

(1986) 07 KAR CK 0018

In the Karnataka High Court

Case No : W.A. No's. 1367 of 1979 etc. and W.P. No's. 18097 of 1979 etc.

Muniswamy

APPELLANT

Vs

Superintendent of Police

RESPONDENT

Date of Decision : 18-07-1986

Acts Referred:

Karnataka Civil Services (General Recruitment) (Seventeenth Amendment) Rules,
1982 — Rule 1, 1 (3), 3 (2)

Citation : (1986) ILR (Kar) 3447

Hon'ble Judges : Puttaswamy, J;Mahendra, J

Bench : Division Bench

Advocate : Chandrasekhariah, Government, S.V. Srinath and S.M. Babu, G.N. Seshagiri Rao, Mohandas N. Hegde, N.Y. Hanumanthappa, G.B. Raikar, Umesh R. Malimathfor Parties, Venkataranga Iyengar, S.M. Babu and N.B. Bhat, for the Appellant;

Judgement

Puttaswamy, J.—As the questions that arise for determination In these cases are either common or inter-connected, we propose to dispose of them by a common order.

2. Writ Appeals Nos. 1367 to 1369 of 1979 are filed by the appellants against the inter locator order dated 28-11-79 of Rama Jois, J. rejecting their application - I.A.No. I in Writ Petitions Nos. 18097 to 18099 of 1979 in so far as that application sought for an interim relief to the Superintendent of Police not to hold examinations to the posts of Head Constables.

3. Writ Appeals Nos. 1962 and 1963 of 1984 are filed by the appellants against the order dated 20 8-1984 of Chandrakantaraj Urs, J. dismissing their Writ Petitions Nos. 13501 and 13502 of 1984 respectively since reported in T.D. Madar Vs. Suprintendent of Police, We will hereafter refer to the appellants in all these appeals also as petitioners. The Writ Petitions have been referred by the Learned Single Judges before whom they were posted for being heard with Writ Appeals Nos. 1962 and 1963 of 1984 and that it is how all these cases have been

posted before us. We will deal with Writ Appeal Nos. 1367 to 1369 of 1979 after we deal with all other cases.

4. In the Police Department of Government of Karnataka, as elsewhere the lowest post in the police force is that of a Police Constable (PC or Constable), The next higher post in the Department is that of an Head Constable (HC) which is filled only by promotion. The Police force in the State is regulated by the uniform Karnataka Police Act of 1963 (Karnataka Act 4 of 1964) ("the Act") which is in force from 2-4-1965.

5. The recruitment to the posts of Constables and Head Constables, with which we are concerned in these cases is regulated by the Karnataka State Police Service (Recruitment) Rules, 1967 ("the Police Rules"). These Rules have been framed by the Governor in exercise of the powers conferred on him by the proviso to Article 409 of the Constitution and have come into force from 16-11-1967 replacing the earlier Rules called the Mysore Police Services (Recruitment) Rules, 1965 that were in force from 1-4-1965.

6. All the petitioners were initially recruited as constables.

7. The Police Rules provided for holding an examination consisting of written and oral examinations from among eligible constables and their promotions as Head Constables from among those that pass in such examinations. On the basis of examinations held from time to time, several petitioners have been promoted on different dates by the Superintendents of Police of the Districts or other competent officers".

8. On different dates, the Superintendents of Police had promoted several petitioners as Head Constables on a temporary or ad hoc basis in the exigencies of public service on the terms and conditions set out in the respective orders, one of them was that they should pass the examinations prescribed for the post of Head Constable under the Rules. In conformity with the orders of promotions and the Rules, several of the petitioners appeared for the examinations in which they were unsuccessful, In that view, the Superintendents have made orders of reversions against them, which are challenged by them before this Court.

