IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8116 OF 2003

T. Narasimhulu & Ors. ... Appellants

Versus

State of A. P. & Ors. ... Respondents

WITH

CIVIL APPEAL NOs. 8082 OF 2003, 8083 OF 2003 AND 8088 OF 2003

J U D G M E N T

A. K. PATNAIK, J.

These are appeals against the judgment and order dated 05.04.2002 of the Division Bench of the Andhra Pradesh High Court in a batch of Writ Petitions Nos. 14689 of 2001, 25322 of 2001, 24420 of 1997 and Writ Petition No.22926 of 2001 (for short 'the impugned judgment').

2. The relevant facts very briefly are that on 28.07.1983 the Government of India sent a Circular to all the State

Governments to depute the Forest Range Officers who have passed the Forest Ranger Course with honours for admission to two year course at the State Forest College for the post of Assistant Conservator of Forest. In response to the Circular, the Government of Andhra Pradesh sent the Forest Range Officers, who had secured honours in Forest Ranger Course, on deputation to the State Forest College for training as Assistant Conservators of Forests during the period 08.04.1986 to 23.06.1994. On 13.11.1994, the Andhra Pradesh Administrative Tribunal delivered a judgment in O.A. No.3258 of 1994 holding that the deputation of Forest Range Officers, namely, Sri B. Narayan Reddy and Sri T. P. Thimma Reddy, for training as Assistant Conservators of Forests was contrary to the Andhra Pradesh Forest Service Rules, 1965 (for short 'the Forest Service Rules'). On 29.05.1995, the Government of Andhra Pradesh issued G.O.Ms. No. 35 adding a proviso to Rule 2 of the Forest Service Rules that Forest Range Officers who secured first and second ranks in their batches for

Honours in Ranger's Training Course shall be eligible for appointment as Assistant Conservators and this G.O.Ms. No. 35 was published in the Gazette of the Andhra Pradesh on 01.06.1995. On 03.07.1995, the Andhra Pradesh Government issued G.O.Ms. No.51 amending this proviso to Rule 2 of the Forest Service Rules so as to provide that Forest Range Officers who secured Honours in their batches in the Rangers Training Course shall be eligible for appointment as Assistant Conservators and this G.O.Ms. No.51 was published in the Gazette of Andhra Pradesh on 12.09.1996. The appellants who were working as Assistant Conservators of Forests challenged the amendments to Rule 2 of the Forest Service Rules by G.O.Ms. No.35 and G.O.Ms. No.51 before the Andhra Pradesh Administrative Tribunal and thereafter before the High Court. By the impugned judgment, the Division Bench of the High Court has dismissed the Writ Petitions.

3. Mr. L. Nageshwar Rao Rao, learned counsel appearing for the appellants in Civil Appeal No.8116 of 2003,

submitted that a bare perusal of the G.O.Ms. 35 dated 29.05.1995 and G.O.Ms. No.51 dated 03.07.1995 would show that the Government Orders directing that the amendments shall be deemed to have come into force from 08.04.1986 was not part of the Notification which was published in the Gazette. He submitted that the amendments by G.O.Ms. Nos. 35 and 51 are amendments to Rule 2 made under the proviso to Article 309 of the Constitution and although the proviso to Article 309 of the Constitution does not prescribe any specific mode of publication of the Rules made thereunder, the amendments are required to be published in the same manner in which the Rules made under an Act are published. He referred to Section 21 of the Andhra Pradesh General Clauses Act which provides that even where an Act or Rule provides for publication merely but does not say expressly that it shall be published in the Official Gazette, it would be deemed to have been duly made if it is published in the Official Gazette. He cited a decision of this Court in *I.T.C.*

Bhadrachalam Paperboards & Anr. v. *Mandal Revenue Officer, A. P. & Ors*. [(1996) 6 SCC 634] in support of this submission. He vehemently submitted that although the amendments made to Rule 2 by G.O.Ms. Nos. 35 and 51 were published by a notification in the Official Gazette, the portion of the Government Order in G.O.Ms. NOs. 35 and 51 directing that the amendments would have retrospective effect from 08.04.1986 was not published in the notifications in the Official Gazette. He argued that the legal consequence is that the amendments to Rule 2 made by G.O.Ms. NOs. 35 and 51 would have only prospective effect. In other words, the amendments by G.O.Ms. Nos. 35 and 51 would have effect from 19.05.1995 and 03.07.1995 respectively and will not have retrospective effect from 08.04.1986.

