
(2003) 08 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 31906 of 1997, 33492 of 1998, 12391 of 2000 and Batch and 10533 of 2002

Union of India (UOI) and Others

APPELLANT

Vs

K. Radhakrishna Murthy and Another

RESPONDENT

Date of Decision : 25-08-2003

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Citation : (2003) 6 ALD 742 : (2004) 1 ALT 609

Hon'ble Judges : T. Ch. Surya Rao, J; D.S.R. Varma, J; Bilal Nazki, J

Bench : Full Bench

Advocate : D. Krishna Murthy, for the Appellant; B.S.A. Satyanarayana, for A. Venkateswarlu, for the Respondent

Judgement

T. Ch. Surya Rao, J.

On a reference made by a Division Bench of this Court comprising of the Hon'ble Sri Justice Bilal Nazki and Hon'ble Sri Justice D.S.R. Varma, this batch of writ petitions has come before us for consideration.

2. Briefly stated the facts, for brevity and better understanding of the matter, are thus: The contesting respondents in this batch of writ petitions while working as Time Scale Accountants in the Office of RMS V. Division, Visakhapatnam were promoted as Lower Selection Grade Accountants (TBOP), ("LSG" for brevity) with effect from 30.11.1983. However, they were not actually entrusted with the duties of LSG due to lack of sufficient number of supervisory posts and they were allowed to continue in the posts of Time Scale Accountants. Notwithstanding the same, their pay was fixed by giving them the benefit of one increment in accordance with FR.22(c) on the assumption that it involved higher duties and responsibilities and they had been drawing the same. Thereafter, when vacancies arose in the cadre of Assistant Head Record Officer (Accounts), ("AHRO" for brevity) they were posted as AHROs (Accounts) with effect from 6.7.1987 on ad hoc basis. They were regularised in the said posts with effect from 7.10.1987.

The respondents claimed that their pay should be fixed in accordance with FR 22(c) since they were promoted to the posts of AHRO (Accounts). However, the authorities declined to accede to their request. In the mean while, all of them were retired from service due to superannuation. Some time later, when their efforts to persuade the authorities to fix their pay in accordance with FR.22(c) proved futile, they moved the Central Administrative Tribunal, Hyderabad Bench. The Tribunal by its judgment dated 24.4.1997 allowed their claim and directed the Union of India and other functionaries in the Department of Posts to fix notionally the pays of the respondents as per FR.22(c) (old) which is now FR.22 (1)(a)(i) (new) with effect from the date of their promotion as AHROs and directed them further to revise the pension of the respondents accordingly.

3. Assailing the said orders, the Union of India and other officers in the hierarchy of the Postal Department filed various writ petitions in this Court. When the writ petitions came up for hearing before a Division Bench of this Court of which my learned brothers Bilal Nazki, 3 and D.S.R. Varma, J., were members, while placing reliance upon a Division Bench judgment of this Court rendered in Writ Petition No. 9582 of 1999 dated 12.7.1999 it was sought to be contended that the respondents were entitled to the benefit of FR.22(1)(a)(i). Noticing a direct judgment of the Apex Court in Union of India and Others Vs. Ashoke Kumar Banerjee, , on the point, the Division Bench was of the view that the view expressed earlier in Writ Petition No. 9582 of 1999 by a Division Bench of this Court appeared to be not correct. Inasmuch as the judgment rendered in W.P. No. 9582 of 1999 by a co-equal bench of this Court falls foul with the judgment of the Apex Court in Ashoke Kumar Banerjee's case, the Division Bench felt that it required reconsideration by a larger bench of this Court. That is how the matter has been referred to us.

4. It admits of no doubt that the post of LSG Accountant and the post of AHRO (Accounts) carry the same time scale of Rs. 1400-2300. Both of them were supervisory in nature. It is nobody's case that the post of AHRO (Accounts) involves higher responsibilities than the post of LSG Accountant. Admittedly, the respondents who had been working as Time Scale Accountants were promoted initially to the cadre of LSG Accountants under TBOP scheme with effect from 30.11.1983. Later when vacancies arose, they were posted as AHROs (Accounts) with effect from 6.7.1987 on ad hoc basis and with effect from 7.10.1987 on regular basis. The respondents claim that it was a case of promotion and, therefore, they are entitled to the fixation of their pay by stepping up by granting another increment in terms of FR.22(1)(a)(i). Inasmuch as both the posts carry the same time scale of pay and they do not involve any higher duties and responsibilities, it is the case of the petitioners that the respondents are not entitled to any stepping up by granting another increment under FR.22(1)(a)(i) since their pay was already fixed under FR.22(1)(a)(i) when they were promoted to LSG Accountants in the first instance.