9. On 22-8-1985 the Director General of Police in Karnataka, Bangalore (Director) who is the Head of the Police Department had issued a circular to the Superintendents to make promotions to the posts of Head Constable from the post of constables on the basis of seniority-cum-merit without insisting on the passing of examinations prescribed to the post in the Police Rules on and from 24-6-1982 and also undertake a review of promotions from that date on that basis. A number of Head Constables that had earlier passed the examinations presented by the Police Rules and promoted on that basis, apprehending their reversions in obedience to the said circular of the Director, have approached this Court challenging the said circular and for other appropriate reliefs. The petitioner in one of the Writ Petitions, who is stated to have passed the examinations, but had not so far been promoted, while challenging the circular of

the Director, had sought for a mandamus to consider his case for promotion. With this general backdrop we consider it necessary to notice the facts in Writ Appeals Nos. 1962 and 1963 of 1984 and Writ Petitions Nos. 575 to 594 of 1986 in some detail as illustrative only to better appreciate the contentious urged before us.

10. WRIT APPEALS NOS. 1962 AND 1963 OF 1984 : On 6-5-1983 and 27-9-1983 (Annexures B and B1) the Superintendent of Police, Shimoga District, Shimoga ("Superintendent") promoted the petitioners as Head Constables on a temporary basis solely on the basis of their seniority for a period of one year or till the list of Head Constables on the basis of examinations is prepared whichever was earlier. In June, 1984 the Superintendent held the examinations prescribed by the Rules permitting the petitioners and others to appear for the examination and in that they were not successful. In terms of the promotion order as also to accommodate those who had passed the examinations, the Superintendent by different but identical orders made on 7-7-1984 (Annexures C and D) had reverted the petitioners. In Writ Petitions Nos. 13501 and 13502 of 1984 the petitioners challenged the said orders of reversions principally on the ground that the same were contrary to the Karnataka Civil Services (General Recruitment) Rules, 1977 ("General Rules") as amended on 19-6-1982, by the Karnataka Civil Services (General Recruitment) (Seventeenth Amendment) Rules, 1982 (1982 Rules) which came into force on 24-6-1982. On 20-8-1984 Chandrakantaraj Urs, J. has rejected the said Writ Petitions without notice to the respondents. Aggrieved by the said order of Chandrakantaraj Urs, J. the petitioners have filed these appeals before us reiterating that very contention and also relying on the circular of the Director.

11. Writ Petitions Nos. 575 to 594 of 1986 : The 20 petitioners in these cases, recruited as Constables, who have passed the examinations held by the Superintendent, Chick-magalur, have been promoted by the Superintendent on different dates as Head Constables. Apprehending that the Superintendent would comply with the circular of the Director and revert them to the posts of the Constables, the petitioners have approached this Court challenging the circular Of the Director and for other consequential reliefs.

12. Sriyuths S. K. Venkataranga Iyengar, N. B. Bhat, G. B. Raikar, H. Subramanya Jois and Umesh Malimath have appeared for the petitioners that had not passed the examinations and have naturally made a common cause, which is also supported by Sri Chandrasekharaiah, learned Government Advocate who has appeared for the State Government and its subordinate authorities in all these cases. Whenever we refer to the names of any of these learned Advocates, we should be understood as referring to the names of others also. Sri G. N. Seshagiri Rao, learned Advocate who has appeared for the petitioners that had passed the examinations, has opposed all of them.

13. Sri Bhat had contended that on and from 24-6-1982 under the 82 Rules the only method of recruitment to the posts of Head Constables was only on the

basis of seniority-cum-merit and no other basis and therefore, the non-passing of examinations by the petitioners under the Police Rules was no ground to revert them from the posts of Head Constables to the posts of Constables.

14. Sri Seshagiri Rao in refuting the contention of Sri Bhat had urged that the 1982 Rules had no application to promotions and reversions exclusively regulated by the Police Rules and the reversions made by the Superintendent were legal and valid and the circular issued by the Director was unauthorised and illegal.

15. The Police Rules have been made and promulgated by the Governor in exercise of the powers conferred on him by the proviso to Article 409 of the Constitution to regulate the recruitment to the various categories of posts in the Police Department of Government. The Rules are therefore special Rules and exclusively regulate the recruitments in the Police Department and no other. These Rules also regulate the recruitment to the posts of Constables and Head Constables.

16. Entry No. 4 of the Police Rules regulating the recruitment to the posts of Head Constables which is material reads thus :

Sl. No.	Category of Posts	Method of recruitment	Minimum qualification and period of probation	Appointing Authority.
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1	2	3	4	5
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4.	Head Constable			
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By promotion by selection from the cadre of Police Constable

Method of selection :-Applications from Constables desirous of appearing for a promotional examination will be called for by the Superintendent and the Commissioner in the case of Bangalore City, once a year.

