
(2014) 01 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : CWP No. 10740 of 2011 and COPC No. 716 of 2011

H.P. Non-gazetted Judicial Employee Welfare Association

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Constitution of India, 1950 — Article 131, 14, 141, 144, 16
Himachal Pradesh Subordinate Courts Employees (Pay, Allowances and Other
Conditions of Service) Act, 2005 — Section 3, 3(1), 4, 4(1), 4(2)
Life Insurance Corporation (Modification of Settlement) Act, 1976 — Section 3

Citation : (2014) LabIC 2762

Hon'ble Judges : Dharam Chand Chaudhary, J;Dev Darshan Sud, J

Bench : Division Bench

Advocate : B.C. Negi, Advocate for the Appellant; Shrawan Dogra, Advocate General, V.S. Chauhan, Addl. Advocate General, Ramesh Thakur, Asst. Advocate General and Ajay Mohan Goel, Advocate General, Advocate for the Respondent

Judgement

Dev Darshan Sud, J.—The petitioner, H.P. Non-gazetted Judicial Employees Welfare Association, challenges Annexure P-4, the Himachal Pradesh Subordinate Courts Employees (Pay, Allowances and other conditions of service) Act, 2005 (hereinafter referred to as "the Act") assented to by the Governor of Himachal Pradesh on 7th February, 2006. In brief, the contention of the petitioner is that this Act is contrary to the recommendations of the First National Judicial Pay Commission (Justice Shetty Commission). We need not reproduce the facts in detail as the report which is being monitored by the Supreme Court regularly by calling for affidavits in compliance from various States is not in dispute. The question for consideration in this writ petition is as to whether the Act violates Article 14 of the Constitution of India, it impinges on the basic structure of the Constitution by overruling the judgment/directions issued by the Supreme Court from time to time or whether the State is competent under its legislative function to pass the enactment by superseding the directions issued by the Supreme Court. It is urged by learned Advocate General that there can be no challenge to

the Act as (a) the legality of the Act was subject-matter of consideration in previous proceedings in C.W.P. No. 4562 of 2009, titled H.P. Non-gazetted Judicial Employees Welfare Association v. State of H.P. and others, decided on 20th July, 2011, which this Court had dismissed; (b) it is within the legislative competence of the State Legislature to pass the Act to overrule the directions issued by the Supreme Court.

2. Prior to filing of the present writ petition, C.W.P. No. 4562 of 2009, titled H.P. Non-gazetted Judicial Employees Welfare Association v. State of H.P. and others, was instituted in this Court which was disposed of on 20th July, 2011. While deciding the writ petition, the Court inter alia holds:--

"We are concerned in this Report with the service conditions of the unsung heroes who work overtime but remain unnoticed and unrecognized. They are the staff who form a critical and important mass of our administration of justice in District Courts and Courts subordinate thereto.

When we refer to administration of justice, we think only of the judges of the Courts. The judge of a Court, no doubt, is indispensable to our notion of a Court. But, the judge alone cannot administer justice. The working of a Court does not depend only on the work of the Judicial Officer in taking evidence, hearing arguments and rendering judgment. These functions are necessarily to be supplemented by the staff of the Court. Their work extends to pre-trial, during trial and post-trial stages of a case. Without their contribution at all these stages, there cannot be prompt and satisfactory termination of any case."

2. Extracted above are the opening paragraphs of the Preface in the report of the First National Judicial Pay Commission on improvement of service conditions of non-judicial staff in subordinate courts, popularly known as Shetty Commission report, named after its Chairman Justice K. Jagannatha Shetty, Former Judge, Supreme Court of India. In this Case, we are concerned with the implementation qua the subordinate Courts, in particular the employees in subordinate Courts. The Commission took into consideration the following aspects:

"(i) that the Court Staff have too much work load;
(ii) that they work overtime without any compensation;
(iii) that there is disparity and inequality in terms of inter alia job content: and
(iv) that there is need to improve the service conditions and proper division in the administration."

3. As far as the State of Himachal Pradesh is concerned, the following are some of the general recommendations:

"III. MEDICAL ALLOWANCE

In Himachal Pradesh, no Medical Allowance is being paid to the employees. Reimbursement facility is available.

The High Court has suggested adoption of open medical reimbursement facility.

The State Government has stated that reimbursement of medical claim is admissible to all the State Government employees as well as the Court employees and as such there is no justification to grant extra payment.

The Staff Association has suggested that in case the Commission recommends medical allowance, it should be on par with West Bengal and should be in addition to reimbursement facility.

Having considered the above view and for reasons stated in Chapter-XV, we recommend payment of Medical Allowance of not less than Rs. 100/- p.m. in addition to reimbursement of hospitalization charges, if any, to all Court employees who are below the Clerical Cadres and also to Drivers.

IV. SPECIAL ALLOWANCE TO STAFF WORKING IN RECORD ROOM/PROPERTY ROOM

It is uniformly found that the Record Room and Property Room, generally in all Courts, do not have proper work place. These branches are housed in basement or cellar and/or at the rear end of the Court building where natural light and air are minimal, besides dust and dirt with awful smell. These places are generally not fit for human habitation, besides resulting into solitary confinement to officials.

The High Court has agreed that the Record Room/Property Room should be well ventilated and duly fitted with exhaust fans. Keeping in view the nature of duties in the congested and dust driven files in such rooms, it has recommended grant of Special Allowance to the Record/Property Keeper.

The State Government has observed that there is no provision for such payment to the Court staff. Similar is the position in respect of such staff working in Govt. Depts.

The Staff Association has suggested payment of Rs. 500/- per month to Record Keeper.

With due regard to the views of the High Court, and for reasons stated in Chapter-XVI, Special Allowance of Rs. 100/- per month is recommended to each of the staff working in the Record Room/Property Room."

4. The petitioner is the H.P. Non-gazetted Judicial Employees Welfare Association. According to the petitioner, no meaningful steps have been taken by the State despite the directions issued by the Supreme Court. It is their contention that the State is bound to implement the directions in view of Annexure P-1, order dated 7.10.2009, issued by the Supreme Court. The order reads as follows:

"The Shetty Commission Report was submitted in March, 2003, pursuant to the orders dated 17.12.1997 and 7.1.1998 passed by this court wherein it was emphasized that the improvement in services conditions of the judicial staff is

necessary for the administration of justice and rule of law. This court, after considering the submission made by the State/UTs/High Courts, has accepted the Shetty Commission recommendations and passed various orders.

Finally, on 15.7.2008 this court has directed:

- (I) The recommendations are reasonable and do not involve any financial burden.
- (II) The decision to implement the recommendations by all States should be taken within a period of three months.
- (III) The recommendations will be implemented w.e.f. 1.4.2003.

We are told that so far all the States/UTs have not implemented the recommendations fully. Some of the States have implemented the recommendations but had given effect to the date later than 1.4.2003. Still some of the grievances of various officers are subsisting. In view of these circumstances, we direct that thereafter these matter be considered by the respective High Courts of the State/UTs.

We direct that:

- (I) The High Courts, on judicial/administrative side, will ensure implementation of the recommendations of the Shetty Commission within a reasonable period of one year. The High Court shall permit writ petitions or applications that may be filed by the individual or staff association representing the various members of the staff.
- (II) The High Courts shall also see that the recommendations are implemented w.e.f. 1.4.2003.
- (III) There shall be benefit of one advance increment on the existing pay-scale instead of initial pay-scale. In many of the States, the same benefit has not been given to the members of the staff, the High Court should also see that these recommendations are implemented.
- (IV) In some of the States based on various other pay commissions reports benefits had been given to the members of the staff, these benefits, if any, given shall be in addition to the recommendations given by the Shetty Commission. In any case, if the members of the staff association/subordinate staff getting higher benefits under any of the recommendations of the pay commission/Government orders, they shall be permitted to avail those benefits. Office is directed to send back all the records, if any, to the respective High Courts. A copy of the consolidated report of the Shetty Commission may also be sent to the respective High Courts/UTs."

5. The stand taken by the State is that in the year 2005, a special legislation has been enacted-The Himachal Pradesh Subordinate Courts" Employees (Pay, Allowances and other Conditions of Service) Act, 2005. Paragraph 2 of the affidavit filed by the State before this Court reads as follows:

"2. That as on date, the Himachal Pradesh Subordinate Court's Employees (Pay, Allowances and other Conditions of Service) Act, 2005 governs the position for regulating the pay, allowances and other conditions of service of the subordinate court employees in the State of Himachal Pradesh, wherein under section- 3, it has been provided as follows:

"3. (1) Notwithstanding anything contained in any rules regulating the pay, allowances and other conditions of service or any judicial order or judgment passed by any competent court, the Subordinate courts' employees shall be paid the pay scales, as specified in the Schedule.

(2) The rates of allowances and other conditions of service of the Subordinate Courts' employees shall be such as may be prescribed."

It is pertinent to submit that the Act *ibid* still holds good as it has neither been struck down by the Hon'ble Supreme Court nor has been declared *ultra vires* the Constitution. It is humbly submitted that the replying respondent under the aforesaid circumstances is not in a position to depart from the express provisions of the aforesaid enactment. However, it is relevant to submit that the State Government has already revised the pay scales for all the State Government employees w.e.f. 1.1.2006. Said revised pay scales, are also applicable to the subordinate courts employees and a provision for the grant of Grade Pay has also been made therein which is lacking in the Shetty Pay Commission Report. If looked at in totality the revised pay scales given to the Judicial employees are better as compared to those recommended by Shetty Pay Commission Report."

6. Quite strangely, there is no challenge to the validity of the said legislation in this case. The Writ Petition has been filed only with the following prayers:

"(i) That a writ of Certiorari may very kindly be issued and impugned act of the respondent Nos. 1 & 2 which amounts to executive inaction and further as per petitioner amounts to willful disobedience of the directions of the Hon'ble the Apex Court in W.P. (C) No. 1022/1989 may very kindly be quashed and set aside.

