

PETITIONER:
RAVINDRANATH PAI & ANR

Vs.

RESPONDENT:
STATE OF KARNATAKA & ANR.

DATE OF JUDGMENT 20/02/1995

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
KULDIP SINGH (J)
HANSARIA B.L. (J)

CITATION:
1995 AIR 1978 1995 SCC Supl. (2) 246
JT 1995 (2) 520 1995 SCALE (1) 800

ACT:

HEADNOTE:

JUDGMENT:

1. These two civil appeals by special leave seek to challenge a common order dated 30.1.1988 of the Administrative Tribunal, Karnataka in Application Nos. 4814 and 4815 of 1986 moved by the present two appellants. The Tribunal has dismissed these applications.

2. A few introductory facts to highlight the common grievance of the appellants may be noted at the outset. The appellants were initially diploma holders in engineering. They were recruited as Supervisors in the years 1960 and 1961 in the Public Works Department of Karnataka State. Later, appellant no. 1 acquired degree in civil engineering in 1967 and appellant no. 2 acquired graduation in engineering in 1970. At the time of their recruitment, relevant recruitment rules envisaged that only degree holders were entitled to be appointed as Junior Engineers, whereas diploma holders could be appointed as Supervisors. In 1969 this position was changed and both the cadres of Junior Engineers and Supervisors were merged into one cadre of Junior Engineers. This was followed by an order of the Karnataka State in 1971 extending identical pay scales with retrospective effect from 1.1.1957 to both graduate and diploma holder Junior Engineers. The Karnataka State by another order dated 9.1.1974 sought to bifurcate the service into two cadres, namely, Junior Engineer (Division-1) and Junior Engineer (Division-II). The former cadre was to comprise of degree holders and the later of diploma holders. This bifurcation of cadres was sought to

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be given retrospective effect from 3.7.1969. This retrospective bifurcation was sought to be supported by an enactment called the Karnataka State Civil Services (Classification and Scale of Pay of Non-graduate Junior Engineers of the Public Works Department) Act, 1975 being Act 9 of 1975. The Act provided for classification and scale of pay

admissible to non-graduate Junior Engineers of the Public Works Department of the State of Karnataka. By Section 2 of the said Act, the posts of nongraduate Junior Engineers were declared to have existed with retrospective effect from 1st November, 1956. By sub-section 2(1)(ii) of the said Act it was provided that the scales of pay admissible to such non-graduate Junior Engineers were to be only those specified for such category of posts and not those admissible to category of Junior Engineer graduates. These scales were also given retrospective effect from 1. 11. 1956.

3. The aforesaid bifurcation of cadres was brought in challenge in Karnataka High Court by writ petition no. 3182 of 1973. During the pendency of the writ petition Karnataka Act 9 of 1975 came into force. The High Court by its decision dated 1.9.1981 took the view that bifurcation of the combined cadre of Junior Engineers which was holding the field from 1969 to 1974 could be operative from 9.1.1974 for the purpose of separate pay scales of graduate and non-graduate Junior Engineers. In so far as the Act sought to give retrospective effect to its operation for a period prior to 9.1.1974, it was regarded as invalid. Accordingly, a writ of mandamus was issued restraining the respondents from recovering any part of the salary received by the non-graduate Junior Engineers petitioners for any period prior to 9.1.1974 and a further mandamus was issued to pay the salary which accrued to them upto 9.1.1974, which had not been paid. The writ petitions were accordingly partly allowed.

4. It is thereafter that the appellants approached the Karnataka High Court by filing writ petitions for issuance of appropriate order against respondent authorities directing them to treat the appellants as Junior Engineers (Division-1) in the light of their existing qualification of graduation. The said direction was sought for appellant no. 1 from 3.7.1969, on which date by Gazette notification a combined cadre of Junior Engineers had come into operation, while a similar direction was sought for appellant no. 2 from 1970, from the date on which he got graduation.

5. These writ petitions were transferred to the Karnataka Administrative Tribunal which had got established in the meantime. The Tribunal by its impugned common order dismissed the writ petitions which were treated as applications. The Tribunal took the view that decision of the Karnataka High Court dated 1.9.1981, on which strong reliance was placed by the appellants, was with reference to the retrospective revision of pay scales only, that the Division Bench of the High Court had struck down the retrospective effect of the Karnataka Act only on the aspect of fixing separate pay -scales for Junior Engineers graduates and non-graduates from any date prior to 9.1.1974 but the retrospective bifurcation of the cadre of Junior Engineers into Junior Engineers graduates (Division I) and non-graduates (Division-II) was not touched by the High Court. Consequently, such bifurcation of combined cadre of Junior Engineers into the separate cadres of

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Junior Engineers - graduates and nongraduates - had to be treated to have come into operation from 1. 11. 1956. As per the Act there was no question of treating the appellants as belonging to the cadre of Junior Engineers (Division-1); so too; nongraduate Supervisors would not be entitled to be included in the cadre of Junior Engineers (Division-1) even if they acquired degrees while in service.