Constables who possess the prescribed minimum service including those on deputation to other Departments or other branches of Police Department or on Foreign Service may apply and their applications should reach the Superintendent or the Commissioner, as the case may be, on or before the First April each year.

Qualification: (1) Must have put in not less than five years service as Police Constable and must have passed the Kan-nada Language test unless exempted under the Mysore State Civil Services (Kannada Language Test and Departmental Examinations) Rules 1962.

Superintendent /Deputy Commissioner.

The Superintendents and the Commissioner, in the case of Bangalore City, shall prepare a statement in Form-"E" showing the names of Police Constables who apply for permission to appear for the examination, the names being arranged in the order of seniority.

The Superintendents and the Commissioner, in the case of Bangalore City shall note against each constable as to whether he is permitted or not to appear for the examination, after scrutinising their applications and considering the following:

- (a) Number of years of service the Police Constable has put in.
- (b) Number of defaults
- (c) Number of good service entries and rewards earned by the Police Constable.
- (d) Ability to command men.
- (e) Approximate number of vacancies of Head Constables likely to occur in a year.
- (f) The number of Police Constables permitted to appear for the examination should not ordinarily exceed five times the number of vacancies of Head Constables likely to occur in that year.

In the case of Constables who are not permitted to appear for the examinations, the Superintendent and the Commissioner, in the case of Bangalore City, shall in his own handwriting record the specific reasons for not permitting the Constables to appear for the examination.

The Superintendents and the Commissioner, in the case of Bangalore City, shall cause for circulation amongst the subordinates a list of Constables permitted to appear for the examination. The Superintendents shall also send a copy of such list to the Range Deputy Inspectors General. The Deputy Inspectors General of the Range, the Commissioner, in the case of Bangalore City and the Deputy Inspector General, CID and Railways, Bangalore, in the case of Railway Police, shall appoint a Board of Examiners consisting of an officer of the rank of superintendent and two Superior Police Officers for setting and valuing papers in the written examination. He shall also fix a common day for conducting the written examination in all the Districts and Units in his jurisdiction.

The written examination shall consist of the following :

Max. Mark Min. Marks

- (a) A paper on elementary law and knowledge of Police duties to be answered either in English or in Kannada

100 35

- (b) A paper on General knowledge in subjects connected with Police work.

100 35

Total 200 70

The written examination shall be held at the District Headquarters and for the Railway Police and the City Police at Bangalore.

The Board of Examiners shall expeditiously value the answer papers and communicate the marks to the concerned Superintendent or the Commissioner.

The oral examination shall consist of the following :

Max.Marks Min. Marks.

(a) Drill and Parade including words of command and knowledge of weapons.

100 50

(b) Assessment of service and interview including knowledge in elementary Law and Police Duties.

100 50

Total 200 100

The oral examination shall be conducted on the following day or days of holiday the written examination or on such days as the Superintendent and Commissioner in the case of Bangalore City, shall fix. The oral examination shall be personally conducted by the Superintendent and the Commissioner in the case of Bangalore City, assisted by one of the Gazetted Assistants. He may take the assistance of a Reserve Inspector a Reserve Sub-Inspector in conducting the test in drill and parade

The Constables who secure the minimum marks fixed in each test and 50 per cent of the total marks, shall be considered as having successfully passed the examination and those Constables who secure less than 25 percent of the marks in the aggregate will not be eligible for appearing for the subsequent two examinations and thereafter they will be eligible for appearing for the examination.

The names of persons successful in the tests shall be included in the list in the order of merit according to the total marks obtained by them, by the Superintendent and the Commissioner, as the case may be. The list so prepared shall be published by issuing a District Order and by circulation. These names shall be added at the bottom of the pre - existing list.

