
(2010) 08 AHC CK 0175
In the Allahabad High Court

Shiv Gopal Gupta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Police Act, 1861 — Section 2, 2, 46(2), 46(2)
Uttar Pradesh Government Servants (Criterion for Recruitment by Promotion) Rules, 1994 — Rule 14, 4, 5, 6
Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2008 — Rule 16, 17, 3, 3(1), 30

Citation : (2010) 08 AHC CK 0175

Hon'ble Judges : Sunil Ambwani, J; K.N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Shri Shri Shashi Nandan, Sr. Advocate assisted by Shri Sudeep Harkauli and Shri V.K. Upadhyay for the petitioners. Shri Satish Chaturvedi, Addl. Advocate General assisted by Shri M.C. Chaturvedi, Chief Standing Counsel; Shri Y.K. Srivastava and Shri S.P. Srivastava, State Counsels appear for the State respondents.

2. The petitioners are serving as Sub Inspectors in Civil Police in the State of U.P. The petitioner Nos. 9 and 10 were appointed in 1980-81 batch. The petitioner Nos. 1 and 2 were appointed on 15.10.1982. The petitioner Nos. 3, 4, 5, 6 and 8 were appointed on 16.1.1984 and petitioner No. 7 was appointed on 15.10.1982.

3. By this writ petition the petitioners have prayed for directions to quash the order dated 31.10.2009, issued by the U.P. Police Services Recruitment and Promotion Board, initiating process for filling up 1340 vacancies of the year 2005 (47); 2006 (98); 2007 (81) and 2008 (1114) for promotion from the post of Sub Inspector, Civil Police to the post of Inspector, Civil Police in accordance with the U.P. Sub Inspector and Inspector (Civil Police) Service Rules, 2008 (In short the Rules of 2008) as amended by First Amendment to the rules of the year 2009

notified on 2.4.2009. They have also prayed for writ of mandamus restraining the respondents from initiating any process of selection for promotion to these vacancies and also the vacancies, which exist prior to 2.12.2008, and to consider their claims for promotion in accordance with Government Order dated 5.11.1965 u/s 2 and Section 46(2) of the Indian Police Act, 1841.

4. Brief facts giving rise to the writ petition are that all the petitioners serving as Sub Inspector, Civil Police claim to be qualified and eligible for the vacancies of Inspectors in Civil Police upto 2.12.2008, to be filled up in accordance with the Government Order dated 5.11.1965. They have put in more than 10 years of service as substantive Sub Inspectors. Prior to the enforcement of the Rules of 2008 the Government Order dated 5.11.1965 provided for sending the names of all eligible persons, with not less than 10 years of service as such, and are below 50 years of age on the first of January of every year from the Ranges to the Police Headquarter. The Range Deputy Inspector General of Police was required to prepare separate lists of those Sub Inspectors, who were considered suitable for officiating promotion in order of seniority and those, who are not considered fit for officiating promotion with brief reasons. The Departmental Selection Committee was, thereafter, required to consolidate the list and call for interview, four times the numbers of Inspectors required to be approved for officiating promotion. On the accruals of substantive vacancies the appointment was to be made from amongst the candidates on the approved list on the basis of suitability. The names of candidates passed over, were required to be considered for subsequent selections with no further interview for filling up substantive vacancies. The candidates selected were to be placed on probation under Para 403(3) of the Police Regulations.

5. The procedure of selection for promotion under the Government Order dated 5.11.1965 was challenged in the High court on the ground that after the enforcement of U.P. Government Servant Criteria for Recruitment by Promotion Rules, 1994 published on 10.10.1994, the promotions have to be made in accordance with Rule 4 providing for criteria of seniority subject to rejection of unfit, except for the post of Head of the Department, the post one rank below the Head of Department and a post carrying maximum of pay scale of Rs. 6700/- and above. The selections initiated under the Government Order dated 5.11.1965 were set aside by this Court and the special appeal was dismissed. The Supreme Court in Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, allowed the civil appeals and while setting aside the judgment of the learned Single Judge and Division Bench of the High court held that police force has special significance in the administration of the State. It was held in paras 36, 37 and 38 as follows:

