

A THE STATE OF KARNATAKA AND ORS. ETC. ETC.

v.

B.V. THIMMAPPA AND ORS. ETC. ETC.

AUGUST 23, 1993

B [A.M. AHMADI AND N. VENKATACHALA, JJ.]

C *Karnataka Civil Services (Service and Kannada Language Examination) Rules, 1974: Sub-rule (1)(i) of Rule 4 read with sub-rules (1) & (2) of Rule 3—Whether persons gaining promotions during the period allowed to pass prescribed examinations liable to reversion if they fail to finally pass the examinations within the prescribed period—Whether such penalty could be implied from the objects of these Rules?*

D *Section 4 of Karnataka Services Examinations Act, 1976—Whether new penalties could be added by way of implication from the Rules when the Rules allude only to the penalties "specified" therein.*

Interpretation of statutes : scope of inferences warranted by implication—Whether any penalty can be inferred from the objects of the Statute/ Rules/Regulations without support from textual provisions.

E **New State of Mysore (later re-named as Karnataka) came into existence under the States Re-organisation Act, 1956 (the S.R. Act) did not have Kannada language as their mother tongue nor did they know Kannada. Therefore, the State Government brought into force the Karnataka Civil Services (Service and Kannada Language Examination) Rules, 1974**
F **with the object of improving the quality of their services.**

G **Sub-rule (1) of Rule 3 of the Rules made it obligatory for the Government servants to pass the prescribed Kannada language and service examinations with the prescribed period or extended period as laid down in sub-rule (2) of Rule 3. The second, third and fourth provisos to sub-rule (3)(a) of Rule 3 defines the categories of personnel exempted from certain penalties or restriction contained in sub-rule (3)(a). Rule 4 placed certain restrictions on the promotion and appointment by transfer of those employees who failed to pass within the prescribed or extended period the requisite examinations, e.g. at the end of the said period those who failed**
H **to clear the requisite examinations became ineligible for further promo-**

tions by virtue of sub-rule(1) (i) of Rule 4. Section 4 of Karnataka Services Examinations Act, 1976 envisaged that failure by the State government servants to pass these examinations within the prescribed/ extended period shall entail the consequences "specified" in the Rules.

A considerable number of personnel who failed to pass the required examinations within the prescribed/extended period had, during the prescribed/extended period, gained further promotions. While preparing the *inter se* provisional seniority lists for it servants, the State Government took the view that the said promotees need not be reverted. This view was challenged by several Government servants who were junior to the said promotees but had passed the prescribed examinations within the stipulated period, the former filed writ petitions in the High Court. A learned single Judge of the High Court allowed a batch of such petitions and quashed the impugned provisional seniority list, based on that order, another learned single Judge allowed two more similar writ petitions. Against these orders, two respondents therein, namely, the State Government and the Comptroller of the State Accounts Department, filed writ appeals, before a Division Bench; another writ petition was also referred to the same Division Bench for a decision.

Upholding the view of the learned Single Judge, the Division Bench by its common Judgment dated 30th November, 1984, reverted those employees who were promoted after the commencement of the Rules while did not revert those promoted before the said commencement; and directed the State Government to re do the seniority lists within six months.

Feeling aggrieved by the Judgment dated 30 November, 1984, the State of Karnataka preferred Civil Appeals and S.L.P.'s before this Court; and a Government servant who feeling aggrieved by the Judgment of the High Court in a Writ Appeal rendered following the judgment dated 30th November, 1984, also filed an appeal by special leave.

The State urged, *Inter alia*, that there was no express provision in the Rules for reversion of Government Servants from higher posts to which they had already gained promotions during the periods allowed to pass the required examinations. But the respondents supported the contrary view taken by the Division Bench of the High Court.

A Disposing of the matters, this Court

HELD : 1. Section 4 of Karnataka Services Examinations Act, 1976 clearly envisages that the failure to pass the prescribed examinations within the stipulated period shall entail only those consequences which were 'specified' in the Rules; there is no room to incorporate new penalties by way of implication from the object of the Rules, since no penalty can be implied solely by reference to the object of any statute (or set of rules/regulations) without any support derived from the textual provisions. [729-G-H; 730-A-B, G-H]

C 2. The penalties contained in the Rules suggest stagnation both in career and monetary increments, but not reversion. Hence, non-passing of service and Kannada Language Examinations by Government servants of Karnataka, required to be passed by them under the Rules within the period allowed thereunder, does not render them liable to reversion from the higher posts to which they were promoted during that period to lower posts held by them before such promotions. [736-B]

E 3. The High Court erred in differentiating between those who had been promoted to higher posts before the commencement of the Rules and those who were promoted after the commencement of the Rules but before the lapse of the period allowed to pass the prescribed examinations, in support of reversion. [732-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5339-5362 of 1985.

F From the Judgment and Order dated 30.11.84 of the Karnataka High Court in W.A. Nos. 756-776/81 and 993, 994/82 and 17720/80.

With

G Civil Appeal No. 4140 of 1993.

And

Civil Appeals Nos. 4141/1993 and 4142/1993.

H M. Veerappa for the appellants in C.A. Nos. 5339-5362/85.

Ranjit Kumar for the respondents in C.A. Nos. 5339-5362/85.

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C.S. Lalitha for the intervenors in C. A. Nos. 5339-5362/85.