5. In view of the above diametrically opposite views, it is apposite here to

consider FR.22, the provision germane in the context. F.R.22, insofar as is relevant for the present purposes, reads as under:

"F.R.22. The initial substantive pay of a Government servant who is appointed substantively to a post on time-scale of pay is regulated as follows:

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended:

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purpose of Rule 30), than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii).....

(in).....

(iv)....."

6. A mere perusal of the above excerpted provision shows that the new post to which the Government employee is promoted, must involve the assumption of duties or responsibilities of greater importance than those attached to the former post. Then only his initial pay in the new post shall be fixed by adding one increment to his substantial pay in the former post. Therefore, the requirement is a condition precedent.

7. As discussed hereinabove, it is not the case of the respondents that the post of AHRO (Accounts) involves duties or responsibilities of greater importance than that of the post of LSG Accountant. On that score alone, the respondents are not entitled to the stepping up of their pay in accordance with FR.22(1)(a)(i). That apart, in well-nigh identical set of facts in Union of India v. Ashoke Kumar Banerjee (referred to supra) the Apex Court considered the effect of FR.22(1)(a)(i). That was a case where the respondent was working in the Central Public Works Department (CPWD) as Junior Engineer in the time scale of Rs. 1640-2900. He worked in that capacity for a period of 15 years. Having regard to the length of service he had put in, he was granted Assistant Engineer's scale of Rs. 2000-3500. By giving necessary increment, his pay was fixed at Rs. 2600/- by applying FR.22(1)(a)(i). Later, he was promoted as Assistant Engineer and when he claimed again the stepping up of his pay as per FR.22(1)(a)(i), his request was declined. In that context, the Apex Court held in para 8 thus:

"For the applicability of FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to the higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says:

"his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more."

8. From the above it is manifest that before invoking the provisions of FR.22(1)(a)(i), two conditions are required to be satisfied namely, (i) that the post to which the employee is promoted must be a post involving the duties or responsibilities of greater importance than those attached to his former post: and (ii) that he must be moving from a lower scale attached to the lower post to a higher scale attached to the higher post. Both the conditions are a sine qua non and in the absence of both or any one of them, the employee cannot invoke the said provision.

9. The respondents sought to rely upon a Bench judgment of this Court in W.P. No. 9582 of 1999 dated 12.7.1999. No doubt, the facts in that case are identical to the facts in these cases. In that judgment, the judgment of Apex Court referred to supra was sought to be distinguished on the premise that according to the facts in the case before the Apex Court a notional promotion to the employee was given in the first instance and was promoted on regular basis later and therefore, when stepping up of the scale of pay was sought for, for the second time it was held to be unreasonable. But according to the fact of the case before the Division Bench, the respondent was promoted to the cadre of Lower Selection Grade in the scale of Rs. 1400-2300 and subsequently he qualified in the competitive examination for the post of Inspector of Post Offices, which too carries the identical scale of Rs. 1400-2300. The Division Bench failed to consider the dictum of the Apex Court in Ashoke Kumar Banerjee's case (referred to supra) that for the applicability of FR.22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to the higher post. In our view, the judgment of the Division Bench of this Court in W.P.No. 9582 of 1999 directly falls foul with the judgment of the Apex Court and, therefore, it cannot escape the invariable conclusion that it is no more a good law.

10. Sri B.S.A. Satyanarayana, learned Counsel appearing for the respondents would contend that inasmuch as the respondents in these writ petitions having been directed to be given the benefit of FR.22(1)(a)(i) way back in the year 1995 and since all of them were retired from service, the judgment of the Apex Court in Ashoke Kumar Banerjee's case (referred to supra) rendered in the year 1998 shall not be made applicable to their cases and that judgment should be treated to have been only prospective in operation and it is not desirable to unsettle the settled position at this length of time.

11. The doctrine of prospective operation is a device innovated for the first time by a 11 Judge Bench of the Apex Court in I.C. Golak Nath and Others Vs. State

of Punjab and Another, . In para 51, it was held thus:

"(51) As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions" is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

Accepting the lead given in *Golak Nath v. State of Punjab*, case (supra) the Apex Court has extended the said doctrine to the interpretation of ordinary statutes as well. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , a Constitution Bench of the Apex Court in para 44 held thus:

"44. The need to make the law laid in *Union of India and others Vs. Mohd. Ramzan Khan*, , case prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the enquiry officer to the delinquent employee and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in Courts at different stages. In many of the cases, the misconduct has been grave and in other the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration, which will far outweigh the benefit to the employees concerned. Both administrative reality and public interest do not, therefore, require that the orders of punishment passed prior to the decision in *Mohd. Ramzan Khan* case without furnishing the report of the enquiry officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above."