(ii) That a writ of mandamus may very kindly be issued thereby Respondent Nos. 1 & 2 may very kindly be directed to implement the directions of the Hon'ble the Apex Court in above stated writ petition qua implementation of the recommendations of Shetty Commission with respect to the subordinate staff of the courts in its letter and spirit and grant said scales as recommended by the Shetty Commission with effect from 1.4.2003 and further as per said recommendations order the change of designations of the employees of the association, in the interest of law and justice.

(iii) That respondents may very kindly be directed to take into consideration annexure P-1 while implementing recommendations of Shetty commission inasmuch as that same are to be implemented w.e.f. 1.4.2003 and benefit of one advance increment on the existing pay scales is to be given but with keeping in mind that if some category of employee is getting more pay, same is not to be

reduced.

(iv) That directions may be given to the respondents to designate the staff as per recommendations of the Shetty commission and further designate the courts as Civil Judge (Senior Division) and Civil Judge (Junior Division) instead of officers as has been done presently. It is submitted that respondents further may kindly be directed to keep in mind that while giving pay scales to the Supdt. Grade II, (Senior Sherishtedar), as the same are to be kept above bench clerk and stenographer, scale of Rs. 7220-11660/- be given to the said category."

Proceeding further, this Court held:--

"8. Therefore, in the absence of any challenge to the vires of the Act, it will not be proper and possible for this Court to ignore the said legislation. Annexure R-1A is the copy of the Act, Schedule to the Act has prescribed the pay scales of various employees in the Subordinate Courts, covering 15 categories. In the absence of any challenge to the validity of the said legislation, to the extent the reports are otherwise dealt with in the Act, the direction of the Apex Court for ensuring implementation can only be understood as subject to the legislation made by the State. In this context, it is to be noted specifically that Section 3 of the Act introduced as non-obstante clause has taken care of the directions issued by the Supreme Court for implementation of the Shetty Commission and it is provided that the legislation is made notwithstanding contained in any judicial order or judgment passed by any competent Court. The legislation having thus purportedly taken away the substratum of the directions issued by the Supreme Court after the submission of the report in 2003 and in the absence of challenge to the validity of the enactment, the legislation validly made by the State cannot be ignored."

3. Thereafter, the Court proceeded to hold that those of the recommendations of the Shetty Commission, which have not been dealt with under the Act, are bound to be implemented by the State.

4. Adverting to the first preliminary objection taken before us, the contention requires to be rejected for the reason that vires of the Act was not considered by the Court as it was not the subject-matter of the writ petition. This Court has specifically held that in absence of any challenge to the validity of the legislation enacted, the Act cannot be ignored. It is the second aspect with respect to the powers and competence of the State to enact legislation contrary to the directions issued by the Supreme Court which is being considered by us.

5. The recommendations of the Shetty Commission as accepted by the Supreme Court are not in dispute. We now advert to the directions of the Supreme Court issued from time to time.

6. In All India Judges Association and others v. Union of India and others, along with companion matters (2006) 12 SCC 178, the Supreme Court while dealing with the Shetty Commission Report had considered the affidavits filed by various

States with respect to the implementation/follow-up action taken. We find that the Court holds:--

"2. The States of Tripura and Goa have complied with the recommendations, though belatedly.

3. The State of Tamil Nadu has filed an affidavit on 14-10-2004 stating that the installments for the year 2002 and 2003 are still in arrears and could not be paid because of the financial crunch in the State. After hearing the learned counsel for the State of Tamil Nadu, we allow time till 30-6-2005 and hope that the compliance shall be reported within this much time.

4. The State of Kerala has filed an affidavit dated 11-1-2005 stating that because of the financial stringency in the State it has not been able to comply with the recommendation. Inasmuch as all other States/UTs have implemented the recommendation, we expect the State of Kerala also to adopt a positive approach, accept the recommendation and report compliance within a reasonable time, latest by 30-6-2005.....

19. Before parting, we make it clear that the recommendations made by the Shetty Commission have to be complied with in letter and spirit in regard to pay scales, arrears, pension including past pension without regard to the financial constraints and without regard to stand taken by any of the States or UTs in their affidavits or applications separately filed. Such compliance after taking necessary decisions at the level of the respective State Governments and UTs must be reported to this Court within the time-frame, as stated hereinabove.

(Emphasis supplied) (at pp. 179, 182)

7. Continuing further, in *All India Judges Association and others v. Union of India and others*, (2006) 12 SCC 187 the Court holds:--

"State of Himachal Pradesh

17. So far as the grant of Central DA is concerned, compliance has been made. So far as the case of pensioners is concerned, the State has some reservation. We see no justification of the stand taken by the State of Himachal Pradesh as regards the pensioners, as most of the State Governments and Union Territories have either complied with or agreed to make compliance with the recommendations of the Shetty Commission as regards pensioners. We direct the State of Himachal Pradesh also to make compliance and report the same by 30-6-2005, failing which the Chief Secretary of the State of Himachal Pradesh shall remain present in the Court on the next date of hearing.....

State of Kerala

19. The learned amicus curiae has invited attention of the Court to the affidavit dated 18-4-2005 filed on behalf of the State. Vide para 4 thereof, the only plea taken by the State of Kerala is that there is financial crunch in the State and the possibility of similar demand being raised by the employees of other

departments. Both of these pleas have no substance and such pleas have been rejected earlier.

20. Let the State of Kerala make full compliance, issue notification in that regard and file affidavit of compliance on or before 30-6-2005." (at pp. 190-191)

8. By its order dated 7.10.2009 (Annexure P-3) after hearing the learned counsel for the States, the Court passed the following order:--

".....The Shetty Commission Report was submitted in March, 2003, pursuant to the orders dated 17.12.1997 and 7.1.1998 passed by this Court wherein it was emphasized that the improvement in service conditions of the judicial staff is necessary for the administration of justice and rule of law. This Court, after considering the submission made by the States/UTs/High Courts, had accepted the Shetty Commission recommendations and passed various orders. Finally, on 15.7.2008 this Court has directed:

- (i) the recommendations are reasonable and do not involve any financial burden.
- (ii) the decision to implement the recommendations by all States should be taken within a period of three months.
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We are told that so far all the States/UTs have not implemented the recommendations fully. Some of the States have implemented the recommendations but had given effect to the date later than 1.4.2003. Still some of the grievances of various officers are subsisting. In view of these circumstances, we direct that hereafter these matters be considered by the respective High Courts of the States/UTs. We direct that:

- (i) The High Courts, on judicial/administrative side, will ensure implementation of the recommendations of the Shetty Commission within a reasonable period of one year. The High Court shall permit writ petitions or applications that may be filed by the individual or staff association representing the various members of the Staff.
- (ii) The High Courts shall also see that the recommendations are implemented w.e.f. 1.4.2003.
- (iii) There shall be benefit of one advance increment on the existing pay scale instead of initial pay scale. In many of the States, the same benefits has not been given to the members of the staff, the High Court should also see that these recommendations are implemented.
- (iv) In some of the States based on various other pay commissions Reports, benefits had been given to the members of the Staff, these benefits, if any, given shall be in addition to the recommendations given by the Shetty Commission. In any case, if the members of the staff association/subordinate staff getting higher benefits under any of the recommendations of the pay commission/Government

orders, they shall be permitted to avail those benefits.

Office is directed to send back all the records, if any to the respective High Courts. A copy of the consolidated Report of the Shetty Commission may also be sent to the respective High Courts/UTs....."

9. On 16th February, 2009 with respect to State of Himachal Pradesh, the Supreme Court noted:--

"Learned counsel appearing for the State of Himachal Pradesh has submitted that as regards the salary and allowances and other perquisites of the members of the subordinate staff of the H.P. Judiciary, a bill has been passed by the State Legislature conferring the benefits. Learned counsel further submits that while passing the enactment, the Shetty Commission recommendations have been taken into consideration. He seeks time to seek further instructions in the matter and produce a copy of the same. Six weeks time is granted for filing a further affidavit."

We have reproduced these directions in detail as it would be necessary for judging the Constitutional validity of the Act. It is undisputed before us that the aims and objects of the Act, Annexure P-4, state that the State Government is incapable of implementing the recommendations with respect to the pay of the employees of subordinate Courts as it would result in disparity of pay and allowance amongst various sections of employees of the State. We reproduce the Statement of Objects and Reasons as under:--

"STATEMENT OF OBJECTS AND REASONS

The Hon"ble Supreme Court in its orders in the case Writ Petition No. 1022/89 titled "All India Judges Association v. Union of India and others" dated 20-9-2004 and 17-1-2005 had issued directions on the implementation of various recommendations of the Shetty Commission Report on the pay scales and service conditions of the Judiciary etc. The State Government has examined the recommendations and has accepted number of recommendations despite its involving significant recurring expenditure. The State Government had also expressed its inability before the Supreme Court to implement the recommendations in respect of the Subordinate Courts" employees pay, allowances and conditions of service inter alia because the implementation of the said recommendation for a particular section of employees of the State will result in disparity among the remaining similarly placed categories of the State employees and lead to similar demands from the other services.

Keeping in view the various orders of the Hon"ble Supreme Court in this regard, the matter was placed before the Cabinet in its meeting dated 13-10-2005. The Cabinet did not approve the proposal to implement the Shetty Commission Report on the pay scales and service conditions of the Subordinate Courts employees. As such, it has been decided to bring a legislation in order to preserve the presently permissible pay, allowances and conditions of service of

the Subordinate Courts" employees.

This Bill seeks to achieve the aforesaid objectives....."

10. Section 3 of the Act contains a non obstante clause:--

"3. (1) Notwithstanding anything contained in any rules regulating the pay, allowances and other conditions of service or any judicial order or judgment passed by any competent court, the Subordinate Courts" employees shall be paid the pay scales, as specified in the Schedule. (2) The rates of allowances and other conditions of service of the Subordinate Courts" employees shall be such as may be prescribed."