4. Mr. P.S. Patwalia, learned counsel appearing for Respondent Nos. 3, 4, 7, 8, 12, 13 and 14 (the private respondents), in reply, submitted that Article 309 of the Constitution does not prescribe any specific mode of publication for the rules made under the Article and all

that is required is that there should be some reasonable mode of publication so that the affected parties are made aware of the factum of promulgation of the rules. He further submitted that in *Chandra Prakash Tiwari & Ors*. v. *Shakuntala Shukla & Ors.* [(2002) 6 SCC 127], this Court has held that where the parties were actually aware of the fact that the rules have been published, the argument that the rules were not actually published is a hyper-technical one.

5. We are unable to accept the submission of Mr. Nageshwar Rao that portion of the Government Orders in G.O.Ms. Nos. 35 and 51 directing that the amendments to Rule 2 therein would have retrospective effect from 08.04.1986 were required to be published in the Official Gazette. A plain reading of G.O.Ms. Nos. 35 and 51, copy of which has been annexed, would show that the amendments to Rule 2 of the Forest Service Rules made therein are in exercise of powers conferred by the proviso to Article 309 of the Constitution. Article 309 of the Constitution is extracted hereinbelow:

> "**309. Recruitment and conditions of service of persons serving the Union or a State**.—Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:
>
> Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act."

Article 309, quoted above, would show that under the main provision of the Article, Acts of appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of Union or of any State. The proviso to Article 309 of the Constitution, however, states that until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, the President or the Governor,

as the case may be, or any such person as they may direct, make rules regulating the recruitment and conditions of service of persons appointed, to such services and posts in connection with the affairs of the Union or of any State respectively. The proviso to Article 309 further says that "any rules so made shall have effect subject to the provisions of any such Act" made under Article 309 of the Constitution. The words "any rules so made shall have effect" signify that the rules will become operative subject only to the provisions of the Constitution and the provisions of any Act made by the appropriate Legislature under Article 309 of the Constitution. Hence, Section 21 of the Andhra Pradesh General Clauses Act, which provides that where in any Act, or any rule passed under any Act, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the Official Gazette, has no application whatsoever to a rule made under the proviso to Article 309 of the Constitution.

6. In *I.T.C. Bhadrachalam Paperboards & Anr.* v. *Mandal Revenue Officer, A. P. & Ors.* (supra) cited by Mr. Rao, one of the questions which arose for decision was whether the publication of the exemption notification in the Andhra Pradesh Gazette as required by Section 11(1) of the Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 was mandatory or merely directory and this Court held after considering its earlier decisions that where the parent statute prescribes the mode of publication or promulgation that mode has to be followed and that such a requirement is imperative and cannot be dispensed with. The Court, in particular, held that where a power is conferred to exempt a class of persons from the levy created by a statute upon another authority by the legislature, that authority has to, and can, exercise that power only in strict compliance with the requirements of the provision conferring that power and it is in the interest of the general public that such notifications are not only given wide publicity but there should also be no dispute with respect to the date of their

making or with respect to the language and contents thereof. In the present case, the facts are entirely different. As we have seen, the amendments to Rule 2 of the Forest Service Rules by G.O.Ms. Nos. 35 and 51 with retrospective effect are sought to be made in exercise of powers conferred under the proviso to Article 309 of the Constitution and not in exercise of any power conferred by any Act made by the State Legislature and the Constitution or any appropriate Act made under Article 309 of the Constitution does not prescribe any mode of publication of rules made under the proviso to Article 309.

7. This is not to say that rules made under the proviso to Article 309 of the Constitution are not required to be published at all. A rule made under the proviso to Article 309 of the Constitution has the same effect as an Act of appropriate Legislature regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Hence, even if Article 309 of the

Constitution does not say that the rules made under the proviso thereto are required to be published, these rules are required to be published just as any other Act passed by the appropriate Legislature is required to be published so that the persons affected by the rules or the Act are aware of the rule or the Act. In *Harla* v. *The State of Rajasthan* [AIR 1951 SC 467] this Court held:

> "…. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some civilized11way so that all men may know what it is or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to 11civilized man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential."

Also in *State of Maharashtra* v. *Mayer Hans George* [AIR 1965 SC 722] this Court held:

> "..... Where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the subject of prosecution but where there is no statutory requirement we conceive the rule to be that it is necessary that it should be published in the usual form i.e. by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules .... ."

