
(1994) 11 KL CK 0069

In the High Court Of Kerala

Case No : W.A. No. 492 of 1991 and Connected Cases

State of Kerala and Others

APPELLANT

Vs

P.K. Satheesh and Others

RESPONDENT

Date of Decision : 21-11-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (1994) 2 KLJ 1041

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : K.A. Abdul Gafoor, K. Balakrishnan and V.C. James, Govt. pleader, for the Appellant; M.K. Damodaran and C.S. Rajan, for the Respondent

Judgement

Viswanatha Iyer, J.—The above Writ Appeals and Writ Petitions concern the eternal question of the ranking and seniority of direct recruits vis-a-vis promotees, the department concerned being the Agricultural Income Tax and Sales Tax Department of the Kerala State. We shall deal first with the group of cases relating to Assistant Sales Tax Officers (ASTOS. for short), for which we have culled out the facts from the three writ petitions O. P. Nos. 891, 8935 and 11957 of 1990, the judgment in which has given rise to the seven writ appeals Nos. 494, 550, 551, 552, 763, 774 and 823 of 1991, and O. P. No. 11081 of 1990 which stands referred to us for decision. We shall deal with the case of the Sale Tax Officers separately. The chequered career of the disputes, and the fluctuating fortunes of the parties may be stated thus. (The Exhibits referred to in this paragraph and the next are those annexed to O. P. No. 11081 of 1990). The Kerala Agricultural Income Tax and Sales Tax Subordinate Service (Subordinate Service, for short) consists of Assistant Sales Tax Officers (which includes officers of various designations) governed by the special rules, namely the Kerala Agricultural Income Tax and Sales Tax Subordinate Service Rules (hereinafter called the Subordinate Service Rules), which came into force on 11-10-1962. These rules prescribed two methods of appointment to the service, by transfer of members of the Ministerial Subordinate Service employed in the

department, and the other, by direct recruitment. (Vide rule 2(a)). Rule 2(b) prescribed the quota for such appointment which, to begin with, was one, by direct recruitment, and three, by transfer in respect of every four substantive vacancies. Five persons were directly recruited in 1965 and another five in 1968 in accordance with these rules. Twenty persons were recruited in 1976 and 21 in the year 1977, when a writ petition O. P. No. 1346 of 1977 was filed by one Madhu, a Head Clerk transferee praying for allotment to him of rank and seniority above the direct recruits in the category of ASTOs. This writ petition was disposed of on 22-2-1979 with direction to fix the seniority in accordance with the quota rule contained in rule 2 (b). The Government accordingly directed the Board of Revenue by the order dated 20-7-1981 to prepare the seniority list assigning national seniority to every three transferees below one direct recruit. The two petitioners in O. P. No: 11081 of 1990 as well as four others, who were direct recruits, appointed in 1976 or 1977, thereupon filed writ petition O. P. No. 5967 of 1981 challenging this direction as contrary to rule 2 (b). The writ petition was disposed of by the judgment Ext. P1 dated 29-6-1982, which was affirmed in the appeals filed by the State, and certain affected transferees, by the judgment Ext. P2 dated 31-10-1983. Suffice it to say that the result of these proceedings was to hold that persons of either class, transfers or direct recruits, appointed in excess of the quota respectively assigned to them should yield place to the other, rightly appointed within the quota. A direction was given accordingly to fix the seniority. It was also stated in the appellate judgment that Government shall not take into account any orders which were inconsistent with the principles indicated in the judgment.

2. The matter was taken up in appeal to the Supreme Court by the transferees, and it is stated that the appeals were stated for hearing on 30-10-1984 (though it was actually disposed of only on 21-8-1990). In the meanwhile, Government passed an order Ext. P3 on 4-9-1984 by which the operation of rule 2(b) was diluted by introducing a new sub rule, rule 2 (c) providing that rule 2(b) shall apply only from 1-4-1974 and not from 11-10-1962. as under the original scheme: At the same time, the proviso to rule 2 (c) provided that the amendment shall not apply to those appointed prior to 1-4-1974. In other words, the ten direct recruits appointed prior to 1-4-1974 were not affected by the amendment, but those appointed after 1-4-1974 in 1976, 1977, etc-were affected by it.

