra Pradesh by Act No. 26 of 2006 declared to limit the liability of the State on schemes of advancement to the extent of grant-in-aid sanctioned to the posts by nullifying the judgment rendered by the High Court of Andhra Pradesh in W.P. No. 8697/2005 dated 07.11.2005 and similar exercise having been undertaken by the State of Karnataka through Act No. 7 of 2014, the constitutional validity be

upheld since there is no challenge to the competence of the legislature to enact the impugned legislation. Hence, he prays for dismissal of the writ petitions.

12. In support of his submissions, he has relied upon the following judgments:

"(i) C.R. Neelakandan and Another Vs. Union of India (UOI) and Others, AIR 2014 SC 2407 : (2014) AIRSCW 3178 : (2014) 6 JT 260 : (2014) 6 SCALE 380

(ii) Jagdish Prasad Sharma Vs. State of Bihar and Others, (2014) 7 AD 629 : (2013) 3 LLN 401 : (2013) 9 SCALE 459 : (2013) 8 SCC 633 : (2014) 1 SCC(L&S) 290

(iii) Unreported judgment rendered in W.P. Nos. 226-228/1998 disposed of on 13.08.1998. Smt. Renukha v. State of Karnataka

(iv) Tirath Ram Rajindra Nath, Lucknow Vs. State of U.P. and Another, AIR 1973 SC 405 : (1973) 3 SCC 585 : (1973) 31 STC 314

(v) The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd., AIR 1975 SC 2037 : (1975) 2 SCC 274 : (1975) SCR 394 Supp

(vi) AIR 1976 SC 2250 I.N. Saksena, R.D. Doongaji v. State of Madhya Pradesh

(vii) Utkal Contractors and Joinery (P) Ltd. and Others Vs. State of Orissa, AIR 1987 SC 2310 : (1987) 64 CLT 256 : (1987) 4 JT 1 : (1987) 2 SCALE 639 : (1987) SCC 751 Supp : (1988) 1 SCR 314

(viii) In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, AIR 1992 SC 522 : (1991) 4 JT 361 : (1991) 2 SCALE 1049 : (1993) 1 SCC 96 Supp : (1991) 2 SCR 497 Supp

(ix) Comorin Match Industries (P) Ltd. Vs. State of T.N., AIR 1996 SC 1916 : (1996) 65 ECR 233 : (1996) 5 JT 167 : (1996) 3 SCALE 538 : (1996) 4 SCC 281 : (1996) 1 SCR 349 Supp : (1996) 102 STC 1

(x) Bhubaneshwar Singh and Bimla Devi Poddar and Others Vs. Union of India (UOI) and Others, (1994) 5 JT 83 : (1994) 3 SCALE 334 : (1994) 6 SCC 77 : (1994) 1 SCR 639 Supp

(xi) Indian Aluminium Co. etc. etc. Vs. State of Kerala and others, (1996) 2 AD 137 : AIR 1996 SC 1431 : (1996) 2 JT 85 : (1996) 1 SCALE 780 : (1996) 7 SCC 637 : (1996) 2 SCR 23

(xii) Meerut Development Authority, etc. Vs. Satbir Singh and others, etc., (1996) 8 AD 164 : AIR 1997 SC 1467 : (1996) 9 JT 382 : (1996) 7 SCALE 470 : (1996) 11 SCC 462 : (1996) 6 SCR 529 Supp : (1997) 1 UJ 29 : (1997) AIRSCW 167 : (1996) 7 Supreme 669

(xiii) A. Manjula Bhashini and Others Vs. The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another, AIR 2010 SC 3143 : (2009) 9 JT 229 : (2009) 4 LLJ 57 : (2009) 9 SCALE 99 : (2009) 8 SCC 431 : (2009) 2

13. Having heard the learned Advocates appearing for the parties, on perusal of the pleadings and case laws relied upon by the learned Advocates appearing for the parties, this Court is of the considered view that only question which arises for consideration is:

"Whether constitutional validity of Karnataka Private Aided Educational Institutions Employees (Regulation of Pay, Pension and other Benefits) Act, 2014 (Act No. 7 of 2014) is to be upheld or be declared as unconstitutional on the ground that it is ultra vires of the Constitution of India?"

In order to undertake this exercise, it would be necessary to narrate few facts which are common to all the writ petitions and also extract the impugned legislation.

FACTUAL MATRIX:

14. All the petitioners are working as teaching and non-teaching staff of private aided educational institutions. They came to be appointed by the respective institutions after permission came to be granted by the Department of Education. On the ground that they are legally entitled for fixation of pay scale, annual increments, seniority and also entitled to pensionary benefits from the date of their initial appointment upto the date of their appointment with aid and denial of said benefit to them is bad in law, they had approached this Court by filing writ petitions with a prayer to reckon and count the past services rendered by them namely, from the date of their initial appointment up to the date of approval of their appointment with aid for the purposes of fixation of pay scale, annual increments, seniority and pensionary benefits. Writ petitions filed by them came to be allowed and was affirmed by the Division Bench of this Court and Special Leave Petitions filed by the State challenging the orders passed by Division Bench came to be dismissed. Thus, the matter attained finality.

15. For the purposes of immediate reference, one set of writ Appeals filed by the State which came to be dismissed by the Division Bench of this Court in W.A. No. 503/2011 and connected matters by order dated 30.11.2011 requires to be noticed to meet the arguments advanced by respective learned Advocates. It came to be held by the Division Bench as under:

"4. Since on a similar question this Court has taken a consistent view, in several petitions, holding that such lecturers are entitled to the benefit of fixation of salary from the date of their initial appointment and not necessarily from the date the college was admitted to grant-in-aid, the present petitions stand allowed. Annexure-"C" by which such a benefit is denied to the petitioners is hereby quashed. The respondents are directed to take into account the past services of the petitioners from the date of their respective appointments till the passing of the impugned order for the purpose of fixation of pay with revision from time to time in the cadre of Lecturers along with arrears and to pass

suitable orders within a period of eight weeks, if not earlier, from the date of receipt of a certified copy of this order.

(emphasis supplied)

16. Similar matters which came to be disposed of by the Division Bench was challenged by the State Government in Special Leave Petitions filed before the Hon''ble Apex Court in SLP (C) Nos. 14870-15136/2012 c/w SLP (C) Nos. 22176-22186/2010 which came to be dismissed by order dated 21.08.2013. Thus, the matter attained finality. In other words, petitioners therein acquired certain rights by virtue of orders passed by this Court.

17. On account of non-implementation of the orders/directions issued in the above referred judgments and also similar orders, aggrieved petitioners had approached this Court by initiating contempt proceedings, wherein the State undertook to implement the orders within two months and as such, reserving liberty to the complainants/petitioners to seek revival of the contempt proceedings in the event of order passed by the learned Single Judge is not complied, contempt proceedings came to be disposed of. Thereafter, the State did not comply with the order passed by the learned Single Judge and as such, complainants revived the contempt proceedings by filing necessary applications and the State Government being put on notice, produced the Government order, under which the State Government extended the service benefits for the unaided period of service, such as fixation of pay scale, adding annual increments, seniority, T.B.A. and pensionary benefits. Thereafter, several orders came to be issued by the State Government under which the service benefits such as fixation of pay scale, annual increments, pensionary benefits and other consequential benefits were extended to some of the petitioners only and several others have not been extended the service benefits for unaided period. It would be apt to note at this juncture itself that review application filed by the State Government before the Hon''ble Apex Court seeking review of dismissal of Special Leave Petitions also came to be dismissed on 06.12.2012.

18. It is in this factual background, the State Government through the impugned enactment namely, by Act No. 7 of 2014 introduced Karnataka Private Aided Educational Institutions (Regulation of Pay, Pension and other Benefits) Act, 2014 to extend Grant-in-aid computed at the minimum of pay scale in the time scale on the date of admission to Grant-in-aid to the employees working in Private Educational Institutions in the State and to limit the liability of the State on schemes of advancement to the extent of Grant-in-aid sanctioned to the posts and for the matters connected therewith or incidental thereto for the purposes indicated thereunder with retrospective effect from 01.06.1995.

19. Concededly the State Government amended the Karnataka Education Act, 1983 namely, Section 87 of the Education Act through Ordinance namely, through Karnataka Education (Amendment) Ordinance, 2014 (Karnataka Ordinance No. 1/2014) retrospectively i.e., with effect from 01.06.1995. The

amendment brought about to Section 87 via Ordinance reads as under:

"2. Amendment of Section 87.- In the Karnataka Education Act, 1983 (Karnataka Act 1 of 1995), in section 87,-

(a) in the proviso the words "and benefits of retirement" shall be omitted; and

(b) after the proviso, the following provisos shall be inserted, namely:-

"Provided further that conditions of service of the employees working in aided educational institutions shall be as such as may be determined by the State Government from time to time.

Provided also that since 1974 no employee of the aided institution is required to appear and pass any Service Examination or the Kannada Language Examination as prescribed in the Karnataka Civil Service (Service and Kannada Language Examination) Rules, 1974 no such employee shall be eligible for or be granted any additional increment for having passed or deemed to have been passed said examination from the date of commencement of said rules."