36. On a conspectus of the whole issue, it is thus difficult to comprehend that the General Rule framed under Article 309 should or would also govern the existing special rules concerning the police rules. Admittedly, the guidelines as contained in the Government Order dated 5.11.1965 have been under and in terms of the

provisions of the Police Act. There is special conferment of power for framing of Rules dealt with more fully hereinbefore, which would prevail over any other Rule. Since no other rule stands formulated and the Government Order of 1965 being taken as the existing rule pertaining to the subject matter presently under consideration with recent guide-lines as noted above, its applicability cannot be doubted. Unless the General Rule specifically repeal the effectiveness of the special rules, question of the latter rule becoming ineffective or inoperative would not arise. In order to be effective, an express mention is required rather an imaginary repeal. It is now a well settled principle of law for which no dilation is further required that law Courts rather loath repeal by implication. The General Rule framed under Article 309 has been for all State Government officials on and since 1994. List II (State List) of the 7th Schedule specially refers to the powers of the State Legislature to frame Rules specially for the Police. In this context Item 2 there of would be significant which reads as follows:

List II - State List

2. Police (including railway and village police) subject to the provisions of entry 2A of List I.

37. Police force admittedly has a special significance in the administration of the State and the intent of the framers of our Constitution to empower the State Government to make rules therefore has its due significance rather than being governed under a general omnibus rule framed under the provisions under Article 309. When there is a specific provision unless there is a specific repeal of the existing law, question of an implied repeal would not arise. In any event, the General Rules are only prospective in nature and as such could not have affected the selection process which commenced in the year 1993 and it is on this score the parties advanced quite a lengthy submissions but in our view question of further consideration thereof would not arise by reason of the commencement of the selection process in 1993.

38. Incidentally, the intention of the Legislative intent has to be assessed in its proper perspective and from the word used therein. In this context the inter-ministerial correspondence as noticed above and the understanding apropos the Government Order stands clear enough to indicate that while General Rules framed in the year 1994 are for general government servants, the Police force are to be guided by the provisions of the Police Act and no exception can be taken thereto.

6. The State Government decided to make statutory Rules under Sub-section (2) of Section 46 read with Section 2 of the Police Act, 1861, to substitute administrative instructions. The Rules of 2008, were notified on 2.12.2008 providing for a Board under Rule 3(c); Service under Rule 3(1); and the year of recruitment to begin from 1st July of the calender year in Rule 3(m). The "Cadre" was specified in Rule 4 and the recruitment with the source and recruitment reservation was provided in Rules 5 and 6. The procedure of

recruitment is provided in Rule 14, and which includes a physical standard test, preliminary written test, physical efficiency test and main written examination. The Rules also provide for medical examination and group discussion and the preparation of merit list after the main examination on the basis of the marks obtained by each candidate. These marks also include assessment of the service records in the manner provided in Rule 16(c).

7. The written examination carries 300 marks; the assessment of service record carries 100 marks and group discussion carries 20 marks under Rule 16(a), (b) and (c) respectively. The method of written examination is given in Rule 17, with preparation of final select list in order of merit and the aggregate of marks obtained by them in service record under Rule 17(b)(ii) (service record) and Clause-C which includes group discussion.

8. The Rules of 2008 were notified on 2.12.2008 and were amended by the First Amendment to the Rules notified on 2.4.2009, the Second amendment notified on 19.1.2010 prior to the initiation of the process of recruitment by promotion. The Third amendment, 2010 was notified on 5.4.2010.

9. Shri Shashi Nandan, Learned Counsel for the petitioner submits that the Rules of 2008 notified on 2.12.2008 are not retrospective in operation. These Rules have not only changed the eligibility but also method of selection. The earlier method of calling of names and preparation of list of those, who are suitable for officiating promotion and thereafter substantive appointment has been given up, providing for written examination. He submits that with the change in the eligibility criteria by reducing the length of service from 10 years to 7 years and thereafter providing for written examination in which there are 300 marks, with only 100 marks for service records and 20 marks for group discussion the petitioners, who were eligible and had a right to be considered for vacancies, which were not filled up upto 2.12.2008, have been discriminated. While the petitioners were waiting for promotion after completing 10 years of substantive service for several years, the enforcement of the Rules on 2.12.2008, proposes to fill up all the vacancies under the new Rules of 2008.