12. It is obvious, therefore, that the doctrine of prospective overruling although can be applied to the interpretation of ordinary statutes and need not necessarily be in respect of the constitutional provisions, it can be applied only by the highest Court of the country and it is discretionary. As can be seen from the facts in the *Managing Director, ECIL v. B. Karunakar* case (supra), the Apex Court held for the first time that the judgment in *Mohd. Ramzan Khan's* case (supra) was prospective in operation and laid down the law that the delinquent employee was entitled to a copy of the report of the enquiry officer before the disciplinary authority had taken its decision on the charges leveled against him. Till then number of cases have been decided without furnishing the report of the enquiry

officer to the delinquent employees. Basing on the judgment of the Mohd. Ramzan Khan's case (supra) if all those cases which are in innumerable number shall have to be reopened, it would have certainly resulted in utter chaos. To avoid that, the Apex Court in Managing Director, ECIL's case (supra) held that the judgment in Mohd. Ramzan Khan's case (supra) prospective in operation. Therefore, it is obvious that the discretion given to the Apex Court to make the law laid down by it prospective in operation is to be exercised to avoid greater evil and to do complete justice in the matter.

13. In Baburam Vs. C.C. Jacob and Others, , it was held thus:

"The prospective declaration of law is a device innovated by the Apex Court to avoid re-opening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in the larger public interest. Therefore, the Subordinate Forums which are legally bound to apply the declaration of law made by the Supreme Court, are also duty-bound to apply such dictum to the cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law.

14. According to the facts the point involved for consideration was as to whether the percentage of reservation has always to be worked out in relation to the number of posts which formed the cadre strength and such reservation is not to be made with reference to a vacancy. Earlier the Apex Court in R.K. Sabharwal and others Vs. State of Punjab and others, , having regard to the fact that the state of affairs prevailing by then was nebulous, settled the issue holding that such reservation is in relation to the number of posts comprising in the cadre and not in relation to the vacancies. It was also observed in that judgment that the interpretation given by the Constitution Bench of the Apex Court shall be operative prospectively. When reliance was sought to be placed on the said judgment of the Apex Court, the question further arose before the Central Administrative Tribunal. Ernakulam Bench was as to whether it was open to the Tribunal to apply the law laid down in R.K. Sabharwal v. State of Punjab case (referred to supra) to the facts of the case before it. Eventually when the matter came up before the Apex Court having regard to the context it was held that the subordinate forums are legally bound to apply the declaration of law made by the Apex Court and in deed duty-bound to apply such dictum to the cases which would arise in future only.

15. We see no deviation in the law laid down by the Apex Court in two of its earlier Constitution Benches. The Constitution Bench of the Apex Court in R.K. Sabharwal's case did declare that the interpretation given by the Court should be operative prospectively.

16. In *Harsh Dhingra Vs. State of Haryana and Others*, , a three Judge Bench of the Apex Court held in para 7 thus:

"Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation.

By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty-bound to apply such dictum to cases which would arise in future. Since it is indisputable that a Court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of *stare decisis* and not judicial legislation."

17. That was again a case where the High Court of Punjab and Haryana held that the Government could make reservation of plots while making development of the urban estates but that power was not limited. Repelling the argument that the Chief Minister could allot plots according to his discretion, the High Court indicated that the Government should frame appropriate policy for allotment of plots to specified classes of persons. However, in respect of the allotment that had already been made, it indicated certain class of persons to whom the allotment could be made by a Bench of the High Court in *S.R. Dass v. State of Haryana* (1998) 1 PLR 430. For nearly a decade thereafter the Government of Haryana took the decision. When it was argued before the High Court in *Harsha Dhingra's* case that the decision of the said Court in *Anil Sabharwal v. State of Haryana*, (1997) 2 PLR 7 should be made prospectively, however, the High Court held that the doctrine of prospective overruling could not be applied because such power could be invoked only by the Apex Court and not by the High Court. Eventually when the matter came up before the Apex Court, having regard to the context it was held that when the law was declared by the Apex Court the subordinate forums are duty-bound to apply such law to the cases which would arise in future. It may be reiterated that the same question that had fallen for consideration in *Baburam's* case (referred to *supra*) has again fallen for consideration in that case. In fact, the Apex Court followed its earlier decision in *Baburam's* case in that judgment.

18. It is obvious from the above that the Apex Court has gone a step further and held that since the very object of prospective declaration of law is to validate all actions taken contrary to the declaration of law preceding such declaration and prevalent till then in the larger public interest, the subordinate forums which are legally bound to apply the declaration of law made by the Apex Court are also duty-bound to apply such dictum to the cases which would arise in future. Needless to emphasize that the law to be applied by the subordinate forums must be declared prospective by the Apex Court.