3. The petitioners in O.P. No. 5967 1981 challenged the amendment by petitions under Article 32 of the Constitution before the Supreme Court namely Writ Petition Nos. 15495-96 of 1984. The writ petitions as well as the Civil Appeals arising out of the judgments Exts. P1 and P2 were disposed of by the Supreme Court by the judgment Ext. P5 dated 21-8-1990. The writ petitions were allowed to be withdrawn with liberty to the petitioners to move this court. The Civil Appeals were disposed of with a direction to this court to dispose of the writ petition afresh in the light of the decision in Direct Recruit Class II Engineering Officers" Association v. State of Maharashtra, AIR 1990 S. C. 1607. As permitted

by this judgment, O. P. No. 11081 of 1990 was filed in this court on 6-11-1990 challenging the retrospective amendment by rule 2 (c) as unconstitutional and void, in as much as it affected the rights of the direct recruits advised and appointed between 1-4-1974 and 4-9-1984, the date of the amendment.

4. The State however purported to sustain the validity of the amendment referring to the agitation carried on by the ministerial staff in the department for variation of the quota rule.

5. In the meanwhile, the State had further amended the Subordinate Service Rules by an order dated 4-11-1985 by which they altered the ratio of 3:1 between transferees and direct recruits to 88:12, thereby reducing the quota for direct recruits from 25% to 12%. This was given retrospective effect from 1-4-1981.

6. The Kerala Public Service Commission had invited applications on 16-3-1979 for direct recruitment of ASTOs and the rank list was published on 3-8-1981, Government reported twelve vacancies, and twelve persons were advised by the Public Service Commission for appointment. Three of them did not however join, and fresh advice of three other persons was sought and made. Among those as advised were the petitioners in O. P. Nos. 8935 and 11957 of 1990. There existed further vacancies for being filled up by direct recruitment, but Government did not report the vacancies with the result the three petitioners in O. P. No. 891 of 1990 filed writ petitions O. P. Nos. 6599 and 5818 of 1983 for direction to the State to report the vacancies to the Public Service Commission. This court issued an interim direction to report the vacancies forthwith. Eventually the writ petitions were disposed of on 24-7-1985 with a direction to the State and the Board of Revenue to appoint the three petitioners as Assistant Sales Tax Officers in the quota available for direct recruits. This decision was affirmed in appeals, W. A. Nos. 477 and 478 of 1985 filed by the State. In compliance with the direction contained in the judgment in the writ petitions, the three petitioners were advised for appointment on 2-1-1986 and they were appointed accordingly.

7. The Board of Revenue published a provisional seniority list of Assistant Sales Tax Officers for the period 1-4-1981 to 31-3-1987 on 3-1-1989. Petitioners in the three writ petitions, O. P. Nos. 891, 8935 and 11957 of 1990 were assigned ranks below many of the transferees, which according to these petitioners, was not legal, or in proper implementation of the quota rule. Many of these transferees had only been provisionally posted from the Ministerial Service under rule 31 (a) of the Kerala State and Subordinate Service Rules (KSSR) to cope up with the work in the cashew seasons, which did not entitle them to any rank or seniority over the direct recruits. According to the petitioners, these postings were purely provisional to meet the exigencies of service during the cashew seasons, and were not to substantive vacancies. Nevertheless, these personnel were placed above the direct recruits ignoring the quota rule contained in rule 2 (b). They claimed that 25% of the vacancies should be filled up only by the direct recruits.

8. The main target of challenge was thus the assignment of lower rank and Seniority to the direct recruits in the provisional seniority list. It was inter alia pointed out that certain direct recruits appointed from the rank list of 3-8-1981 had been assigned ranks 97 to 105 and the petitioners were entitled to rank not far below these persons as they had also been appointed from the same select list: in support of which various details were given. It was nevertheless that they were shunted down to take their place below many of the transferees. This they stated was violative of Articles 14 and 16 of the Constitution.

9. The State however defended the provisional list, relying on the retrospective amendment which they had effected on 4-11-1985 with effect from 1-4-1981 reducing the quota for direct recruits from 25% to 12%.

10. The learned Judge dealt with the matter elaborately and held, based on the various decisions of the Supreme Court culminating in T.R. Kapur and Others Vs. State of Haryana and Others, that the Government's power to make rules regulating the recruitment and conditions of service of persons appointed to public services is subject to the well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment With retrospective effect. It was accordingly held that the petitioners before him who had been appointed prior to the amendment dated 4-11-1985 should be assigned rank in the seniority list based on the rules which existed at that time, i.e. at the time of their appointment.