M. Veerappa for the appellants in C.A. Nos. 4140 and 4141 of 1993.

K.R. Nagaraja, R.S. Hegde and A. Nagabhushnam for the appellants in C.A. No. 4142 of 1993.

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S.K. Kulkarni and Surya Kant for the respondents in appellants in C.A. No. 4142 of 1993.

M. Veerappa for the intervenor in C.A. No. 4142 of 1993.

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The Judgment of the Court was delivered by

VENKATACHALA, J. Whether the non-passing of Service and Kan-
nada Language Examinations by Government servants of Karnataka, re-
quired to be passed by them under the Karnataka Civil Services (Service
and Kannada Language Examinations) Rules, 1974 within the period al-
lowed for the purpose thereunder, rendered them liable to reversion, from
the higher posts to which they were promoted during that period; to the
lower posts held by them before such promotions, is the sole question,
which needs our answer in deciding these Civil Appeals and Special Leave
Petitions.

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New State of Mysore was formed under the States Re-organisation
Act, 1956 ("the S. R. Act") comprised of certain territories of the States of
Bombay, Hyderabad and Madras and the territories of the States of Coorg
and Mysore. As a consequence thereof, a large number of Government
servants who belonged to the States of Bombay, Hyderabad and Madras
and all the Government servants who belong to the States of Mysore and
Coorg constituted the Civil Services of the new State of Mysore, which a
few years thereafter, was renamed as "Karnataka State". In course of time,
the contingent of Government servants in State's Civil Services largely
swelled, due to intermittent fresh recruitments. But the quality of service
rendered by the Government Servants was found to be, rather, unsatisfac-
tory. This situation, made the State Government to take urgent measures
needed to improve the quality in the performance of duties by its Govern-
ment servants. The State Government, therefore, brought into force from

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- A 10th January, 1974 the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974, to be hereinafter referred to as "the Rules", a measure which imposed an obligation on almost all Government servants in the State's Civil Services, the passing of the Kannada Language and prescribed service examinations, with the prescribed period or extended period. What consequences, should the Government servants suffer for non-passing of such examinations within the prescribed period or extended period, were also specified in the Rules. Although the period so prescribed and the period so extended for the passing of the required examinations by the Government servants elapsed, a considerable number of them did not pass one or the other of such examinations. Among those who did not pass the examination were a few, who had been promoted to higher posts during the period prescribed and the period extended, therefore. At the time of expiry of the period thus prescribed and the period thus extended for passing of such examinations, the State Government was engaged in the preparation of provisional seniority lists of Government servants in all its Departments. The question which was confronted by the State Government then was, whether the Government servants who were promoted to higher posts during the period prescribed or the period extended under the Rules for passing there required examinations should be reverted to lower posts occupied by them before their promotions, due to their non-passing of one or the other of such examinations. The State Government, on consideration of the question, since took the view that non-passing of the examinations required to be passed under the Rules by such promotees, did not entail their reversion, that view become the basis for finalisation of provisional seniority lists of the Government servants, in its various Departments. However, several Government servants, who were juniors to such promotees, but who had passed the required examinations in time, in their bid to overtake their senior, filed writ petitions in the High Court challenging the correctness of the provisional seniority lists of their respective Department. A learned single Judge of the High Court, who heard a batch of such writ petitions, came to hold the view, that the Government servants who had been promoted to the higher posts without passing the required examinations, during the period allowed to them under the Rules to pass such examinations, should be reverted to the posts held by them before such promotion, yielding places to their junior, who had passed the examinations. That learned Judge, therefore, by his order
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dated 15th November, 1979, allowed the batch of writ petitions, quashed the impugned provisional seniority list of the Government servants of the Department to which the writ petitioners belonged and directed the State Government to re-do the same in consonance with his holding. Yet another learned Single Judge of the High Court, allowed two more similar writ petitions by his order dated 6th December, 1979, based on the order made in the earlier batch of writ petitions. The State Government and the Comptroller of the State Accounts Department, who were the respondents in the said writ petitions, challenged the sustainability of the orders made thereon by the said two learned Single Judges, by filing writ appeals, to be heard by a Division Bench. Another writ petition No. 17720 of 1980, where the question involved was whether the writ petitioner therein, a second Division Clerk in the Office of the Deputy Commissioner, who had passed the examinations as per the Rules entitled him to displace his senior who had been promoted to a higher post but had not passed the examination as per Rules, was a matter referred for decision by the Division Bench, which was to hear the writ appeals. The Division Bench constituted for the purpose, which heard the writ appeals and the referred writ petition, rendered its common judgment dated 30th November, 1984 thereon upholding the view of the learned single Judge, that had led him to make the order under appeals. In that judgment, the Division Bench made certain declarations and directions, requiring the State Government to apply them generally to all Government servants in the Civil Services of the State. Those declarations and directions read thus:

- "1. (a) We declare that those that have been promoted within the first period viz., 1-11-1956 to 9-1-1974 but have not passed the Kannada and Service Examinations within the time allowed by the Rules except those that are exempted under the Rules to the extent they are so exempted, are not entitled for confirmation and increments in the promotional posts held by them only and are not liable to be reverted to the lower posts solely on the ground that they had not passed the Kannada language and service examinations prescribed under the Rules.