The said Ordinance having not been placed before both the Houses of the State namely, Legislative Assembly and Legislative Council as required under Article 213(2)(a) of the Constitution of India, same has lapsed which is not disputed by the learned Additional Advocate General. Hence, this Court would not examine the issue of constitutional validity of the amendment to Section 87 brought about by Ordinance during the pendency of writ petitions, though some of the petitioners have also amended the writ petitions and have sought for declaring Karnataka Education (Amendment) Ordinance, 2014 being unconstitutional and violative of Article 14 and 16 of the Constitution of India, since such an exercise if undertaken would be an exercise in futility and academic issue.

20. Now turning my attention back to the core issue namely, the constitutional validity of Act No. 7 of 2014, it would be of benefit to extract the Statement, Objects and reasons of enacting the impugned legislation by the State of Karnataka. It reads as under:

"Statement, Objects and Reasons:

"An Act to regulate salary and allowance and other conditions of service of teaching and non-teaching employees of private educational institutions on admission to grant-in-aid and limiting financial liability of the State and other matters connected therewith are incidental thereto;

Whereas, the State Government has admitted several private educational institutions for grant-in-aid to improve the standard of education and reduce the burden of the management by giving the salary grant to teaching and non-teaching staff.

And whereas, the Government in order No. ED 65 SES 62 dated 24.08.1963 introduced the Karnataka State Aided Schools Employees Contributory Provident

Fund-Insurance-Pension scheme (Triple Benefit Scheme) Rules to regulate pensionary benefits of aided institutions coming under the ambit of Primary and Secondary Education with effect from 01.04.1963 and directed to take in to account the length of qualifying service of all previous service whether temporary, officiating or permanent either in one or more than one State - aided institution.

And whereas, the Government framed the Karnataka Education Act, 1983 to provide for the planned development of educational institutions, inculcations of healthy educational practice, maintenance and improvement in the standards of education and better organization discipline and control over Educational institutions in the state with a view to fostering the harmonious development of the mental and physical facilities of students and cultivating a scientific and secular outlook through education and the said Act came into force from 1-6-1995 as per Government notification No ED 2 MES 95 dated 30-05-1995 with a saving clause enshrined in Section 146(3) by virtue of which the TBS Rules became part and parcel of the said Act.

And whereas, non-consideration of non-grant service for pay was questioned in W.P. Nos. 226-228/1998 and the said writ petitions were dismissed on 13-08-1998 by rejecting the reliefs sought by the writ petitioners.

And Whereas, the Government in letter No. ED 130 PMC 99 dated: 12-07-2001 has given direction not to reckon the unaided service for pensionary benefits.

And Whereas, the Government has issued a circular on 20-09-2003 bearing No. ED 90 PMC 99 clarifying that the non-grant service shall not be considered for the purpose of pension and leave.

And whereas the Government has issued order No. ED 674 SEW 2005 dated: 10-04-2006 reiterating the directions given in rule 3(1)(b) and (c) of the Karnataka Educational Institutions (Recruitment and Terms and Conditions of Service of Employees in Private Aided and Primary and Secondary Educational Institutions) Rules, 1999, wherein the service rendered during non-grant period shall not be considered for pay, leave, pension and any other service benefits.

And whereas the non-reckoning of non-grant period of service for pensionary benefits was challenged by Sri H. Peter in W.P. No. 10399/2004 and the Hon'ble High Court of Karnataka allowed the said writ petition on 01-09-2006 with a direction to compute pensionary benefits by considering non-grant period.

And whereas, in exercise of powers conferred by Sub-Section (1) of Section 145 of the Karnataka Education Act, 1983 the Government framed the Karnataka Pre-University Education (Academic, Registration, Administration and Grant-in-aid etc.) Rules, 2006. The Sub-rule (2) and (3) of Rule 21 of the said Rules reads as below-

"(2) The posts and the persons working in such posts in private aided Pre-University Colleges shall be eligible for grant-in-aid only from the date of

sanction of the grant-in-aid by the Government and the earlier period of un-aided service shall not count for any pay fixation, increment, leave, seniority and other service benefits including pension.

(3) Consequent to the sanction of salary grant-in-aid to an employee of aided Pre-University College, the initial pay of such an employee shall be fixed at the minimum of the pay scale applicable to the post and he will not be eligible for any monetary benefits either notionally or otherwise in respect of the earlier period of unaided service."

And whereas, the Writ Appeal No. 291/2007 filed by the State before the Division Bench of the Hon"ble High Court of Karnataka against the order dated: 01-09-2006 made in W.P. No. 10399/2004 was rejected and the Special Leave Petition filed by the State before the Hon"ble Supreme Court was also dismissed on 09/05/2011.

And whereas, non reckoning of non grant period of service for pensionary benefits was challenged in W.P. No. 126/2008 and W.P. No. 15025/2006 and the said writ petitions were connected with the writ appeals filed by the state and the said writ petitions were allowed on 03-11-2009.

And whereas, Government issued circular No. ED 156 PMC 2005 dated: 13-03-2009 once again reiterating the directions given in Rule 3(1)(b) and (c) of the Karnataka Educational Institutions (Recruitment and Terms and Conditions of Service of Employees in private aided and primary and secondary educational institutions) Rules 1999, wherein the service rendered during unaided period shall not be considered for pay, leave, pension and any other service benefits.

And whereas, the non-consideration of non-grant period for fixation of pay was challenged in W.P. No. 25447/2010 and the said writ petition was allowed on 16-08-2010. The State filed Writ Appeal 4788/2010 against the order dated: 16-08-2010 and the Division Bench of the Hon"ble High Court dismissed the said writ appeal and the Special Leave Petition (CC) No. 7365/2012 was dismissed on 02-07-2012. The review petition No. 2364/2012 filed by the State against the order passed in S.L.P. (CC) No. 7365/2012 was also dismissed on 06-12-2012, thereby creating inevitable situation of complying orders of the Hon"ble High Court of Karnataka in W.P. No. 25447/2010 against the directions given in rule 21(2) and (3) of the Karnataka Pre-University Education (Academic, Registration, Administration and Grant-in-aid etc.) Rules, 2006.

And whereas, the Special Leave Petition No. 22176-22186/10 filed by the State in the Hon"ble Supreme Court of India challenging order dated: 03/11/2009 was connected with other S.L.P's filed by the State and the said S.L.P's were dismissed on 21-08-2013.

And whereas, the Government in Order No. ED 176 UPC 75, dated: 18.08.1976, introduced the Karnataka State Aided College and Technical Institutions Employees Triple Benefit Scheme (Pension, Insurance and Management

Contribution) Rules, 1976 (TBS Rules for short) to regulate pensionary benefits in aided institutions coming under the ambit of Higher Education with effect from 01.04.1970 and directed to take into account all the previous service rendered in regular and whole time posts in Grant-in-aid institutions governed by TBS Rules shall be taken into account for computing the length of qualifying service.

And whereas, Government in G.O. No. ED 15 UEC 89, dated: 05.04.1991 sanctioned the revised 1986 University Grants Commission pay scales to the Librarians and the Physical Education Personnel in the First Grade (Degree) i.e., Government Colleges and those aided by the Government as per the Grant-in-aid Code under the Department of Collegiate Education with effect from 01.01.1986 and extended the Career Advancement Scheme inter alia to the Librarian and Physical Education personnel in the aided colleges;

And whereas in exercise of the powers conferred by sub-section (1) of section 145 of the Karnataka Education Act, 1983, the Government has issued rules namely the Karnataka Educational Institutions (Recruitment and Terms and Conditions of Service of Employees in Aided Colleges of Education and Teachers' Training Institutes) Rules, 2001. In the proviso to rule 3(1)(b) and 3(1)(c) of the said rules, a direction is given that the service rendered during non-grant period shall not be considered for pay, leave, pension and any other service benefits.

And whereas, the service rendered by the employee of the private colleges and Technical Institutions prior to the date of admission into grant-in-aid was also taken into consideration for the purpose of Automatic Advancement Scheme and Career Advancement Scheme by an unintended interpretation of the directions given in Government Order No. ED 25 UPC 2001, dated: 03.06.2003, which was issued with the intention of counting non-grant period service for Automatic Advancement Scheme and Career Advancement Scheme subject to fulfillment of conditions specified in the guidelines issued by the competent authorities/bodies;

And whereas, the non-reckoning of non-grant period of service for Automatic Advancement Scheme, Career Advancement Scheme and Pension was challenged by some Aided employees in Hon'ble High Court of Karnataka in Writ Petition Nos. 14676/2001, 871/2004, 19431/2005 and 5145/2007 and upholding the contention of the Petitioners that the Triple Benefit Scheme Rules and the Government Orders are not inconsonance with section 87 of the Karnataka Education Act, 1983 thereby rejecting the Government's contention that as per TBS Rules only the service rendered in aided institutions be considered for qualifying service, the Hon'ble High Court on 13.10.2006 and 12.12.2007 allowed the Writ Petitions by directing reckoning of the service from initial appointment on the basis of actual emoluments drawn, including increments and promotions for non-grant period;

And whereas, the State filed Appeals against the Orders dated: 13.10.2006 and 12.12.2007 made in Writ Petitions Nos. 14676/2001, 871/2004, 19431/2005 and 5145/2007 and on 03.11.2009, the Hon'ble High Court of Karnataka connected

the Writ Appeals Nos. 450/2007 and 848/2008 filed by the State with other similar Writ Petitions delivered the following Order:

"Under the circumstances, Writ Appeals filed by the State have to be dismissed and the Writ Petitions have to be allowed. Rule is made absolute. The respective authorities are directed to consider the case of each of the Petitioner and pass orders accordingly in the context of relevant rules applicable to them with regard to their retirement benefits including pension and gratuity along with interest at the rate of 6% p.a. which shall be paid with effect from the date of filing of the Writ Petition by each of these lecturers/teachers within a period of two months from the date of receipt of the certified copy of this Order".