19. In *Kailash Chand Sharma v. State of Rajasthan*, (2002) 6 SCC 563 the Apex Court held in para 40 thus:

"The sum and substance of this innovative principle is that when the Court finds or lays down the correct law in the process of which the prevalent understanding of the law undergoes a change, the Court, on considerations of justice and fair deal, restricts the operation of the new-found law to the future so that its impact does not fall on the past transactions. The doctrine recognizes the discretion of the Court to prescribe the limits of retroactivity of the law declared by it. It is a great harmonizing principle equipping the Court with the power to mould the relief to meet the ends of justice. Justification for invoking the doctrine was also found in Articles 141 and 142 which as pointed out in *Golak Nath* case are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. In the aftermath of *Golak Nath* case we find quite an illuminating and analytical discussion of the doctrine by Sawant, J. in *Managing Director, ECIL v. B. Karunakar*. The learned Judge prefaced the discussion with the following enunciation:

"It is now well settled that the Courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice".

20. It is obvious that in the above judgment the Apex Court relied upon its earlier judgments in *Golak Nath*'s case and the *Managing Director, ECIL*'s case (referred to *supra*). That was a case where selections were made nearly for one decade by applying bonus marks to the respondents of the Districts concerned and the rural areas in the state of Rajasthan, The process was upheld by the High Court of Rajasthan by its two judgments decided in the years 1991 and 1994. When the selection process was initiated and completed subsequently, *Kailash Chand Sharma* and others approached the High Court. A learned Single Judge of the High Court of Rajasthan doubted the correctness of its earlier decisions rendered in the years 1991 and 1994. The matter was, therefore, referred to a Full Bench. Eventually when it came up before the Apex Court, having noticed that the law on the subject was in a state of flux, the Apex Court invoked the principle of prospective overruling. It is obvious that the said doctrine has been invoked by the Apex Court itself because of the peculiar situation obtaining on account of the change in the law.

21. The contours of the doctrine of prospective operation can well now be understood from a conspectus of the judgments of the Apex Court right from *Golak Nath*'s case upto *Kailash Chand Sharma*'s case, as under:

(1) The doctrine of prospective overruling can be applied only by the highest Court of the country i.e., the Supreme Court as it has the constitutional jurisdiction to declare the law binding on all the Courts in India.

(2) When the Court finds or lays down the correct law, in the process the prevalent understanding of the law undergoes a change on the considerations of

justice and fair deal, the operation of the new founded law can be restricted to future only without having its impact on the past transactions.

(3) The doctrine recognizes the discretion of the Court to prescribe the limits of retroactivity of the law declared by it.

(4) The doctrine of prospective overruling can be applied not only in matters arising under the constitution, nay in matters arising under ordinary statutes even.

(5) It is a device to be adopted to avoid reopening of settled issues and to prevent multiplicity of proceeding and avoidable litigation in the public interest.

(6) Once the law is declared by the Apex Court as prospective, subordinate forums are legally duty-bound to apply the said declaration made by the Apex Court to the cases which would arise in future before them.

22. Having due regard to the law laid down by the Apex Court as regards the doctrine of prospective overruling, the contention of the learned Counsel appearing for the respondents that the operation of the judgment of the Apex Court in Ashoke Kumar Banerjee's case (supra) should be made prospective, seems to be fallacious. The reasons are not far to seek. Firstly that the Apex Court did not lay down a new law changing the prevalent position of law by then; secondly that the Apex Court in its judgment in Ashoke Kumar Banerjee 's case did not declare the said judgment to be proactive; and thirdly that there is no question of unsettling the settled position. The situation obtaining in the instant case as can be seen from the facts is not such. For the above reasons it cannot be held that the law laid down by the Apex Court in Ashoke Kumar Banerjee's case (supra) is prospective in operation. Therefore the contention of the learned Counsel appearing for the respondents merits no consideration.

23. For the foregoing reasons, we answer the reference holding that to invoke the FR.22 (1)(a)(i) two conditions are required to be noticed, namely, (i) that new post must involve the assumption of duties and responsibilities of greater importance than those attached to the earlier post; and (ii) that the employee must be moving from lower scale attached to the lower post to higher scale attached to the higher post.

24. At this stage, it is submitted that WP No. 838 of 2000 is not connected with the batch and the point involved in that writ petition is different. Therefore, the WP No. 838 of 2000 is deleted from the Batch. The writ petition be placed before the Division Bench for hearing.