On this prescription, a Division Bench of this Court consisting of Chandrasekhar, C.J. and Venkatesh, J. in Rudrachari and ors. v. State of Karnataka and ors. ILR 1978 (Kar) 1635 had expressed thus :

" -- But, the examination prescribed under the 1967 Rules as a method of selection for promotion of Police Constables to the posts of Head Constables, cannot be regarded as service examination. It is not prescribed for the holder of the post of Police Constable. His confirmation and earning increments do not depend upon his passing that examination. Passing a service examination, as that term is ordinarily understood, may be a condition for eligibility for promotion to the next higher post. But, such examination is not a competitive examination for selection for promotion to a higher post. There is nothing in the context of the

1974 Rules or the Service Examinations Act which requires that the term "prescribed examination" or the term "service examination" should be given an extended meaning so as to include a competitive examination for selection for promotion to a higher post.

29. Thus, we are unable to accept the contention of the Learned Government Advocate that the examination prescribed under the 1967 Rules for selection for promotion of Police Constables to the posts of Head Constables, has been superseded either by the 1974 Rules or by the Service Examinations Act. As stated earlier, the proviso to Sub-section (7) of Section 115 of the S. R. Act has no application to the present case since none of the parties are allottees under that Act. It follows that there was no basis for reviewing the promotions of the petitioners who had been promoted on the basis of their performance in the examination prescribed under the 1967 Rules".

We are concerned in these cases with the enunciation made on non-allottees or those recruited on and after 1-11-1956 or more precisely under the Police Rules. Sri Bhat, in our opinion, rightly did not dispute that this declaration held the field till 24-6-1982. But, whether this has been really rendered ineffective or (sic)otiose by the 1982 Rules as opined by the Director also is the precise question that calls for our examination.

17. Before Chandrakantaraj Urs, J. this very contention was urged by Sri Bhat in a slightly different manner which has been fairly noticed and dealt by the Learned Judge. But, before us, the contention was projected in a different way. In this view, no useful purpose will be served by noticing the reasoning adopted by the Learned Judge to reject the same. We, therefore, proceed to examine the contention as urged before us.

18. The task of interpretation of a provision of a statute or a Rule is not a simple exercise of reading a few words out of context. Any such attempt by a Court would result in giving a distorted meaning to the provision to be construed. In *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, Bhagavathi, J. (as His Lordship then was) reviewing all the earlier cases and quoting with approval a passage from Learned Hand that had become classical, had expressed on the primary and progressive rule of interpretation of any provision in these inimitable words :

"..... The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he said ""....it is true that the words used, even in their literal sense,

are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing ; be it a statute, a contract or anything else. But, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning". We must not adopt a strictly literal interpretation "of Section 52 Sub section (2) but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the the context and the collocation of the provisions in which Section 52 Sub-section (2) appears, because, as pointed out by Judge Learned Hand in most felicitous language : "... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create". Keeping these observations in mind we may now approach the construction of Section 52 Subsection (2)".

Bearing these and all other relevant Rules of Construction of statutes in particular of the Rule "Generalia Specialibus Non-Derogant" exhaustively dealt by Maxwell on Interpretation of Statutes (Eleventh Edition) under that heading on pages 168 to 172, we must ascertain the true scope and ambit of Sub-rule (2) of Rule 3 of the General Rules introduced by the 1982 Rules.

19. The General Rules have been framed by the Governor under the proviso to Article 409 of the Constitution. These Rules have repealed and replaced the earlier Rules called the Karnataka State Civil Services (General Recruitment) Rules, 1957 ("1957 Rules"). The General Rules closely follow the earlier 1957 Rules and there is really no material difference between the two sets of Rules.

20 The title of the Rules that replace the earlier 1957 Rules indicate that they regulate general recruitment to the Karnataka State Civil Services. A broad examination of the Rules disclose that they generally regulate the recruitment to the State Civil Services or make general Rules for recruitment. The object of General Rules is to make broad and general Rules for recruitment to services and posts connected with the affairs of the State of Karnataka. They are framed too broadly and generally cover situations that are not covered in the Rules of recruitment to any service or post of any specific Department of Government. The various general provisions made in the General Rules such as that an applicant must be a citizen of India apply to all recruitments in all Departments of Government. In making a recruitment to a service or post the concerned authority must apply the General Rules and the special Rules of that service or post of that Department and make a selection with due regard to the provisions made in both the Rules. Both must be read together and effect given to both without doing violence or defeating the provisions of either of the Rules.