And whereas, the State of Karnataka preferred the Appeal in the Hon"ble Supreme Court in the Special Leave Petition No. 22176-22186/2010 was connected with other similar Special Leave Petitions were dismissed on 21.08.2013;

And whereas, there is no justification to include the service rendered in un-aided institutions which are subsequently brought under grant-in-aid, for the purpose of pensionary benefits as such inclusion would amount to taking into consideration the service not covered by the Pension Rules and it would also amount to giving retrospective effect to the admission to grant-in-aid which is never contemplated by the Government;

And whereas, if the increments earned by the teaching and non-teaching employees of the Private Aided Educational Institutions in non-grant period is taken into consideration for releasing the Grant-in-aid, and for the purposes of Automatic Advancement Scheme, Career Advancement Scheme and Pension it would involve very huge financial implication to the state exchequer;

And therefore, Government reviewed the matter and decided to extend Grant-in-aid computed at the minimum of pay in the time scale on the date of admission to grant in aid to the employees working in Private Educational institutions in the State and to limit the liability of the State on schemes of Advancement to the extent of Grant-in-aid sanctioned to the posts and for the matters connected therewith or incidental thereto for the purposes hereinafter appearing;"

21. The preamble of a Statute like the long title is a part of the Act and is an admissible aid to construction. Although not an enacting part, the preamble is expected to express the scope, object and purpose of the Act more comprehensively than the long title. It may recite the grounds and cause of making the statute, the evils sought to be remedied or the doubts which may be intended to be settled. Sir John Nickel in *Brett v. Brett* reported in (1826) 162 ER 456 at page 458-459 has held:

"It is to the preamble more specially that we are to look for the reason or spirit of every statute, rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the statute, and so

evidencing in the best and most satisfactory manner, the object or intention of the legislature in making or passing the statute itself."

22. As to circumstances under which a preamble can be used as a tool in aid of interpretation, came to be considered by the Hon'ble Apex Court in the case of *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, AIR 1961 SC 954 : (1962) 1 SCR 44 and held:

"It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded though, where the object or meaning of an enactment is not clear, the preamble may be resorted to explain it. Again, where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances, the enactment is intended to apply. We cannot therefore, start with the preamble for construing the provisions of an Act, though we could be justified in resorting to it, nay, we will be required to do so if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application."

It has been further held by the Hon'ble Apex Court in *State of Rajasthan Vs. Leela Jain*, AIR 1965 SC 1296 : (1965) 1 SCR 276 that preamble cannot be used to eliminate the operative provisions of the statute as unintended. It has been held:

"The preamble may, no doubt, be used to solve any ambiguity or to fix the meaning of the words which may have more than one meaning but it can, however, not be used to eliminate as redundant or unintended, the operative provisions of the statute."

23. Thus, an enactment including its preamble must be read as a whole to decide whether any part of the enacting provision is clear or ambiguous. If, however, having read the Act as a whole, including the preamble, the enacting words clearly negative the construction which it is sought to support by the preamble, that is an end of it. It has been held by the Hon'ble Apex Court in the case of *State of West Bengal Vs. Union of India*, AIR 1963 SC 1241 : (1964) 1 SCR 371 that objects of the Act cannot be used to cut down the generality of the words used in the statute. It has been observed by the Hon'ble Apex Court as under:

"It is however well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Government's rights as owner of minerals. A statute, as passed by Parliament, is the expression of the

collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, or the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute. "

24. Keeping these principles in mind, when the Statements, Objects and Reason of the impugned enactment i.e., Act No. 7/2014 is perused, it would clearly emerge that the State Government having admitted several Private Educational Institutions for Grant-in-aid to improve the standard of education and reduce the burden of management had extended salary grant to teaching and non-teaching staff from the date of grant and not from the date of their initial appointment. Records would also indicate that several employees both teaching and non-teaching being aggrieved by non-consideration of initial date of appointment for extending grant-in-aid, pay and other benefits had questioned such denial and had sought for reckoning the non-grant period for extending pay, leave, promotion, pension and other service benefits. Records would also indicate that several writ petitions filed by such of those employees including petitioners herein had been allowed by this Court and affirmed in Writ Appeals and confirmed by the Hon'ble Apex Court. However, in order to exclude the non-grant period rendered by the employees in unaided institutions which were subsequently brought under the Grant-in-aid for the purpose of pay and pensionary benefits, automatic advancement scheme, career advancement scheme, impugned enactment has been brought about on the ground that it would result in huge financial implication to the State Exchequer. When preamble of the Act is read in conjunction with the provisions of impugned enactment, it would clearly indicate that it disentitles the petitioners the benefit of fixation of pay scale, annual increments, Time Bound Allowances, pensionary benefits and other consequential benefits from the date of their entry into service but they would be entitled to such benefits from the date of approval of their appointment with aid. In other words, the benefit accrued and derived by the petitioners by virtue of the order passed by this Court and which have also been implemented by the State is sought to be nullified by the impugned Act No. 7/2014.

25. Keeping the aforesaid aspects in mind, further and deeper examination namely, the constitutional validity of the Act is being examined in the background of its challenge on the grounds already noted hereinabove.

26. It is not in dispute that petitioners and similarly placed persons had approached this Court for reckoning the non-grant period to be treated as qualifying years for the purposes of extending pay and other service benefits and this Court having considered the plea of the State which was to the effect that Karnataka Education Act, 1993 and the Rules made thereunder would enable the State to restrict the employees working in aided institutions to grant salary and other service benefits from the date of admitting them to grant and not any period anterior to it and rejected the same by delving upon Section 87 of the Education Act and Rule 3 of the Karnataka Educational Institutions (Recruitment and Terms and conditions of service of employees in Private Aided Primary and

Secondary Educational Institutions) Rules, 1999 by holding that a conjoint reading of Section 87 of the Karnataka Education Act, 1993 and the Rules made thereunder, it is clear that the intention of the State Government is to grant parity to the teachers working in all Government Schools as well as those working in Private Schools vide judgment rendered by Division Bench on 03.11.2009 in W.A. No. 848/2008 and connected matters. It came to be held by the Division Bench to the following effect:

"21. On a combined reading of these provisions what emerges is that under Section 87 of the Act, conditions of service of employees in recognized private educational institutions must be on par with the conditions of service of the State Government Institutions. However, the proviso states that with regard to conditions of service including the retirement for employees in educational institutions such as the state aided institutions can be prescribed otherwise meaning thereby that the conditions of service of aided institutions could be varied as compared to the conditions of service of teachers of Government Institutions by means of Rules being enacted. It is in view of this proviso the 2001 Rules and the 1999 Rules as well as 2003 referred to above have been enacted."

27. The question whether the legislature has kept itself within the jurisdiction assigned to it or has encroached upon a forbidden field, is determined by finding out the true nature and character of the legislation. The Courts" strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed so as to make it effective and operative on the principle expressed in the maxim "ut res magis valeat quam pereat" - that the thing may rather have effect than be destroyed; that the transaction may be valid rather than invalid. It is on application of this principle that Courts while pronouncing upon the constitutionality of a statute start with a presumption in favour of constitutionality and prefer a construction which keeps the statute within the competence of the legislature. There is, therefore a presumption that the legislature does not exceed its jurisdiction and the burden of establishing that the act is not within the competence of the legislature, or that it has transgressed other constitutional mandates such as those relating to fundamental rights, is always on the person who challenges its vires.

28. Lord Denning in the case of FAWCETT PROPERTIES v. BUCKINGHAM COUNTY COUNCIL reported in 1960 (3) AIR 503 has observed thus:

"But when a statute has some meaning even though it is obscured, or several meanings, even though it has little to choose between them, the Courts have to say what meaning the statute is to bear rather than reject it as a nullity."

29. A statute is designed to be workable and the exercise undertaken by a Court should be to secure that object unless crucial omission or clear direction makes that ultimate end unattainable. If on one construction a given statute would become ultra vires the powers of the legislature, whereas on another

construction, which may be open and the statute remains effective and operative, the Court will prefer the latter, on the ground that the legislature is presumed not to have intended to act in excess of its jurisdiction.

