
(1977) 03 MP CK 0014
In the Madhya Pradesh High Court
Case No : M.P. No. 179 of 1973

M.P. State Road Transport Corporation, Bhopal	APPELLANT
Vs	
Ramchandra and others	RESPONDENT

Date of Decision : 09-03-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 254, 254(1)
Road Transport Corporations Act, 1950 — Section 1(3), 10, 12, 19, 21

Citation : (1977) JLJ 292

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;G.L. Oza, J;G.G.Sohani, J

Bench : Full Bench

Advocate : K.A. Chitale, for the Appellant; M. Bhatnagar, for the Respondent

Judgement

Shivdayal, C.J.—A Division Bench has referred this case to us. The following question arises for consideration:--

Whether the employees of the Madhya Pradesh State Road Transport Corporation are governed by the Regulations made by the M.P.S.R.T.C. in exercise of its power u/s 45 of the Road Transport Corporation Act, 1950 or the Standing Orders Rules, made by the State Government under the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, which have been applied to the Road Transport Corporation.

2. This petition under Article 226 of the Constitution calls in question an order passed by the Industrial Court. Indore, directing reinstatement of Ramchandra (respondent). Ramchandra originally had joined the service of the Gwalior Northern India Transport Company. His date of birth was recorded as December 5, 1908. At the relevant time, he was employed as a Traffic Supervisor in the M.P. State Road Transport Corporation. The Divisional Manager by his letter dated June 9, 1969, ordered his retirement with immediate effect under Regulation 59 on the ground that he had already attained the age of 58 years, which is the age of retirement under that Regulation. The respondent challenged the order of his retirement contending that his date of birth is December 12, 1913. Secondly,

Regulation 59 is inapplicable inasmuch as he was governed by the Standing Orders. For the date of his birth, he relied on his horoscope and also on the alleged interpolations in the records.

3. The Labour Court directed his reinstatement and also allowed him one fourth of the back wages. The Industrial Court also held that the Regulations had not been legally brought into force. It, therefore, maintained the order of reinstatement passed by the Labour Court and further allowed full back wages. The Corporation has, by this petition under Article 226, challenged those orders of the Labour Court and the Industrial Court. When this petition was placed before the Division Bench, it was of opinion that the question involved required a decision by a larger Bench.

4. The petitioner's contention is that the employees are governed by the Regulations made by the Corporation in exercise of its powers u/s 45 of the Road Transport Corporation Act, 1950 (hereinafter called the Corporation Act"). Being a law made by Parliament, the Regulations have overriding effect by virtue of Clause (1) of Article 254 of the Constitution.

5. The following dates are material :--

April 1, 1961 --The Road Transport Corporation Act, 1950, (made by Parliament) was applied to the State of M.P. by virtue of section 1(3).

May 19, 1962 --The M.P.S.R.T.C. was established u/s 3 of the Act.

November 25, 1961 --The M.P. Industrial Employment (Standing Orders) Act, 1961 came into force.

February 1, 1963 --The Standard Standing Orders Rules framed by the State Government.

July 6, 1963 --The said Rules were applied to the Road Transport Corporation by the State Government.

6. However, in the meanwhile, on June 28, 1963, the M.P.S.R.T.C. had passed a resolution whereby Regulations were framed u/s 45 of the Corporation Act (hereinafter called the "Regulations"). On June 26, 1964, the State Government accorded its sanction as required by section 45 of the Corporation Act. On July 8, 1964, the General Manager M.P.S.R.T.C. made an order enforcing the Regulations. On June 1, 1970, the Corporation itself passed a resolution enforcing the Regulations giving them retrospective effect from July 8, 1964.

7. We shall first examine whether the Regulations are valid and apply to the M.P.S.R.T.C. The Road Transport Corporation Act, 1950, was made by Parliament. The earlier Road Transport Corporation Act, 1948 (No. XXXII of 1943) was enacted with a view to enable the Provincial Governments, who may so desire, to establish Road Transport Corporations. Since the power to legislate for the incorporation of Trading Corporations was given to the Central Legislature and the creation of statutory Transport Corporations was found as amounting to

incorporation of Trading Corporations, the 1948 Act was replaced by a comprehensive Act, the Road Transport Corporation Act, 1950. It, however, enabled such of the Provincial Governments, which might so desire, to set up Transport Corporations with the object of providing efficient, adequate, economical and properly coordinated system of road transport services. Chapter II provides for establishment of Road Transport Corporations in the States. Chapter III deals with powers and duties of Corporations. Chapter IV contains provisions for finance, accounts and audit. Chapter V contains miscellaneous provisions. Clearly enough, the subject matter of this enactment falls within the purview of Entry 43 "Incorporation regulation and winding up of Trading Corporations, including Banking, Insurance and Financial Corporations, but not including Co-operative Societies". The Act is, therefore, enacted by a competent legislature, i.e. Parliament.