10. Shri Shashi Nandan submits that the invidious discrimination caused by the Rules of 2008 is violative of Articles 14 and 16 of the Constitution of India. According to him all the vacancies and in any case the vacancies, which have arisen upto the enforcement of the Rules on 2.12.2008, should be filled up by old method in accordance with the judgments in *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, *P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others*, *P. Mahendra v. State of Karnataka JT 1989 (4) 459* followed in *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*,

11. Shri Satish Chaturvedi, Addl. Advocate General appearing for the State submits that earlier there were no statutory rules. The promotion from the post of Sub Inspector to the post of Inspector were governed by Government Orders dated 5.11.1965 and 24.7.2003. The last selections were held in the year 1997,

when the petitioners were not eligible. The selections under the Government Orders dated 5.11.1965 and 24.7.2003, were quashed by the High court and the special appeal was dismissed on the ground that the general rules namely U.P. Government Servant (Criteria for Recruitment by Promotion) Rules, 1994, made under Article 309 of the Constitution of India will be applicable. In Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, the judgment of the High Court were set aside and the selections were upheld. The Supreme Court held that the special rules will prevail over the general rules.

12. Shri Satish Chaturvedi submits that on 31.10.2009, when the process was initiated for filling up 1340 vacancies of the year 2005-06, 2007-08, the new Rules of 2008 had come into force. The petitioners' right to be considered for promotion could be affected, if the process for filling up vacancies had started prior to the enforcement of the Rules of 2008. The State Government has powers to make statutory rules and also to amend them by changing the criteria. The Rules have been amended to remove inequality and to bring more transparency in selection. The State Government also wanted to fill up posts of Inspector of Civil Police carrying greater responsibilities by promoting meritorious persons. A conscious decision was taken to adopt the method of written examination without giving up the performance of the candidates reflected in their service records. The policy to promote Sub Inspectors to the post of Inspectors by selecting meritorious candidates, is a policy decision, which does not call for interference by the Court.

13. Shri Chaturvedi submits that earlier the method for selection in the Government Orders dated 5.11.1965 and 24.7.2003 provided for preparing year wise lists. New Rules also provide for selections every year, by enlarging the zone of consideration. He would submit that by Third Amendment to the Rules made on 5.4.2010 the orders of the Government issued from time to time with regard to selection, promotion, training, appointment, determination of seniority and confirmation of Sub Inspectors and Inspectors of Civil Police in U.P. police force have been rescinded and removed ab initio and thus previous government orders are no longer available for promotion. The third amendment to the Rules 2010 notified on 5.4.2010 reads as follows:

The Uttar Pradesh Sub-inspector and Inspector (Civil Police) Service (Third Amendment) Rules, 2010

Short title and 1. (1) These rules may be called the commencement Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service (Third Amendment) Rules, 2010 (2) They shall be deemed to have come into force with effect from December 2, 2008.

Amendment of In the Uttar Pradesh Sub-Inspector Rule 30 and Inspector (Civil Police) Service Rules, 2008, for existing Rule 30 set out in Column 1 below, the rule as set out and Column 2 shall be substituted, namely:

Column-I Column-II

Existing rule Rules as hereby substituted

Overriding Over riding effect 30 effect 30

The provisions (1) The provisions of these rules of these rules shall have effect notwithstanding shall have anything to the contrary contained effect in any other rules, Government notwithstanding order or anything to the contrary contained in any other rules, Government order or Administrative Administrative instructions, made instructions, or issued by the State Government. made or issued by the State Government. (2) the orders of the Government issued from time to time with regard to matters connected with or incidental to the selection, promotion, training appointment, determination of seniority and confirmation etc. of Sub Inspectors and Inspectors of Civil Police in Uttar Pradesh Police Force shall stand rescinded and revoked ab- initio.

(3) The members of the service shall have no claim with regard to matters connected with or incidental to the selection, promotion, training appointment, determination of seniority and confirmation etc., under any Rules, Government Orders or Administrative Instructions issued in regard thereto, and any rights accrued thereunder shall be deemed terminated.

(4) Notwithstanding such rescission, the benefit of selection, promotion, training, appointment, determination of seniority and confirmation etc., granted before December 2, 2008 under the prevalent Rules, Government Orders or Administrative Instructions shall not be withdrawn.