- (b) We declare that those that were in government service as on 10-1-1974 and have been promoted on and after 10-1-1974

A for vacancies arising during the second period from 10-1-1974 to 30-4-1977 with or without a condition to pass the Kannada language and service examinations, if any prescribed on that day except those that are exempted by the Rules are liable to be reverted on or after 1-5-1977 if they have not passed the Kannada language and service examinations so prescribed on or before 30-4-1977.

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(c) We declare that the State Government and its subordinate authorities that are competent, are bound to review the earlier promotions as on 1-5-1977 and revert those that are ineligible to hold the promotional posts and promote those that are eligible and suitable to hold the posts in their places in accordance with law and the observations made in this order.

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(2) We direct the appellants in the writ appeals and the respondents in the writ petition to review all the earlier promotions in their respective departments/offices in the respective cadres and make available all such benefits to which the respondents in the writ appeals and the petitioner in the writ petition are entitled to in accordance with law and the observations made in this order and the orders in the original writ petitions to the extent they are affirmed by this order, with all such expedition as is possible in the circumstances of the cases and in any event within a period of 6 months from the date of receipt of the order of this Court."

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F Feeling aggrieved by the said judgment of the Division Bench of the High Court, the State of Karnataka, has preferred against that judgment Civil Appeals Nos. 5339-5362* of 1983 and S.L.P.'s (C) Nos. 14163 and 14876 of 1985, under consideration. S.L.P.(C) No. 3394 of 1987 is that filed by a Government servant who felt aggrieved by another Division Bench judgment of the High Court in Writ Appeal No. 1790/85 rendered following

G the judgment, now under consideration in the civil appeals and special leave petitions of the State of Karnataka.

H Our answer to the sole question formulated at the out-set, is enough to decide all these civil appeals and SLP's., we propose to dispose of all of them by this common judgment.

Mr. M. Veerappa, the learned counsel for the State of Karnataka, strenuously urged, that the view taken by the Division Bench of the High Court in its judgment dated 30th November, 1984 that Government servants who had been promoted during the period allowed to them under the Rules to pass the required examinations, are liable to be reverted to the lower posts held by them before the commencement of the Rules, because of their non-passing of the examinations before the expiry of that period, being not at all a view warranted by the Rules, the same was wholly incorrect and unsustainable. According to him, under the 'examinations scheme' envisaged by the Rules, reversion of the Government servants from the higher posts to which they were promoted during the period allowed to them for non-passing of the required examinations in time, not being a consequence envisaged by the Rules, the same was wholly alien to the Rules. The Division Bench which found that there was no express provision in the Rules providing for reversion of the Government servants from higher posts to which they were promoted during the period allowed to them to pass the required examinations, to lower posts held by them before commencement of the Rules, on account of their non-passing of such examinations, according to him, could not have taken the view that the consequence of reversion of Government servants from the promoted higher posts to the lower posts held by them before the commencement of the Rules on account of their non-passing, was what was implicit in the Rules. Reversion of Government servants from higher posts to lower posts, he stressed, since amounts to award of punishment to them, as if they were found guilty of official misconduct, the Division Bench should have seen that such consequence would not have been a matter on which Rules would have been silent, if such consequence was really intended by the Rules. By specially drawing our attention to rule 4 of the Rules which imposes restrictions on promotions of Government servants arising due to their non-passing of the required examinations, he pointed out, that there was nothing in that rule which even remotely suggests reversion of Government servants from higher posts to which they were promoted during the period in which they were required to pass the examinations in the event of their non-passing of such examinations. The Division Bench, he argued, could not have, therefore, held that reversion of promoted Government servants was implicit in the Rules. The learned counsel for the petitioner in S.L.P. (C) No. 3394 of 1987 supported the arguments of the learned counsel for the State. However, learned counsel who appeared for respondents in the

- A appeals and Special Leave Petitions Nos. 14163 and 14876 of 1985, sought to support the view taken by the Division Bench of the High Court that the Rules impliedly required the Government servants promoted to higher posts during the period allowed to them for passing the required examinations, to be reverted to the posts held by them before the commencement of the Rules, if they had not passed the required examinations before the expiry of the period allowed for the purpose and they should make place for their juniors who were eligible to hold such promotional posts because of their passing of the required examinations.

- C The arguments of learned counsel on the question requiring our answer in deciding these appeals and S.L.P.'s., if are to be appreciated in their right perspective, reference to the Rules and their Preamble become essential. Hence, we shall reproduce the Rules insofar as they bear on the question requiring our decision.

Preamble:-

- D "Whereas for purposes of ensuring that the official duties of persons appointed to public services and posts in connection with the affairs of the State of Karnataka are satisfactorily performed, it is expedient to make provision requiring them to pass appropriate service examinations and the Kannada Language Examination;

Now, Therefore, the Governor of Karnataka hereby makes the following rules, namely:-

- F 1. *Title and commencement* - (1) These rules may be called the Karnataka Civil Services (Services and Kannada Language Examinations) Rules, 1974.

2. *Definitions*. - In these rules, unless the context otherwise requires, -

- G (1)

(2) "Government servant" means a person to whom parts I and II of the Karnataka Civil Services Rules, for the time being in force, are applicable, except a person working as a Local Candidate or holding a Class IV post;

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(3) "Kannada language examinations" means the Kannada language examination specified in Schedule I; A

(4) "Prescribed examinations" with reference to any post means the service examinations prescribed for the holder of the said post as specified in Schedule-II; B

(5) "Schedule" means a Schedule to these rules;

(6) "Service examination" means a service examination specified in Schedule-I.