11. Taking recourse to this provision, it is submitted before us by learned Advocate General that pay and allowances would be governed by this Act and not by the Shetty Commission Report. A number of decisions have been cited before us by learned counsel appearing for the parties, which we now proceed to consider. At the outset, we note that the legislation has been enacted with the sole objective that it is not possible for the State to implement the recommendations, as the employees of the Courts cannot be treated differently from the other employees in the State and ensuing disparity would itself create inequality, which is constitutionally impermissible. On this aspect we hold that the aims and objects of the Act as also the reasons advanced cannot form the basis for enactment of the legislation for the reason that the Supreme Court has considered and held that recommendations are reasonable and do not involve any financial burden and that in All India Judges Association"s case (supra) this very reason was advanced by the State of Kerala which was rejected by the Supreme Court. In these circumstances, we cannot accept the submission of the State that the purported disparity can form the basis for justification of the Act. Moreover, the Shetty Commission has considered in detail the arduous nature of the duties being performed by the Court employees and it is only after detailed consideration that the recommendations have been made. We note that these recommendations are not confined to the State of Himachal Pradesh but have been directed to be adopted uniformly for all the States/UT in India. We also note that all States and Union Territories have been ordered by the Supreme Court to comply with the provisions made therein with further direction that in case the State has granted benefit over and above the recommendations of the Shetty Commission, that cannot be withdrawn and continued in addition to what the Commission recommends. The petitioner has also appended the report so far as it deals with the pay and benefits to be granted to the category to which the petitioners belong (Annexure P-2).

12. In Hari Singh and Others Vs. The Military Estate Officer and Another, on the question of enactment of validation of the Act being in conflict to the statutory provision, the Supreme Court holds:--

"21. The meaning of a Validation Act is to remove the causes for ineffectiveness or invalidity of actions or proceedings which are validated by a legislative

measure. This Court in *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, dealt with the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. u/s 73 of the Bombay Municipal Boroughs Act, 1925 a municipality could levy a rate on building or lands or both situate within the municipality. This Court held in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, that the term "rate" must be confined to an impost on the basis of annual letting value and could not be validly a levy on the basis of capital value. Because of this decision the Gujarat Legislature passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. The 1963 Act provided that past assessment and collection of "rate" on lands and buildings on the basis of capital value or a percentage of capital value was declared valid despite any judgment of a Court or Tribunal to the contrary. The earlier decision of this Court was applicable to the meaning of the word "rate" occurring in the 1925 Act. The Validation Act gave its own meaning and interpretation of the law under which the tax was collected. It was also said by this Court that a tax declared illegal could be validated if the ground of illegality was capable of being removed. Therefore, a validating law is upheld first by finding out whether the legislature possesses competence over the subject-matter, and, secondly, whether by validation the Legislature has removed the defect which the courts had found in the previous law.

22. The Legislature had legislative competence to enact the 1971 Act. It means that it could legislate on the subject of providing a speedy procedure for eviction of persons in unauthorized occupation of public premises. The Legislature has power to pass laws with retrospective operation. The challenge to the 1971 Act is that the 1958 Act is unconstitutional, and, therefore, there cannot be validation of anything done under an unconstitutional Act. The fallacy of the appellants' submission is in overlooking the crucial provisions in the 1971 Act that the 1971 Act is effective from September 16, 1958 and the action done under the 1958 Act is deemed to be done under the 1971 Act. There is no vice of discrimination under the 1971 Act. There is only one procedure under the 1971 Act." (at pp. 248-249) (of SCC) : (at pp. 2211, 2212 of AIR)

13. Learned Advocate General also relies on the decision of the Supreme Court in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, to urge that there can be no challenge to the Act on question of overriding the Shetty Commission for the reason that the State was competent to enact and does not suffer from the vice of unconstitutionality. In particular, emphasis has been laid on the following principles adjudicated:--

"38. The power of the Legislature to validate matters which have been found by judgments or orders of competent courts and tribunals to be invalid or illegal is a well-known pattern. The Legislature validates acts and things done by which the basis of judgments or orders of competent courts and tribunals is changed and the judgments and orders are made ineffective. All the sales tax validation cases, the election validation cases are illustrations of that proposition. The present

appeals are not of the type of providing indemnity against penalties or determining existing facts to be treated in accordance with change of law.

39. The effect of validation is to change the law so as to alter the basis of any judgment, which might have been given on the basis of old law and thus make the judgment ineffective. A formal declaration that the judgment rendered under the old Act is void is not necessary. If the matter is pending in appeal, the appellate Court has to give effect to the altered law and reverse the judgment. The rendering of a judgment ineffective by changing its basis by legislative enactment is not an encroachment on judicial power but a legislation within the competence of the Legislature rendering the basis of the judgment non est. If a competent court has found that a particular tax or levy has been imposed by a law, which is void because the Legislature passing the law was not competent to pass the law, then the competent Legislature has validated the tax or levy by a validation Act involving a re-enactment of the invalid law. Where the competent Legislature has passed a law which is contrary to any of the fundamental rights in Part III of the Constitution and the law has been declared void by a competent court, the appropriate Legislature has passed a retrospective law validating the actions taken under the old invalid law by curing the defects in the old law so as to make the new law consistent with Part III of the Constitution.

.....

42. Counsel on behalf of the respondent contended that the constituent power could deal with amendments of the Constitution, but could not exercise constituent power in relation to validating an election.

.....

49. The constituent power is sui generis. It is different from legislative power. The position of unlimited lawmaking power is the criterion of legal sovereignty. The constituent power is sovereign because the Constitution flows from the constituent power." (at pp. 40, 41 & 42) (of SCC) : (at pp. 2317 to 2819 of AIR)

14. Learned Advocate General urges that on the precedent in I.N. Saksena Vs. State of Madhya Pradesh, that no indefeasible right of the petitioner has been violated, the Court held:--

"14. Four contentions were raised by him before the High Court: (1) that the Act has been passed to overrule the decision of the Supreme Court which the legislature has no power to do; (2) that the statement of objects and reasons attached to the bill when it was introduced, indicates that its main object was to avoid financial burden which would fall on the State on account of its having to pay arrears of pension etc. to a large number of officers who had been retired under the said memorandum which was treated to be a rule and which the Supreme Court held was not an effective rule but merely an executive instruction; (3) that the matter having once been decided by the Supreme Court, was barred by the principle of res judicata and (4) that the rules give naked

power to the authorities to retire any employee after he has attained the age of 55 years by giving him three months" notice, and provide no guidelines for the exercise of this power.

.....

20. A perusal of this Court's decree, dated January 30, 1967 (extracted above) would show that it is not a money decree, raising a judgment-debt. It is a declaratory decree, declaring that the respondents' order dated September 11, 1963, compulsorily retiring the appellant was invalid, and consequently the appellant would be deemed to have continued in service till he attained the age of 58 years. The further declaration that "he will be entitled to such benefits as may accrue to him by virtue of the success of the writ petition" was only incidental or ancillary to the main relief and will fall or stand with the same. This being the position, the decree did not create an indefeasible right of property in favour of the appellant. We, therefore do not find any substance in the argument that the impugned Act seeks to acquire without payment of compensation property vesting in the appellant and is consequently unconstitutional.

21. The 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. Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function, the court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the law, prescribing norm of conduct which will govern parties and transactions and to require the court to give effect to that law." (at pp. 754-756) (of SCC): (paras 14, 20 and 21 of AIR, Lab IC)

15. Support was also sought from the decision in Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, to urge that the Act held to be unconstitutional can otherwise be validated by the legislature.

16. We now advert to the submissions of the petitioner. In Belgaum Gardeners Cooperative Production Supply and Sale Society Ltd. Vs. State of Karnataka, (In the matter of: In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, it is held:--

"73. The Ordinance is unconstitutional because it affects the jurisdiction of the Tribunal appointed under the Central Act, viz., the Inter-State Water Disputes Act which legislation has been made under Article 262 of the Constitution. As has been pointed out above, while analysing the provisions of the ordinance, its obvious purpose is to nullify the effect of the interim order passed by the Tribunal on 25th June, 1991. The Ordinance makes no secret of the said fact and the written statement filed and the submissions made on behalf of the State of Karnataka show that since according to the State of Karnataka the Tribunal has no power to pass any interim order or grant any interim relief as it has done by the order of 25th June, 1991, the order is without jurisdiction and, therefore,

void ab initio. This being so, it is not a decision, according to Karnataka, within the meaning of Section 6 and not binding on it and in order to protect itself against the possible effects of the said order, the Ordinance has been issued. The State of Karnataka has thus arrogated to itself the power to decide unilaterally whether the Tribunal has jurisdiction to pass the interim order or not and whether the order is binding on it or not. Secondly, the State has also presumed that till a final order is passed by the Tribunal, the State has the power to appropriate the waters of the river Cauvery to itself unmindful of and unconcerned with the consequences of such action on the lower riparian States. Karnataka has thus presumed that it has superior rights over the said waters and it can deal with them in any manner. In the process, the State of Karnataka has also presumed that the lower riparian States have no equitable rights and it is the sole judge as to the share of the other riparian States in the said waters. What is further, the State of Karnataka has assumed the role of a judge in its own cause. Thus, apart from the fact that the ordinance directly nullifies the decision of the Tribunal dated 25th June, 1991, it also challenges the decision dated 26th April, 1991 of this Court which has ruled that the Tribunal had power to consider the question of granting interim relief since it was specifically referred to it. The Ordinance further has an extra-territorial operation inasmuch as it interferes with the equitable rights of Tamil Nadu and Pondicherry to the waters of the Cauvery river. To the extent that the Ordinance interferes with the decision of this Court and of the Tribunal appointed under the Central legislation, it is clearly unconstitutional being not only in direct conflict with the provisions of Article 262 of the Constitution under which the said enactment is made but being also in conflict with the judicial power of the State.