8. Section 45 of the Corporation Act enacts:--

S. 45 Power to make regulations--(1) A Corporation may, with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--

(a) the manner in which, and the purposes for which, persons may be associated with the Corporation u/s 10;

(b) the time and place of meetings of the Corporation and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer or General Manager and the Chief Accounts Officer;

(d) the issue of passes to the employees of the Corporation and other persons u/s 19 ;

(e) the grant of refund in respect of unused tickets and concessional passes u/s 19.

The Madhya Pradesh State Road Transport Corporation was established u/s 3 of the Act. In exercise of its powers u/s 45, it has made regulations which, inter alia provide for conditions of appointment and service within the meaning of Clause (c) of subsection (2) of section 45 Regulation 59 reads thus:--

59. Employees of State Transport are liable to compulsory retirement on the date of their completion of fifty eight years of age unless specifically permitted by the Corporation to continue in service for a specified period thereafter, but he must not be retained after the age of 60 years, without the sanction of State Government.

9. Now, the last mentioned subject comes within the purview of Entry 24 in the Concurrent List of the Seventh Schedule to the Constitution Welfare of labour, including conditions of work, provident fund, employer's liability, workmen's compensation, invalidity and old age pension and maternity benefits". It must, however, be said that the true subject matter of the Corporation Act, in pith and substance, falls within the legislative field of Parliament, by which it has been enacted. Even if section 45(2)(c) incidentally trenches upon the subject matter in the Concurrent List, the validity of the Act is not affected, firstly, because of the pith and substance doctrine, and, secondly, because the subject matter in the Concurrent List is also within the legislative field of Parliament.

10. It must, therefore, be said that (i) the Corporation Act, 1950, is valid having been enacted by a competent legislature ; (ii) although a particular provision may be found to fall within the purview of the Concurrent List yet the Act remains to fall within the purview of the Union List of the Seventh Schedule and is, therefore, valid ; (iii) as the Regulations have been made under the Act are by competent authority in exercise of its delegated powers they are, valid ; and (iv) the Regulations validly apply to the employees of the M.P.S.R.T.C,

11. We will now advert to the M.P. Industrial Employment (Standing Orders) Act, 1961. It provides for rules defining with sufficient precision in certain matters the conditions of employment of employees in undertakings in the State of Madhya Pradesh. It received the assent of the President on July 8, 1961. It contains 23 sections and a Schedule. Section 3, inter alia defines "Certifying Officer". "Standard Standing Orders" (i.e. rules framed u/s 21 relating to matters set out in the Schedule); and "Standing Order" which may be applicable to Industrial Establishments immediately before the coming into force of the Act. Section 6 enacts:--

The State Government may, by notification, apply Standard Standing Orders to such class of undertakings and from such date as may be specified therein...

Section 8 provides for certification. Section 21 reads thus:--

21. Power to make rules.--(1) The State Government may, by notification, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rule may:--

(a) provide for additional matters to be included in the Schedule;

(b) frame Standard Standing Orders for the purposes of this Act and different Standard Standing Orders may be framed for:--

(i) different classes of undertakings, and

(ii) different categories of employees;

(c) lay down the procedure to be followed by the certifying Officer, the Labour

Court or the Industrial Court;

(d) specify the fee which may be charged for furnishing copies of standing orders filed in the register u/s 12;

(e) provide for any other matter which is to be or may be prescribed.

(3) The rules made under this section shall be subject to the condition of previous publication in the Gazette.

The schedule reads as follows:--

SCHEDULE

See sections 3(b) and 6(3)

Matters to be provided in Standard Standing Orders.

I. Classification of employees, e.g. whether permanent, temporary, apprentices, probationers, bad lies & whether seasonal or otherwise.

II. Tickets, cards, service books, registers and service certificates.

III. Recruitment.

IV. Manner of intimating to employees the period and hours of work, holidays, pay days and wage rates.

V. Shift working.

VI. Holidays, procedure and authority to grant.

VII. Closing and reopening of sections of the undertaking and temporary stoppages of work including laying off and the rights and liabilities of the employer and employees arising therefrom.