(Kunwar Fateh Bahadur) Pramukh Sachiv

14. Shri Chaturvedi submits that third amendment to the Rules rescinding the Government Orders have not been challenged by the petitioners.

15. Shri Chaturvedi submits that the First amendment to the Rules of 2008 was notified on 2.4.2009, and the Second amendment was notified on 19.1.2010. Though earlier notification in respect of the First amendment was to be effective from the date of publication in the gazette, the provisions of the First amendment were made effective from retrospective effect w.e.f. 2.12.2008, by the Third amendment to the Rules notified on 5.4.2010. Shri Chaturvedi has relied upon judgments of the Supreme Court in State of M.P. and Others Vs. Raghuveer Singh Yadav and Others, in submitting that the alteration of eligibility qualification for appointment by making amendments and withdrawing the earlier notification to proceed afresh with recruitment is valid exercise of rule making power. No candidate acquires any vested right of promotion against the State. The Court distinguished the judgment in P. Mahendran and others Vs. State of Karnataka and others, in which the prescription of additional qualification after the recruitment was notified was held to be bad in law. He has also relied upon V.K. Sood Vs. Secretary, Civil Aviation and others, Col. A.S. Sangwan Vs. Union of India (UOI) and Others, and Union of India v. Pushpa Rani JT 2008 (8) SC 474 (para 29); Dilip Kumar Garg v. State of UP JT 2009 (3) SC 2002.

16. In *Union of India v. Pushpa Rani* (supra) in paragraph 29 the Supreme Court held

29. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.

17. In *State of M.P. and Others Vs. Raghuveer Singh Yadav and Others*, the advertisement was issued on 27.7.1987 calling for applications from eligible candidates with qualification prescribed, degree in Arts, Commerce or Science or Engineering or Diploma in Engineering. The written examinations were held and results were declared and interview cards were issued. The Government in the meantime amended the Rules in consultation with the Government of India and the Public Service Commission and altered the eligibility qualification for appointment to those posts by presenting degree in Science with Physics as a subject or Degree in Engineering or Technology or Diploma in Engineering. The change in the qualifications during the pendency of the selections was challenged. The Supreme Court held that the State has got power to prescribe qualifications for recruitment. Pursuant to amended Rules the Government withdrew the earlier notification and wanted to proceed with the recruitment afresh. It was not a case of any accrued right. The candidates, who had passed examination had got legitimate expectation to be considered of their claims according to the Rules then in vogue. The amended Rules had only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. The Supreme Court distinguished the eligibility in *P. Mahendran v. State of Karnataka* on the ground that in that case the additional qualifications were prescribed. It was held that the additional qualifications prescribed had no retrospective effect.

18. In *Dilip Kumar Garg and Anr. v. State of U.P. and Ors.* (Supra) the Supreme Court held relying upon *Pushpa Rani's* case and *Official Liquidator v. Dayanand and Ors.* JT 2008 (11) SC 467 that Article 14 should not be stretched too far, other wise it will make the functioning of the administration impossible. The

administrative authorities are in the best position to decide the additional qualifications and the Court must respect this and should not interfere readily with administrative decisions.

19. In the present case prior to the enforcement of the Rules of 2008 w.e.f. 2.12.2008 under Government Orders the selections for promotion to the post of Inspector were made under Government Order dated 5.11.1965 and 24.7.2003 providing for 10 years service as eligibility for promotion. In order to improve the efficiency and to promote young persons, the period of eligibility in the Rules of 2008 was reduced to 5 years. The recruitment, however, was not started as the names were not called before the First amendment to the Rules was notified on 2.4.2009 providing for excluding period of probation in counting 5 years on the first day of the year of recruitment. The Service Rules were amended by the First Amendment notified on 2.4.2009 excluding period of probation (2 years) and thereafter by third amendment period of eligibility was clarified to be of 7 years. The Second Amendment to the Rules notified on 19.1.2010 clarified the intention of the State Government to provide for 7 years service on the first day of the year of recruitment as eligibility of the substantively appointed Sub-Inspectors to be considered for the post of Inspectors. The corrigendum dated 5.4.2010 simply amended the first column of Rule 5(2) of the Second Amendment, which was erroneously published. The first column merely described the original rule, the rule as it stood amended by the First Amendment to the Rules on 2.4.2009. By the Third amendment the Rules were made retrospective to operate with effect from the date, when the Rules were notified on 2.12.2008. In order to raise any doubts the third amendment rescinded all Government Orders and instructions issued from time to time prior to the enforcement of the Rules of 2008 and declared them to be revoked ab-initio. The eligibility criteria in Rule 5 after the Second Amendment to the Rules on 19th January, 2010 read with corrigendum dated 5th April, 2010 now reads as follows:

By promotion through the Board on the basis of departmental examination, from amongst substantively appointed Sub Inspectors, who have completed 7 years" service as such on the first day of the year of recruitment.

20. It is obvious that the State Government by changing the eligibility criteria from 10 years to 7 years and providing for departmental examination wanted to infuse young and competent persons as Inspector of Civil Police. The amendment clarified the legislative intention. The recruitment started with calling for the names of the eligible persons for promotion. The amendment made in between before the recruitment started cannot confer any right on the petitioners, to claim promotion on the basis of the Rules as they were operating, when they became eligible, for consideration for promotion.

21. The petitioners have not correctly appreciated the ratio of the judgments in A.A. Calton Vs. Director of Education and Another, B.N. Nagarajan and Others Vs. State of Mysore and Others, In Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and

Others, and P. Mahendra and Ors. v. State of Karnataka and Ors. (1989) 4 JT 459 . All these judgments relate to the facts in which the process of recruitment or promotion had started by issuing advertisement. In para 11 of the N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, it was held that where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing Rules or Government Orders, and further indicates the extent of reservations, selection of candidates in such as case must be made in accordance with the then existing rules and Government Orders. The candidates, who apply, and undergo written or viva voce test acquire vested right for being considered for selections in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. The right of the candidates crystallises on the date of publication of advertisement. However, in all these judgments there is a caveat that a candidate does not get absolute right in such case for promotion or selection. If the recruitment rules are amended retrospectively during the pendency of selection, in that event, selection must be held in accordance with the amended rules. The legislative intent is ascertained either by express provision or by necessary implication.

22. In a recent decision in High Court of High Court of Delhi and Another Vs. A.K. Mahajan and Others, the Supreme Court again considered the question as to whether a mere chance of promotion can be a ground to challenge the amendment to the Rules and whether the recruitment rules amended retrospectively during the pendency of the selection are applicable to the selection on vacancies arising prior to the amendment. The Supreme Court held:

22. This Court has time and again held that since promotion is not a right of the employee, a mere chance of promotion if affected cannot and does not invalidate the action on the part of employer. That right of consideration may accrue at a particular point of time or subsequently thereto. Merely because at a particular point of time the employee is not considered, does not mean the total denial of the consideration of the employee.

37. Last but not the least, there was no mandamus issued by this Court in the aforementioned judgment. Completely erroneous observation has been made that a mandamus was issued by this Court and that the same could not be nullified by resorting to the Rule-making power by respondent Nos. 1 and 2 (therein) since there was no change in the circumstances. A further observation is also incorrect that the amendment could only be made when there is a change in circumstances. The need for the amendment could even be felt because of the change of the policy. If the High Court came to the conclusion that there was any need for amendment on the factual situation, the amendment could always be made.

38. In the present case, the amendment was necessitated on account of the statistics of promotions to the three categories, where the Private Secretaries

had almost monopolized the same. Therefore, there was nothing wrong with the amendments. This Court in *S.B. Mathur and Others Vs. Chief Justice of Delhi High Court and Others*, had also not given any mandamus that the promotions would only be in the light of the existing Rules and in no other. The Court had simply approved of the Rules, as they then stood, providing for the equal status of the three categories and the combined seniority list for them. This did not mean that this Court directed that there could be no change in the modality or that there could be no three separate seniority lists from the three categories. In our opinion, the judgment is completely misunderstood by the High Court.

39. Further, if this was the situation found by the High Court that the Rule could not be changed by amendment, the High Court could have and should have found fault with the whole amendment, not only the retrospectivity aspect thereof. But that has not happened. The High Court has not invalidated the amendments, creating three seniority lists for the three categories and introducing the principle of rotational promotion. It has only found fault with the retrospectivity.