21. Rule 1 of the General Rules deals with title, commencement and application of the Rules. Rule-1(3)(a) of that Rule which is relevant reads thus :

"(3)(a) These rules shall apply to recruitment to all State Services and to all posts in connection with the affairs of the State of Karnataka and to members of all State Civil Services and to the holders of posts whether temporary or permanent except to the extent otherwise expressly provided :

(i) by or under any law for the time being in force ; or

(ii) in respect of any member of service by a contract or agreement subsisting between such member and the State Government,"

This rule provides that the provisions made in the Rules will apply to recruitments to all State Civil Services except those to whom special provision has been made in any other Rule. The words "by or under any law for the time being in force" exclude the application of the General Rules to the extent provision for recruitment is made in other Rules or Law of any other Department. Rule 1 of the Rules excludes the application of the General Rules to cases where special Rules are. made for recruitment to any post or service in any other Department of Government.

22 Rule 3 before its amendment made by the 1982 Rules reads thus ;

"3. Method of recruitment -- Except as otherwise provided in these rules or any other rules specially made in this behalf, recruitment to any service or post shall be made by direct recruitment which may be either by competitive examination or by selection, or by promotion which may be either by selection or on the basis of seniority-cum-merit. The methods of recruitment and qualifications shall be as specified in the rules of recruitment specially made in that behalf ;

Provided that in respect of direct recruitment to any service or post when the method of recruitment is not specified in the rules of recruitment specially made, the method of recruitment shall be by selection after an interview by the Commission, the Advisory or Selection Committee or the Appointing Authority, as the case may be.

Provided further that no person shall be eligible for promotion unless he has satisfactorily completed the period of probation or officiation, as the case may be, in the post held by him."

Even here, this Rule only regulates the method of recruitment generally. The opening part of this Rule as also the very last sentence of the Rule takes special care to provide that the general methods of recruitment dealt in the General Rules shall apply only in the absence of special Rules.

23. The entire notification publishing the 1982 Rules made by the Governor reads thus :

"Notification No. DPAR 78 SRR 76 BANGALORE DATED 19TH JUNE, 1982 - K.G.D. 24th June, 1982

G. S. R. 104:-1. Title and commencement :-(1) These rules may be called the

Karnataka Civil Services (General Recruitment) (Seventeenth Amendment) Rules, 1982.

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

2. Amendment of Rule 3 :- Rule 3 of the Karnataka Civil Services (General Recruitment) Rules, 1977 shall be renumbered as Sub-rule (1) thereof, and, after the Sub-rule (1) as so re-numbered, the following Sub-rule shall be inserted, namely :

"(2) Notwithstanding anything contained in these rules or in the rules of recruitment specially made in respect of any service or post -

(a) the promotion to the post of a Head of Department or the post of an Additional Head of Department, if it is in a grade equivalent to that of the Head of the Department concerned, shall be by selection: and

(b) the promotion to all other posts shall be on the basis of seniority-cum-merit."

After the amendment made by this amendment, Rule 3 of the General Rules reads thus :

"3. Method of recruitment :- Except as otherwise provided in these rules or any other rules specially made in this behalf, recruitment to any service or post shall be made by direct recruitment which may be either by competitive examination or by selection, or by promotion which may be either by selection or on the basis of seniority-cum-merit. The methods of recruitment and qualifications shall be as specified in the rules of recruitment specially made in that behalf.

Provided that in respect of direct recruitment to any service or post when the method of recruitment is not specified in the rules of recruitment specially made, the method of recruitment shall be by selection after an interview by the Commission, the Advisory or Selection Committee or the Appointing Authority, as the case may be.

Provided further that no person shall be eligible for promotion, unless he has satisfactorily completed the period of probation or officiation, as the case may be, in the post held by him.

(2) Notwithstanding anything contained in these rules or in the rules of recruitment specially made in respect of any service or post -

(a) the promotion to the post of a Head of Department or the post of an Additional Head of Department, if it is in a grade equivalent to that of the Head of the Department concerned, shall be by selection ; and

(b) the promotion to all other posts shall be on the basis of seniority-cum-merit."