11. The learned Judge then dealt with the question of assignment of rank and seniority inter se between direct recruits and transferees. He held that the quota rule had not broken down as the rank list dated 3-8-1981 was correct and could be drawn upon for making appointment by direct recruitment. In the event, he directed the sonority list to be finalised in accordance with the principles laid down by the Supreme Court in the Direct Recruit Engineering Officers Association case. It is this decision that is under challenge by the State as well as by some of the transferees in the seven writ appeals referred to in paragraph 1 above.

12. We must here mention some events that took place subsequent to the filing of the writ appeals. Firstly O. P. No. 5967 of 1981 which stood remanded to this court from the Supreme Court, was disposed of on 26-9-1992, with a direction to the Board of Revenue to prepare a seniority list in accordance with the decision in the Direct Recruit Engineering Officers Association case. Interim directions were also issued in the writ appeals directing the Government and the Board of Revenue to prepare provisional seniority lists of Assistant Sales Tax Officers. It was stated before us that provisional lists were accordingly prepared on various dates, including one on 20-1-1993. with a final list being published on 20-1-1994. These lists are under challenge in some writ petitions filed by aggrieved parties. We are not entering into the merits of the controversy relating to these subsequent lists as they are not within the pale of the cases disposed of by this judgment.

13. The writ appeals before us are filed by the State, and transferees, some of whom, not being parties to the writ petitions, have filed the appeals with leave of this court. O.P. No. 11081 of 1990 is virtually a representation of the writ petition filed by those petitioners in the Supreme Court. Therein they challenge the amendment of 4-9-1984, on various grounds including the one on which the learned Single Judge held in O. P. No. 891 of 1990, etc. that an amendment affecting the vested rights of officers in public services was impermissible in law. The only question which we have to tackle, and which we are tackling in the writ appeals is the validity or otherwise of the amendment of 4-11-1985. We may note here that the prospective operation of this amendment is not under challenge. The challenge is only to the retrospectively given to it from 1-4-1981. We are therefore considering only the question whether the retrospectively given to the amendment is valid in law. We shall deal with the challenge to the amendment of 4-9-1984 in O. P. No. 11081 of 1990 later.

14. The direct recruits have been appointed from out of the rank lists prepared by the Public Service Commission from time to time. We cannot agree with the Government Pleader that the quota of direct recruits has been exceeded during any period-in fact the figures relied on by the Government Pleader were stoutly denied by the direct recruits. At any rate, there has been no challenge by any of the transferees to the appointment of the various petitioners directly as ASTOs. In the absence of any valid material placed before us to demonstrate that any of the direct appointments had been made irregularly, and in the absence of any challenge by any transferee to these appointments, at any point of time, as being, in excess of the quota, we hold that the petitioners in the writ petitions O. P. Nos. 891, 8935, and 11957 of 1990. have been appointed regularly and within the quota for direct recruits as per the rules at the relevant time. We may also note that such a contention does not appear to have been urged before the learned Single Judge. We do not find any reference to it in his judgment.

15. If this be the position, the direct recruits are entitled to be assigned seniority vis-a-vis the transferees in terms of rule 2 (b) of the Subordinate Service Rules, following the guidelines laid down by the Supreme Court in the Direct Recruit Engineering Officers Association case. This is a right which has vested in them on their appointment in accordance with the then obtaining quota rule. The case of break down of the quota rule during the relevant years when the petitioners were appointed, which was faintly suggested before us by the Government Pleader for the State, and counsel for the transferees, does not stand scrutiny for the reason that during all these periods, there were rank lists prepared by the Public Service Commission in existence, from which the appointments could be and were in fact, made. There was no necessity then to resort to appointment by transfer, when admittedly the Public Service Commission lists were current, and were available for being drawn on, for appointment by direct recruitment. In that event, the seniority has to be fixed strictly in accordance with the quota rule, and the transferees appointed in excess of the quota assigned to them, as the rules stood at the relevant time, have to be pushed down to yield place to the direct

recruits. This was a right which inhered in the direct recruits on their appointment, and which they could preserve against any arbitrary amendment of the rules.