30. A perusal of statement of objects and reasons assigned by the State while enacting Act No. 7/2014, it would indicate that the legislature with an intent to remove the basis of the judgment rendered by this Court has sought to ensure such decision is rendered ineffective. The legislature, while removing the basis of a judgment or its substratum can exercise its power by bringing in a legislation to render such judicial decision ineffective. If the legislature wants to render a judicial decision ineffective, it can only do so by removing or altering or neutralizing the legal basis of the judgment which is sought to be made ineffective and that neither the legislature nor the executive has the power of simply declaring the earlier decision of the Courts as invalid or not binding. In otherwords, legislature has the power to remove the defect in the statute pointed out by the Courts by amending Act and removing such defect in the statute by validating such Act retrospectively with the aid of legal fiction. It has been held by Hon''ble Apex Court in the case of *Tirath Ram Rajindra Nath, Lucknow Vs. State of U.P. and Another*, AIR 1973 SC 405 : (1973) 3 SCC 585 : (1973) 31 STC 314 as under:

"7. Now coming to the second contention of Dr. Singhvi, we fail to see how the question of lack of power now arises in view of Section 3-AB. While developing his contention No. 2, Dr. Singhvi urged that the Legislature has unauthorisedly encroached on the judicial power. The amended Section 3-AB merely interdicts the decision rendered by the High Court and has not removed the want of power noticed by the High Court. We are unable to accede to this contention. The Legislature has not purported either directly or by necessary implication to overrule the decision of the Allahabad High Court in *Krishna Brick Field's* case (*supra*). On the other hand it has accepted the decision as correct but has sought to remove the basis of the decision by retrospectively changing the law. This court has pointed out in several cases the distinction between encroachment on the judicial power and the nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the Legislature but the latter is within its permissible limits. In the instance case what the Legislature has done is to amend the law retrospectively and thereby remove the basis of the decision rendered by the High Court. Such a course cannot be considered as an encroachment on the judicial power."

31. It has been further held by Hon''ble Apex Court in the case of *I.N. SAKSENA v. STATE OF M.P* reported in AIR 1976 SC 2250 that distinction between a "legislative act" and a "judicial act" is well known though in some specific instances the line which separates one category from the other may not be easily discernible. It has been held that such validating legislation which removes the causes for ineffectiveness or invalidity of actions is not an encroachment on judicial power.

"22. While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or over-ride a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Article 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based. As pointed out by Ray C.J. in *Indira Nehru Gandhi v. Raj Narain*,⁽¹⁾ the rendering ineffective of judgments or orders of competent courts and tribunals by changing their basis by legislative enactment is a well-known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power."

32. The legislature may, at any time, in exercise of the plenary power conferred on it by Article 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively, which would be subject to legislative competence. Thus, rendering the judgments and orders of competent Courts ineffective by changing their basis by legislative enactment is a well known pattern of all validating Acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be construed as encroachment of judicial power. If the legislature by passing an Act without altering the statute on the basis of which the judgment was pronounced, then such legislation will not nullify the effect or force of the judgment pronounced by a Court in any manner.

33. The learned Additional Advocate General has very heavily relied upon the judgment of Hon"ble Apex Court in the matter of *Comorin Match Industries (P) Ltd. Vs. State of T.N.*, AIR 1996 SC 1916 : (1996) 65 ECR 233 : (1996) 5 JT 167 : (1996) 3 SCALE 538 : (1996) 4 SCC 281 : (1996) 1 SCR 349 Supp : (1996) 102 STC 1 to contend enacting validation law with retrospective effect is within the competence of the legislature and by amendment Act, judgment of the High Court is being nullified to sustain the constitutional validity of the impugned Act.

34. Assessment Orders for the assessment year 1957-58 to 1965-66 came to be challenged before the High Court of Madras by *COMORIN MATCH INDUSTRIES PRIVATE LIMITED* contending that it had sold the Safety Matches manufactured by it, in the course of inter-state trade and commerce for which sales tax was charged under the Central Sales Tax Act, 1956 (for short "CST), on the ground that CST was levied on turnover which included excise duty and no CST can be levied on excise duty. Claim for refund of the tax collected by the authorities were also made. Similar writ petitions were also filed before the High Court. The High Court of Madras allowed the writ petition in the case of *LARSEN AND TOUBRO LIMITED v. JT. CTO* reported in (1967) 20 STC (Mad.) . Following that

decision, High Court allowed the writ petition filed by the assessee - COMORIN MATCH INDUSTRIES and other writ petitioners. Though the sales tax authorities did not file any appeal against the judgment of COMORIN MATCH INDUSTRIES, but preferred an appeal in respect of another assessee before the Hon''ble Apex Court i.e., in the case of State of Madras Vs. N.K. Nataraja Mudaliar, (1968) 3 SCR 829 : (1968) 22 STC 376 . The Hon''ble Apex Court held that provisions of sub-sections (2), (2-A) and (5) of Section 8 of the Central Sales Tax were valid. However, it was held that the tax on excise duty was illegal and affirmed the decision of the High Court on the said issue.

35. The grievance of the assessee - COMORIN MATCH INDUSTRIES was that despite the judgment of the High Court, refund of the tax was not granted though specific direction had been given by the High Court to the said effect. The Hon''ble Apex Court in NATARAJ MUDALIAR's case, while disposing of the appeal had directed as under:

"The appeal will be allowed and the order passed by the High Court declaring the provisions of Sections 8(2), 8(2-A) and 8(5) ultra vires must be set aside.

The petition out of which this appeal arises was one of a group of petitions filed before the High Court. Against orders passed in favour of the other assessees the State has not preferred appeals. The amount involved in the claim is small. The State apparently has approached this Court with a view to obtain a final determination of the important question which was raised in the petitions filed before the High Court. We therefore direct that there will be no order as to costs in this Court and in the High Court."

36. Yet another reason for which assessments were set aside was on account of inclusion of excise duty in the computation of "turnover". There was a controversy as to how the turnover under the Central Sales Tax should be computed. Under the T.N. General Sales Tax Act, 1959 and the Rule, as it stood at the material time, provisions had been made for deduction of excise duty in the computation of chargeable turnover. The High Court of Madras held that the quantum of turnover for the purposes of levy of CST had to be made in the same manner by excluding the excise duty paid on the goods sold.

37. The Central Sales Tax Act, 1956 was amended by Central Sales Tax (Amendment) Act, 1969, whereunder the definition of "turnover" defined in Section 2(j) was amended and the working of Section 9 was radically altered. The new provisions were deemed always to have been substituted. The said amendment was effected with a view to put an end to the controversy whether "turnover" should be computed in accordance with the provisions of the State Sales Tax law or not. This amendment was brought about to get over the view expressed by the Hon''ble Apex Court in State of Madras Vs. N.K. Nataraja Mudaliar, (1968) 3 SCR 829 : (1968) 22 STC 376 whereunder it had been held that the Central Sales Tax had to be levied in the same manner as provided in the Madras General Sales Tax Act. It had been held by Hon''ble Apex Court in

NATARAJA MUDALIYAR's case referred to supra as under:

"If under the Madras General Sales Tax Act in computing the turnover the excise duty is not liable to be included and by virtue of Section 9(1) of the Central Sales Tax Act has to be levied in the same manner as the Madras General Sales Tax Act, the excise duty will not be liable to be included in the turnover....

We are of the view that in the matter of determining the taxable turnover the same rules will apply by virtue of Section 9(1) of the Central Sales Tax Act, whether the tax is to be levied under the Central Sales Tax Act or the General Sales Tax Act."

When the Central Sales Tax Act was examined by the Madras High Court in LARSEN AND TOUBRO's case referred to supra and the Hon'ble Apex Court in NATARAJ MUDALIAR's case, defined "turnover" as defined in Section 2(j) of the Central Sales Tax Act to mean "the aggregate of the sales prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in the prescribed manner". By amending Act, the words "and determined in the prescribed manner" were substituted by the words "and determined in accordance with the provisions of this Act and the Rules made thereunder". This amendment was given effect with retrospective effect from the date on which the Central Sales Tax Act came into force and thereby the basis of law on which judgement in N.K. NATARAJ MUDALIAR's case was pronounced was removed from the statute.

38. It is in this background, the Hon'ble Apex Court in Comorin Match Industries (P) Ltd. Vs. State of T.N., AIR 1996 SC 1916 : (1996) 65 ECR 233 : (1996) 5 JT 167 : (1996) 3 SCALE 538 : (1996) 4 SCC 281 : (1996) 1 SCR 349 Supp : (1996) 102 STC 1 has held that the statute being what it was, the judicial interpretation of the statute could not be held to be erroneous by legislative imprimatur, but if the statute itself was amended retrospectively so that the very basis of the judgment disappear, then it could not be said that the judgment was still in force and will have to be given effect even though the legislature had specifically laid down that amended law would operate. It has been held by the Hon'ble Apex Court in said case as under:

"16. Therefore, the majority view appears to be that if a judgment is pronounced by a court and the effect of that judgment is sought to be taken away by legislature by passing an Act without altering the statute on the basis of which the judgment was pronounced, then such legislation will not nullify the effect or force of the judgment pronounced by a court in any manner. The statute being what it was, the judicial interpretation of the statute could not be held to be erroneous by legislative imprimatur, but if the statute itself was amended retrospectively so that the very basis of the judgment disappeared, then it could not be said the judgment was still in force and will have to be given effect to even though the legislature had specifically laid down that the amended law will

operate notwithstanding any judgment or decision or decree by the court to the contrary. In fact, that is how the judgment of Shri Prithvi Cotton Mills Ltd. understood and explained."

39. The power of validation is undisputed if vested with the Legislature. For this proposition, the judgment of Hon"ble Apex Court in the case of Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, AIR 1970 SC 192 : (1971) 79 ITR 136 : (1969) 2 SCC 283 : (1970) 1 SCR 388 can be looked up.

40. The distinction between legislative and judicial function is well known. Within the scope of its legislative competence and subject to other constitutional limitations, Legislature can exercise its power to enact laws and said power is plenary in nature. In exercise of such plenary power, Legislature can enact law prospectively as well as retrospectively. Where the statutory provision is interpreted by the Court in a particular manner and directions are issued for implementing the judgment in the light of the interpretation placed on the statutory provisions, the legislature need not pass a validating Act. In such situation, the legislature in exercise of its plenary power under Article 245 and 246 can make a new Act altering fundamentally the provisions which was the basis of the judgment passed by the Court. This exercise can be done with retrospective effect also.