VIII. Liability to search and entry into premises by certain gates.

IX. Attendance and late coming.

X. Leave conditions, procedure and authority to grant.

XI. Termination of employment otherwise than by way of punishment, and the notice thereof to be given to the employers and employees.

XII. Punishment involving warning, censure, fine and deductions in wages.

XIII. Suspension or dismissal for misconduct and acts or omissions which constitute misconduct.

XIV. Means of redress for employees against unfair treatment or wrongful exactions by the employer or his agents or servants.

From these provisions and particularly the schedule, it is quite clear that the subject matter of this enactment is within the purview of Entry 24 in the

concurrent List. The Madhya Pradesh State Government applies Standard Standing Orders to M.P.S.R.T.C. with effect from July 6, 1963. The Act is, therefore, valid, being within the legislative competence of the Madhya Pradesh legislature.

12. The Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 provide, inter alia, for classification of employees, recruitment, shift working closures temporary stoppage and lay off, termination of employment, disciplinary action for misconduct, retirement, etc Section 3(b) of the Standing Orders Act contemplates "Standard Standing Orders" to be framed by the State Government. Section 6 provides that the State Government may by notification apply "Standard Standing Orders" to such class of undertaking and from such date as may be specified therein. When that has been done, an undertaking may apply for amendment of the Standard Standing Orders. (See Rules 3 and 7 of the Standing Orders Rules, 1963). The Standing Orders Rules, 1963, having been made by the State Government in exercise of the powers u/s 21 of the Standing Orders Act, are valid and they having been applied to the M.P.S.R.T.C. with effect from July 6, 1963, govern the service conditions of the employees of M.P.S.R.T.C. (Vide section 6) Rules and Regulations made by a subordinate agency under the statutory power delegated by the legislature have the same force as laws made by the legislature. (See T.B. Ibrahim Vs. Regional Transport Authority, Tanjore, Banta Singh Vs. State of Madhya Pradesh and Others, . It is stated in Maxwell, which statement has been approved by the Supreme Court in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyay,

Rules made under a statute must be treated for all purposes of Construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation.

13. It can be stated as undoubted position of law that so far as there is no repugnancy between the" Regulations on the one hand; and the Standing Orders Act or the- Rules, on the other, all the provisions of both will apply to the M.P.S.R.T.C. The Corporation and its employees, will be governed by both the Regulations and the Standing Orders Act and Rules Further even if there is an apparent inconsistency, it is the duty of the Court to so interpret the provisions as to harmonies them Problem arises when provisions contained in one are repugnant to the provisions contained in the other, so (sic) both of them collide and cannot stand together. In such a case, it is to be decided which overrides the other. Repugnancy arises when two enactments, both of them being within the competence of legislatures, collide and when the Constitution provided that the enactment of one legislature has superiority over the other. It is then that to that extent of repugnancy, one supersedes the other. "Repugnancy" connotes the idea of Incompatibility, that is to say, when both cannot logically exist at the same time. As was observed by Higgins, J. in Clyde Engineering Co. Ltd., (sic) Cowbarn (1926) 37 CLR 466 quoted in AIR 1939 74 (Federal Court)

When is a law "inconsistent" with another law ? Etymologically, I presume that things are inconsistent when they cannot stand together at the same time: and one law is inconsistent with another law when the command or power or other provision in one law conflicts directly with the command or power or provision in the other.

14. Article 254 of the Constitution runs thus:--

254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters as enumerated in the Concurrent List, then subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contain any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter then the law so made by the Legislature of such State, shall, if it has been reserved for the consideration of the President and has received his assent prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