74. In this connection, we may refer to a decision of this Court in *The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc.*, . The facts in this case were that the High Court as well as this Court had held that property tax collected for certain years by the Ahmedabad Municipal Corporation was illegal. In order to nullify the effect of the decision, the State Government introduced Section 152A by amendment to the Bombay Provincial Municipal Corporation Act the effect of which was to command the Municipal Corporation, to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. This Court held that the said provision makes a direct inroad into the judicial powers of the State. The legislatures under the Constitution have within the prescribed limits, power to make laws prospectively as well as retrospectively. By exercise of those powers a legislature can remove the basis of a decision rendered by a competent court thereby rendering the decision ineffective. But no legislature in the country has power to ask the instrumentalities of the State to disobey or disregard decisions given by the courts. Consequently, the provisions of sub-section (3) of Section 152A were held repugnant to the Constitution and were struck down. To the same effect is another decision of this Court in *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, . In this case a settlement arrived at

between the Life Insurance Corporation and its employees had become the basis of a decision of the High Court of Calcutta. This settlement was sought to be scuttled by the Corporation on the ground that they had received instructions from the Central Government that no payment of bonus should be made by the Corporation to its employees without getting the same cleared by the Government. The employees, therefore, moved the High Court, and the High Court allowed the petition. Against that, a Letters Patent Appeal was filed and while it was pending, the Parliament passed the Life Insurance Corporation (Modification of Settlement) Act, 1976 the effect of which was to deprive the employees of bonus payable to them in accordance with the terms of the settlement and the decision of the single Judge of the High Court. On this amendment of the Act, the Corporation withdrew its appeal and refused to pay the bonus. The employees having approached this Court challenging the constitutional validity of the said legislation, the Court held that it would be unfair to adopt legislative procedure to undo a settlement which had become the basis of a decision of the High Court. Even if legislation can remove the basis of a decision, it has to do it by alteration of general rights of a class but not by simply excluding the specific settlement which had been held to be valid and enforceable by a High Court. The object of the Act was in effect to take away the force of the judgment of the High Court. The rights under the judgment would be said to arise independently of Article 19 of the Constitution.

75. Yet another decision of this Court on the point is *P. Sambamurthy v. State of Andhra Pradesh*, : (1987) 1 SCR 879 : (AIR 1987 SC 663). In this case what was called in question was the insertion of Article 371D of the Constitution. Clause (5) of the Article provided that the order of the Administrative Tribunal finally disposing of the case would become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order was made, whichever was earlier. The proviso to the clause provided that the State Government may by special order made in writing for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it became effective and in such a case the order of the Tribunal shall have effect only in such modified form or be of no effect. This Court held that it is a basic principle of the rule of law that the exercise of Power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law, and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of the law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. If the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death-knell of the rule of law. The rule of law would be meaningless as it would be open to the State Government to defy the law and yet get away with it. The proviso to

Clause (5) of Article 371D was, therefore, violative of the basic structure doctrine.

76. The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change 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 functioning as an appellate court or Tribunal.

77. The effect of the provisions of Section 11 of the present Act, viz., the Inter-State Water Disputes Act read with Article 262 of the Constitution is that the entire judicial power of the State and, therefore, of the courts including that of the Supreme Court to adjudicate upon original dispute or complaint with respect to the use, distribution or control the water of, or in any inter-State river or river valleys has been vested in the Tribunal appointed u/s 4 of the said Act. It is, therefore, not possible to accept the submission that the question of grant of interim relief falls outside the purview of the said provisions and can be agitated under Article 131 of the Constitution. Hence any executive order or a legislative enactment of a State which interferes with the adjudicatory process and adjudication by such Tribunal is an interference with the judicial power of the State. In view of the fact that the Ordinance in question seeks directly to nullify the order of the Tribunal passed on 25th June, 1991, it impinges upon the judicial power of the State and is, therefore, ultra vires the Constitution." (at pp. 139-142)

In *G.C. Kanungo and D.C. Routray Vs. State of Orissa*, the Court has considered the Constitutional validity of the Arbitration (Orissa Second Amendment) Act, 1991. Six points were formulated by the Court for consideration. We only consider the second which was as to whether the Act was result of mala fides. On this, the Court held that mala fides or ulterior motives cannot be attributed to the State Legislature in making a law within its competence and cannot form the ground for declaring the legislation unconstitutional, relying upon the principles in *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, . On the fourth point formulated that the Act had encroached on the judicial power of the State exclusively vested in courts, the Court held in favour of the petitioner by ruling:--

"17. It is true, as argued on behalf of the petitioners, that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decision as invalid or not binding, for such power if exercised would not be a legislative power exercised by it but a judicial power exercised by it encroaching upon the judicial power of the State exclusively vested in courts. The said argument advanced, since represents the correct and well-settled position in law, we have thought it unnecessary to refer to the decisions of this Court cited by learned counsel for the petitioners, in that behalf and hence have not referred to them.....

28. Thus, the impugned 1991 Amendment Act seeks to nullify the awards made by the Special Arbitration constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by that Act itself. When the awards made under the 1984 Amendment Act by the Special Arbitration Tribunals in exercise of the State's judicial power conferred upon them which cannot be regarded as those merged in Rules of Court or judgments and decrees of courts, are sought to be nullified by the 1991 Amendment Act, it admits of no doubt that legislative power of the State Legislature is used by enacting the impugned 1991 Amendment Act to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself, judicial power. (See Cauvery Water Disputes Tribunal, Re). From this, it follows that the State Legislature by enacting the 1991 Amendment Act has encroached upon the judicial power entrusted to judicial authority resulting in infringement of a basic feature of the Constitution-the Rule of Law. Thus, when the 1991 Amendment Act nullifies the awards of the Special Arbitration Tribunals, made in exercise of the judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, we have no option but to declare it as unconstitutional having regard to the well-settled and undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid and not binding, for such powers, if exercised, would not be legislative power exercised by it, but judicial power exercised by it encroaching upon the judicial power of the State vested in a judicial tribunal as the Special Arbitration Tribunal under the 1984 Amendment Act. Moreover, where the arbitral awards sought to be nullified under the 1991 Amendment Act are those made by Special Arbitration Tribunals constituted by the State itself under the 1984 Amendment Act to decide arbitral disputes to which State was a party, it cannot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power for grant of such permission as could result in allowing the State, if nothing else, abuse of its power of legislation." (at p. 109 & 114)

In S.R. Bhagwat and others, Vs. State of Mysore, this Court holds:--

"9. It is not in dispute between the parties that pursuant to the aforesaid direction issued by the Division Bench of the High Court the respondent-State has considered the cases of all the petitioners for being granted deemed dates of promotions and they have been given such deemed dates of promotions. The aforesaid decision of the Division Bench has become final between the parties. As consequential monetary benefits on the grant of deemed promotions to the petitioners as directed by the aforesaid decision were not made available to the petitioners they filed contempt petitions in the High Court. These contempt petitions were got adjourned from time to time before the High Court by the respondent-State. In the meantime the respondent-State resorted to its legislative powers and issued the impugned Ordinance which ultimately culminated into the impugned Act. By the impugned provisions of the Ordinance and the Act the actual financial benefits directed to be made available to the

petitioners pursuant to the orders of the Division Bench of the High Court which had become final are sought to be taken away as can be seen from the scrutiny of the Act. It is under these circumstances that the petitioners filed this petition under Article 32 for getting a declaration that the impugned provisions in so far as they tried to confiscate the financial benefits made available to them by the writs of mandamus issued by the High Court are null and void as they amount to legislative overruling of binding judicial decisions and seek to deprive them of their fundamental rights guaranteed under the Constitution.

Rival Contentions

10. Learned counsel for the petitioners in support of his submission has relied upon a number of decisions of this Court with a view to submitting that the impugned provisions clearly seek to nullify final binding decisions of the High Court against the State and in favour of the petitioners. It is an admitted position that common decision of the Division Bench of the High Court, has not been challenged higher up by the respondent-State. Learned Senior counsel for the respondent Shri Madhava Reedy on the other hand fairly submitted that he could not support provisions which attempted to bypass the High Court's directions. His principal submission, however, was that consequential financial benefits directed by the High Court did not cover monetary benefits flowing from deemed promotions. He also in passing submitted that the foundation of the High Court judgment was displaced by the impugned Act but ultimately did not pursue the point any further. Hence we need not dilate on that additional aspect any further.

Conclusion and Reasons for the same

11. Having given our anxious consideration to rival contentions we have reached the conclusion that the impugned provision of the Act, namely, Section 11 sub-section (2) is clearly ultra vires the powers of the State Legislature as it encroaches upon the judicial field and tries to overrule the judicial decision binding between the parties and consequently the relevant sub-sections of Section 4 which are also in challenge will have to be read down as indicated hereinafter in this judgment. Before we advert to the relevant provisions of the impugned Karnataka Act it will be appropriate to keep in view the settled legal position governing the present controversy.

12. It is now well settled by a catena of decisions of this Court that a binding pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.

13. A Constitution Bench of this Court in the case of *In the matter of : CAUVERY WATER DISPUTES TRIBUNAL*, had to pronounce on the validity of Karnataka Kauvery Basin Irrigation Protection Ordinance, 1991 by which an interim order

passed by a statutory Tribunal supported by the decision of this Court dated 26th April, 1991, which had ruled that the Tribunal had power to consider the question of granting interim relief since it was specifically referred to it, was sought to be displaced. Sawant, J., speaking for the Constitution Bench held that the said provisions were unconstitutional and ultra vires. In paragraph 76 of the Report the following observations were made; (SCC P-142)

"The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change 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 functioning as an appellate Court or Tribunal."

In the case of G.C. Kanungo and D.C. Routray Vs. State of Orissa, , a Division Bench of this Court speaking through Venkatachala, J., had to consider the validity of Arbitration (Orissa Second Amendment) Act, 1991 which sought to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by the Act itself. Striking down the provisions as ultra vires and illegal Venkatachala, J., made the following observations in paragraph 28 of the Report; (SCC page 114).