41. As held by the Hon"ble Apex Court in the case of C.R. Neelakandan and Another Vs. Union of India (UOI) and Others, AIR 2014 SC 2407 : (2014) AIRSCW 3178 : (2014) 6 JT 260 : (2014) 6 SCALE 380 that State can validate the law by removing the defects pointed out by the Court will have to be examined in the facts and circumstances of each case. The question whether or not the legislature has usurped the judicial power or enacted a law in breach of separation of powers would depend upon facts of each case after considering the real effect of law on a judgment or a judicial proceeding. Three primary tests which requires to be applied are:

"(1) Whether the vice pointed by Court and invalidity suffered by previous law is cured, complying with legal and constitutional requirements?

(2) Whether Legislature has competence to validate the law?

(3) Whether such validation is consistent with the rights guaranteed in part III of the Constitution?"

42. Thus, Court has a delicate function to examine the law enacted by legislature to find out, whether in fact legislature has exercised legislative power by merely declaring an earlier judicial decision to be invalid and ineffective or the legislature has altered and changed the character of legislation which ultimately render the judicial decision ineffective.

43. It has to be remembered that there is always a presumption that legislature does not exceed its jurisdiction. As such, burden of establishing that legislature

has transgressed constitutional mandate is always on the person who alleges such violation and who challenge the vires. It is to be remembered that until and unless it becomes clear beyond reasonable doubt that the legislation under challenge has transgressed constitutional limits, Courts refrain from interfering with such legislation and it will be allowed to stand. The adjudication of the rights of the parties according to law is a judicial function. When a particular rule or the Act is interpreted by a Court of law in a specified manner and the law making authority forms the opinion that such an interpretation would adversely affect rights of the parties and as such, a new set of rules or laws is enacted, it is quite often challenged on the ground of the legislature having transgressed its power or usurped the judicial power. Thus, the Courts would have delicate function to undertake and examine the new set of laws enacted by the legislature and to find out whether in fact the legislature has exercised the legislative power by merely declaring an earlier judicial decision to be invalid and ineffective or the legislature has altered and changed the character of the legislation which ultimately may render the judicial decision ineffective.

44. The Hon''ble Apex Court in the case of C.R. Neelakandan and Another Vs. Union of India (UOI) and Others, AIR 2014 SC 2407 : (2014) AIRSCW 3178 : (2014) 6 JT 260 : (2014) 6 SCALE 380 while examining the constitutionality of Kerala Irrigation and Water Conservation (Amendment) Act, 2006 and declaring it as unconstitutional in its application to and effect on the Mullaperiar Dam was also examining the separation of powers between legislature, executive and judiciary and held that even without express provision of the separation of powers, the doctrine of separation of powers is an enshrined principle embodied in the Constitution of India. It has been held by the Hon''ble Apex Court after elaborate discussion on the issue of doctrine of separation of powers under the Constitution of India and summarized it as under:

"121. On deep reflection of the above discussion, in our opinion, following are the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law. In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of powers between legislature, execution and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution. Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs -legislature, executive and judiciary - is also nothing but a consequence of principles of equality enshrined in Articles 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality under Articles 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality under Articles 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part - III of the Constitutions.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde. In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law.

(vii) The law enacted by the legislature may apparently seem to be within its competence but yet in substance if it is shown as an attempt to interfere with the judicial process, such law may be invalidated being in breach of doctrine of separation of powers. In such situation, the legal effect of the law on a judgment or a judicial proceeding must be examined closely, having regard to legislative prescription or direction. The questions to be asked are, (i) Does the legislative prescription or legislative directions interfere with the judicial functions? (ii) Is the legislation targeted at the decided case or whether impugned law requires its application to a case already finally decided? (iii) What are the terms of law; the issues with which it deals and the nature of the judgment that has attained finality? If the answer to (i) to (ii) is in the affirmative and the consideration of aspects noted in question (iii) sufficiently establishes that the impugned law interferes with the judicial functions, the Court may declare the law unconstitutional."

45. Thus, it would emerge from the scheme of constitution that Legislature can

render judicial decision ineffective by enacting validating law within its legislative field fundamentally altering or changing its character retrospectively. However, said principle would have no application where a judicial decision has been rendered by recording a finding of fact and under the pretence of such plenary power, legislature, cannot nullify or neutralize the effect of the judgment rendered after ascertainment of facts by means of evidence or material placed by the parties to such dispute. A final judgment once rendered would be operative and executable until and unless altered by the Court itself in appropriate proceedings.

46. Keeping the aforestated discussion in mind, the constitutional validity of Act No. 7/2014 is to be tested. As held by Hon''ble Apex Court in STATE OF TAMIL NADU v. STATE OF KERALA referred to supra, a validating law is to be judged by applying three tests namely,

"(1) Whether the legislature possesses competence over the subject matter?

(2) Whether by validation the legislature has removed the defect which the Courts found in the previous law? and,

(3) Whether it is inconsistent with the provisions of Part III of the Constitution?"

47. Insofar as the first test is concerned, it would not detain this Court for too long to hold that there is not much challenge by the petitioners with regard to the competency of the legislature to enact the impugned Act namely, Act No. 7/2014. Hence, question of applying the first test and examining as to whether the impugned Act would pass the said test does not arise.

48. However, the other two tests namely, whether the impugned Act is a validating Act brought about to remove the defect which the Courts had pointed out in the previous law or whether the impugned Act is inconsistent or contrary to the provisions of Part III of the Constitution will have to be examined in the background of the law laid down by this Court in granting relief to the petitioners namely, directing the State to reckon the non-grant period or the date of initial appointment for the purposes of granting pay, promotion, pension and other service benefits to be granted to them which concededly was on account of interpretative process adopted by this Court, by declaring the law namely, Karnataka Education Act, 1993 and Rules made thereunder. Purportedly to plug the said loop hole or the lacuna in the law, legislature in exercise of its plenary power has brought about the impugned enactment. Whether this Court had pointed out any defect in the existing enactment and whether on the basis of said defect, judgment came to be rendered so as to enable the legislature to remove such defect found in the previous law would be the primary question. It is also to be examined as to whether the impugned enactment is not opposed to Part III of the Constitution of India or in other words, impugned enactment is inconsistent with Part III of the Constitution of India.

49. In Writ Appeal No. 848/2008 c/w W.A. No. 450/2007 and other writ petitions,

Division Bench of this Court examined the contention of the State which was to the effect that the non-grant period of service of the lecturers/teachers cannot be taken into consideration for paying pensionary benefits, by relying upon Section 87 of the Karnataka Education Act, 1993 and Rule 3 of the Karnataka Educational Institutions (Recruitment and Terms and Conditions of Service of Employees in Aided Colleges of Education and Teachers Training Institutions) Rules, 2001 and Karnataka Educational Institutions (Recruitment and Terms and Conditions of Service of Employees in Aided Colleges) Rules, 1999. However, Division Bench rejected said contentions by holding that there is no contra prescription insofar as the teachers of the aided institutions are concerned and said Rule create a parity between the Teachers of the Government colleges as well as aided colleges.

50. Likewise, the serving as well as retired teachers, assistant teachers and non-teaching staff who have worked or working in aided private institutions assailed the Government Order dated 25.03.2011 whereunder the claim made by those petitioners for grant of one increment on account of their passing Kannada Language examination came to be denied for the period 1974-1987. Said order came to be quashed before a co-ordinate Bench of this Court and this Court by order dated 10.08.2012 upheld the contention of employees. Same was assailed in Writ Appeal No. 2779 and 4868-5434/2013 by the State before the Division Bench. It was contended in the appeals by the State that writ petitioners were not entitled to any benefits which are applicable to Government servant and teachers serving in the aided institutions cannot be treated on par with the teachers serving in the Government institution and mere passing of the Kannada Examination by them, which was not obligatory, would not entitle them to claim the increment and as such, it was contended that the learned Single Judge was not justified in directing that monetary benefit being paid to them for passing of the Kannada Language examination or same to be extended to the teachers working in private aided institutions also. Section 87 of the Karnataka Education Act, 1993 and Rule 3 of Karnataka Educational Institutions (Recruitment and Terms and Conditions of Service of Employees in Private Aided Primary and Secondary Educational Institution) Rules, came to be examined by the Division Bench and direction issued by the learned Single Judge to grant benefit of one increment to those teaching and non-teaching staff of the aided institutions on par with the Government schools was upheld. It has been held by the Division Bench as under:

"On a conjoint reading of the Section and the Rules along with Annexure-H, it becomes clear that the intention of the State Government is to grant parity to the teachers working in all Government schools as well as those working in private schools. However, this is subject to the financial capacity of the State Government. It is in that regard that the proviso has been inserted to Sub-Rule(b) of Rule 3(1), so as to deny certain benefits to employees of aided institutions. In the instant case, if the State had intended to deny the benefit of one incentive to the teachers and non-teaching staff of private institutions on

passing of the Kannada language examination, the same could have been inserted in Annexure-II of the Rules. The absence of such an insertion in Annexure-II coupled with Section 87 read with Clause (b) of Sub-Rule(1) of Rule 3 makes clear that there is no intention on the part of the State Government to deny such a benefit to the teachers of the aided institutions. Moreover, conditions of service of staff of private aided institutions could be varied by the State Government under Sub-Rule (2) of Rule 3. Such a variation has not been pointed out insofar as the respondents are concerned. In that view of the matter, the learned Single Judge was right in quashing Annexure-A impugned in the writ petition and directing the State to grant the benefit of one increment to those teaching and non-teaching staff of the aided institutions, particularly the respondents herein, on passing of the Kannada language examination, on par with the Government schools. In that view of the matter, the impugned order does not call for any interference in these appeals. The appeals being devoid of merit are dismissed."