This amendment is only an amendment to the General Rules and is not amendment to the Police Rules. This amendment on its very plain language must

be read only as an amendment to the General Rules. This amendment cannot be read as enlarging the sweep, extent and the applicability of the general Rules of recruitment. They cannot also be read as amending all other special Rules of recruitment of all other Departments of Government in general and the Police Department in particular. The amendment made to the General Rules must be read as subordinate to the application of the Rules declared by Rule 1(3) of the Rules and cannot be read as enlarging their scope, extent and applicability much less read as abrogating all other special Rules made for recruitment to services and posts in all other Departments of Government. Unfortunately, the petitioners ask us to read this amendment totally out of context and also too literally. When so read it is bound to give an astonishing, distorted meaning and effect. On these general considerations, we find it difficult to hold that the 1982 Rules nullify or abrogate or amend the Police Rules regulating the recruitment to the posts of Head Constables. From this it follows that when recruitment, to any service or post of Government is not regulated by any special Rules, then and then only the posts of Head of Departments of Government as defined in the 1982 Rules had to be filled by promotion by selection and all other posts in such Department have to be filled by promotion on seniority-cum-merit basis.

24. Even otherwise, the very wide language used in the opening part of Sub-rule (2) somewhat unhappily cannot be interpreted as undoing every thing done in all other special Rules of recruitment to services or posts in other Departments. We are of the view that such a construction is opposed to all settled canons of construction of statutes and is even disastrous. We can not read the non - obstante clause of Rule 3(2) or the terms "or in the Rules of recruitment specially made in respect of any service or post" on which very great emphasis was laid by Sri Bhat as supporting his construction or militate against the construction we have earlier placed.

25. The efficiency of every category of service or for that matter every member of a public service is in the public interest. In United States of America even annual increments to a member of a service are granted on an evaluation of merit only and not automatically. In that and other countries promotions based on an evaluation of merit in lower cadres have come to stay. In the evaluation of merit for making promotions from a lower cadre to a higher cadre examinations are adopted. What we said here stems from the treatises (I) Theory and Practice of Modern Government by Herman Finer (1954 Edition) Part Six-"The Civil Service" Chapter 34 - "Problems which arise after Recruitment", and (2) The Law of Civil Services by H. Eliot Kaplan Chapter-Appendix - "The Merit System in the Constitution page 384" and "Essentials of a Modern Civil Service Merit System-page 386."

26. The posts of Head Constables in the hierarchy of posts of Police Department are very important posts. The Head Constables who are generally posted as heads of Rural Police Stations or out-posts or Police Stations in towns and cities are invested with powers of investigation into crimes and offences under the

Indian Penal Code and other laws. They will be in immediate command of the Police Stations under whom a number of Police Constables have to work. The honesty and efficiency of Head Constables as also the leadership they provide to their subordinates namely the Police Constables of their Police Station will considerably tell on the maintenance of law and order in the State. With these objects in view, the Rules have made very meticulous and elaborate provisions for evaluating their merit. Both on principle and authority we are clearly of the view that the 1982 Rules have not attempted to undo what has been provided in the Police Rules.

27. In *Ajay Kumar Banerjee and ors. v. Union of India and ors.* AIR 1984 SC 1130 on which very strong reliance was placed by Sri Bhat, the Supreme Court examining the validity of the General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Second Amendment Scheme, 1980 (Scheme) purported to be made under the General Insurance Business Rationalisations Act, 1982 (Central Act 57 of 1982) held the same as ultra vires of that Act. In considering the second ground of challenge to the scheme as made in derogation of the industrial Disputes Act, 1947 the Court at paras 38 and 39 observed thus :

"....The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied;

(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment. If either of these two conditions is fulfilled, the later Law even though general, would prevail.

29. From the text and the decisions, four tests are deducible and these are : (i) The legislature has the undoubted right to alter a law already promulgated through subsequent legislation (ii) A special law may be altered, abrogated or repealed by a later general law by an express provision, (iii) A later general law will override a prior special Law if the two are so repugnant to each other that they cannot co exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, Maxwell on "The Interpretation of Statutes", Twelfth Edition, pages 196-198."