15. When the question of repugnancy between any provision contained in a law made by the legislature of a State and any provision contained in a law made by Parliament arises, Clause (2) of Article 254 has first to be considered, because if the case falls under Clause (2) then Clause (1) becomes inapplicable. Clause (2) comes into play only when the two laws in question deal with a matter in the Concurrent List. If that question is answered in the affirmative, then the second test to be applied is whether the State law has been made with the assent of the President. And, when that question too is answered in the affirmative, then the third and most important question arises whether the provisions of the law made by Parliament were earlier. Thus, when all these three conditions are satisfied, the law made by the State Legislature will prevail. The provisions of Clause (2) make it abundantly clear that in respect of a matter which falls within the Concurrent List of the Seventh Schedule, the decisive factor, is, which law was made subsequently. This is, because both Parliament and State Legislature are competent to legislate on that subject. If the State Legislature decides that, in that State, the law should be different from that enacted by Parliament, it is free to make a law so as to over-ride the earlier law made by Parliament. So also, if Parliament is of opinion that the law made by the State deserves to be overridden, it can legislate subsequently and thereby override the earlier law

made by the State Legislature This is made abundantly clear by the proviso to Clause (2) of Article 254, of the Constitution. The underlying principle seems to be this. When Parliament made the law earlier, the subsequent law made by the State Legislature was not in contemplation. For instance, when the Parliament made the Road Transport Corporation Act, 1950, it could not be in its contemplation that the Legislature of Madhya Pradesh State would enact, after 11 years, the M.P. Industrial Employment (Standing Orders) Act, in the year 1961. However, if the Parliament so desires, it can enact at any time a law with respect to the same matter in order to override the State law.

16. Shri Chitale, learned counsel for the petitioner, argued that Clause (1) of Article. 254 applies where there is repugnancy between any particular provision in the said Regulations Act and any provision in the Standing Orders Rules. The argument is that by applying the pith and substance doctrine, the Regulation Act is not within the Concurrent List, it essentially deals with matters under Entries 43 and 44 of the Union list, while the Standing Orders Act, and the Rules framed thereunder, deal with subject-matter of Entry 24 in the Concurrent List. Shri Chitale urged that even though the regulations framed u/s 45 of the Regulation Act trench upon Entry 24 of the Concurrent List, yet according to the pith and substance rule, the Act will still be held to be within the purview of Entries 43 and 44 of the Union List and not Entry 24 of the Concurrent List. That being so Clause (2) of Article 254 is out of the way, and, consequently. Clause (1) of Article 254 will apply. Under the latter provision, the law made by the Parliament must prevail, whether it is earlier or subsequent. We are clearly of opinion that this contention cannot be accepted. The doctrine of pith and substance is this. Entries in the Legislative Lists when taken separately may be found to overlap one another in certain cases. They have to be read together and reconciled with each other so as to avoid rendering any of them nugatory. Entries have to be construed with reference to the actual enactment. Relative fields of the Entries cannot be considered merely in the abstract. Whether a particular provision falls within the jurisdiction of the Legislature which has passed it, the Court has to see what constitutes in pith and substance the true subject matter of the Legislation and whether such subject matter is covered by the Legislative List of that Legislature. If, in pith and substance, a particular provision falls within the Legislative field of the Legislature which enacted it, the validity of such provision will not be affected even if it incidentally trenches upon the topic within the Legislative competence of another Legislature. Where an impugned Act covers several matters and it may be called as a single Act, i.e. under one title, yet, its validity must be considered with reference to the particular provision which is impeached. The rule was established in *Russel v. Queen*, (1882) 46 LJ 889. See observations of Lord Atkin in *Gallagher v. Lynn* 1937 3 All ER 598. The rule of pith and substance was reiterated by Gwyer, C.J., in *AIR 1941 47 (Federal Court)* and also by the Privy Council in *Prafulla Kumar v. Bank of Commer. Khulana*, 74 IA 23: *AIR 1947 SC (60)* and by the Supreme Court in *The Kannan Devan Hills Produce Vs. The State of Kerala and Another*, *Sita Ram Sharma and Others Vs.*

State of Rajasthan and Others, and Monogram Mills Ltd. and Others Vs. The State of Gujarat, This doctrine is usefully and usually invoked when a law made by a Legislature essentially in respect of a subject matter pertaining to its Legislative List, contains a provision which trenches upon another Legislative List not within its competence.

17. An enact rent, according to the pith and substance rule may fall within the Union List and may, therefore, be held to be valid inasmuch as it deals with the subject matter contained in the Union List. And this may be so even when a particular provision trenches upon an Entry in another List. In other words, in order to judge the validity and competence of an enactment, it is sufficient if by applying the pith and substance rule, the Law is found to be within the Legislative competence of Parliament. However, it is a separate and distinct matter that any particular Provision contained in a law made by Parliament is found to be repugnant with a Provision contained in a Law made by State Legislature. The Language of Clause (2) is abundantly clear. It applies where a Law made by the Legislature of a State contains any provision repugnant to the provisions "of an earlier Law made by Parliament". Thus, what is to be seen is whether any Provision contained in the Standing Order Act, 1961, is repugnant to the Provision of the Regulations Act, 1950, which is "earlier Law". In that case, the provisions contained in the standing Orders Act will prevail, as it has received the President's assent.