51. The legislature cannot by a bare declaration without more, directly overrule, reverse or override a judicial decision. However it may, at any time, in exercise of the plenary powers conferred on it by Article 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective effect either curatively or neutralizing the effect on which such decision is based. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power. For this proposition, judgment of the Hon"ble Apex Court in the case of Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, AIR 1975 SC 2299 : (1975) SCC 1 Supp : (1976) 2 SCR 347 can be looked up.

52. Legislature while passing validating law and providing an intended valid legislation must indicate the defect pointed out in the judgment which otherwise could not have been rendered. The intended legislation must be curative legislation, not directly declaring the judgment as ineffective. It has been held by the Hon"ble Apex Court in Sajjan Singh Vs. State of Rajasthan, AIR 1965 SC 845 : (1965) 1 SCR 933 to the following effect:

"It is also urged that inasmuch as the impugned Act purports in substance to set aside the decisions of courts of competent jurisdiction by which some of the Acts added to the Ninth Schedule have been declared to be invalid, it is unconstitutional. We see no substance in this argument. It is hardly necessary to emphasize that legislative power to make laws in respect of areas entrusted to the legislative jurisdiction of different legislative bodies, can be exercised both prospectively and retrospectively. The constituent power conferred by Art. 368 on the Parliament can also be exercised both prospectively and retrospectively. On several occasions, legislatures think it necessary to validate laws which have been declared to be invalid by Courts of competent jurisdiction and in so doing, they have necessarily to provide for the intended validation to take effect

notwithstanding any judgment, decree or order passed by a court of competent jurisdiction to the contrary. Therefore, it would be idle to contend fiat by making the amendment retrospective, the impugned Act has become constitutionally invalid."

53. It has been held by the Hon"ble Apex Court that though the legislature has power to validate an invalid levy retrospectively and can change the character of tax or duty from impermissible to permissible but these principles would not apply if it is in the form of a explanation, vide M.P. Cement Manufacturers" Association Vs. State of Madhya Pradesh and Others, (2005) 11 JT 342 : (2003) 10 SCALE 54 : (2004) 2 SCC 249 : (2003) 6 SCR 557 Supp . It has been held as under:

"22. The legislature has the power to validate an invalid levy and to do so retrospectively. The prescription provided in the context of judicially invalidated legislation would not apply as the 2001 amendment had not, till the promulgation of the 2003 Act, been held to be invalid by any court. The legislature can also change the character of the tax or duty from impermissible to permissible but the tax or levy should be within its legislative competence. However, in our view, these principles would not apply to the 2003 amendment since it is in the form of an Explanation to Section 3(2) . The object of an Explanation to a statutory provision has been culled out from the earlier judicial decisions and succinctly restated in S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, AIR 1985 SC 582 : (1985) 1 SCALE 74 : (1985) 1 SCC 591 : (1985) 2 SCR 643 .

"53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

- (a) to explain the meaning and intendment of the Act itself,
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same as to make it consistent with the dominant object which it seems to subserve.
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment, and
- (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming a hindrance in the interpretation of the same."

54. The power of the legislature to remove the basis of a decision rendered by a

competent Court in exercise of its plenary power is an issue which is no more res integra in view of the law laid down by Hon"ble Apex Court in the case of The State of Himachal Pradesh and Others etc. Vs. Yash Pal Garg (dead) by LR's and Others etc., H.H. Exporters etc. and Jai Mata Rolled Glass Ltd. and Another etc., (2003) 4 JT 413 : (2003) 4 SCALE 448 : (2003) 9 SCC 92 : (2003) 3 SCR 1056 . Likewise, where the legislature possess competence over the subject matter and tries to remove the defect which the Courts had found in the existing law and makes adequate provision in the validating law, the constitutionality of such law has been held to be upheld as held by the Hon"ble Apex Court in Dharam Dutt and Others Vs. Union of India (UOI) and Others, AIR 2004 SC 1295 : (2003) 10 SCALE 14 : (2004) 1 SCC 712 : (2003) 6 SCR 151 Supp .

55. However, if the judgment is delivered on the principles of parity, while re-enacting the law with retrospective effect, such Act can be questioned as one being in violation of fundamental rights enshrined in Part-III of Constitution. If the judgment is delivered on the principle of parity i.e. Article 14 of the Constitution, then there is little scope or area left available to the legislature to enact a law inasmuch as, there is nothing left to be validated or defect to be cured. Such legislation cannot be considered as curative legislation. Where the judgments are held to be ineffective by amending law, then exercise of power by the legislature has to be held as having encroached upon the judicial power. It has been held by Hon"ble Apex Court in the case of State of Haryana and others Vs. The Karnal Co-op. Farmers' Society Limited, etc. etc. and others, AIR 1994 SC 1 : (1993) 2 JT 235 : (1993) 1 SCALE 812 : (1993) 2 SCC 363 : (1993) 2 SCR 193 to the following effect:

"31. Thus, it becomes clear that a Legislature while has the legislative power to render ineffective the earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively, it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon, by a Legislature under our Constitution.

32. In the instant case, the Haryana State Legislature, by the Amendment Act of 1981, has not made any provision to include the lands and immovable properties - the subject of the civil Court's decrees, in "Shamilat deh" so as to bring them within the purview of the principal Act. But, the provision made therein merely directs the Assistant Collector of First Grade, in effect, to disregard or disobey the earlier civil Courts' decrees and judicial orders by which it had been held that certain lands and immovable properties fell outside "shamilat deh" regulated by the principal Act. Such provisions inserted by the Amendment Act of 1981 in the principal Act by a Legislature are clearly unconstitutional for they are to be regarded as provisions made by encroaching upon the judicial power. Hence, the view of the High Court that the provisions of the Amendment Act of 1981 which

merely authorize the Assistant Collector of First Grade to decide the claims to the made before him claiming certain lands or immovable properties as "shamilat deh" vesting in Panchayats ignoring the judicial orders or decrees, by which any right, title or interest of private parties in such lands or immovable properties are recognized are unconstitutional, requires to be upheld. Consequently, the provisions of the Amendment Act of 1981, insofar as they are intended to operate retrospectively for nullifying the adjudications made by civil Courts prior to that Amendment Act are invalid, inoperative and unconstitutional. However, the provisions in the Amendment Act of 1981, can undoubtedly operate prospectively for adjudicating upon claims to "shalimat deh" in proceedings initiated subsequent to the commencement of that Act, if they do not, in any way, disturb the finality of adjudications made earlier."

56. In this connection, the judgment of the Hon"ble Apex Court in the case of The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc., AIR 1970 SC 1292 : (1970) 2 SCC 280 : (1971) 1 SCR 288 can be noticed whereunder the High Court as well as the Apex Court has held that the property tax collected for certain years by the Municipal Corporation was illegal. In order to nullify the effect of the decision, the State Government introduced Section 152-A by an amendment to the Act, the effect of which was to command the Municipal Corporation, to refuse to refund the amount illegally collected despite the orders of the High Court as well as Apex Court. In this background, it was held that said provision makes direct in-road into the judicial powers. It was further held that no legislature in the country has power to ask the instrumentalities of the State to disobey or disregard the decision given by the Courts. Consequently, the amended provision was held to be repugnant to the Constitution and struck down.

57. The legislature can change the basis on which decision is rendered by the Court and thus, changed the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to function as an appellate Court or Tribunal. This view is fortified by the law laid down by the Hon"ble Apex Court in the matter of: CAUVERY DISPUTES TRIBUNAL reported in 1993 supplement (1) SCC 96(II).

58. The legislature cannot assume power of adjudicating a case by virtue of its enactment of the law without leaving it to the judiciary to decide it with reference to the law in force. The legislature also is incompetent to over rule the decision of a Court without properly removing the base on which the judgment is found. The Hon"ble Apex Court in Indian Aluminium Co. etc. etc. Vs. State of Kerala and others, (1996) 2 AD 137 : AIR 1996 SC 1431 : (1996) 2 JT 85 : (1996) 1 SCALE 780 : (1996) 7 SCC 637 : (1996) 2 SCR 23 while examining the validity of Section 11 of Kerala Electricity Surcharge (levy and collection) Act, 1989 (Act 22 of 1999) and further provision permitting non-refund of the amount collected has

laid down the parameters for examining the constitutionality of validating Act by the Courts in the following manner:

"56. From a resume of the above decisions the following principles would emerge:

(1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the court to give effect to them;

(2) The Constitution delineated delicate balance in the exercise of the sovereign power by the legislature, executive and judiciary;

(3) In a democracy governed by rule of law, the legislature exercises the power under Articles 245 and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law.

(4) Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained;

(5) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;

(6) The court, therefore, needs to carefully scan the law to find out:

(a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements;

(b) whether the legislature has competence to validate the law: (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

(7) The court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the legislature. Therefore, they are not encroachment on judicial power.