We are of the view that these observations do not lay down any new proposition in the interpretation of statutes and reiterates only the well settled principles and do not militate against the conclusion we have earlier reached. As held by us the General Rules that only make general provision for recruitment had not amended or abrogated the Police Rules which is the special law of the Police Department. In this connection, it is apt to recall the famous observations of Justice Holmes in *Joseph Lochner v. People of the State of New York* (1905) 198 US 45 that

"general propositions do not decide concrete cases." We, therefore hold that Ajay Kumar's case³ does not really bear on the point.

28. Sri Jois has urged that the ruling rendered by the Division Bench in Rudrachari's case² was plainly opposed to the language of the Karnataka Service Examinations Act of 1976 and the Karnataka Civil Services (Service and Kannada Language Examination) Rules, 1974 and requires reconsideration.

29. We are of the view that this ruling of this Court in Rudrachari's case, ILR 1978 (Kar) 1635 in so far as it relates to non-allottees does not require any reconsideration at all though on allottees the same may require reconsideration in the light of the principles enunciated by the Supreme Court in Mohd. Shahabuddin and Others Vs. Union of India (UOI) and Others, . We, therefore, reject this prayer of Sri Jois.

30. On the foregoing discussion, we hold that there is no merit in the contention of the petitioners and we reject the same.

31. What we have so far held is sufficient to dispose of all these cases. But, we consider it proper to examine the validity of the circular issued by the Director also and modulate the reliefs.

32. Sri Seshagiri Rao has urged that the circular dated 22-8-1985 issued by the Director was wholly unauthorised and illegal.

33. Sriyuths Bhat, Iyengar, Raikar, Jois and Malimath have urged that the Director who was competent to issue the circular had correctly interpreted the 1982 Rules and had conveyed its true import and effect to his subordinates for their guidance and implementation.

34. The Circular dated 22-8-1985 issued by the Director and published in the Karnataka Police Gazette dated 14-9-1985 at pages 139-140 of Part-1 reads thus :

"No. 419 EST 3/84 -85 dated 22-8 1985

CIRCULAR

Sub : Procedure for Promotion to the rank of CHCs Modified instruction issued.

Ref: (1) This office endorsement No. E4 C. 79/82-83 dated 24-6-82 communicating Government Notification No. DPAR 78 SSR 76 dated 27-6-1983.

(2) This office memo No. 183 / EST. 2 / 83 - 84 dated 27-10-1983.

In this office memo referred to at Sl. No. 2 above, instructions were issued to the effect that the cases of allottees are to be considered first for promotion on the basis of seniority-cum-merit and with reference to the entries in S.Rs and worksheets/ personal (Confidential) files. In respect of non-allottees the Promotional Examinations in the K.S.P.S. (Recruitment) Rules, 1967 are validly prescribed. The select lists which are now in existence continue to be valid till

they are exhausted. In the Districts and where such lists are exhausted, fresh list may be prepared following the prescribed rules.

2. The above instructions were issued based on the Judgment in the Writ Petition filed by Rudrachari v. State.

3. In this connection, attention is invited to the amendment to Sub-rules 3(2) of the K. C. S. (General Recruitment) Rules, 1977 published in Karnataka Gazette dated 19-6 1982 providing for promotion to all ranks except to those of Head of Department and Additional Head of Department on the basis of seniority-cum-merit.

4. Since the Amendment to the K.C.S. (General Recruitment) Rules, 1977 supersedes relevant provisions of the earlier rules, all Unit Officers should follow the provisions of the Amendment issued to the K.C.S. (G) recruitment Rules, 1977, from the date of its publication in the Official Gazette i.e., 19-6-1982 and take action while making promotions to all ranks (except Head of the Department and Additional Head of the Department).

5. According to this amendment, no promotional examination need be held for promotion from the rank of P.Cs to H.Cs and H.Cs/ASIs to SIs. It shall be purely on the basis of seniority-cum-merit, seniority according to the review / gradation, list and merit based on the review of last 5 years A.C.Rs. A select list of these personnel should be prepared and followed to fill up the promotional vacancies.

Sd/- For D. G. & I. G. P."

This circular has accepted the case urged by Sri Bhat on the 1982 Rules.