"Thus, the impugned 1991 Amendment Act seeks to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by that Act itself. When, the awards made under the 1984 Amendment Act by the Special Arbitration Tribunals in exercise of the State Judicial power conferred upon them which cannot be regarded as those merged in Rules of Court or judgments and decrees of Courts, are sought to be nullified by 1991 Amendment Act, it admits of no doubt that legislative power of the State Legislature is used by enacting impugned 1991 Amendment Act to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself, a judicial power. (See In the matter of : CAUVERY WATER DISPUTES TRIBUNAL, . From this, it follows that the State Legislature by enacting the 1991 Amendment Act has encroached upon the judicial power entrusted to judicial authority resulting in infringement of basic feature of the Constitution - the Rule of Law. Thus, when the 1991 Amendment Act nullifies the awards of the Special Arbitration Tribunals, made in exercise of the Judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, we have no option but to declare it as unconstitutional having regard to the well settled and undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid and not binding, for such powers, if exercised, would not be legislative power exercised by it but judicial power exercised by it encroaching upon the judicial power of the State vested in a judicial Tribunal as

the Special Arbitration Tribunals under 1984 Amendment Act. Moreover, where the arbitral awards sought to be nullified under the 1991 Amendment Act are those made by Special Arbitration Tribunals constituted by the State itself under 1984 Amendment Act to decide arbitral disputes to which State was a party. It cannot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power for grant of such permission as could result in allowing the State, if nothing else, abuse of its power of legislation".

14. In view of the aforesaid settled legal position let us see how far the impugned provisions of the Act bear scrutiny." (at pp. 21-24)

In ITW Signode India Ltd. Vs. Collector of Central Excise, the Court holds:--

"44. A validation Act removes actual or possible voidness, disability or other defect, by confirming the validity of anything which is or may be invalid.

45. In Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, , it was pointed out that a legislature does possess the power to validate statutes and to pass retrospective laws. This Court, however, laid down: (SCC p. 286, para 4)

"When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. 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. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-

matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. 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 it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax."

46. In *Ujagar Prints Vs. Union of India (UOI) and Others etc. etc.*, wherein after considering various decisions, this Court held thus: (SCC P. 517, Paras 65-66)

"A competent legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating factors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective. If in the light of such validating and curative exercise made by the legislature - granting legislative competence - the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant. (See *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*,

66. Such legislative experience of validation of laws is of particular significance and utility and is quite often applied, in taxing statutes. It is necessary that the legislature should be able to cure defects in statutes. No individual can acquire a vested right from a defect in a statute and seek a windfall from the legislature's mistakes. Validity of legislations retroactively curing defects in taxing statutes is well recognised and courts, except under extraordinary circumstances, would be reluctant to override the legislative judgment as to the need for and the wisdom of the retrospective legislation. In *Empire Industries Limited and Others Vs. Union of India and Others*, . This Court observed: (SCR p. 327 : SCC p. 342, para 51)

".... not only because of the paramount Governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of Government amongst those who benefit from it."

In testing whether a retrospective imposition of a tax operates so harshly as to violate fundamental rights under Article 19(1)(g), the factors considered relevant include the context in which retroactivity was contemplated such as whether the law is one of validation of a taxing statute struck down by courts for certain defects; the period of such retroactivity, and the degree and extent of any unforeseen or unforeseeable financial burden imposed for the past period etc. Having regard to all the circumstances of the present case, this Court in *Empire Industries Limited and Others Vs. Union of India and Others*, held that the retroactivity of the amending provisions was not such as to incur any infirmity

under Article 19(1)(g)."

47. In *Delhi Cloth and General Mills Co. Ltd. and Another Vs. State of Rajasthan and Others*, a question arose as to whether a village which was not held to have been included within the limits of a town municipality as mandatory provisions in that part had not been followed could be so included with retrospective effect by a Validating Act by seeking to set at naught a Full Bench decision of the Rajasthan High Court. Referring to *Prithvi Cotton Mills* it was held: (SCC pp. 457-58, paras 15-16)

"15. In the case the village of Raipura there was a preliminary notification calling for objections to the extension of the limits of the Kota Municipality to include it, but it was not followed by a final notification. In the case of the village of Ummedganj there was a notification extending the limits of the Kota Municipality to include it, but it had not been preceded by a notification inviting the objections of the public thereto. Later, another notification was published whereby the village of Ummedganj was excluded from the limits of the Kota Municipality. The provisions of Sections 4 to 7 of the 1959 Act and the earlier provisions of the 1951 Act in the same behalf were, therefore, not met in the case of either the village of Raipura or the village of Ummedganj. The Full Bench of the Rajasthan High Court has held that these provisions were mandatory and that judgment has become final.

16. The Validating Act provides that, notwithstanding anything contained in Sections 4 to 7 of 1959 Act or in any judgment, decree, order or direction of any court, the villages of Raipura and Ummedganj should be deemed always to have continued to exist and they continue to exist within the limits of the Kota Municipality, to all intents and for all purposes. This provision requires the deeming of the legal position that the villages of Raipura and Ummedganj fall within the limits of the Kota Municipality, not the deeming of facts from which this legal consequence would flow. A legal consequence cannot be deemed nor, therefrom, can the events that should have preceded it. Facts may be deemed and, therefrom, the legal consequences that follow."

48. As Sections 4 to 7 of Rajasthan Municipalities Act, 1959 remained unamended which were mandatory, the defect was held to have not been cured.

49. Yet again in *K. Sankaran Nair (Dead) through Lrs. Vs. Devaki Amma Malathy Amma and Others*, this Court followed the aforementioned as well as and other decisions of this Court. It was observed: (SCC p. 438, para. 9)

"It becomes at once clear that once this Court struck down the rule concerned permitting compulsory retirement of a Government servant the very basis of the earlier judgment upholding such an exercise got knocked off and was totally obliterated from the Statute-Book. Consequently the very foundation of the judgment vanished. Such a judgment would obviously become baseless lacking the very foundation on which it could operate. The very foundation of an earlier judgment can be displaced by either a competent legislature enacting a

retrospective provision for that purpose or by a competent court deciding the legal provision concerned on which such judgment is based as ultra vires and void. In either case the very foundation and legal substitution of such judgment will vanish retrospectively. In such an eventuality the law could be said to have been totally displaced from the very inception of enactment of such a law and consequently any judgment based on such a non-existing law as found in retrospect could obviously lack efficacy and consequential force of res judicata."

50. In *Bakhtawar Trust and Others Vs. M.D. Narayan and Others*, , one of us (Khare, CJI) speaking for the Bench upon noticing some of the decisions referred to hereinbefore and other decisions observed that the questions which were required to be posed and answered are: (SCC p. 312, para 27)

(i) what was the basis of the earlier decision; and

(ii) what, if any, may be said to be removal of that basis?

51. Upon considering the relevant provisions therein it was held that the basis of the decision of the High Court had undergone a change having regard to the change in the Zonal Planning Regulations which now changed the law, which view the High Court was bound to take in terms of the changed law. This Court held: (SCC p. 313, para 31)

"It is well settled by the decisions of this Court that when a validity of a particular statute is brought into question, a limited reference, but not reliance, may be made to the Statement of Objects and Reasons. The Statement of Objects and Reasons may, therefore, be employed for the purposes of comprehending the factual background, the prior state of legal affairs, the surrounding circumstances in respect of the statute and the evil which the statute has sought to remedy. It is manifest that the Statement of Objects and Reasons cannot, therefore, be the exclusive footing upon which a statute is made a nullity through the decision of a Court of law."

52. In *Easland Combines*, this Court held: (SCC p. 419, para 14)

"14. In our view, there is no substance in this submission. As stated earlier, the relevant amended portion of Section 11A inter alia makes it abundantly clear that when any duty of excise has been short levied or short paid, whether or not such short levy or short payment was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of the Act or the rules, the Central Excise Officer, can within one year from the relevant date, serve notice on the person chargeable with the duty, which has been short levied or short paid, requiring him to show cause why he should not pay the amount specified in the notice. This amendment changes the entire basis or foundation of the judgment rendered in *Cotspun*'s case. The entire discussion in the said case is based upon rule 173B which dealt with classification list and that assesses must determine the excise duty which is payable by him on the goods which he intends to remove in accordance with

approved classification list. The Court based its reasoning by holding (SCC at p. 637, para 13) "Rule 10 does not deal with classification list or relate to reopening of approved classification lists. That is exclusively provided by Rule 173B." The Court further held that the levy of excise duty on the basis of approved classification list is not short levy and the differential duty cannot be recovered on the ground that it is a short levy and Rule 10 then has no application. After the amendment of law, this reasoning of the judgment would no longer survive. It is true that the levy of excise duty on the basis of approved classification list or price-list or the assessment order is correct levy till such time as the correctness of the approved classification list or price list or till the assessment order is set aside. However, with retrospective effect, the legislature has empowered the Central Excise Officer to set at naught the erroneous approval of classification list or acceptance of price list or assessment order. What was provided by Rule 173B is now specifically provided by Section 11A."