18. The position boils down to this that such provisions contained in the Standing Orders Act, 1961, as are repugnant to any provision contained in the Regulations Act, will prevail.

19. Now the Regulations; though made subsequent, are not made "by Parliament". The Regulations made by the M.P.S.R.T.C. in exercise of its powers u/s 45 of the Corporation Act, though valid, because they have been made by virtue of the power delegated by Parliament, yet, it is not the same thing as to say that they are "made by Parliament. In Article 254(1) of the Constitution, the expression employed is "any provision of Law made by the Legislature of a State" and "any provision of a Law made by Parliament". So also, in Clause (2) of Article 254, the words used are Law made by the Legislature of a State and "an earlier Law made by Parliament". Therefore, in the present context, the Standing Orders Act is a Law made by the Legislature of the State; the Regulations Act is a Law made by (sic) but the Regulations made by the M.P.S.R.T.C. are not a Law made by Parliament. In Dr. Indramani Pyarelal Gupta Vs. W.R. Nathu and Others, the Supreme Court Laid down thus:--

Learned counsel is undoubtedly right in his submission that a power conferred by a by bye Law is not one conferred by the Act" for in the context the expression "conferred by the Act, would mean conferred expressly of by necessary implication by the Act itself..."By" an Act would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom The words "under the Act" would

in that context, signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, byelaws made by a subordinate Law making authority which is empowered to do so by the parent Act. The distinction is thus between what is directly done by the enactment and what is done indirectly by rule making authorities which are vested with powers in that behalf by the Act.

20. Shri Chitale Learned counsel for the petitioner, relied on *The Mysore State Road Transport Corporation v. Gopinath Gundachar* AIR 1958 SC 464. In our opinion, it is not in point. So also *Devraj Urs. v. The General Manager, Mysore S.R.T. Corporation* AIR 1971 SC Mys. 99 is not in point. The Learned counsel further placed reliance on *National Transport Company Vs. State of Bihar*, . But no directions u/s 34 of the Corporation Act were placed before us. Even if there had been any, the Standing Orders Rules superseded them to the extent of repugnancy for the reasons already given.

21. During the course of the hearing, we were referred to the decision of this Court in *Kripashankar v. State of M.P.* M.P. No. 334 of 1972, Decided on 11-1-1974. In that case, it was rightly held that the Regulations made by the M.P.S.R.T.C. are valid having been made by virtue of section 45 of the Road Transport Corporation Act, 1950, which Act falls within the Entry 43 or 44 of List 1 of the seventh schedule to the Constitution. It was also rightly held that the Standard Standing Orders were validly made as they related to a subject covered by the Concurrent List However, with due respect, we are unable to agree with the decision of the Division Bench in their observation that the M.P.S.R.T.C. had to allow a choice to its employees to elect whether they would be governed by the Standard Standing Orders in the matter of their service conditions or by regulations made under the Regulations Act, 1950. This would be setting up two different sets of conditions of service in the same undertaking. It is not permissible for an Industrial Establishment to have two sets of Standing Orders to govern the relevant terms and conditions of its employees. See *Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union*, , as also *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, and *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, Moreover, there is no provision in either the Standard Standing Orders or the Regulations Act for such an election or option to be exercised by the employees.

22. Section 45 of the Regulations Act empowers the Corporation to "make" regulations after previous sanction of the State Government. This necessarily requires three steps:--

(1) The Corporation "frames" or "proposes" regulations by its resolution. They have to be sent to the State Government for according sanction.

(2) The State Government then accords its sanction. In this power of the Government it is implicit that it may reject or suggest amendment or

modification in the proposed regulations and eventually accord its sanction,

(3) After the State Government accords its sanction, the Corporation "makes" regulations. This third step is necessary because the expression "previous sanction of the Government" necessarily denotes that the Corporation in order to "make" the regulation has to do something "after" the sanction of the State Government. To put it differently the "previous sanction" is a step earlier than the "making of the regulations."