3. *Obligation of Government servants to pass certain examinations--* C

(1) Save as otherwise provided in these rules, every Government servant shall within the period prescribed in sub-rule

(2) pass, --

(1) the Kannada Language Examination, and D

(2) the prescribed examinations, if any, in respect of the post held by him.

(2)(a) A Government servant, --

(i) in service on the date of commencement of these rules shall pass the said examinations within a period of two years from the said date; E

(ii) appointed to any post on or after the date of commencement of these rules, shall pass the said examinations within a period for two years from the date of his appointment; F

Provided that a person appointed to any post on probation shall pass the said examinations within the period of his probation. G

(b) Where after the commencement of these rules, --

(i) a new service examination is prescribed for the holder of any post; or

(ii) a new post is created and service examinations are H

A prescribed for the holder of the new post; or

B (iii) provision is made for promoting the holder of a post to a higher post for which service examinations are already prescribed, by amending schedules I and II or in any other manner, such holder shall pass the said prescribed examinations within a period of two years from the date of such prescription, or from the date such provision is made, as the case may be.

C Provided that the State Government may by general or special order, and for reasons to be recorded in writing, extend the period under this sub-rule to such extent as it deems fit.

D (3) (a)no Government servant shall by confirmed in the post held by him, or shall earn an increment in the time scale of pay of the post held by him, unless he passes the Kannada Language Examination and the prescribed examinations, if any in accordance with the provisions of sub-rules (1) and (2):

E Provided that in the case of a Government servant other than a person appointed to any post on probation, the increment in the time scale of pay shall be granted during the period allowed under sub-rule (2) for passing the examinations.

F Provided further that this sub-rule shall not be applicable to a Government servant who has been allotted or deemed to have been allotted to serve in connection with the affairs of the State of Karnataka under Section 115 of the States Re-organisation Act, 1956 while holding the post which he held on 1st November, 1956 or the higher post on first stage promotion.

H Provided also that nothing in clause (a) shall be applicable to a Government servant who has attained or who attains the age of 45 years for the purpose of earning annual increments only.

Provided also that a Government servant who is blind and whose job does not require him to read and write shall be exempt from passing any written service examination or the Kannada Language Examination for purposes of confirmation and earning annual increments, but shall of intimation and equring annual increments, but shall however pass the Kannada Language *Viva-Voce* Examination.

- (b) A Government servant who during any period does not earn increment in the time scale of pay of the post held by him under clause (a), shall on becoming eligible to such increment by passing the Kannada Language Examination and the prescribed examinations, if any, or attaining the age of 45 years be entitled to fixation of his pay in the time scale of pay at the appropriate stage under rule 51A of the Karnataka Civil Services Rules.

4. *Restriction on promotions and appointments by transfers.* --

(1) After the expiry of a period of two years form the date of commencement of these rules, or from the date of prescription of the service examinations, whichever is later (or from the date on which provision is made for promoting the holder of a post to higher post for which service examinations are already prescribed), no Government servants shall be eligible --

- (i) for promotion to any higher post, (unless he has passed, if not exempted under the proviso to sub-rule (1) of Rule 3, the Kannada language examination or the test in Kannada Language referred to in the said proviso) and the prescribed service examination, if any, for the holder of such higher post and the post already held by him.

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- (ii) for appointment by transfer to any post unless he has passed, if not exempted under the proviso to sub-rule (1) of Rule 3, the Kannada Language Examination or the test in Kannada language referred to in the said proviso and the prescribed examinations, if any, for the holder of such

A post.

(2) sub-rule (1) shall not have effect --

B (a) for a period of one year from the first day of May, 1976 in respect of holders of posts for whom service examinations were prescribed on 10th January, 1974; and

C (b) for a period of one year, from the date of expiry of two years from the date of such prescription in respect of holders of posts for whom the service examinations have been prescribed after 10th January, 1974.

Provided that, if the same examination has been prescribed on different dates to the holders of a lower post and of a higher post, sub-clauses (a) or (b) shall have effect from the earlier of such dates.

D 5. *Savings.*

SCHEDULE I

E I. Kannada Language Examination

II. Service Examinations:-

1. Accounts (Higher) Examinations.

2. Accounts (Lower) Examinations.

F 3. Revenue (Higher) Part, I and II Examinations.

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G SCHEDULE-II

H In respect of posts or category of posts specified in column (2) of the Table below in the Services specified in Column (1) thereof the service examinations prescribed shall be those specified in the corresponding column (3) thereof.

TABLE

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Service 1	Posts 2	Service Examination 3
1. The Karnataka Administrative		
2. The Karnataka General Service (Revenue Sub-ordinate Branch)	(1) Deputy Tehsildars	(1) Revenue Higher (2) Accounts Higher (3) General Law (Parts I and II)
	(2) Sheristedar	(1) Revenue Higher (2) Accounts Higher (3) General Law Parts I and II
	(3) I Division Clerks	(1) Revenue Higher
	(4) I Grade Revenue Inspector and	(2) Accounts Higher
	(5) Stenographers	(3) General Law Parts I and II
	II Division Clerks	
	II Grade Revenue Inspectors	(1) Revenue Lower
	Village Accountants	(2) Accounts Lower
3.		
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When, the Preamble to the Rules, as could be seen therefrom, declares that the provisions made therein requiring the Government servants to pass the Kannada Language Examination and the Service examinations, are meant for ensuring the performance of their duties satisfactorily, it becomes obvious, that the object sought to be achieved by the Rules, is the improvement in the quality of performance of Government servants in discharge of their respective duties attached to civil posts held by them.