8. It will be clear from the law laid down by this Court that where the law prescribes the mode of publication of the law to become operative, the law must be published in that mode only, but where the mode of publication of the law is not prescribed by the law, such law should be published in some usual or recognized mode to bring it to the knowledge of all persons concerned. In the present case, the contention of the appellants before the Tribunal or the High Court was not that the Government Order in G.O.Ms. Nos. 35 and 51 that the amendment to Rule 2 of the Forest Service Rules would have retrospective effect from 08.04.1986 was never made known by any

reasonable mode, but that it was not published in the Official Gazette. This contention of the appellants, as we have seen, has no merit.

9. Mr. Rao next submitted that Rules under the proviso to Article 309 of the Constitution can be made by the President or the Governor, as the case may be, with retrospective effect, but if such Rules made with retrospective effect affect a vested right of a Government servant, the same will be *ultra vires* Article 14 of the Constitution. He submitted that in the seniority list published on 15.12.1988 the appellants were shown senior to respondents 3 to 14 (private respondents) having been appointed to the cadre of Assistant Conservators of Forests by direct recruitment earlier than the private respondents, but as a consequence of the retrospective effect of the amendments to Rule 2 of the Forest Service Rules by G.O.Ms. Nos. 35 and 51, the private respondents will be shown senior to the appellants in the seniority list. He referred to the observations of this Court in para 24 at page 638 of the

judgment in *Chairman, Railway Board & Ors*. v. *C.R. Rangadhamaiah & Ors*. [(1997) 6 SCC 623] that in many decisions of this Court the expressions 'vested rights' or 'accrued rights' have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. He argued that since the seniority of the appellants had been adversely affected by amendments to Rule 2 by G.O.Ms. NOs. 35 and 51 made with retrospective effect from 08.04.1986, the amendments take away the vested rights or accrued rights and are liable to be struck down by the Court.

10. In reply, Mr. Patwalia submitted that in *S. S. Bola & Ors*. v. *B.D. Sardana & Ors*. [(1997) 8 SCC 522] a three-Judge Bench of this Court has taken a view that a particular position in the seniority list within a cadre can neither be said to be accrued or vested right of a Government servant and that an Act of the State Legislature, which has retrospective effect and which affects seniority of

Government servants, cannot held to be *ultra vires* the Constitution. He submitted that the private respondents, who were Forest Range Officers and were deputed to the State Forest College in accordance with Government Orders, had been treated as direct recruits of different years to the posts of Assistant Conservators of Forests pursuant to the G.O.Ms. Nos. 35 and 51 and that the seniority in the cadre of the Assistant Conservators of Forests have to be determined vis-à-vis the appellants, who were also direct recruits in accordance with the relevant seniority rules. He submitted that the contention of the appellants that their vested/accrued right to seniority has been affected by the amendments to Rule 2 of the Forest Service Rules, is, therefore, misconceived.

11. In *Chairman, Railway Board & Ors*. v. *C.R. Rangadhamaiah & Ors*. (supra), cited by Mr. Nageshwar Rao, however, whether seniority was a vested right or not was not the issue and the issue was whether pension of a Government servant admissible under the rules in force at the time of

retirement could be adversely affected by a retrospective amendment to the rules and the Constitution Bench held that such retrospective amendment affected the vested rights and was violative of Articles 14 and 16 of the Constitution. Mr. Rao, however, has relied on the following observations in paras 23 and 24 of the judgment in *Chairman, Railway Board & Ors*. v. *C.R. Rangadhamaiah & Ors*. (supra):

> "**23.** The said decision in *Raman Lal Keshav Lal Soni*[1] of the Constitution Bench of this Court has been followed by various Division Benches of this Court. (See *K.C. Arora* v. *State of Haryana*[2]; *T.R. Kapur* v. *State of Haryana*[3]; *P.D. Aggarwal* v. *State of U.P.*[4]; *K. Narayanan* v. *State of Karnataka*[5]; *Union of India* v. *Tushar Ranjan Mohanty*[6] and *K. Ravindranath Pai* v. *State of Karnataka*[7].)
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> **24.** In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. …."

[1] (1983) 2 SCC 33
[2] (1984) 3 SCC 281
[3] (1986) Supp. SCC 584
[4] (1987) 3 SCC 622
[5] 1994 Supp. (1) SCC 44
[6] (1994) 5 SCC 450
[7] 1995 Supp. (2) SCC 246

It will be clear from the obiter in para 24 of the judgment quoted above on which Mr. Nageshwar Rao has relied upon that this Court has included seniority as one amongst the vested rights or accrued rights on the basis of the decisions of this Court noted in para 23 of the judgment quoted above. We have perused the decisions noted in para 23 of the judgment and we find that it is only in the case of *Union of India* v. *Tushar Ranjan Mohanty* (supra) that a two-Judge Bench of this Court has held that seniority of the Tushar Ranjan Mohanty was a vested right and this vested right could not be taken away by retrospective amendments of the rules.