40. We have already pointed out that the retrospective effect given to the amendments was after consideration of material statistics. Further, the date fixed was also relevant, as it was immediately after the last promotion was effected. We, therefore, find no fault with the retrospective aspect and in our opinion, the High Court has wrongly found fault with the retrospective aspect on the incorrect logic that the amendments affected any absolute vested or accrued rights of being considered. There is no such absolute accrued or vested right of consideration, which could not be affected by the retrospective amendments. The only condition is that such retrospective amendments should be constitutionally valid.

41. In the decision in *N.T. Devin Katti and Ors. v. Karnataka Public Service Commission and Ors.* reported in *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, the Court was considering the right of the candidates to be considered. The question in that case was that as to which Rules were applicable, particularly, when there were amendments in the Rules after the advertisement was issued. The Court clearly held that under such circumstances, normally the existing Rules on the date of advertisement would be applicable, however, if there is an amendment in the Rule with retrospective effect, then it would be the amended Rules, which would be applicable. The Court observed that it was on the date of the advertisement that the right of the candidate crystallizes. However, the Court observed that he had no absolute right in the matter.

42. The Court further observed:

11. ...If the Recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules.

The Court also observed that:

11. ...a candidate, on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the Rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of Rules during the pendency of selection unless the amended Rules are retrospective in nature.

(Emphasis supplied)

43. This judgment was relied upon further in case of Marripati Nagaraja and Ors. v. Government of Andhra Pradesh and Ors. reported in 2007(11) SCC 522. This Court observed: AIR 2007 SCW 6861

16. The State, in exercise of its power conferred upon it under the proviso to Article 309 of the Constitution is entitled to make Rules with retrospective effect and retroactive operation. Ordinarily, in the absence of any Rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied. But, if some Rule has been given a retrospective effect which is within the domain of the State, unless the same is set aside as being unconstitutional, the consequences flowing therefrom shall ensue. In such an event, the applicable rule would not be the Rule which was existing, but the one which had been validly brought on the statute book from an anterior date....

44. In Virender Singh Hooda and Others Vs. State of Haryana and Another, in paragraph 45, this Court recognized the power and competence of the Legislature to make a valid law and make it retrospectively, so as to bind even past transactions. In para 67 and 68, the Court explained the aspect of retrospectivity and came to the conclusion that there was nothing wrong if the Legislature had removed the basis of the decision of this Court by repealing the circulars. It further observed that:

67. ...the candidates have the right to the posts that are advertised and not the ones which arise later for which a separate advertisement is issued. A valid law, retrospective or prospective, enacted by the legislature cannot be declared ultra vires on the ground that it would nullify the benefit which otherwise would have been available as a result of applicability and interpretation placed by a superior Court.

The decision in the case of Chairman, Railway Board (cited supra) was specifically considered in para 70 of the judgment. The Court reiterated the observation made in that case that a Rule, which seeks to reverse from an anterior date a benefit which has been granted or availed of e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the

Constitution to the extent it operates retrospectively. We have already pointed out that it is only to this extent that the retrospectivity can be challenged. However, for that there has to be a tangible benefit awarded like promotion or pay-scale or a rate of pension. Such is not the state of affairs in the present case. The Court also made reference to the decision in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, wherein it was held that impugned Rules did not recall a promotion already made or reduce a pay-scale already granted.

45. In short, law regarding the retrospectivity or retroactive operation regarding the Rules of selection is that where such amended Rules affect the benefit already given, then alone such Rules would not be permissible to the extent of retrospectivity.

(Emphasis supplied)

23. In the present case the recruitment by inviting names for consideration was started on 31.10.2009. By that date the First, and Second amendment to the Rules of 2008, were notified with a clear legislative intention that the Sub Inspectors appointed substantively, who have completed 7 years of service on the first day of year of recruitment will be considered for promotion in accordance with the new method for selections provided in the Rules. The Third Amendment to the Rules was notified on 5.4.2010 to clarify the intention that all previous Rules, Government Orders and administrative instructions are rescinded, revoked ab-initio, and are withdrawn.

24. The petitioners did not acquire or mature any right to be considered for promotion under the Government Order dated 5.11.1965.

25. The writ petition is dismissed.