23. In the present case, the regulations were "proposed" and sent to the State Government on June 28, 1963, when it passed a resolution to that effect. This was the first step. Then, it was on June 26, 1964, that the State Government accorded its sanction. This was the second step. Now the third step was taken by the General Manager, M.P.S.R.T.C. who, by his order, dated July 8, 1964, enforced the regulations. The question is whether the General Manager had any such power. It is not to be found either in the Road Transport Corporation Act, or in the Regulations. It is not necessary to examine the question whether such power could be delegated to the General Manager, because no material has been placed before us to show that in fact such power had been delegated to him. In these circumstances it cannot be said that the third step was taken before June 1, 1970. It was on the last mentioned date that the Corporation passed a resolution enforcing the regulation and giving them retrospective effect from July 8, 1964. This resolution of June 1, 1970, was the third step. Therefore, it was on June 1, 1970, that the regulations were "made" within the meaning of section 45 of the Act.

24. Regulation 59 fixes the age of retirement. The Standing Orders do not contain any such age of retirement. Order 10 of the Standard Standing Orders provides for termination of employment, but do not provide for any ipso facto age of retirement. Regulation 59, therefore, can stand together with Order 11 of the Standard Standing Orders. There is no repugnancy. Furthermore, it is clear law that a provision as to the age of retirement in an establishment applies to all employees irrespective of whether they entered into the service prior to or subsequent to the coming into force of that provision and even though there was no such provision for retirement in the past. See *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, and *Avery India Limited Vs. The Second Industrial Tribunal, West Bengal and Others*,

25. However, no retrospective effect could be given. When any power is delegated to a person or authority to make any rule or regulation, it will depend on the language employed in the statutory provision, whether such authority has the power to give retrospective effect. Where no such language is to be found, the authority exercising subordinate legislative function (sic) cannot make a rule or regulation which can operate with retrospective effect (See *Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others*, . In Section 45 of the Corporation Act there are no words which authorise a Corporation the State Government to give

re respective effect to any Regulation.

26. Before we leave this case, we desire to point out that it is the State Government to which authority has been delegated to make rules under S. 21 of the Standing Orders Act and it is the State Government which has been invested with power to accord sanction to proposed regulations under S. 45 of the Regulations Act. It is upto the State Government whether to accord sanction or not. Therefore, no repugnancy would arise if the State Government bears in mind at the time of according sanction the Standing Orders which had already been made by it.

27. The conclusions we have reached may be summed up in the following propositions:

(1) (a) If in pith and substance the essential subject-matter of the law made by Parliament falls within the purview of the Union List, its Legislative competence is not affected merely because any Provisions contained in it incidentally trench upon another Legislative List. However, the said provisions still pertain to that other Legislative List, without affecting the validity of the Act as a whole;

(b) When there is a law made by Parliament and another made by the State Legislature, each within its respective field of legislative competence, then both operate simultaneously and effect must be given to all such provisions of both the laws, at one and the same time, as can stand together;

(c) However, in case of repugnancy, Article 254 of the Constitution has to be applied;

(2) (a) If in relation to a matter Pertaining to the Union List a provision contained in the law made by the State Legislature is repugnant to the Provision contained in the law made by Parliament, the latter will prevail irrespective of whether it was made earlier or later this is the effect of Clause (1) of Article 254 ;

(b) If, in relation to a matter Pertaining to the Concurrent List a provision contained in the law made by the State legislature is repugnant to the provisions contained in the law made by Parliament, the former will prevail provided ;

(a) the latter was made earlier, and

(b) the former has received the assent of the President, otherwise the latter will prevail. This is the effect of Clause (2) of Article 254 ;

(c) Parliament can by subsequently making a law override the provision in the said law which prevails vide proposition (v) above (See the proviso);

(d) The word "provision" in Clauses (1) and (2) of Article 254 is significant. Repugnancy need not be in the entire enactment;

(3) (a) Regulations made by a subordinate Legislature under powers delegated in a law made by Parliament become part and parcel of the law under which they are made and are enforceable as such ; (b) However, such Regulations cannot be

said to be "made by Parliament within the meaning of Article 254 ;

(4) Regulations made u/s 45 of the Road Transport Corporation Act, 1950, require three steps:

(a) Corporation must by resolution propose the Regulations and send them for sanction of the State Government;

(b) The State Government then accords its sanction. In this power of the Government it is implicit that it may reject or suggest amendment or modification in the proposed Regulations. This is the force of the word "Previous" in the expression "with the previous sanction of the State Government ;

(c) The Corporation has then to "make" the Regulations by a resolution, and publish it.