(8) In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from the

particular date. The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorize its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof.

(9) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same."

59. A bare reading of above dicta laid down by Hon''ble Apex Court would indicate that the legislature by mere declaration without anything more, cannot directly over rule, revise or over write a judicial decision. It has been held that the consistent thread that runs through all the decisions of the Apex Court is that the legislature cannot directly over rule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the Constitution of India. The State has to establish that due to absence of the provision found in the amending Act, such judgment came to be rendered and this was the defect pointed out by the Court and to cure the defect pointed out, amending Act or amendment was being brought in.

60. It is well settled by catena of judgments that when the Courts in exercise of power of judicial review have declared a particular statute to be invalid, the legislature has no power to over rule the judgment. However, it has the power to suitably amend the law by use of appropriate phraseology by removing the defects pointed out by the Court for its effective enforcement.

61. Where the legislature validates the executive action repugnant to the statutory provision declared by the Court of law, what the legislature is required to do is, first to remove the very basis of invalidity and then validate the executive action. In order to validate the executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a Court of law would not be binding as the legislature would not possess that power.

62. In the instant case, the decisions rendered by the Courts insofar as petitioners and similarly placed persons are concerned relates to pay parity, grant of increment on par with teachers working in Government institutions, payment of pension and grant of other service benefits which is based on Article 14 of the Constitution. Thus, it is a fundamental right which has accrued to the

petitioners as a matter of interpretation of Section 87 of Karnataka Education Act, 1993 and Rules made thereunder by applying the principle of "equal pay for equal work" financial benefits have been extended to the petitioners and similarly placed persons, which again is based on the principles laid down in Article 14 and 16 of the Constitution. The impugned enactment by the legislature in exercise of its plenary power would take away the judicial pronouncement which have been based on Article 14 of the Constitution and as such, the impugned enactment will have to be necessarily held as opposed to Article 14 of the Constitution and thereby it fails to pass one of the tests as indicated by the Hon"ble Apex Court in C.R. Neelakandan and Another Vs. Union of India (UOI) and Others, AIR 2014 SC 2407 : (2014) AIRSCW 3178 : (2014) 6 JT 260 : (2014) 6 SCALE 380 referred to supra.

63. At this juncture, it would be apt to note the judgment of Hon"ble Apex Court in the matter of The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others, AIR 2000 SC 634 : (2000) 1 JT 159 : (2000) 1 SCALE 101 : (2000) 2 SCC 42 : (2000) SCC(L&S) 247 : (2000) 1 SCR 158 : (2000) AIRSCW 153 : (2000) 1 Supreme 135 wherein the Hon"ble Apex Court has opined that it is the duty of all the States in India to facilitate the imparting of primary and secondary education and the grant-in-aid to the private schools is a constitutional obligation, which the States cannot ignore and it is also held that State Administration cannot plead lack of resources to meet such contingency. It has been held by the Hon"ble Apex Court as under:

"10. Coming to the contention of the appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of the respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the Authorities running the Administration to find out the ways and means of securing funds for the purpose. We do not deem it necessary to consider this question in further detail. The contention raised by the appellants in this regard is rejected. It is, however, clarified that the proportion in which the additional burden will be shared by the Chandigarh Administration and the Management of the school will be in accordance with the Grant-in- aid Scheme applicable to the school from time to time. The judgment of the High Court that the sharing of the financial burden will be in the ratio of 95 % to 5% is modified accordingly."

64. In fact, directions came to be issued by the Hon"ble Supreme Court way back in the year 1998 in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, AIR 1988 SC 1663 : (1988) 3 JT 172 : (1989) LabIC 1314 : (1995) 3 LLJ 710 : (1988) 2 SCALE 101 : (1988) 4 SCC 571 : (1988) 1 SCR 682 Supp : (1989) 1 SLJ 123 : (1988) 2 UJ 401 to the effect that teachers of the aided schools must be paid the same pay scales and dearness allowance as teachers in Government schools for the entire period claimed by

petitioners, and that the expenditure on that account should be apportioned between State and the management in the same proportion in which they share the burden of the existing emoluments of the teachers which direction was reiterated by the Hon"ble Apex Court on 21.02.1990 between the same parties reported in reported in Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, AIR 1990 SC 968 : (1990) 60 FLR 503 : (1990) 1 JT 293 : (1990) 1 SCALE 247 : (1990) 1 SCC 306 Supp : (1990) SCC 306 Supp : (1990) 1 UJ 355 with a direction to the State to pay scales of the teachers of the Government aided schools so as to bring them at par with the pay scales of teachers of Government schools with effect from 01.04.1979 and also additional dearness allowance on the basis of revised pay scales for the period 01.04.1979 to 31.12.1985 in five installments.

65. In this background, it requires to be noticed that the impugned Act namely, Act No. 7/2014 enacted by the State legislature in exercise of its plenary power is sought to be defended on two grounds namely,

"(1) It causes financial burden to the State; and

(2) Petitioners and similarly placed employees working in Government aided institutions do not have right to claim monetary and service benefits from the date of their initial appointment."

It is the same plea which came to be put forward by the State when petitioners and similarly placed persons had approached this Court seeking for pay parity on par with the employees working in Government institutions. By interpretative process, this Court has consistently held in catena of judgments that Section 87 when read with Section 49 of the Karnataka Education Act, 1993 does not leave any iota of doubt to arrive at a conclusion about there cannot be any discrimination between two types of teachers discharging same duties and thereby it came to be held that pay parity by way of differentiation between the teachers working in Government aided institutions and teachers working in aided institutions would amount to discrimination and is hit by Article 14 of the Constitution of India.

66. The judgments rendered by this Court as affirmed by Division Bench and confirmed by Hon"ble Apex Court has not extended the benefit to the petitioners on the basis of any lacuna either in the Karnataka Education Act, 1993 or the Rules made thereunder and thereby enabling the legislature to fill up the said defect or loop hole or lacuna in the enactment through the impugned enactment. However, on the touch stone of Article 14, Section 87 of Karnataka Education Act, 1993 has been held to be discriminatory. The legislature nor the executive has the power to simply declare the decisions of the Court as invalid or not binding. The State has not taken into consideration any fresh material nor it has taken into consideration any report from competent and expert bodies to arrive at a conclusion that the impugned enactment is brought about as a curative legislation. The Courts in the instant case have not found or declared any law to

be invalid so as to enable the legislature to exercise its plenary power to remove or alter or neutralize the legal basis in the unamended law.

67. In fact, at this juncture, it would be apt to note the subsequent event also that arose during the pendency of these writ petitions namely, amendment brought about to Section 87 of the Karnataka Education Act by way of Ordinance whereunder the words "and benefits of retirement" found in the proviso to Section 87 of the Act was sought to be omitted and the provisos indicated thereunder was sought to be inserted. The above said omission and insertion which were sought to be included under the Karnataka Education (Amendment) Ordinance, 2014 (Karnataka Ordinance 1 of 2014) reads as under:

"2. Amendment of Section 87. - In the Karnataka Education Act, 1983 (Karnataka Act 1 of 1995), in section 87,-

(a) in the proviso the words "and benefits of retirement" shall be omitted; and

(b) after the proviso, the following provisos shall be inserted, namely:-

"Provided further that conditions of service of the employees working in aided educational institutions shall be as such as may be determined by the State Government from time to time.

Provided also that since 1974 no employee of the aided institution is required to appear and pass any Service Examination or the Kannada Language Examination as prescribed in the Karnataka Civil Service (Service and Kannada Language Examination) Rules, 1974 no such employee shall be eligible for or be granted any additional increment for having passed or deemed to have been passed said examination from the date of commencement of said rules."

3. Cancellation of sanction of Additional increment and extinguishment of claims, if any.- (1) Notwithstanding anything contained in the Karnataka Education Act, 1983 (Karnataka Act 1 of 1995), any order of the State Government or rules governing the conditions of employees of any Private aided Educational Institution or any other Law governing the Grant in aid to the above employees or any Judgment, decree or order of any Court or Tribunal or Authority no employees of an aided institution is required to pass any Service or Kannada Language examination or be eligible for or be granted any additional increment for having passed or deemed to have been passed any such examination as prescribed to Government Servants in the Karnataka Civil Services (Service and Kannada Language examination) Rules, 1974 and any claim of an employee of a Private Educational Institution for sanction of any additional increment for the above reason shall stand extinguished, accordingly,-

(a) the order issued by Government directing to sanction any additional increment for the above reason shall stand cancelled;

Provided that any amount paid as per the order now cancelled towards said additional increment shall not be recovered;

(b) no suit or other proceeding shall be maintained or continued in any Court against the Government by any employee of Private Aided Educational institution claiming additional increment for the said purpose or arrears thereof or for pensionary benefits by reckoning the said additional increment;

(c) no Court shall enforce any decree or order directing release of grant in aid taking into account the additional increment for having passed or deemed to have been passed the Service examination or the Kannada Language Examination by an employee of Private aided Educational Institution."