53. We may notice that in *Widia (India) Ltd. and Others Vs. The State of Karnataka and Others*, , this Court held: (SCC p. 34, para 34)

"34. It is true that normally tax would not be levied with retrospective effect but at the same time to validate the tax which was levied, after removing the defects pointed out by the previous decision, the State Government could exercise its powers u/s 3(1) of the Act and it cannot be said that it has acted beyond its jurisdiction. Therefore, it cannot be held that notification dated 23rd September, 1998 empowering the authority to levy and collect tax w.e.f. 1.4.1994 to 6.1.1998 is, in any way, illegal or erroneous. The defects pointed out in *Avinyal Polymer's* case are removed and, therefore, it cannot be said that the notification dated 23.9.1998 is, in any way, illegal. In a situation like the present one where notifications levying tax were held to be illegal, for validating such levy, the State Government has issued the aforesaid notification. It is not pointed out that the said notification is discriminatory between the goods imported from other States and similarly goods manufactured or produced within the State." (at pp. 66-71)

In *Virender Singh Hooda and Others Vs. State of Haryana and Another*, the Court holds:--

"In these matters the validity of the Haryana Civil Service (Executive Branch) and Allied Services and Others Services, Common/Combined Examination Act, 2002 (for short "the Act") is under challenge to the extent of its retrospective application. The Act was enforced on 27th March 2002. Section 1(2) of the Act provides that the Act is deemed to have come into force with effect from 29th August, 1989. Section 1(3) provides that the Act shall apply to those persons who have been appointed or are offered appointment to the services/posts, recruitment to which is made by holding common/combined examination. Section 3 repeals the executive instructions contained in various circulars issued from time to time. We are concerned with circulars dated 22nd March, 1957 and 26th May, 1972. Section 4(1) provides that no appointment shall be made to any

post or service to which the Act applies beyond the number of posts advertised. Section 4(2) provides that notwithstanding anything to the contrary contained in any judgment, order, decree or decision of the Court of law, Act, Rule, Regulation or executive instructions, no candidates, from the date of commencement of the Act, shall, on the basis of his merit or placement in a common/combined examination, have right to seek appointment to Haryana Civil Service (Executive Branch) and Allied Services or other services beyond the number of advertised posts. Section 4(3) provides that State Government shall not be competent to offer appointment to a candidate, who is placed in waiting list or, claims himself to be in the waiting list on the basis of the common/combined examination, for a post for which his name was not recommended by the Commission. Proviso to Sub-section (3) of Section 4 stipulates that if a candidate has been appointed or offered appointment over and above advertised posts for any reason, the service of such candidate shall be dispensed with. However he shall be entitled to be appointed to the services/posts, if any, for which his name was originally recommended by the Commission. It has further been provided that no recovery of higher salary, emoluments or any other financial benefits drawn by such candidate as a result of his appointment in excess of the advertised posts, shall be made from him but his pay shall be fixed in the scale of the post to which he is found entitled for appointment under the Act.

2. The contention urged on behalf of the petitioners is that the Act amounts to usurpation of judicial power by the State Legislature with a view to overrule the decisions of this Court in *Virender S. Hooda and Others Vs. State of Haryana and Another*, and *Sandeep Singh's case* (C.A. No. 7422 of 1999 decided on 9th November, 2000). It has also been contended that the impugned legislation is violative of Articles 14 and 16 of the Constitution of India. Supporting the legislation and controverting that the Act is violative of Articles 14 and 16, it has been urged on behalf of the State that the Act has removed the basis of the aforesaid decisions, which is a legal and legitimate mode of exercise of legislative power and the effect on employees is only incidental, as a consequence of the enforcement of the Act and it would not be correct to label the legislative power, a usurpation of judicial power.

.....

17. At this stage, we may reproduce the statement of objects and reasons of the Act which reads as under:--

"Statement of Objects And Reasons Hon"ble Supreme Court, in *Virender S. Hooda and Others Vs. State of Haryana and Another*, held that in the light of Government circular letter dated March 22, 1957 and May 26, 1972 all those vacancies which had occurred in Haryana Civil Service (Executive Branch) upto the period of six months from the date of recommendations made by the Haryana Public Service Commission were required to be filled out of the same selection. Thereafter, the Hon"ble Supreme Court in its judgment dated 9th November, 2000 in Civil Appeal No. 7422 of 1999 "*Sandeep Singh and others v.*

State of Haryana and others" relating to Haryana Civil Service (Executive Branch) and Allied Services Examination, 1993, has inter alia held that even on first principle, it appeals to us to commend that the vacancies available in any particular service till the date of interview at least should be filled. In from the very same examination unless there is any statutory embargo for the same.

There is another set of decisions by the Hon''ble Supreme Court starting with Hoshiar Singh Vs. State of Haryana and Others, , in which it has been held that appointments beyond the advertised posts cannot be made as it deprives the candidates who were not eligible at the time of original advertisement but have acquired eligibility subsequently, the opportunity to compete for public employment against such additional posts which did not form part of the original advertisement. The Hon''ble Supreme Court found such appointments to be violative of Articles 14 and 16 of the Constitution of India. This view has been followed by the Apex Court in several subsequent decisions. However, in Virender Singh Hooda's case or in Sandeep Singh's case no argument was advanced before the Apex Court based on the judgment in Hoshiar Singh's case and other similar cases.

The judgments in cases of Virender Singh Hooda, Sandeep Singh and Sujana Singh etc. have thus created multiplicity of litigation inasmuch as various candidates who were originally selected for one of the allied services are claiming appointment to Haryana Civil Service (Executive Branch) or some other allied service. Also the Haryana Public Service Commission calls candidates for interview equivalent to thrice the number of advertised vacancies. In case subsequent vacancies are clubbed with the advertised vacancies at a later stage, it would lead to more litigation even from those who were not called for interview but otherwise would have been eligible for being called for interview had the subsequent vacancies been clubbed initially. Further, as a result of above-mentioned judgments of Hon''ble Supreme Court, two sets of candidates have got appointments against one post.

This has brought about total uncertainty at such a late stage in selection for Haryana Civil Service (Executive Branch) and Allied Service made by the Haryana Public Service Commission. Considerations like efficiency and availability of equal opportunity to candidates who become eligible for taking up subsequent examinations have been kept in view. Since the entire problem has arisen as a result of recruitments made pursuant to advertisement dated 30th August, 1989, hence this Bill has been proposed w.e.f. 29th August, 1989."

18. Sub-sections (2) and (3) of Section 1 and Sections 3 and 4 read as under:

"1(2) It shall be deemed to have come into force with effect from the 29th August, 1989 and shall cover recommendations made by the Commission after that date except Section 5 of this Act which shall come into force at once.

(3) It shall apply to those persons who have been or are appointed or offered appointment to the service/posts recruitment to which is made by holding

Common/Combined Examination.....

3. The executive instructions contained in circulars No. 814-GS-37/3237-S, dated June, 1937, No. 4596/1178-GS-37/9276, dated 10th September, 1937, No. 475 P.S.C. 37, dated 12th July, 1937, No. 1637-G-II-56, dated 22nd March, 1957, No. 2311-GSE-72/16727, dated 26th May, 1972, No. 66/32/88-7/GSI, dated 28th October, 1993 and No. 66/80/97-7GSI, dated 27th February, 1998 and the notification No. G.S.R./Const./Art. 309/2002, dated 28th March, 2001 are hereby repealed.

4. (1) No appointment shall be made to any post or service to which this Act applied beyond the number of posts advertised.

(2) Notwithstanding anything to the contrary contained in any judgment, order, decree or decision of a Court of Law, Act, rule, regulation or executive instructions, no candidates, from the date of commencement of this Act shall, on the basis of his merit or placement in a Common/Combined Examination, have right to seek appointment to Haryana Civil Services (Executive Branch) and Allied Services or other service's beyond the number of advertised posts.

(3) The State Government shall not be competent to offer appointment to a candidate, who is placed in waiting list or who claims himself to be in the waiting list on the basis of Common/Combined Examination, for a post for which his name was not recommended by the Commission:

Provided that if a candidate has been appointed or offered appointment over the above advertised posts for any reason, the services of such candidates shall be dispensed with. However, he shall be entitled to be appointed to the service/posts, if any, for which his name was originally recommended by the Commission:

Provided further that no recovery of higher salary, emoluments or any other financial benefits drawn by such candidate as a result of his appointment in excess of the advertised posts, shall be made from him but his pay shall be fixed in the scale of the post to which he is found entitled for appointment under this Act."

19. The questions that fall for determination are:--

(1) Whether the Act, to the extent of its retrospectivity, is ultra vires as it amounts to usurpation of judicial power by the legislature or it removes the basis of decisions in Hooda and Sandeep Singh's cases?

(2) Is the Act violative of Articles 14 and 16 of the Constitution of India?.....

45. It is well settled that if the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. 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 it removes the defect which the courts had found in the existing law.

46. It is equally well settled that the legislature cannot by a bare declaration, without anything more, directly overrule, reverse or override a judicial decision; it may, at any time in exercise of the plenary power conferred on it by 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 neutralizing effect the conditions on which such decision is based (I.N. Saksena Vs. State of Madhya Pradesh,It was held that the rendering ineffective of judgments of courts and tribunals by changing their basis by legislative enactment is a well-known pattern of all validating Acts.....

47. There is a distinction between encroachment on the judicial power and 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 (Tirath Ram Rajindra Nath, Lucknow Vs. State of U.P. and Another, . The reason for this lies in the concept of separation of powers adopted by our constitutional scheme. The adjudication of the rights of the parties according to law is a judicial function. The legislature has to lay down the law prescribing norms of conduct which will govern parties and transactions and to require the court to give effect to that law (I.N. Saksena case).

48. The legislature can change the basis on which a decision is given by the court and thus change 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 liability alone. Such an act on the part of the legislature court or tribunal, which is against the concept of separation of powers. (Cauvery Water Disputes Tribunal, Re.)

49. 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 the rights of the parties and would be grossly iniquitous and accordingly a new set of rules or laws is enacted, it is very often challenged on the ground that the legislature has usurped the judicial power. In such a case the court has a delicate function to 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 (AIR 1997 3127 (SC))

54. Having noticed the principles laid down by this Court in various decisions, let us now examine the decisions relied upon by learned counsel for the petitioners. In support of the contention that the Act is an attempt to overreach this Court and is ultra vires, reliance has been placed on the decision in Indian Aluminium Co. etc. etc. Vs. State of Kerala and others, . After extensively considering the earlier decisions on the subject, it was observed that in exercising legislative power, the legislature by mere declaration, without anything more, cannot

directly overrule, revise or override a judicial decision.