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If, sub-rule (1) of rule 3, definition clauses (2) to (6) of rule 2 and Schedules I and II, of the Rules are read together, they make it clear, that

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A every Government servant is obligated to pass Kannada Language Examination and Service Examinations set down respecting the civil post held by him within the period prescribed therefore under sub-rule (2) of rule 3, save otherwise provided for by the Rules.

B The period prescribed for passing of the required examination under clause (a) of sub-rule (2) of rule 3, by a Government servant (i) who was already in civil service is two years from the date of commencement of the Rules (10th January, 1974); (ii) who was appointed in any post of civil service after the commencement of the Rules is two years from the date of such appointment; and (iii) who was appointed in any civil service on
C probation is the period of his probation, also becomes clear from that clause.

Then, sub-rule (2) of rule 3, by its clause (b) prescribed two years as the period within which a holder of a civil post has to pass the examinations required of such post - (i) where new service examination is
D prescribed for the holder of such post; or (ii) where a new post is created and service examinations are prescribed for holder of such post; or (iii) where provision is made for promoting the holder of a post to a higher post for which service examinations are prescribed by amending Schedules I and II or in any other manner, from the date of such prescription or from
E the date such provision is made, as the case may be.

These sub-rules (1) and (2) of Rule 3 do not, however, provide for reversion of a Government servant promoted to a higher post within two years' period allowed for him to pass the examinations required to hold that post, for his non-passing of examinations required of the higher post
F because of either the prescription made therefor or the provision made therefor, becomes apparent from the plain and unambiguous language in which they are couched. The proviso to clause (a) of sub-rule (2), since states that a person appointed to any post on probation shall pass the said examinations within the period of his probation, it is made obvious, that
G service of a person appointed as a probationer in civil post cannot come to an end merely for the reason of non-passing by him of the examinations prescribed for the holder of such post.

From the proviso to clause (b) of sub-rule (2), which empowers the State Government to extend the period prescribed under the sub-rule for
H passing of such examinations, it becomes clear that Government was

enabled to extend the period prescribed under the sub-rule where such extension was warranted and the period fixed under the sub-rule was not intended to be a rigid requirement. In fact, it is undisputed, that the period of two years prescribed for Government servants to pass the examinations required of them as holders of such posts was extended upto 1st May, 1977, that is, by as long a period as an year and four months.

What are the consequences which a Government Servant suffers for non-passing of the examinations required of the post held by him, within the prescribed period or extended period, as to (1) his confirmation in the post held by him, (ii) earning of an increment in the time scale of the post held by him, and (iii) on his promotion and appointment by transfer are specified with exactness in sub-rule (3) of rule 3 and rule 4 of the Rules; and the same cannot go, unnoticed.

As to confirmation of Government servant envisaged under clause (a) of sub-rule (3), it says that he shall not be confirmed in the post held by him unless he passes the Kannada Language Examination and the prescribed examinations. It requires a clarification here that 'the post held by him' (a Government servant) adverted to in the sub-rule is not restricted to the post held by him immediately before the date of commencement of the Rules on 10th January, 1974 but has to apply necessarily to the post held by him immediately after 30th April, 1977, the expiry of the prescribed period or extended period under the Rules for passing of the required examinations by him as holder of a promotional post, for he was entitled to promotion to higher post notwithstanding the requirement under the Rules as to passing of certain examinations as a holder of a lower post or as a holder of a higher promotional post. It cannot be said otherwise, for to say so, would mean that a government servant who becomes a holder of a higher post during the period allowed for him to pass the examination, could be confirmed in that higher post, if he passes the examinations of the holder of lower post held by him immediately before the commencement of the Rules. The effect of the sub-rule, therefore, as to confirmation of a Government servant in the post held by him before commencement of the Rules is, that he cannot get confirmed even in that post, if he has not passed the examinations required of the holder of the post under the Rules. In other words, he cannot get confirmed in that post, unless he passes the examinations required of the holder of that post. The effect of the sub-rule, then, as to Government servant's confirmation in the promotional post which depend on the examinations required to be passed by holder of such

- A higher post, would be the same as applicable to lower post held by him before the commencement of the Rules.

The effect of sub-rule (a) as to confirmation of a Government servant cannot be anything other than what we have indicated above, becomes clear, since the sub-rule refers to confirmation in a post held by the Government servant in the context of non-passing of his examinations required under sub-rules (1) and (2) thereof which require passing of examinations by the Government servant in the post held by him before the commencement of the Rules and in the promotional post, if any, held by him before the expiry of the period allowed to him to pass such examinations.