16. But this right of the direct recruits is sought to be affected by the retrospective amendment of 4-11-1985 with effect from 1-4-1981. The amendment has taken away the rights which had vested in the direct recruits, appointed after 1-4-1981 to have their seniority fixed in accordance with the quota as it stood at the relevant time, and the number of vacancies which were available to be filled up by direct recruitment, as per that quota. The effect of the amendment is to confer advantage on the transferees vis-a-vis the direct recruits by reducing the number of vacancies available for direct recruits and thereby affecting their rank and seniority. It must be noted that the direct recruits joined service in the expectation of being assigned rank and seniority as per the then existing quota rules, and the number of vacancies accruing to them thereon, but this right of theirs is arbitrarily deprived of and affected by the retrospective amendment.

17. Absolutely no explanation is forthcoming as to why the amendment was necessitated or made with effect from the date mentioned. There is no particular reason why the date 1-4-1981 was chosen as the date from which the rule as amended should operate. It is no doubt open to the State to prescribe the mode of appointment for any post, but if that prescription operates retrospectively and deprives employees of rights which had vested in them, there is a violation of Articles 14 and 16 of the Constitution, and the retrospectively has to be quashed. There can be no doubt on the facts of these cases that the retrospective operation of the amendment has arbitrarily deprived the direct recruit of the rights which had inhered in them on their appointment during the relevant period. Their fundamental rights under Articles 14 and 16 of the Constitution have been violated.

18. The Supreme Court has time and again held that retrospectively of an amendment to the service rules which takes away the vested rights of employees, is not sustainable. We may refer to a few decisions on the point, apart from those referred to by the learned Judge. In *P.D. Aggarwal and Others Vs. State of U.P. and Others*, it was observed that while the Government had undoubtedly the power under the proviso to Article 309 of the Constitution to make rules and amend them with retrospective effect such retrospective amendments cannot take away vested rights. The amendments must be reasonable and not arbitrary or discriminatory violating Articles 14 and 16 of the Constitution. In *Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others*, , this principle was reiterated in more emphatic terms. It was pointed out that while the legislature was undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws, they have to conform to the do's and don'ts of the Constitution. Neither prospective nor retrospective laws can be made so as to contravene

fundamental rights. The law must satisfy the requirements of the Constitution today, taking into account the accrued or acquired rights of the parties today. The law cannot say that 20 years ago the parties had no right, and therefore the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago, and ignore the march of events and constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history. A similar sentiment was expressed in *K. Narayanan and others Vs. State of Karnataka and others*, It was observed that Seniority is an incident of service which cannot be eroded or curtailed by a rule which operates discriminately. The operation of a rule with retrospective effect may result in undue benefit to one class of employees over the other. The rule making authority should not be permitted normally to act in the past. Therefore the rule impugned in that case made in the year 1985 permitting appointment by transfer, and making it operative from 1976 was held to be vicious, contravening Articles 14 and 16 of the Constitution.

19. We are not multiplying decisions. Suffice it to say that on the facts of the cases before us the rights which had vested in the direct recruits have been arbitrarily taken away by the retrospective amendment. Therefore, the retrospectively given to the amendment is bad, and is liable to be declared as such. The amendment can, as we stated earlier, operate prospectively and there is no challenge to it.

20. This situation is attempted to be got over by the learned Government Pleader with the submission that the amendment was necessitated because of the dissatisfaction which had arisen among those in service, by the provision of a quota for direct recruitment. Discussions were going on to settle the issue by reducing the quota for direct recruits and it was as a result of this discussion, that the amendment was effected. This contention, at best, only shows that the Government acted without mala fides, but that will not save the situation created by the violation of Articles 14 and 16 of the Constitution. Direct recruitment was not stopped pending settlement of the issue: on the other hand, it continued kindling expectations in the direct recruits of their rank and seniority being fixed in a certain manner under the then quota rule and the vacancies available consequent thereon. Having appointed the direct recruits as per the rules then in force, Government cannot subsequently turn round and say that despite the validity of their appointment, they should take their rank below many of the transferees by virtue of a retrospective amendment. This is rank injustice, and unreasonable.

21. Mr. Gaffoor appearing for some of the transferees raised a contention that the only right which was guaranteed to the direct recruits, and which had vested in them, was to have their seniority reckoned with reference to the date of appointment under rule 27 (c) of the KSSR. Accordingly to him no more and no

less was guaranteed. We find it difficult to accept this submission. Seniority is an incident of service, and a very vital incident at that. Rule 27 (c) requires the seniority to be reckoned with reference to the date of appointment, but its equally axiomatic that no person who is otherwise a junior under the quota rule can by any means be accorded seniority. The then prevailing quota rules also vest a right in the direct recruits to have the seniority fixed in a particular manner vis-a-vis the transferees. It is this right that is sought to be affected by the retrospective amendment. We find no substance in Mr. Gaffoor's plea.

