

PETITIONER:
BHAKTA RAMEGOWDA & ORS, ETC.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ANR. ETC.

DATE OF JUDGMENT: 24/01/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

WITH

CIVIL APPEAL NOS. 492-98, 501-02 &/499 OF 1997
(Arising out of SLP (C) Nos. 6086-87/95, 17091-95/96, 5152-53/96 and 10429/96)

O R D E R

Leave granted. We have heard learned counsel on both sides.

These appeals by special leave arise from the order of Karnataka Administrative Tribunal, made on April 29, 1994 in Application Nos. 3727/82 and batch.

The admitted position is that under Karnataka Civil Services (General Recruitment) Rules, 1977, the Government exercising the power under proviso to Article 309 of the Constitution has amended Rule 8 and introduced proviso thereto. It reads as under:

"8. Provision for reservation of appointments or posts:- Subject to provisions of sub-rule (3) of Rule 9, appointments or posts shall be reserved for the members of the Scheduled Castes, Scheduled Tribes, Backward Tribes and other Backward Classes to such extent and in such manner as may be specified by the Government under clause (4) of Article 16 of the Constitution of India."

As a result thereof, the Government is empowered, in consistency with Article 335 of the Constitution, to a point by promotion by way of reservation of the members belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes to such extent and in such manner as may be specified by the Government under clause (4) of Article 16 of the Constitution. By another order dated April 1, 1992, the second proviso was introduced which reads as under:

"Provided that, notwithstanding anything in the rules of recruitment specially made in respect of any service or post, the backing vacancies in the

promotional quota shall be determined and implemented with effect from 27th April, 1978.

Note: The backlog vacancy means the extent of the number of vacancies available under the roster system upto the level of lowest category in group-A posts calculated from 27th April 1978."

Under this proviso, the Government has introduced the principle of filling up of the posts reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes including the backlog vacancies in promotional quota effective from April 27, 1978. These rules came to be challenged in the Tribunal. The Tribunal had held that first proviso cannot be made with retrospective effect. The view taken by the Tribunal is wholly unsustainable.

A Constitution Bench of this Court had held in B.S. Vadera vs. Union of India [AIR 1969 SC 118] that rules made under the proviso to Article 309 of the Constitution are legislative in character and, therefore, they could be made with retrospective effect. The same principle was reiterated in several decisions, viz., Chief Secretary to Government of Andhra Pradesh & Anr. V/s. V.J. Cornelius etc. [AIR 1981 SC 1099], P.D. Aggarwal & Ors. V/s. State of U.P. & Ors. [AIR 1987 SC 1676], Supreme Court Employees Welfare Association V/s. Union of India & Ors. [AIR 1990 SC 334], R.L. Bansal & Ors. V/s. Union of India & Ors. [AIR 1993 SC 978] and V.K. Sood V/s. Secretary, Civil Aviation & Ors. [AIR 1993 SC 2285]. The view of the Tribunal that the rules cannot be made with retrospective effect is ex-facie illegal and unsustainable. The rules also were struck down on yet another ground, namely, until the guidelines have been provided for working out the rules, the rules are non est and, therefore, the second proviso is ultra vires. This view also is not correct. The operation of the rules does not depend on the guidelines to be laid. Merely because the guidelines have not been provided in the manner in which the backlog vacancies are required to be filled up, the second proviso to Rule 8 made in exercise of the power under proviso to Article 309 does not become non est. At best, it remains unworkable. The Government is required to formulate the guidelines under Article 16(4) of the Constitution as to the manner in which the backlog vacancies are required to be filled up. Admittedly, such guidelines have not been provided including preparing the roster, identifying the backlog vacancies and the placement of the officers between the general and reserved categories which were annexed for first time along with the counter-affidavit filed in the Tribunal. Under these circumstances, the view of the Tribunal is not correct. It may be construed that to the extent the second proviso remains unworkable until the guidelines under Article 16(4) have been issued by the State Government. Under these circumstances, whatever promotions have been given, they would remain valid subject to laying down of the guidelines and working out of the backlog vacancies in the light of the guidelines provided thereunder and adjustment of the 11 officers promoted under second proviso. All the promotions will be subject to the above fitment and adjustment between general candidates and the reserved candidates in the respective categories, namely, Scheduled Castes and Scheduled Tribes and other Backward Classes in accordance with the guidelines and the law laid down by this Court. The State Government is directed to complete the exercise within a period of three months from

the date of the receipt of the order.

The appeals are allowed to the above extent. No costs.

JUDIS