55. The contention strenuously urged on behalf of the petitioners is that a mandamus issued by a Court cannot be nullified by enactment of law. Strong reliance has been placed on behalf of the petitioners to a Constitution Bench decision of seven Judges in the case of Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, . The observations relied upon are in para 9 to the effect that the judgment given by the Calcutta High Court, which was relied upon by the petitioners is not a mere declaratory judgment holding an impost or tax to be invalid so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. It is a judgment giving effect to the right of the petitioners to annual cash bonus under the settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy lay by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. On the basis of these observations, it was sought to be contended that in the case of mere declaratory Judgment, the Legislature can remove the defects pointed out by the Court by amending the law with retrospective effect but when the rights accrue under writ of mandamus, the said rights cannot be taken away by retrospective legislation. The observations in para 9 relied upon have to be understood in the context of the facts of the case and what was noticed in para 8 of the judgment.

56. The facts in brief were that under a settlement between LIC and its employees, annual cash bonus was payable to Class-III and IV employees. The settlement was effective for the period from 1st April, 1973 to 31st March, 1977. As per the terms of settlement, bonus was paid for the first two years. The Payment of Bonus (Amendment) Act, 1976 was brought into force retrospectively from 25th September, 1975 declaring that employees of the establishments which were not covered by Payment of Bonus Act (LIC was covered by Payment of Bonus Act) would not be eligible for payment of bonus but ex-gratia payment in lieu of bonus would be made. LIC was advised by the Ministry of Finance not to make further payment of bonus to their employees. All India Insurance Employees Association filed writ petition in Calcutta High Court for a writ of mandamus and prohibition directing the LIC to act in accordance with the terms of settlement. The writ petition was allowed against the said judgment. LIC preferred a Letters Patent Appeal against said judgment. On the enactment of the Amending Act, the LPA was withdrawn. Section 3 of the Life Insurance Corporation (Modification of Settlements) Act, 1976 provided as follows:--

"3. Notwithstanding anything contained in the Industrial Disputes Act, 1947, the provisions of 1947 each of the settlement insofar as they relate to the payment of an annual cash bonus to every Class III and Class IV employee of the Corporation at the rate of fifteen per cent of his annual salary, shall not have any

force or effect and shall not be deemed to have had any force or effect on and from the 1st day of April, 1975."

57. This Court declaring the Act to be void noticed in para 8 of the report that judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of the judgment. The writ of mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st, March, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year 1st April, 1975 to 31st March 1976 was concerned, it became crystallized in the judgment and thereafter they became entitled to enforce the writ of mandamus granted by the judgment and not any right to annual cash bonus under the settlement. The Court held (SCC p. 65, para 8) "this right under the judgment was not sought to be taken away by the impugned Act." The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus in obedience of the writ of mandamus. It was further noticed that the error committed by the LIC was that it withdrew the LPA and allowed the judgment of the learned single Judge to become final. By the time LPA came up for hearing, the impugned Act had already come into force and the Life Insurance Corporation could, therefore, have successfully contended in the Letters Patent Appeal, that, since the settlement, insofar as it provided that payment of annual cash bonus, was annihilated by the impugned Act with effect from 1.4.1975, Class III and Class IV employees were not entitled to annual cash bonus for the year 1.4.1975 to 31st March, 1976 and hence no writ of mandamus could issue directing the Life Insurance Corporation to make payment of such bonus. It is noteworthy that the Court observed: (SCC P. 65. Para 8)

"if such contention had been raised, there is little doubt, subject of course to any constitutional challenge to the validity of the impugned Act, that the judgment of learned single Judge would have been upturned and the writ petition dismissed."

It was then noticed that on account of some inexplicable reason, which is difficult to appreciate, the Life Insurance Corporation did not press the LPA and the result was that the judgment of the learned single Judge granting writ of mandamus became final and binding on the parties. This is the background under which the observations were made by the Constitution Bench in para 9." (at pp. 593-594, 598-600, 610-612, 614-615)

In State of M.P. Vs. Rakesh Kohli and Another, the Court holds:--

"32. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles:

(i) there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature,

- (ii) no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found,
- (iii) the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as the Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence,
- (iv) hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law and
- (v) in the field of taxation, the Legislature enjoys greater latitude for classification.

Had the High Court kept in view the above well known and important principles in law, it would not have declared Clause (d), Article 45 of Schedule 1-A as violative of Article 14 of the Constitution being arbitrary, unreasonable and irrational while holding that the provision may pass test of classification." (at p. 327).

Learned counsel submits that the recommendations of the Shetty Commission having been judicially accepted by the Supreme Court and directed to be implemented by every State, there is no requirement of any "validating" piece of legislation. Overruling the judgment of the Supreme Court is impermissible. Learned counsel places reliance on the judgment of the Supreme Court in *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, . Adverting to the facts and considering the provisions of the Life Insurance Corporation Modification of Settlement Act, 1976 enacted by the Parliament denying to the petitioners the right which had been recognized by the settlements approved by the Central Government and acted upon by actual payment of bonus to the employees and finally, converted into a right under the decision of the Calcutta High Court on 21st May, 1976, the majority rules:--

"24.....It is, no doubt, true, said the petitioners, that the impugned Act, if valid, struck at clause 8(ii) of the Settlement and rendered it ineffective and without force with effect from 1st April, 1975 but it did not have the effect of absolving the Life Insurance Corporation from its obligation to carry out the writ of Mandamus. There was, according to the petitioners, nothing in the impugned Act which set at naught the effect of the judgment of the Calcutta High Court or the binding character of the writ of Mandamus issued against the Life Insurance Corporation. This contention of the petitioners requires serious consideration and we are inclined to accept it.

25. It is significant to note that there was no reference to the judgment of the Calcutta High Court in the Statement of Objects and Reasons, no any non obstante clause referring to a judgment of a Court in Section 3 of the impugned Act. The attention of Parliament does not appear to have been drawn to the fact that the Calcutta High Court has already issued a writ of mandamus commanding

the Life Insurance Corporation to pay the amount of bonus for the year April 1, 1975 to March 31, 1976. It appears that unfortunately the judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of that judgment. Section 3 of the impugned Act provided that the provisions of the Settlement insofar as they relate to payment of annual cash bonus to Class III and Class IV employees shall not have any force or effect and shall not be deemed to have had any force or effect from April 1, 1975. But the writ of mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year April 1, 1975 to March 31, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year April 1, 1975 to March 31, 1976 was concerned, it became crystallized in the judgment and thereafter they became entitled to enforce the writ of mandamus granted by the judgment and not any right to annual cash bonus under the Settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus to Class III and Class IV employees for the year April 1, 1975 to March 31, 1976 in obedience to the writ of mandamus. The error committed by the Life Insurance Corporation was that it withdrew the Letters Patent Appeal and allowed the judgment of the learned single Judge to become final. By the time the Letters Patent Appeal came up for hearing, the impugned Act had already come into force and the Life Insurance Corporation could, therefore, have successfully contended in the Letters Patent Appeal that, since the Settlement, insofar as it provided for payment of annual cash bonus, was annihilated by the impugned Act with effect from April 1, 1975, Class III and Class IV employees were not entitled to annual cash bonus for the year April 1, 1975 to March 31, 1976 and hence no writ of mandamus could issue directing the Life Insurance Corporation to make payment of such bonus. If such contention had been raised, there is little doubt, subject of course to any constitutional challenge to the validity of the impugned Act, that the judgment of the learned single Judge would have been upturned and the writ petition dismissed. But on account of some inexplicable reason, which is difficult to appreciate, the Life Insurance Corporation did not press the Letters Patent Appeal and the result was that the judgment of the learned single Judge granting writ of mandamus became final and binding on the parties. It is difficult to see how in these circumstances the Life Insurance Corporation could claim to be absolved from the obligation imposed by the Judgment to carry out the writ of Mandamus by relying on the impugned Act.

26. The Life Insurance Corporation leaned heavily of this Court in *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, in support of its contention that when the Settlement insofar as it provided for payment of annual cash bonus was set at naught by the impugned Act with

effect from April 1, 1975, the basis on which the judgment proceeded was fundamentally altered and that rendered the judgment ineffective and not binding on the parties. We do not think this decision lays down any such wide proposition as it contended for on behalf of the Life Insurance Corporation. It does not say that whenever any factual or legal situation is altered by retrospective legislation, a judicial decision rendered by a Court on the basis of such factual or legal situation prior to the alteration, would straightway, without more, cease to be effective and binding on the parties. It is true that there are certain observations in this decision which seem to suggest that a Court decision may cease to be binding when the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. But these observations have to be read in the light of the question which arose for consideration in that case. There, the validity of the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963 was assailed on behalf of the petitioners. The Validation Act had to be enacted because it was held by this Court in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, that since Section 73 of the Bombay Municipality Boroughs Act, 1925 allowed the Municipality to levy a "rate" on buildings or lands and the term "rate" was confined to an imposition on the basis of annual letting value, tax levied by the Municipality on lands and buildings on the basis of capital value was invalid. Section 3 of the Validation Act provided that notwithstanding anything contained in any judgment, decree or order of a Court or tribunal or any other authority, no tax assessed or purported to have been assessed by a municipality on the basis of capital value of a building or land and imposed, collected or recovered by the municipality at any time before the commencement of the Validation Act shall be deemed to have invalidly assessed, imposed, collected or recovered and the imposition, collection or recovery of the tax so assessed shall be valid and shall be deemed to have always been valid and shall not be called in question merely on the ground that the assessment of the tax on the basis of capital value of the building or land was not authorized by law and accordingly any tax so assessed before the commencement of the Validation Act and leviable for a period prior to such commencement but not collected or recovered before such commencement may be collected or recovered in accordance with the relevant municipal law. It will be seen that by Section 3 of the impugned Act the Legislature retrospectively imposed tax on building or land on the basis of capital value and if the tax was already imposed, levied and collected on that basis, made the imposition, levy, collection and recovery of the tax valid, notwithstanding the declaration by the Court that as "rate", the levy, was incompetent. This was clearly permissible to the Legislature because in doing so, the Legislature did not seek to reverse the decision of this Court on the interpretation of the word "rate", but retrospectively amended the law by providing for imposition of tax on land or building on the basis of capital value and validated the imposition, levy, collection and recovery of tax on that basis. The decision of this Court holding the levy of tax to be competent on the basis of the unamended law, therefore, became irrelevant and could not stand in the way

of the tax being assessed, collected and recovered on the basis of capital value under the law as retrospectively amended. That is why this Court held that the Validation Act was effective to validate imposition, levy, collection and recovery of tax on land or building on the basis of capital value. It is difficult to see how this decision given in the context of a validating statute can be of any help to the Life Insurance Corporation. Here, the judgment given by the Calcutta High Court which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that in any event irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of Mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year 1st April, 1975 to 31st April, 1976 to Class III and Class IV employees....." (at pp. 816-818)