22. Mr. Gaffoor had a further contention that for the purpose of applying the quota rule, only substantive vacancies have to be taken into account, in which event, there will be an excess of direct recruits. Apart from the assertion of counsel, we are unable to find any support for this in the pleadings. In any case, as pointed out earlier, the direct recruits were being appointed without any demur from any quarter, and we do not find any reason to accept the plea at this distance of time that direct recruitment was made irregularly or in excess of the quota. This plea is only to be stated and rejected.

23. A more vehement plea which was put forward by Mr. Gaffoor was that there was no challenge to the amendment of 4-11-1985 in the three writ petitioner, O. P. Nos. 891, 8935 and 11957 of 1990, and therefore this question need not be gone into. We are unable to accept this contention. For one thing, all the parties had understood and proceeded on the basis that the retrospectively was under challenge by these petitioners, who were claiming fixation of their rank and seniority accordingly. Grounds C and D in the writ petitions definitely make out the plea that the action of the State in placing these petitioners below many of the transferee was arbitrary and illegal and violative of Article 14 of the Constitution. It is true that the retrospectively as such was not stated to be violative of Articles 14 and 16 of the Constitution, but then this question became relevant and apparent only after the counter affidavit was filed by the State relying on the retrospective amendment to justify the pushing down of the direct recruits below many of the transferees. The writ petition was filed at a time when the provisional seniority list of ASTOs for the period 1-4-1981 to 31-3-1987 was published. The petitioners could not have discerned from that list, the reason their lower ranking or that it was a consequence of the amendment of 4-11-1985. The matter was explained only by the counter affidavit. The petitioners could not therefore be faulted for not specifically challenging the retrospectively; but no prejudice has been caused as the State which is the party really affected went for the hearing with full awareness that this issue was involved in the case. We reject this contention.

24. We shall now deal with a contention raised by Sri. K. Balakrishnan appearing for the interveners. He states that a vacuum will be created by striking down the retrospectively of the amendment. The amendment consists of two parts, one operating in the future prospectively, and the other, retrospectively. If the retrospective part is struck down, it will not automatically result in the

resuscitation of the old rule which was substituted or replaced by it with effect from 1-4-1981. Reliance is placed on the decisions in *Firm Mehtab Majid & Co. v. State of Madras*, AIR 3963 S.C. 928 *Devadasan v. Union of India*, AIR 1964 S. C. 179, *B.N. Tiwari Vs. Union of India (UOI) and Others*, and *Indian Express Newspapers (Bombay) P. Ltd. v. Union of India*, AIR 1986 S. C. 515. We do not agree What is sought to be done by deleting the retrospectively is the protection of the fundamental rights of the petitioners under Articles 14 and 16 by preserving their rank and seniority in the category of ASTOs vis-a-vis the transferees. What happens or does not happen to the rule as such is therefore immaterial. We need not therefore deal in depth with the question whether the substituted rule will stand revived or not. Suffice it to say that the rights of the petitioners shall not be affected by the amendment in question. This plea is also overruled.

25. There was another feeble suggestion, again by Sri. K. Balakrishnan, that the petitioners should have challenged the appointment of the transferees by appropriate statutory appeal, and that in the absence of such challenge, they are precluded from filing writ petition under Article 226 of the Constitution. We do not see why. The petitioners cause of action for challenging the rank and seniority arose only when the provisional seniority list was published, assigning them lower ranks. Their grievance is against the rank and seniority assigned to them. Their case is one of infraction of the fundamental rights under Articles 14 and 16. We do not find any infirmity in their approach to this court under Article 226.

