REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2684 OF 2007

B.Premanand & Others ..Appellants

versus

Mohan Koikal & Others ..Respondents

O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment/order of the Full Bench of the High Court of Kerala at Ernakulam dated 24th May, 2006 passed in Writ Appeal No. 1774 of 2003. By that judgment the writ appeal filed by the appellants against the judgment of a learned Single Judge dated 24th September, 2003 has been dismissed.

The facts have been set out in the impugned judgment and hence we are not repeating the same here except wherever necessary.

The dispute in this appeal is about the *inter se* seniority on the post of Block Development Officer between the general category candidates (the respondent Nos.1 to 5 herein) and the Scheduled Caste/Scheduled Tribe candidates (the appellants herein).

The rule relevant for this purpose is Rule 27(c) of the Kerala State and Subordinate Services Rules, 1959 (for

short 'the Rules'), which states:

> "27(c) Notwithstanding anything contained in clauses (a) and (b) above, the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice made for his appointment to such class, category or grade and when two or more persons are included in the same list of candidates advised, their relative seniority shall be fixed according to the order in which their names are arranged in the advice list."

A perusal of the above rule shows that seniority is to be determined by the date of first effective advice made by the Public Service Commission to the State Government for appointment.

Admittedly, in the present case, the first effective advice for the appellants was made by the Kerala Public Service Commission on 8.7.1992, and they joined between 13.8.1992 and 22.10.1992 whereas the advice for the respondent Nos. 1 to 5 was made on 6.4.1993, and they were appointed as B.D.O. On 28.9.1993 and they joined between 6.10.1993 and 17.11.1993. Hence, it is obvious from Rule 27(c) of the Rules that the appellants are senior to the private respondents. However, both the learned Single Judge and Full Bench have held in favour of the respondents.

We have carefully perused the judgments of the Full Bench and the learned Single Judge, and we regret we cannot agree with them.

The Full Bench and Single Judge have relied on

equity, justice and good conscience, rather than law. We are of the opinion that this approach is incorrect. When there is a conflict between law and equity, it is the law which is to prevail. Equity can only supplement the law when there is a gap in it, but it cannot supplant the law.

In the present case, Rule 27(c) clearly makes the appellants senior to the respondents as the advice for their appointments were made prior to that for the respondents.

Mr. V.Shekhar, learned senior counsel, appearing for the private respondents, however, submitted that due to certain obstructions for which the private respondents are not to be blamed, their first effective advice was sent later. Mr. Shekhar submitted that the rank list for the respondents was prepared after due selection on 25.11.1987, but the advice was not sent by the Public Service Commission till 1993 because of a letter dated 30.11.1988 issued by the Chief Secretary, Kerala Government directing the Commissioner of Rural Development to start applying the ratio in respect of cadre strength instead of the practice

being followed. Since the respondents' rank list was expiring on 24.11.1990, they apprehended that they would not get appointment, and hence they filed writ petition No. 9161 of 1989 in the High Court. Ultimately, the writ petition was allowed and the order of the Chief Secretary set aside, but in the meantime, the State Government issued

notification dated 5.12.1989 inviting applications from SC/ST candidates for appointment as B.D.Os. under the special recruitment as per Rule 17A of the Rules. The rank list with regard to these SC/ST candidates was published on 20.6.1992, and hence they were appointed before the candidates whose rank list was published in 1987 (the respondents herein). However, under Rule 27(c) what has to be seen for determining seniority is not the date when the rank list was published but the date when the advice was sent.

Mr. Shekhar has relied on the decision of this Court in *Dalilah Sojah vs. State of Kerala & Others, (1998) 9 SCC 641*. That decision, in our opinion, is clearly distinguishable as it makes no reference to Rule 27(c) of the Rules. Moreover, the observation therein that "when two vacancies arose on 6.10.72 the appellant had a right to be appointed against one of the vacancies" is clearly

against the settled legal position that even a selected candidate has no indefeasible right to be appointed vide Constitution Bench decision in *Shankarsan Dash vs. Union of India,* AIR 1991 SC 1612, and several decisions thereafter.