In *All India Judges' Association and Others Vs. Union of India and Others*, the Court while dealing with the Shetty Commission repelled the challenge that merely because the State was enacting law governing judicial services and other employees under Article 309, the recommendations of the Commission were an encroachment on the powers of the legislature as the decision of the Court did not encroach on these powers. The Court holds: "These review petitions have been filed by the Union of India and various States raising general objections as well as objections to the specific directions given by this Court vide our judgment dated 13th November, 1991 to improve the service conditions of the members of the subordinate judiciary in the country. The general objections which are common in all the petitions may be summarised as follows:

(a) As per Articles 233 and 234 of the Constitution, the appointment to the posts of District Judges as well as to the posts other than those of the District Judges under the Judicial Service of the State are made by the Governor of the State. The power to regulate their conditions of service belongs to the executive subject to the legislative control. It is entirely in the purview of the respective State legislature, Government to determine the conditions of service and as such this power given to the State Legislature and the State Government is whittled down or curtailed by issuance of the specific directions in this regard by this Court.

(b) In *S.L. Sachdev and Another Vs. Union of India (UOI) and Others*, , this Court has laid down that the Court cannot interfere with or change the administrative policy of the Government unless it violates some provisions of the

Constitution such as Art. 14 which requires that even an administrative authority must act fairly and treat its employees equally. No such ground was raised in the writ petition.

(c) The respective State Subordinate Judicial Services have service conditions that have been gradually developed and evolved over long years along with the service conditions of other Government services in the States/Union Territories. Any change in the service conditions of the Subordinate Judiciary in isolation is bound to generate some demands from other services and it may be difficult for the State to resist such demands.

(d) The question of uniformity in service conditions is a question of policy pertaining to the respective State Governments which alone are competent to decide on the said issue and such decisions on the issue have various implications and ramifications which have to be determined by the respective State Governments by taking into account its financial limitations.

(e) The directions given by this Court involve a very heavy financial outlay and the State Governments with varying degrees of resources cannot implement the directions without considering and taking into account their own financial resources. Hence it is not possible to bring about uniformity in service.

(f) The State Governments have constituted from time to time, State Pay Commissions for examining and scales to the members of the Subordinate Judicial Service in view of the variations in conditions from place to place and from State to State both qualitatively and quantitatively. Hence the feasibility of referring the question of appropriate pay scales of judicial officers to the State Pay Commissions deserves careful consideration. It may be possible to strive towards uniformity of pay-scales over a period of time with the co-operation of all the States.

(g) A mandatory direction enjoining upon the State to allocate resources to a specific activity would greatly impair the competence of the executive and the legislature to decide relative priorities in respect of the allocation of available resources on developmental and non-developmental activities. Any direction by the Government which involves spending sums out of the Consolidated Fund of the State/Union Territory, would amount to a direction to the State legislature/Parliament for carrying out necessary legislation for relevant appropriation. Such a direction cannot be given by the judiciary to the legislature.

(h) In terms of Art. 309 of the Constitution, matters concerning appointment, promotion, terms of conditions of service of the Subordinate Judiciary are to be decided by the State Government/Union Territory Administration subject to such laws as may be passed by the legislature/Parliament. The implementation of the directions given by this Court is likely to result in an impingement on the constitutional functions and powers of the executive and the legislature.

(i) In the interest of adhering to the constitutional scheme of the division of

powers, the directions given by the Court may be converted to recommendations prompting State legislature/Governments and the Parliament/Union Government to study them carefully and to introduce the requisite changes on their own in gradual steps.

(j) The function of the higher judiciary is limited to examining whether the means adopted by the State legislature/Government are constitutionally valid : Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others,

16. The contention with regard to the financial burden likely to be imposed by the directions in question is equally misconceived. Firstly, the Courts do from time to time hand down decisions which have financial implications and the Government is obligated to loosen its purse recurrently pursuant to such decisions. Secondly, when the duties are obligatory, no grievance can be heard that they cast financial burden. Thirdly, compared to the other plan and non-plan expenditure, we find that the financial burden caused on account of the said directions is negligible. We should have thought that such plea was not raised to resist the discharge of the mandatory duties. The contention that the resources of all the States are not uniform has also to be rejected for the same reasons. The directions prescribe, the minimum necessary service conditions and facilities for the proper administration of justice. We believe that the quality of justice administered and the calibre of the persons appointed to administer it are not of different grades in different States. Such contentions are ill-suited to the issues involved in the present case.

(Emphasis supplied)(at pp. 291-292 & 299)

17. Learned counsel for the petitioner urges that the Act is nothing but a colourable exercise of power by the respondent to overrule the judgment/directions of the Supreme Court which is otherwise binding on all as mandated by Articles 141 and 144 of the Constitution of India.

18. It is in this background that submissions made by learned counsel appearing for the petitioner as also by learned Advocate General are to be considered. We cannot ignore the decision/directions of the Supreme Court directing that recommendations made by the Shetty Commission have to be implemented uniformly by all States and Union Territories in India. These directions issued from time to time cannot be treated as a "piece of legislation" which requires a Validating Act to be passed by the State Legislature. The State of Himachal Pradesh is not unique in implementing the directions of the Supreme Court. The preamble of the Act is nothing but reasons put forth for not adopting the recommendations of the Shetty Commission, which is in fact verbatim reproduction of what was submitted before the Supreme Court, and rejected. We also note that recommendations are not peculiar to the State of Himachal Pradesh to empower the legislature to enact a legislation modifying/reversing the recommendations made on the specious plea that it is dealing with a particular class only. We cannot treat the administration of justice in Himachal Pradesh as

something unique and different from the other States and Union Territories in India. In fact, there is no justification brought on record nor it can be so.

19. The preamble of the Act is contrary to the directions issued by the Supreme Court and the reasons put forth by the various State rejected by the Supreme Court on the plea of the States that it would cause financial burden and discrimination between various employees. We note that there can be no parity claimed by employees working in different departments with that of judicial employees working in the judiciary. The State having failed in its attempt to convince the Supreme Court that recommendations cannot be implemented, cannot now urge that the Act negating the recommendations of the Shetty Commission is within the Constitutional competence of the legislature. We only reproduce the words of the Supreme Court in S.R. Bhagwat's case (supra) that Section 3 of the Act is ultra vires the powers of the State Legislature as it encroaches upon the judicial field and tries to overrule the judicial decision. A Constitutional Bench in Rupa Ashok Hurra Vs. Ashok Hurra and Another, holds:--

"24. There is no gainsaying that the Supreme Court is the court of last resort-the final court on questions both of fact and of law including constitutional law. The law declared by this Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India....." (at p. 406)

Continuing the Court holds:

"41.....The role of the judiciary to merely interpret and declare the law was the concept of a bygone age. It is no more open to debate as it is fairly settled that the courts can so mould and lay down the law formulating principles and guidelines as to adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice. In the recent years there is a discernible shift in the approach of the final courts in favour of rendering justice on the facts presented before them, without abrogating but bypassing the principle of finality of the judgment....." (at p. 413)

20. When examined on the basis of the principles, supra, and considering the fact situation that the legislation under challenge before us seeks to set aside the Supreme Court judgment, we are unable to appreciate that the legislature has acted constitutionally to formulate a law after considering the direction of the Supreme Court. Indeed, if we accept this contention, Himachal is the only State which is unique in urging that it cannot implement the judgment because of two reasons; (a) financial stringency; (b) not considering the employees of the judiciary in a different class. We note from the directions issued by the Supreme Court from time to time that all States in India have implemented the Shetty Commission recommendations as directed by the Supreme Court. In this background, to allow the State of Himachal Pradesh to purportedly exercise power to modify the directions of the Supreme Court would not only violate Article 14 of the Constitution by treating the employees of judiciary differently from those in other State, but also a serious encroachment on the separation of

powers by acting as an appellate authority over the Supreme Court and an encroachment on the judicial powers of the Court which is Constitutionally impermissible. If the State was unable to implement the recommendations, it should have taken that stand with the Supreme Court and not gone by a circuitous route to overrule the decision.

21. We find that instead of implementing the Shetty Commission recommendations, which have become law, the State enacted legislation contrary to the decision of the Supreme Court. In these circumstances, we allow this writ petition and quash and set aside Section 3 of the Act to the extent that (a) it overrules the directions of the Supreme Court to implement the Shetty Commission recommendations; (b) we direct that Shetty Commission recommendations shall be implemented on and w.e.f. 1st April, 2003 as directed by the Supreme Court (supra); (c) that the petitioner will be entitled to pay, allowances and other benefits as granted by the Commission. In case excess amount has been allowed or perquisite granted in excess of what the Shetty Commission grants, it shall not be withdrawn. Writ petition stands disposed of.

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While disposing of writ petition, we have quashed and set aside the Act to the extent that it is in compact with the recommendations of the Shetty Commission. Since the vires of the Act were in challenge before us, we do not feel it appropriate to proceed further under the Contempt of Courts Act.