68. At the cost of repetition, it requires to be noticed that said Ordinance having not been brought before the Legislature, it has failed and thereby amended provision brought to Section 87 of the Karnataka Education Act, 1993 is not to be found or in other words, unamended Section 87 stands as on date. Thus, Section 87 of the Karnataka Education Act, 1993 having been interpreted by this Court as it is and held that not taking into consideration the date of entry into service for the purposes of pay, promotion, pension and other service benefits to the petitioners and similarly placed employees would tantamount to discrimination and hit by Article 14 of the Constitution of India, Legislature is now precluded from nullifying the effect of judgments rendered by this Court by impugned Act in exercise of its plenary power since it is not validating any law declared by the Courts as invalid or defective. Thus, the very foundation or the basis for the impugned Act is lacking. Consequently, it has to be held that the legislature has transgressed its power and has encroached the judicial arena through the impugned enactment. Thereby, the impugned Act also does not pass the second test prescribed by the Hon"ble Supreme Court in the case of C.R. Neelakandan and Another Vs. Union of India (UOI) and Others, AIR 2014 SC 2407 : (2014) AIRSCW 3178 : (2014) 6 JT 260 : (2014) 6 SCALE 380 .

69. Yet another contention which has been raised by Sri A.G. Shivanna, learned Additional Advocate General is that State of Andhra Pradesh had enacted similar law and same has been upheld by the High Court of Andhra Pradesh when examined, it requires to be taken note of for purposes of rejection for reasons more than one. State of Andhra Pradesh enacted Andhra Pradesh Private Aided Educational Staff (Regulation of Pay) Ordinance, 2005 (Ordinance 3 of 2005) relating to certain service conditions of the employee both teaching and non-teaching of the educational institutions run by private organizations. The validity of the said Ordinance had come up for consideration before the Division Bench of High Court of Andhra Pradesh in the matter of Y. SIDDAREDDY v. GOVERNMENT OF ANDHRA PRADESH reported in (2006)1 ALT 354 and held as follows:

"67. Under Section 4, the Legislature purports to extinguish the rights created under the automatic advancement scheme and the career advancement scheme, the benefits of which are made available to those employees who had rendered certain minimum qualifying service. Section 4 of the Act purports to extinguish the claims of the employees of the private aided educational institutions with regard to the above mentioned four aspects of the service based on any

government order or any judgment of the Court below or tribunal. A plain reading of the section purports to extinguish the rights of the employees through the various orders on the basis of which such rights were created. Though the learned Advocate General argued that the intention of the Legislature is only to extinguish such rights vis-à-vis the State, the section does not make any distinction between the obligation of the State and the obligation of the management to give the benefits as contemplated under the various GOs. It mainly purports to extinguish the right itself thereby relieving even the managements from the obligation to extend the benefits conferred under the various government orders. We fail to understand the whole exercise undertaken by the State. On one hand, the continued existence of the benefits created under the automatic advancement scheme and career advancement scheme is recognized in the Ordinance, but on the literal construction of Section 4, it purports to extinguish the rights flowing from such schemes. In our view, the enactment is a product of an absolute misconception of law and inability of the draftsman to handle the problem. The State in an attempt to escape the financial liability arising out of a plethora of ill-conceived orders issued earlier resorted to the impugned retrospective legislation by which it not only proposes to escape the financial liability - we make it clear the State indeed is entitled to escape -but also extinguish the rights of the employees vis-à-vis the managements. The State also ignored the fact that it owes a constitutional obligation to extend the necessary financial support to the educational institutions imparting education to children below 14 years. The Ordinance does not make any distinction between the educational institutions imparting education to the children below 14 years and those imparting education to children above 14 years. This kind of grouping of SUBJECTS ignoring the constitutionally settled differentia, in our view, itself renders the legislation irrational and arbitrary. In our view, therefore, the Ordinance, as it is, is required to be declared unconstitutional as violating the Article 14 of the Constitution of India. We accordingly declare so. The Writ Petition is allowed as prayed for."

(Emphasis supplied)

70. Facts narrated in the above judgment are some what similar to facts obtained in the instant case. GVK Girls High School was admitted to grant-in-aid with effect from 01.09.1985 as per the Andhra Pradesh Education Act. The arrears of salary to the Head Mistress and Staff of the school were not paid. As such, a writ petition came to be filed and State was directed to pay the arrears. However, it was noticed by the Court that during the pendency of writ petitions, G.O. dated 28.04.1994 was issued refusing to pay the arrears. Hence, direction came to be issued to the State to pay the arrears. It is thereafter the State came forward with a legislation by way of Andhra Pradesh Act, 34 of 1995 with retrospective effect from 17.10.1989 whereunder it permitted denial of "arrears" of grant-in-aid whenever such arrears were claimed under any judgment, decree or order of Court or other authority or any order issued by Government. In the writ Appeal filed by the State against the learned Single Judge's order, State

relied upon the said legislation to get over the judgment of the learned Single Judge. In this background, Division Bench held that legislature could not set aside the judgment of the High Court by Act No. 34 of 1995 by dismissing the Writ Appeal No. 1745 of dated 06.08.1996 and affirming the judgment of the learned Single Judge. This judgment of the Division Bench was carried by the State by way of Special Leave Petition before the Hon''ble Apex Court which was later converted as Civil Appeal No. 2428/1997. The Hon''ble Apex Court has held to the following effect:

"Act 22/1995 cannot set aside the judgment of the learned Single Judge. Now section 2 of the Act 34/95 also purports to nullify the effect of the judgment of the learned Single Judge. It is well settled that the legislature cannot overrule a judgment by passing a law to that effect unless it removes the basis of the legal rights upon which the judgment is based, with retrospective effect and provided there is no violation of any constitutional provision in such withdrawal of rights retrospectively.

In the present case, we are not going into the question whether any provision of the Constitution is violated while passing Act 34/95 denying arrears of grant-in-aid retrospectively. However, in our view, inasmuch as the rights created by Act 1/82 and Act read with the Committee's recommendations have not been nullified by Act 22/95, the judgment of the learned Single Judge remains effective. The basis of the judgment has not been removed. We have already shown that the rights flowing from the Acts were not touched."

71. Thus, from the perusal of the order passed by the Hon''ble Apex Court, it would clearly indicate that judgment of Andhra Pradesh High Court came to be affirmed. It was held by the Andhra Pradesh High Court that Ordinance was unconstitutional and as such, amendment brought to Andhra Pradesh Education Act came to be struck down. In that view of the matter, the said amendment cannot be held as being in pari materia with Karnataka Education Act, 1993. In that view of the matter, contention of the learned Additional Advocate General that amendment brought to Andhra Pradesh Education Act is similar to the impugned Act if accepted also, then the necessary consequence would be to hold the present impugned enactment as also violative of Article 14 of the Constitution of India.

72. One another contention which has been raised by the State is that "Doctrine of Small Repairs" is applicable to the impugned enactment and the legislature in order to carry out the object of the principal Act has resorted to enact the impugned Act. Hence, it is contended that impugned Act does not suffer from any vice for being struck down.

73. Whenever a tax payer would challenge the levy of tax before the Courts, scrutiny of legal provisions is undertaken by the Courts to decide whether the levy of tax is legally valid or suffers from some infirmity. In the event of Court arriving at a conclusion that such levy of tax was not warranted on account of

defect in the enactment or the phraseology used in the statutory provisions or any other infirmity, order for refund. The legislature in such circumstances undertake to enact law to remove or rectify the defect or the lacuna and also validate the proceedings including retaining or withholding tax already recovered by retrospective operation. Such an amending and validating Act to make "small repairs" is permissible mode of legislation which is frequently resorted to in Fiscal enactments which has been approved by the constitutional bench of the Hon''ble Apex Court in the case of *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.*, AIR 1970 SC 169 : (1970) 75 ITR 603 : (1969) 2 SCC 55 : (1970) 1 SCR 268 . Keeping the principles enumerated by Hon''ble Apex Court in mind, when the impugned Act is examined, it would not even remotely suggest that the Courts while interpreting Section 87 of the Karnataka Education Act and the Rules made thereunder had found any infirmity or lacuna in the said enactments so as to enable the legislature to exercise its plenary power to remove such defect or lacuna in the enactment and thereby render the judgments already delivered by the Courts to be ineffective. On the other hand, the impugned enactment has been brought about on the ground that it would cause financial burden on the State which has already been dealt by this Court hereinabove and it has been held that State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources and it is for the authorities to find out ways and means of securing funds for the said purpose as held by the Hon''ble Apex Court in the case of *CHANDIGARH ADMINISTRATION* case referred to supra.

74. For the reasons aforesated, I proceed to pass the following:

ORDER

"(i) Writ Petitions are hereby allowed.

(ii) The Karnataka Private Aided Educational Institutions Employees (Regulation of Pay, Pension and other Benefits) Act, 2014 (Karnataka Act No. 07/2014) is hereby struck down as ultra vires of Constitution of India as it is opposed to Article 14 of Constitution of India and also encroaches upon the judicial powers of the Courts as discussed herein above.

(iii) Respondent - State shall continue to pay salary or pension as the case may be, to petitioners and similarly placed persons as was being paid pursuant to its earlier orders or in other words, as it was being paid prior to impugned enactment.

OR

Respondent-State shall comply with the directions already issued by this Court extending the monetary benefits and treating the petitioners working in Private Aided Educational Institutions on par with the employees working in Government Institutions.

(iv) In the event of respondent - State having recovered any amount/s pursuant to the impugned enactment, same is hereby ordered to be refunded to the respective petitioner/s by the State expeditiously, at any rate within eight weeks from the date of receipt of certified copy of this order.

(v) No order as to costs."

Ordered accordingly.