12. In a three-Judge Bench judgment in *S. S. Bola & Ors*. v. *B.D. Sardana & Ors*. (supra), cited by Mr. Patwalia, however, we find that this Court has clearly held that seniority was not a vested or accrued right. Three separate judgments were delivered by K. Ramaswamy, J., S. Saghir Ahmad, J. and G. B. Pattanaik, J. K. Ramaswamy, J. has held:

> "no one has a vested right to promotion or seniority. But an officer has an interest to seniority acquired by working out the rules. The seniority should be

> taken away only by operation of valid law." [(1997) 8 SCC at 634]

G. B. Pattanaik, J. has also held:

> "Thus, to have a particular position in the seniority list within a cadre can neither be said to be an accrued or vested right of a Government servant and losing some places in the seniority list within the cadre does not amount to reduction in rank even though the future chances of promotion get delayed thereby. …." [(1997) 8 SCC at 666].

S. Saghir Ahmad, J. has agreed with G. B. Pattanaik, J. and has held:

> "In the instant case, the judgments rendered by this Court in the earlier decisions relating to the seniority of the present incumbents were founded on the service rules then existing. These service rules have since been replaced by the impugned Act which has been enforced with retrospective effect. The various aspects of merits have been considered by my Brother Pattanaik and I cannot usefully add any further words on merits. …." [(1997) 8 SCC at 639 at para 162].

It is, thus, clear from the judgment of a larger Bench that in *S. S. Bola & Ors*. v. *B. D. Sardana & Ors*. (supra) that seniority of a Government servant is not a vested right and that an Act

of the State Legislature or a rule made under Article 309 of the Constitution can retrospectively affect the seniority of a Government servant. The second contention of Mr. Rao, therefore, also fails.

13. Mr. Rakesh Dwivedi, learned counsel appearing for the appellants in Civil Appeal Nos.8082 and 8083 of 2003, in addition to the contention of Mr. Nageshwar Rao, submitted that the amendment to Rule 2 by G.O.Ms. No. 51 only provides that Forest Range Officers, who secured honours in their batches in the Rangers Training Course, would be deputed for training to join two years course of the State Forest Service College and does not provide for appointment of such Forest Range Officers as Assistant Conservators of Forests.

14. Rule 2 together with the proviso as amended by G.O.Ms. No.51 is quoted hereinbelow:

"**Rule 2. Appointment** :-- Appointment to the several categories should be made as follows :

Category	**Method of Appointment**

Category 1: Chief Conservator	Promotion from Conservators
Category 2: Conservators	Promotion from Dy.Conservators
Category 2: Dy. Conservators	Promotion from Asst.Conservators
Category 2: Asst. Conservators	Direct recruitment or recruitment by transfer from Rangers of the Andhra Pradesh Sub-ordinate Service.

Provided that Forest Range Officers who secured honours in their batches in the Rangers' Training Course shall be eligible for appointment as Assistant Conservators. They shall be deputed to join the two years course of State Forest Service Colleges run by the Government of India, treating them as direct recruits to the post of Asst. Conservators. The terms and conditions of training prescribed under clauses (a) and (b) of Rule 6 of the said Rules for a probationary Assistant Conservator of Forests appointed by direct recruitment, shall apply to the persons mentioned above. Such appointment to the post of Assistant Conservator of Forests shall be counted against direct recruitment quota."

It will be clear from the title of Rule 2 that the rule provides for appointment and not for training. The main provision of the rule provides for appointment to four categories of officers of the State Forest Services, namely, Chief Conservator, Conservators, Deputy Conservators and Assistant Conservators. The proviso to Rule 2 as amended by G.O.Ms.

No. 51 further provides that Forest Range Officers who secured Honours in their batches in the Rangers' Training Course shall be eligible for appointment as Assistant Conservators and after deputation to join the two years course of State Forest Service Colleges run by the Government of India, will be treated as direct recruits to the post of Assistant Conservators. There is, therefore, no scope for taking a view that the proviso to Rule 2 as amended by G.O.Ms. No. 51 is not a rule relating to appointment of Forest Rangers as Assistant Conservators.

15. In the result, we do not find any merit in these appeals and we accordingly dismiss the same, but there shall be no order as to costs.

.....J.
(Markandey Katju)

.....J.
(A. K. Patnaik)

New Delhi,
May 11, 2010.