Now, as to Government servant's non-earning of the increment in the time scale of pay of the post held by him, unless he passes the Kannada Language Examination and the prescribed examinations, if any, in accordance with the provisions in sub-rules (1) and (2) envisaged by clause (a) of sub-rule (3), refers to non-earning of increments in the higher post held by him during the period allowed to him to pass the examinations required of the holder of the higher post, as well as of the holder of the lower post, if he had not already passed such examinations or exempted from passing them. Indeed, first proviso to clause (a) of sub-rule (3), obligates the Government to grant to Government servants except in the case of a probationer, the increments in the time scale of pay during the period allowed to him under sub-rule (2) for passing the examinations. The increment in the time scale of pay, required to be granted by the Government to its Government servant during the period allowed to him to pass the examinations, has to necessarily relate to the time scale of pay held by him before the commencement of the Rules or the time scale of pay of the higher post, if any, to which he was promoted during the period allowed to him to pass the examinations. Clause (b) of sub-rule (3), then provides for grant of increments not earned on account of non-passing of the required examinations, as and when, such examinations are passed by him or when he attains the age of 45 years.

Then, comes rule 4 of the Rules. This rule, as seen from its, imposes a restriction on promotions or appointments by transfer of Government servants after the expiry of the period allowed to them to pass the examinations required to be passed by them under the Rules as holders of such posts for the reason of their failure to pass the examinations. When clause

(i) of the sub-rule (1) makes such Government servant ineligible for promotion to any higher post unless he has passed the examinations required to be passed, under the Rules to become the holder of higher post from the post already held by him, 'the post already held by him' is referable in the context to the promotional post held by him, if he was promoted to such promotional post during the period allowed to him for passing the examinations required to be passed by the holder thereof. However, this clause is made inapplicable to those who were exempted from passing such examinations. Clause (ii) which is similar to clause (i) applies to appointments by transfer.

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Sub-rule (2) of rule 4, as seen therefrom, suspends the operation of sub-rule (1) for further periods depending on the examinations required to be passed by Government servants as holders of such posts, prescribed on or after 10th January, 1974. Proviso to sub-rule (2) of rule 4 refers to the date from which sub-clauses (a) and (b) shall have effect.

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It would be useful to refer here, to two provisions in the Karnataka Services Examinations Act, 1976- 'the Act', since the clarifications (i) on the matter of promotion of Government servants who had not passed service examinations, if any, prescribed for them before 10th January, 1974, the date on which the Rules came into force and (ii) on the matter of consequences which entail, if the Government servants fail to pass the examinations required to be passed under the Rules, are found there.

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Section 4 of the Act requires that a Government servant who was not promoted solely on the ground of not passing a service examination between 1st November, 1956, (the date of coming into force of the S.R. Act) and 10th January, 1974 (the date of coming into force of the Rules) shall, if he has not already been promoted and if he is otherwise eligible, be promoted.

F

Section 4 of the Act clarifies that every Government servant, including a Government servant promoted under Section 3 of the Act, shall be required to pass the service examinations as provided for and for the purposes specified in the Rules. However, it declares that failure to pass shall entail the consequences specified in the said Rules.

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The Preamble to the Rules as we have pointed out earlier, while states objective of the Rules to be, to ensure improvement in the quality of performance of the Government servants of Karnataka State, in dis-

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A charge of duties attached to their jobs by making them pass certain examinations, 'the examinations scheme' as is reflected in the Rules analysed by us, comprises of explicit provisions on the following matters:

B (1) Several examinations required to be passed by Government Servants having regard to the nature and complexity of duties to be performed by them as holders of civil posts in various departments of State Government

C (2) The period allowed for Government servants to pass the examinations required to be passed by them as holders of State's civil posts, depending upon the posts held by them at the commencement of the Rules or promotional posts held by them on their promotion during the period allowed to pass examinations required of the holders of such posts.

D (3) The consequences, that entail the Government servants, if they do not pass the examinations required to be passed for holding the posts which they held at the time of commencement of the Rules and the promotional posts which they held at the end of the period allowed for them to pass such examinations.

E The Act which came into force in the year 1976, as is also pointed out by us earlier, required that a Government servant who was not promoted solely on the ground of not passing a service examination between 1st November, 1956 (the date of coming into force of the S.R. Act) and 10th January, 1974 (the date of coming into force of the Rules) shall,

F if he has not already been promoted and if he is otherwise eligible, be promoted. Such promotions, therefore, were required to be made after the commencement of the Rules which specify the examinations required to be passed by holders of such promotional posts and before the expiry of the time allowed to Government servants to pass such examinations. However,

G the Act by its section 4, as already pointed out by us, when refers to consequences which entail, for non-passing by Government servants of examinations required to be passed by the Rules, refers to them as those '*specified*' in the Rules. When the Act, therefore, clearly envisaged that failure to pass the examinations by the Government servants shall entail only those consequences which were '*specified*' in the Rules and not those

H which could be '*implied*' from the Rules, no room was left to imply from

the Rules a consequence which was not specified there. Further, what A
 could be stated on the basis of express provisions in the Act and in the
 Rules, as to the consequence to be suffered by Government servants who
 do not pass, the required examinations as holders of higher posts got by
 promotion or the required examinations as former holder of lower posts
 from which they were promoted, before the date allowed for the purpose,
 is the stagnation in their service career. Such Government servants, there- B
 fore, are stuck where they were, immediately after the last day allowed to
 them to pass the examinations is over, without (i) confirmation in the posts
 held by them then or formerly, (ii) earning increment in the time scales of
 pay of the posts held by them then, and (iii) further promotion from their
 posts held by them, unless they are either exempted from passing such C
 examinations or unless they pass them. To put it pithily, such Government
 servants' position will be that of 'you are, as you were' immediately after
 the last day within they had to pass the required examinations, until of
 course, they pass such examinations or are exempted from passing them.