(5) (a) Rules and Regulations made by a subordinate agency under the statutory power delegated by the legislature have the same force as laws made by the Legislature.

(b) When any power is delegated to a person or authority to make any rule or Regulation, it will depend on the language employed in the statutory provision, whether the authority concerned has the power to give retrospective effect. Where no such language is to be found, the authority exercising subordinate legislative function cannot make a rule or Regulation which can operate with retrospective effect.

28. Applying the above propositions to the present case, we have reached the following results :

(1) (a) The essential subject-matter of the Road Transport Corporation Act, 1950, falls within the purview of Entries 43 and 44 of the union List. It is valid, being within the Parliament's legislative competence;

(b) Regulations made by the M.P.S.R.T.C. (after obtaining sanction of the State Government) in exercise of the delegated powers under S. 45 of the 1950 Act, are valid. They have the same effect as if part and parcel of the Act itself;

(C) However the Regulations made by the M.P.S.R.T.C. with the sanction of the State Government cannot be said to be "made by Parliament within the meaning of Clause (2) of Article 254.

(2) (a) The subject-matter of the M.P. Industrial Employment (Standing Orders) Act, 1961, falls within the purview of Entry 24 of the concurrent List. It is valid, being within the State Legislature's competence and it was validly applied to the M.P.S.R.T.C. on July 6, 1963

(b) The Standing Orders Rules 1963 made by the State Government in exercise of the delegated powers under S 21 of the 1961 Act are valid and have been validly applied to the M.P.S.R.T.C.;

(3) (a) Such Provisions of the Corporation Act and the Regulations made under them, and also of the Standing Orders Act and the Standing Orders Rules, must be given effect to simultaneously, as can stand together. In case of any apparent conflict, it is the duty of the Court to so interpret them that they harmonies ;

(b) If any Provision contained in the Corporation Act or the Regulation made under it, the subject-matter of which falls within the Union List is repugnant to the provisions contained in the Standing Orders Act or the Rules made under it, the former will prevail in every case ;

(c) If any Provision contained in the Corporation Act or the Regulation made under it, the subject-matter of which falls within the concurrent list (e.g. conditions of service of employees) is repugnant to the Provisions contained in the Standing Orders Act or the Rules made under it, the latter will prevail, in as much as the Standing Orders Act has received the assent of the President and the Corporation Act is an Earlier law made by Parliament.

(4) There is no repugnancy between the Regulation 59 and Rule II of the Standing Orders Rules. Rule 11 lays down the conditions and procedure for terminating the employment of the employees. Regulation 59 prescribes the age of superannuation. Both can stand together; there is no repugnancy.

(5) The Regulations under S. 45 of the Road Transport Corporation Act must be said to have been made on June 1, 1970.

(6) No election or option can be given to the employees of the M.P.S.R.T.C. in the absence of any such provision in the law. It must be said with respect that Kripa Shankar v. State of M.P. (Miscellaneous Petition No. 334 of 1972, decided on January 11. 1974 did not lay down correct law.

This is our answer to the question which we have framed at the outset.

29. This brings us to the merits of this particular case.

The services of the respondent were terminated by order dated June 3, 1969, with immediate effect. The reason given is, to reproduce the words of that order:--

According to Service Regulation No. 59, the age of retirement of all the employees of the Corporation is 58 years and since you have completed more than 60 years of age, your date of birth being 5-12-1908, you are retired with immediate effect.

30. Since Regulation No. 59 came into effect on June 1, 1970, as held above, the validity of the order of retirement dated June 3, 1969 has to be tested by Standing Order No. 11 of the Standing Orders. Standing Order No. 11 reads as follows:--

11. Termination of employment and the notice thereof to be given by employer and employee:--

(a) When the employment of a permanent employee is to be terminated, he shall be given one month's notice or shall be paid wages for one month in lieu of notice. No employee other than a permanent employee shall be entitled to any such notice or wages in lieu thereof for termination of his service.

(b) The reason for the termination of service shall be recorded in writing and shall be communicated to the employee unless such communication may, in the opinion of the manager, directly or indirectly lay the company or the manager or the person signing the communication open to civil or criminal proceedings at the instance of the employee.

(c) Any permanent employee desirous of leaving the employment shall give one month's notice to his departmental officer stating the reason for which he is leaving but if he so requires he may be relieved earlier than the date on which the period of notice expires.