35. As the Head of the Department, it was open to the Director to issue the circular for the benefit and guidance of his subordinates, can hardly be doubted. Sri Seshagiri Rao also did not dispute this position.

36. We have earlier found that the 1982 Rules had not made any amendment to the Police Rules and the prescription of examinations made therein continues to be in force. Every one of the reasons on which we have rejected the case urged by Sri Bhat and accepted the case urged by Sri Seshagiri Rao necessarily lead us to hold that the circular issued by the Director was contrary to the Rules, illegal and is liable to be quashed.

37. On behalf of those petitioners that had not passed the examinations prescribed to the posts of Head Constables and stand reverted on that ground their learned Counsel confined their challenge to one and the only ground that has been noticed and dealt by us earlier in detail, though in their Writ Petitions the petitioners had challenged them on a few more grounds like the non-holding of examinations at regular intervals etc. But, as the petitioners have not pursued the other grounds before us, we refrain to examine them and express our views on any of them.

38. On the basis of the circular dated 22-8-1985 of the Director, it is unlikely that the competent Officers have held examinations ever since that date. With our quashing the said circular the impediment, if any, for holding examinations to the posts of Head Constables is now removed. We hope that the competent Officers of the Department will hereafter hold examinations and regulate the promotions hereafter strictly in accordance with the Police Rules. We need hardly say that those that have passed in the examinations already held, if not already promoted, have to be promoted if they are otherwise found fit for promotion. Even after promoting all of them, if the administration still finds that there are vacancies in the posts of Head Constables and that they should be manned by persons who have not passed or appeared for the examination, then the administration is free to regulate that situation in accordance with law only. We do hope that the authorities will regulate all matters in accordance with law and avoid unnecessary litigation before the authorities and Courts.

39. What we have held on merits, shows that there is absolutely no merit in the claim made by the petitioners in Writ Petition No. 18097 to 18099 of 1979 in I. A. No. I in so far as the same sought for an interim stay of the examinations. On this ground itself Writ Appeal Nos. 1367 to 1369 of 1979 are liable to be dismissed. Even otherwise, we find no merit in any of the grounds urged by the petitioners to upset the order of the learned Judge on I. A. No. I. We, therefore, hold that these appeals also are liable to be dismissed.

40. As noticed earlier, Chandrakantaraj Urs, J. had expressed the view that the prescription made in the Police Rules for passing examinations to the posts of Head Constables was unaffected by the 198(sic) Rules. We have no doubt that the Director was aware of the order made by Chandrakantaraj Urs, J. when he issued the circular dated 22-8-1985. We are somewhat surprised and even pained that the Director should have thought fit to issue a circular which was contrary to what had been declared by Chandrakantaraj Urs, J. which was in appeal before this Court. In addition to the above, the very question was being agitated before this Court in a large number of cases, In these circumstances, we are of the view that the Director should have refrained from expressing his views and directing his subordinates to regulate the matter in conformity with his circular. We do hope that the Director will not commit such an impropriety atleast in future.

41. We were shocked and surprised when the learned Government Advocate submitted before us that he was supporting the stand urged by Sri Bhat and the circular issued by the Director under instructions from Government. We have no doubt that Government had not really reflected on the untenable stand it was urging before this Court which, if accepted would have meant death knell to efficiency in the services of the State.

42. In the light of our above discussion, we make the following orders and directions:

(a) We dismiss Writ Appeals Nos. 1367 to 1369 of 1979.

(b) We dismiss Writ Appeals Nos. 1962 and 1963 of 1984 and uphold the order of Chandrakantaraj Urs, J. in Writ Petitions Nos. 13501 and 13502 of 1984 for the reasons set out by us.

(c) We quash the Circular No. 419 EST 3/84-85 dated 22-8-1985 issued by the Director.

(d) We direct the official respondents in all these Writ Petitions including Writ Petitions Nos. 13501 and 13502 of 1984 to regulate the promotions and reversions from and to the cadre of Constable to and from the cadre of Head Constable in accordance with the Karnataka State Police Service (Re recruitment) Rules of 1967 and the observations made in this order.

43. Writ Appeals and Writ Petitions are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.