When the State Government finalised the provisional seniority lists D
 of its Government servant in various Departments, it appears to have
 proceeded on the basis that there was nothing in the Rules or the Act,
 which could even remotely suggest that the consequence of non-passing
 of required examinations by Government servants within the period al-
 lowed under the Rules entailed the consequence of their reversion from E
 the higher posts to which they were promoted during that period, to that
 of lower posts held by them before the commencement of the Rules.
 However, when writ petitions were filed in the High Court, impugning such
 provisional seniority lists prepared by the State Government on the ground
 that in the preparation of those lists the State Government should have
 regarded the Government servants who were promoted after the commen- F
 cement of the Rules but who had not passed required examinations within
 the period allowed for them, as those reverted to the posts held by them
 before their promotions and their juniors who had passed the required
 examinations of the higher posts should have been regarded as eligible for
 promotion to higher posts because of the reversion of their seniors, that G
 ground weighed not only with the learned single Judges who decided the
 writ petitions, but also with the learned Judges of the Division Bench, who
 decided the writ appeals arising from the orders of learned single Judges
 and referred writ petitions.

According to learned Judges of the Division Bench, as could be seen H

A from their common judgment the sustainability of which is under challenge by the State, the consequence of non-passing of examinations by the Government servants who were promoted to higher posts during the period allowed to them by the Rules, was not to be their reversion to the lower posts held by them before such promotion, the same 'will make the Rules and the Act a mockery and will not be in accordance with the scheme and object of the Rules and the Act'. The said view of the Division Bench, if correct, may not be sufficient to revert such Government servants from higher promotional posts to lower posts held by them earlier but they are to be removed from even the lower posts to which they were directly recruited, if they had not passed examinations required to be passed by the holders of such lower posts. The Rules, as we have pointed out earlier, no doubt require of a Government servant newly appointed or appointed on probation, to pass the examinations required of the holders of such posts but they do not provide for removal of them from the posts to which they were appointed for the reason of non-passing of the examinations required to be passed by the holders of such posts. Moreover, if there were, at the commencement of the Rules, Government servants who had been promoted to higher posts, it cannot be said that the consequence of non-passing of examinations required of the holders of such posts under the Rules, is their reversion to lower posts. Thus, it becomes difficult for us to think as to how there could arise any difference as to consequence in non-passing of examinations of promotional posts between those who had been promoted to higher posts before commencement of the Rules and those who had been promoted to such posts after the commencement of the Rules. If, that be so, non-reversion of Government servants from the posts to which they were promoted during the period allowed to them to pass the examinations required of the holders of either the lower posts or promotional higher posts, within the period allowed, can never be regarded to be a consequence which will not be in accord with the scheme and object of the Rules nor 'as a consequence which will make the Rules and the Act a mockery', as is observed by the Division Bench. The Division Bench which rightly observed in its judgment that the Rules and the Act do not expressly provide for reversion of Government servants from the higher posts to which they were promoted during the period allowed to them by the Rules for non-passing of the examinations required of the holders of such posts, in our view, should not have disregarded the express provisions in the Rules, in holding that such reversion was to be regarded as the

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consequence implied in the Rules? It is rather unfortunate, that the Division bench in saying so, has failed to notice that it was not even open to it, to imply from the Rules, such consequence, when Section 4(b) of the Act, by saying 'Failure to pass shall entail the consequences *specified* in the said Rules', had forbidden the drawing of any inference relating to any consequence, as that implied in the Rules.

Even so, in the facts of the present cases, it will be our endeavor to find whether there is anything in the Rules which could form the basis for the inference that the non-passing of required examinations by the Government servants promoted to higher posts during the period allowed to them under the Rules would entail the consequence of reversion from promotional posts presently held by them to the lower posts which they held before the commencement of the Rules. Earlier, while analysing the provisions of the Rules as to consequences of non-passing of examinations required under the Rules, by Government servants, we have pointed out that such consequences are relatable to Government servants' confirmation, earning of increments in time scales of pay held by them and promotion from the posts held by them. As non-confirmation in the posts held by Government servants and the non-earning of increments by them in time scales of their posts, cannot be hurdles in the way of Government servants' promotion to higher promotional posts in their respective Departments of the Government, we propose to confine our enquiry to find out, whether there is anything in the Rules which bear on the promotion of Government servants for non-passing of examinations required of them by the Rules.