26. One minor facet arising out of the judgment may also be dealt with here, for purposes of clarification. The learned Single Judge has directed in paragraph 9 of his judgment that the petitioners in O. P. Nos. 891, 8935 and 11957 of 1990 who got appointment prior to 4-11-1985 should be assigned rank in the seniority list based on the rules which existed at that time. The contention of Mr. Gaffoor for the transferees is that petitioners 1 and 3 in O. P. No. 891 of 1990 were appointed only in 1986 as per the advice dated 2-1-1986 and therefore as per the directions in the judgment, they can reckon their seniority only with reference to the rule after the amendment on 4-1-1985. We do not find any difficulty in rejecting this contention. These petitioners were entitled to be advised and appointed from out of the rank list dated 3-8-1981, before 3-8-1983. It was the failure of the State to report the existing vacancies that necessitated their filing the writ petitions O. P. Nos. 6599 and 5818 of 1983 and getting directions. The writ petitions were disposed of on 24-7-1975 before the amendment though the appointments came later. They should therefore get their seniority reckoned with reference to the rule as it stood before 4-11-1985. We clarify accordingly.

27. We are therefore in agreement with the learned Single Judge that the retrospectively given to the amendment of 4-11-1985 cannot operate to effect the rank and seniority of the petitioners vis-a-vis the transferee. The rank and

seniority of the parties has to be fixed in the light of the principles laid down by the Supreme Court in the *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, . The decision of the learned Single Judge on O. P. Nos. 891, 8935 and 11957 of 1990 has therefore to be affirmed.

28. Petitioner in O. P. No. 11081 of 1990 challenges the amendment Ext. P3 dated 4-9-1984 on other grounds as well. The challenge is on various grounds numbering seven. The first ground is that of infraction of vested rights Secondly it is stated that rules 14 to 17 of the KSSR will have to be operated afresh, and fresh rotation applied to the four appointments mentioned in Ground D. Thirdly it is stated that there is no nexus for the date 1-4-1974 with the object of the amendment. Fourthly it is stated that the amendment is made in violation of the direction contained in the appellate judgment of this court Ext. P2 that the Government shall not take into account any orders which were inconsistent with the principles laid down in the judgment. Fifthly it is stated that the amendment is discriminatory for another reason as well, namely that the ASTOs are classified into two without any rhyme or reason, as those appointed before 1-4-1974, and afterwards. Sixthly it is stated that the amendment is made mala fide because of the pressure exerted on Government by those in service. Seventhly it is stated that the amendment in effect overrides the judgment Ext. p2 of this court and therefore it is invalid as an exercise of judicial power.

29. But we do not find it necessary to deal with all these grounds as we are of the view that rule 2(c) limiting the operation of the quota rule in rule 2 (b).for the period subsequent to 1-4-1974 is invalid. It is stated in the counter affidavit that during the period 11-10-1962 to 31-3-1974, there were 368 vacancies of ASTO's to be filled up out of which 92 constituted the quota for direct recruits. But only tea of these vacancies were filled up by direct recruits and the balance 358 were filled up by appointment by transfer At the time the petitioners joined service, they were entitled to take these circumstances into account in the fixation of their rank and seniority; the operation of rule 2(c) introduced on 4-9-1984 has affected this right of theirs. A rule introduced on 4-9-1984 cannot wipe out rights which had accrued in 1976 and 1977, when the petitioners joined service by ex post facto making the law different up to 1-4-1974. The reasons stated by us while considering the validity of the amendment of 4-11-1935 and the decisions of the Supreme Court referred to therein apply with equal force to this situation and it has to be held that rule 2(c) in so far as it limits the operation of rule 2(b) for the period subsequent to 1-4-1974 is unconstitutional and void. The rank and seniority of the petitioners has to be fixed following the principles laid down in *Direct Recruit Engineering Officers Association*, ignoring the limitation introduced by rule 2(c).

30. The respondents have a contention that O. P. No. 11081 of 1990 is considerably belated. The plea is one without substance for the reason that the petitioners had filed writ petitions Nos. 15495-96 of 1994 in the Supreme Court

soon after the amendment was made challenging it. It was only on 21-8-1990 that the Supreme Court disposed of the writ petitions along with the Civil Appeals, permitting the petitioners to withdraw the same with liberty to move this court. It was therefore that the writ, petition was filed in this court on 6-11-1990 challenging the amendment. Petitioners have been vigilant in pursuing their remedies, and we do not find any delay or laches on their part justifying a complaint of delay.