(d) No notice shall be necessary for the discontinuance of the employment of a permanent seasonal employee on the expiry of the season, but he shall have a lien on his post at the commencement of the next season.

31. The requirements are two:--

(i) one month's notice or wages in lieu of notice ;

(ii) reason for the termination to be recorded in writing and communicated to the employee.

The first requirement under Standing Order No. 11 is that the employee must be given one month's notice, alternatively he must be paid wages for one month in lieu of notice. In the present case this was not done. The respondent's services were terminated with immediate effect. The respondent's contention is that because no notice was given, the order of termination is void and ineffective, so that the respondent must be reinstated with effect from that date and is entitled to back wages for all these eight years.

32. We have before us the decision of the Supreme Court in *Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter*, Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, was different from Clause (a) of Standing Order No. 11, which does not contain the word "forthwith". Their Lordships have in *Raj Kumar Vs. Union of India (UOI) and Others*, held that the servant is only entitled to claim notice or a month's emoluments, but he cannot maintain a writ petition to challenge the validity of the order on the basis of the Supreme Court decision in *Senior Superintendent, R.M.S. Cochin v. K.V. Gopinath (supra)*, inasmuch as the rule was amended. In our opinion, having regard to the language of the Standing Order No. 11, the only right of the employee is to claim one month's wages.

33. Shri Chitale's contention is that the second requirement was fulfilled inasmuch as the reason was given. The reason was that he had attained the age

of 58 years. This reason was not by way of punishment. This reason was not arbitrary. The Corporation treated all the employees alike who, had attained the age of 58 years.

34. Learned counsel for the employee strenuously contends that this cannot be a reason for termination of service within the meaning of Standing Order No. 11. In our opinion, the object and purpose behind the requirement under Clause (b) of Standing Order No. 11 is to see whether the services have been terminated by way of punishment or victimization. The expression "reason for termination of service" which is to be recorded and communicated, is a comprehensive expression. It envisages any reason which is not by way of punishment or victimisation and is a reason which is rational, as opposed to arbitrary, capricious or whimsical. If the Corporation decided to retire all its employees on the attainment of the age of 58 years, an order passed in furtherance of such decision does not fall within such vice. To tell an employee that he is being retired because he has attained the age of 58 years, is a reason for termination of the service within the meaning of the rule and that reason is neither arbitrary, capricious nor whimsical. In this view of the matter we hold that the second condition was satisfied. But this is subject to the determination of the age of the respondent. In the present case it was in dispute whether his date of birth is December 5, 1908, as recorded in the records of the Corporation, or December 12, 1913, as alleged by the respondent.

35. Learned counsel for both sides state that since no finding has been recorded on that issue, the case will have to be sent back to the Labour Court. The Labour Court thought it unnecessary to decide that question of fact (See paragraphs 54 and 55 under Issue No. 5).

36. The result of this discussion on the merits of the case is: (i) since the respondent's services were terminated with effect from June 3, 1969, and since Regulation No. 59 (as already held) came into effect on June 1, 1970. Standing Order 11 applies, (ii) Under Clause (1) of Standing Order No. 11 if one month's notice is not given to the employee, the latter is entitled to claim one month's wages in lieu of notice. But the order of termination for want of notice is not a nullity. The employee has to be awarded one month's wages, (iii) The reason for termination was attainment of the age of 58 years. This could be the reason within the meaning of Clause (b) of Standing Order No. 11. (iv) If the respondent's date of birth is December 5, 1908, he would be entitled to only one month's wages in lieu of notice. But, if his date of birth is December 12, 1913, he is entitled to wages up to December 12, 1971 plus wages in lieu of notice. The Labour Court did not decide issue No. 5, so that the matter has to be remitted to it.

37. (i) This petition is partly allowed. The questions of law arising before us have been answered in paragraph 28 above.

(ii) the orders of the Labour Court and the Industrial Court are quashed ;

(iii) the case shall go back to the Labour Court with the following directions ;

(a) The Labour Court shall decide the question of fact whether the date of birth of respondent, Ramchandra is December 5, 1908, or December 12, 1913;

(2) In the former case the respondent shall be awarded one month's wages in lieu of notice. In the later case the respondent shall be awarded wages up to his attaining the age of 58 years, i.e. December 12, 1971, and in addition to it one month's wages in lieu of notice.

The parties shall bear their own costs in all the proceedings uptillnow.