In our opinion, Rule 27(c) of the Rules is plain and clear. Hence, the literal rule of interpretation will apply to it. No doubt, equity may be in favour of the respondents because they were selected earlier, but as observed earlier, if there is a conflict between equity and the law, it is the law which must prevail. The law, which

is contained in Rule 27(c), is clearly in favour of the appellants.

Hence, we cannot accept the submission of the learned senior counsel for the private respondents. The language of Rule 27(c) of the Rules is clear and hence we have to follow that language.

In M/s. Hiralal Ratanlal vs. STO, AIR 1973 SC 1034, this Court observed:

> **"In construing a statutory provision the first and foremost rule of construction is the literaly construction. All that the Court has to see at the very outset is what does the provision say. <u>If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear</u>."**

(emphasis supplied)

It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation

other than the literal rule, vide *Swedish Match AB* vs. *Securities and Exchange Board, India*, AIR 2004 SC 4219. As held in *Prakash Nath Khanna* vs. *C.I.T.* 2004 (9) SCC 686, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, vide *Delhi Financial Corporation* vs. *Rajiv Anand* 2004 (11) SCC 625. Where the legislative intent is clear from the language, the Court should give effect to it, vide

Government of Andhra Pradesh **vs.** ***Road Rollers Owners Welfare Association*** **2004(6) SCC 210, and the Court should not seek to amend the law in the garb of interpretation.**

As stated by Justice Frankfurter of the U.S. Supreme Court (see 'Of Law & Men : Papers and Addresses of Felix Frankfurter') :

> **"Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great judges have constantly admonished their brethren of the need for discipline in observing the limitations. A judge**

> **must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."**

As observed by Lord Granworth in ***Grundy*** **v.** ***Pinniger*****, (1852) 1 LJ Ch 405:**

> **" 'To adhere as closely as possible to the literal meaning of the words used, is a cardinal**

rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."

In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn. pp 45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.

As the Privy Council observed (per Viscount Simonds, L.C.):

"Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used."(see Emperor v. Benoarilal Sarma, AIR 1945 PC 48, pg. 53).

As observed by this Court in CIT vs. Keshab Chandra Mandal, AIR 1950 SC 265:

> **"Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute".**

Where the words are unequivocal, there is no scope for importing any rule of interpretation vide *Pandian Chemicals Ltd.* vs. *C.I.T.* 2003(5) SCC 590.

It is only where the provisions of a statute are ambiguous that the Court can depart from a literal or strict construction vide *Narsiruddin* vs. *Sita Ram Agarwal* AIR 2003 SC 1543. Where the words of a statute are plain and unambiguous effect must be given to them vide *Bhaiji* vs. *Sub-Divisional Officer, Thandla* 2003(1) SCC 692.

No doubt in some exceptional cases departure can be made from the literal rule of the interpretation, e.g. by adopting a purposive construction, Heydon's mischief rule,

etc. but that should only be done in very exceptional cases. Ordinarily, it is not proper for the Court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible vide *J.P. Bansal* vs. *State of Rajasthan &*

Anr. AIR 2003 SC 1405, *State of Jharkhand & Anr.* vs. *Govind Singh* JT 2004(10) SC 349 etc.. It is for the legislature to amend the law and not the Court vide *State of Jharkhand & Anr.* vs. *Govind Singh* JT 2004(10) SC 349. In *Jinia Keotin* vs. *K.S. Manjhi*, 2003 (1) SCC 730, this Court observed :

> " The Court cannot legislate.....under the garb of interpretation.....".

Hence, there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the Courts. In fact, judicial legislation is an oxymoron.

In *Shiv Shakti Co-operative Housing Society* vs. *Swaraj Developers* AIR 2003 SC 2434, this Court observed:

> "It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent."