31. The above discussion disposes of the cases of the Assistant Sales Tax Officers. We shall now take up the cases of the Sales Tax Officers, the facts of which are similar. The post Sales Tax Officer is to filled either by transfer of ASTOs (and others included in that category) from the Subordinate Service or by direct recruitment. The ratio was 3:1 in the first instance which was altered to 80:20 with effect from 1-4-1981 by a retrospective amendment dated 4-11-1985. On 2-7-1981, Government sanctioned the creation of 75 posts of Sales Tax Officers and by proceedings dated 22-7-1981, the Board of Revenue transferred and promoted seventy five ASTOs as Sales Tax Officers. A provisional seniority list of Sales Tax Officers for the period 1-4-1981 to 5-4-1984 was published by the Board of Revenue on 11-6-1989. Three of the direct recruits who had been advised for appointment from the rank list dated 3-10-1979 published by the Public Service Commission, on 23-7-1981 and 14-9-1981 (2). and who had accordingly been appointed on 12-8-1981 and 15-10-1981(2) felt aggrieved by the rank and seniority assigned to them in this provisional seniority list and filed writ petition O.P. No. 7280 of 1989 challenging ft. Inter alia, they contended that the retrospective amendment made on 4-11-1985 was unconstitutional and void. They also challenged the assignment of rank and seniority over them to the seventy five persons promoted on 22-7-1981. The learned Judge disposed of this writ petition along with the three writ petitions of the ASTOs, which raised similar issues, and held retrospectively of the amendment to be bad, as affecting the petitioners' vested rights. The learned Judge also held that the assignment of rack to all the seventy five persons over the direct recruits without determining the actual number of vacancies available to each category was illegal and directed re-assignment of the ranks in accordance with the observations in the judgment. These observations were related to the principles laid down by the Supreme Court in the decision of the Direct Recruit Engineering Officer Association case

32. Writ Appeal Nos. 492 and 512 of 1991 have been filed by the State, and by some aggrieved transferees who were not parties to the writ petition, with leave granted by this court.

33. The main point arising in this case is regarding the validity of the retrospective amendment of the quota rule with effect from 1-4-1981 by proceedings dated 4-11-1985. We have dealt with the matter in detail while considering the case of the ASTOs. For the reasons stated by us therein, which are applicable to these cases as well, we hold the retrospectively of the

amendment to be unconstitutional and void, though the amendment will operate prospectively for the future.

34. But Mr. Gaffoor for the transferees urges two further contentions in support of his challenge to the learned Single Judge's judgment. First he submits that though the fourth respondent in the writ petition was impleaded in a representative capacity, no steps were taken to effect notice of the writ petition to those affected by publication in newspaper. But then it has to be observed that the challenge in the writ petition was primarily to the constitutional validity of the amendment dated 4-11-1985, the other reliefs being consequential to the said relief and flowing from it, not dependant on the case of any particular individual, or particular facts. As stated by the Supreme Court in *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, and reiterated in *A. Janardhana Vs. Union of India (UOI) and Others*, , when the challenge is to the validity of certain decisions/statutory rules as violating Articles 14 and 16 of the Constitution, the necessary parties to be impleaded are only those against whom the relief is sought, and in whose absence, no effective decision could be rendered by the court. The relief sought in that case being thus only against the Union of India, it was held that the non-impleading of those persons who may be affected by the decision was not fatal to the writ petition.

35. The ratio of these decisions applies with equal force to the case before us. The relief sought is mainly the declaration of invalidity of the offending retrospectively of the amendment. This is directed against the State. The other reliefs follow from this declaration as a consequence. The writ petition does not therefore suffer from any infirmity. It does not fail for failure to effect publication in newspaper.

36. The other plea of Mr. Gaffoor is that the learned Judge has directed the enmasse pushing down of the seventy five transferees of 22-7-1981 below the direct recruits. This is stated to be unwarranted and illegal. We do not find any such blanket direction in the judgment as contended by counsel. What the learned Judge has directed is only to reassign the seniority, after determining the actual number of vacancies to which each category is entitled during the relevant period, following the principles laid down in the judgment. We do not find any error or illegality in this direction.

37. The judgment impugned does not therefore suffer from any infirmity regarding Sales Tax Officers as well.

38. This will dispose of the writ appeals. The remaining writ petitions namely. O. P. Nos. 3752 of 1991, 11098, 11803 and 15740 of 1992, 3889 and 11324 of 1994 as also Contempt of Court Case No. 255 of 1994 remain to be dealt with. But we are of the view that these petitions do not call for any further orders having regard to the decision we have rendered in the batch of cases.