The only provision in the Rules which, if we may so, to contains an embargo on promotion of Government servants for their non-passing of examinations required to be passed under the Rules within the periods allowed thereunder, is rule 4 the Rules. However, is only sub-rule (1) (i) thereof, which we have excepted earlier, that relates to the embargo on promotion, as such. As could be seen from the said sub-rule, it no doubt, makes a Government servant ineligible for promotion to any higher posts unless he has passed the examinations required by the Rules to be passed for the holder of such higher post and the post already held by him. Then, the point that assumes importance, is the exact time at which such ineligibility for promotion of a Government servant to a higher post, arises. Since the answer to the said point becomes available in the sub-rule itself, no need arises to search for the answer elsewhere. Such ineligibility of a

- A Government servant to a higher post, as could be seen from sub-rule (1), arises - *after* the expiry of a period of two years from the date of commencement of the Rules or from the date of the prescription of service examinations, whichever is later or from the date on which provision is made for promoting the holder of a post to a higher post for which service examinations are prescribed. The two years' period specified in sub-rule B (1) after which a Government servant becomes ineligible for promotion to a higher post does not by operation of sub-rule (2) come into effect - (a) for a period of one year from the first day of May 1976 in respect of holders of posts for whom service examinations have been prescribed on 10th January, 1974, which takes the expiry period to 30th April, 1977, and (b) C for a period of one year, from the date of expiry of two years from the date of such prescription in respect of holders of posts for whom service examinations are prescribed after 10th January, 1974, which takes the expiry period in such cases beyond 10th January, 1977.

- D However, it cannot go unnoticed, that the proviso to sub-rule (2) says: that "if the same examination has been prescribed on different dates to holders of a lower post and of a higher post, sub-clauses (a) & (b) shall have effect from the earlier of such dates". Therefore, what is said in the proviso is that when the same examinations are prescribed to, a lower post as well as a higher post on different dates, the earlier of such dates, should E be the date after which ineligibility of a Government servant for promotion under sub-rule (1) would arise and nothing beyond.

- Then, when we come to sub-rule (1) (i) where ineligibility for promotion of a Government servant to higher post after the expiry of certain F period, which period also gets suspended under sub-rule (2), the higher post envisaged therein is that which is higher than one which he might have held on promotion during the period allowed by the Rules for passing the examinations required to be passed thereunder, by holders of posts. Therefore, passing of examinations required 'for the holder of such higher post' used in clause (i) while has reference to the higher post to which he is G eligible for promotion, the passing of examinations required 'for the holder of the post already held by him' used in clause (i) could only have reference to the posts held at the time he becomes eligible for promotion to a higher post. From this, it becomes obvious that the 'post already held by him, in the context of the Rules includes the post held by a Government servant H on promotion from a lower post during the period allowed to him by the

Rules for passing the examinations required to be passed under the Rules A
by holders of posts in the civil services of the State.

Thus, rule 4 of the Rules which is intended to be an embargo on
promotion of Government servants governed by the Rules, does not say
anything, even remotely, to suggest that a Government servant who had B
been promoted to higher post during the period allowed to him by the
Rules to pass the examinations required to be passed by holders of such
higher posts, should suffer the consequence of reversion, to non-passing of
such examinations by him. In this situation, the consequence of reversion
of a Government servant from the promotional post held by him to a lower
post, for non- passing of examinations by him, cannot be implied from the C
Rules, on a mere assumption that the object and the purpose of the Rules,
will otherwise, become a mockery.

It is no doubt true, that in the process of interpretation of certain
Statutes, Rules or Regulations, a Court is under a duty to draw certain D
inference as implied in them, if such inference is warranted in the context
of the provisions contained in the concerned Statute, Rules or Regulations
but when such an inference to be drawn is likely to result in imposition of
penalty on any person, much less, a Government servant, known canons
of statutory interpretation, do not permit drawing of such inference solely E
on the supposed object or purpose to be served by the Statute, Rules or
Regulations without any support derived therefore from the textual
provisions.

Hence, when the Rules covering the whole "Scheme of Examinations
for Government Servants", contain exhaustive provisions on all matters F
relating to examinations to be passed by Government servants as holders
of civil posts, the period within which such holder of civil posts have to
pass the examinations required to be passed by them and the consequences
which the Government servants suffer in the event of their non-passing of
the required examination, and yet do not contain any provision which
would suggest that Government servants who had been promoted to higher G
posts during the period allowed for them to pass the examinations required
to be passed by the holders of such promotional posts under the Rules
should be reverted to the lower posts which they held before the commen-
cement of the Rules, the same cannot be matter to be implied from the
Rules on the basis of so called object of the Rules. Consequently, the view
taken by the learned Judges of the single Judge Benches and the Division H

- A Benches of the High Court, that it could be implied from the Rules and the Act that the consequence of non-passing by Government servants who had been promoted to higher posts during the period allowed to them by the Rules, of the examinations required to be passed by them in time, rendered them liable to reversion from the higher promotional posts to lower posts held by them at the commencement of the Rules, cannot be
- B regarded as that warranted or justified by the Rules. Our answer, therefore, to the question considered herein before, is that the non-passing of Service and Kannada Language Examinations by Government servants of Karnataka required to be passed by them under the Rules within the period allowed thereunder for the purpose, does not render them liable to reversion, from the higher posts to which they were promoted during that
- C period, to the lower posts held by them before such promotions.

D As the orders and judgments of the High Court under appeals and special leave petitions are based on an unwarranted and unjustifiable view taken on the question considered by us, the same become unsustainable and warrant interference.

In the result, we grant leave in the Special Leave Petitions and allow the Civil Appeals, set aside the orders and judgments of the High Court under consideration in the present Appeals, dismiss the Writ Petitions Nos. 756-777 of 1981, Writ Petitions Nos. 993 and 994 of 1982 and Writ Petition No. 11720 of 1980 presented before the High Court. However, in the circumstances of these Appeals, we do not propose to make order as to costs.

G.S.B.

Matters disposed of.