Where the language is clear, the intention of the legislature has to be gathered from the language used vide *Grasim Industries Limited* vs. *Collector of Customs* 2002 (4)

SCC 297 and *Union of India* vs. *Hamsoli Devi* 2002 (7) SCC 273.

In *Union of India and another* vs. *Hansoli Devi and others* 2002(7)SCC (vide para 9), this Court observed :

> **"It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the grounds that such construction is more consistent with the alleged object and policy of the Act."**

The function of the Court is only to expound the law and not to legislate vide *District Mining Officer* vs. *Tata Iron and Steel Company* 2002 (7) SCC 358. If we accept the interpretation canvassed by the learned counsel for the private respondents, we will really be legislating because in the guise of interpretation we will be really amending Rule 27(c) of the Rules.

In *Gurudevdatta VKSSS Maryadit* vs. *State of Maharashtra* AIR 2001 SC 1980, this Court observed :

> **"It is a cardinal principle of interpretation of**

> **statute that the words of a statute must be understood in their natural, ordinary or popular**

sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The Courts are adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute".

The same view has been taken by this Court in *S. Mehta* vs. *State of Maharashtra* 2001 (8) SCC 257 (vide para 34) and *Patangrao Kaddam* vs. *Prithviraj Sajirao Yadav Deshmugh* AIR 2001 SC 1121.

The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language.

We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a

pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean.

In this connection, we may also refer to the Mimansa Rules of Interpretation which were our traditional principles of interpretation used for thousand of years by our jurists. It is deeply regrettable that in our law courts today these principles are not cited. Today, our so called educated people are largely ignorant about the great intellectual achievements of our ancestors, and the intellectual treasury which they have bequeathed to us. The Mimansa Rules of Interpretation are one of these great achievements, but regrettably they are hardly ever used in our law courts.

It may be mentioned that it is not stated anywhere in the Constitution of India that only Maxwell's Principles of Interpretation can be utilised. We can utilise any

system of interpretation which can help to resolve a difficulty. Principles of interpretation are not principles of law but are only a methodology for explaining the meaning of words used in a text. There is no reason why we should not use Mimansa Principles of Interpretation in appropriate occasions.

In Mimansa, the literal rule of interpretation is known as the 'Shruti' or Abhida' Principle. This is illustrated by the Garhapatya nyaya (In Mimansa Maxims are known as nyayas). There is the vedic verse: “Aindrya garhapatyam upatishthate”, which means “By the Mantra addressed to Indra establish the household fire.” This verse can possibly have several meanings viz. (1) worship Indra (2) worship Garhapatya (the household fire) (3) worship both, or (4) worship either.

However, since the word 'Garhapatyam' is in the objective case, the verse has only one meaning, that is, 'worship Garhapatya'. The word 'Aindrya' means 'by Indra', and hence the verse means that by verses dedicated to Indra one should worship Garhapatya. The word 'Aindrya' in this verse is a Linga, (in Mimansa Linga means the suggestive power of a word), while the words 'Garhapatyam Upatishthate' are the Shruti. According to the Mimansa principles, the Shruti (literal meaning) will prevail over

the Linga (suggestive power).

It is not necessary to go into details, but reference can be made to the Book 'Mimansa Rules of Interpretation' by K.L.Sarkar which is a collection of

Tagore Law Lectures delivered by him in 1909. According to the Mimansa Principles, the Sruti Principle or literal rule of interpretation will prevail over all other principles, e.g., Linga, Vakya, Prakarana, Sthana, Samakhya etc.

As a result of the above discussion, this appeal is allowed and the impugned judgment of the Full Bench of the High Court as also the judgment of the learned Single Judge are set aside and the writ petition filed by the private respondents before the High Court is dismissed. No costs.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
MARCH 16, 2011

.....J.
[GYAN SUDHA MISRA]