39. O. P. No. 3752 of 1991 is by a transferee Sales-tax Officer in which the main

prayer is for a direction to prepare a fresh seniority list of Sales, Tax Officers in accordance with the Rules, without reserving any place for direct recruits, during the period 1-4-1975 to 17-5-1976, when according to the petitioner the quota rule had broken down. Since the seniority list has to be prepared in the light of the decision in Direct Recruit Engineering Officers Association, no further directions are called for in this petition. It will be for the petitioner to raise his contentions if the seniority list prepared is adverse to him in any manner, No directions are called for at this juncture.

40. In O. P. No. 11098 of 1992 the prayer is to recast the seniority list of Sales Tax Officers in accordance with the principles laid down in Direct Recruit Engineering Officers Association, which necessarily has to be done having regard to our decision in the Writ Appeals. No separate directions are therefore called for in this petition.

41. O. P. No. 11803 of 1992 seeks direction to prepare a seniority list of Sales Tax Officers in accordance with the impugned judgment of the learned Single Judge. This again does not call for any separate orders.

42. O. P. No. 15740 of 1992 is similar, and does not require to be separately dealt with.

43. O. P. No. 3889 of 1994 is another case seeking preparation of the seniority list in accordance with the petitioner's contentions. Since the seniority list has to be prepared in the light of the directions contained in the judgment of the Supreme Court referred to above, as also the decision of the learned Single Judge and our judgment in the cases, we do not find the necessity for any further directions in this petition.

44. In O. P. No. 11324 of 1994, the petitioner who is a direct recruit, seeks directions to implement a seniority list Ext. P2 prepared by the Board of Revenue on 25-3-1994. But there is controversy as to whether the list has been published or not. Whether it has been published or not, and whether it is an enforceable seniority list or not, it is seen that as it stands, it is a purely provisional list, prepared subject to the result of Writ Appeals Nos. 492 and 494 of 1991, which we are disposing of today. Since the list is in any event only a provisional one, we do not deem it proper to issue any directions. Necessarily, the matter will have to be dealt with in the light of the decisions of the Supreme Court as also the decision of the learned Single Judge and ours, and rank and seniority fixed accordingly. No further orders are therefore called for.

45. These petitions have therefore to be closed as not requiring any further orders, but leaving open any individual controversies raised therein by the petitioners for adjudication, if necessary at any later stage, after the seniority list is finalised.

46. C.C.C. No. 255 of 1994 is one filed by a direct recruit in which he complains of non-compliance with the directions contained in two judgments of this court in

O. P. Nos. 11677 of 1993 and 6396 of 1994. The directions were to the Board of Revenue to dispose of a representation made by him, which related to the fixing of his seniority as Sales Tax Officer vis-a-vis transferees. But we do not think this is a fit case for invoking the contempt jurisdiction of this court, in as much as the vexed question of inter se seniority between the direct recruits and the transferees was pending adjudication in this court in these writ appeals, with interim directions issued therein, and the matter required consideration in depth by the Board of Revenue before any orders could be passed. In fact, the Board of Revenue appears to have been alive to the situation and been preparing and publishing provisional seniority lists of officers for various periods. Since the matter was in a state of uncertainty with a number of proceedings pending, the petitioner cannot complain that there was any willful non-compliance with the directions issued by this court in the two judgments. The question whether contempt proceedings should be taken or not is essentially one for the court, and we are satisfied, in the circumstances of the case, that this is not a case where the said jurisdiction should be invoked. C.C.C. No. 255 of 1994 is therefore liable to be dismissed.

47. The result of our above discussion is that Writ Appeal Nos. 492, 494 512, 550, 551, 552, 763, 774 and 823 of 1991 and O. P. Nos. 3752 of 1991, 11098, 11803, and 15740 of 1992, 3889 and 11324 of 1994 and C.C.C. 255 of 1994 are dismissed. O. P. No. 11081 of 1990 is allowed and rule 2 (c) of the Kerala Agricultural Income Tax and Sales Tax Subordinate Service Rules introduced by Ext. P3 order dated 4-9-1984 is declared unconstitutional and void. The Government and the Board of Revenue shall refix the seniority of the directly recruited Assistant Sales Tax Officers and Sales Tax Officers appointed after 1-4-1974 in accordance with the principles laid down by the Supreme Court in The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, as also the observations contained in the judgment of the learned Single Judge, and in this judgment. This shall be done as expeditiously as possible.

There will be no order as to costs.