6. Having heard the learned counsel of the parties, we have reached the conclusion that the decision of the

Tribunal cannot be sustained.

7. It is no doubt true that the appellants had joined the service of the Karnataka State as non-graduate diploma holder Supervisors; but by Government notification dated 18th June, 1969 the Governor of Mysore State in exercise of his powers under Article 309 of the Constitution amended Karnataka Public Works Department Service (Recruitment) Rules, 1960. The said amendment came into force from 3.7.1969, when the said notification was gazetted. By the said amendment to the recruitment rules a combined cadre of Junior Engineers was formed and the category of posts of Supervisors was omitted from the entry relating to the posts of Junior Engineers in the schedule to the Rules. The result was that from 3.7.1969, pursuant to amendment of recruitment rules as per Government notification, there emerged a combined cadre of Junior Engineers and all erstwhile incumbents whether graduates or non-graduates were put on par in a common cadre of Junior Engineers. 'The earlier distinction between graduate Junior Engineers and non-graduate Supervisors was abolished. The appellants, who were earlier Supervisors, therefore, became Junior Engineers, pursuant to the aforesaid Government notification. Their inter se seniority vis-a-vis graduate Junior Engineers had to be, determined accordingly by treating all of them to be belonging to a common cadre of Junior Engineers.

8. This situation not only continued but was further highlighted by Government order dated 5.3.1 Q71 by which parity of pay scales to graduates and non-graduates Junior Engineers was extended with retrospective effect from 1. 1. 1957. Thus, the appellant Supervisors who were earlier non-graduates became entitled to draw the same pay scale as that of graduate Junior Engineers, as all of them from 3.7.1969 onwards belonged to the same cadre of Junior Engineers. This situation continued till 9.1.1974, when by a Government order bifurcation of the common existing cadre of Junior Engineers was made effective by re-classifying posts of Junior Engineers (Division-I) for graduates and Junior Engineers (Division-II) for non-graduates.

9. It is of course true that this bifurcation was sought to be made with retrospective effect from 3.7.1969 and that is what even the subsequent Act 9 of 1975 purported to do. It is to be noted that 52 petitioners who went to the High Court by way of writ petition no. 3182 of 1973 and others decided on 9.1.1981 were principally aggrieved by recovery sought to be effected from their pay on the basis of the impugned Government order and the Act bifurcating the common cadre of Junior Engineers retrospectively with effect from 3.7.1969 and bringing into force separate pay scales for these two cadres. It is also true that the High Court by its final order

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gave relief to those petitioners by holding that retrospective amendment to the Act by which the pay scales were sought to be adversely affected could not be sustained.

10. The Tribunal is, therefore, right when it took the view that the said decision of the High Court nowhere expressly laid down that the Act was invalid in so far as it gave retrospective effect to the bifurcation of the common cadre of Junior Engineers with effect from 3.7.1969 and it was on that basis that the Tribunal nonsuited the appellants. But in our view the Tribunal's final conclusion is not well sustained. Once the Karnataka High Court took the view that retrospective bifurcation of pay scales of earlier existing common cadre of Junior Engineers was bad, on a parity of

reasoning and as a logical corollary it must follow that bifurcation of that common cadre retrospectively from 3.7.1969 would also be bad; otherwise, an inconsistent and incongruous position would result, namely, for both the bifurcated cadres of Junior Engineers, being Division-I comprising of graduates and Junior Engineers Division -II comprising of non-graduates, one common pay scale (which is really meant for the higher cadre of Junior Engineers Division-I) would remain operative from 3.7.1969 till the date the Karnataka Act 9 of 1975 came into force. It is obvious that the aforesaid situation would be highly discriminatory and violative of Articles 14 and 16(1) of the Constitution, as it would result in hostile discrimination against graduate Junior Engineers Division-I and discrimination in favour of non-graduate Junior Engineers Division-II.

11. It has also to be kept in view that the decision of the Karnataka High Court in writ petition 3182 of 1973 and others is acquiesced in by the State and has become final. It is obvious that if as per the said decision, separate pay scales for Junior Engineers (Division-I) and Junior Engineers (Division-II) are not to be sustained with retrospective effect from 3.7.1969, it necessarily follows that such retrospective bifurcation of two separate cadres also could not be sustained with effect from 3.7.1969. Separate cadres cannot survive independently of separate pay scales. Retrospective bifurcation of common cadres of Junior Engineers into two separate cadres of Junior Engineers (Division-I) for graduates and Junior Engineers (Division-II) for nongraduates can survive with separate pay scales or not at all.

12. With respect, the Tribunal has not appreciated this legal position. It is now well settled that even though the Legislature has power to retrospectively amend a statute, it should not be done in a manner which would violate fundamental rights under Articles 14 read with 16(1). On the day on which the Karnataka Act came into force, the graduates and non-graduates Engineers belonged to a common cadre of Junior Engineers and were drawing same pay scales. There could be no discrimination between graduate incumbents and nongraduate incumbents of a common cadre in so far as common pay scales was concerned, as held by the High Court. If that is so the Act by its retrospective sweep could not destroy the fundamental rights of all these incumbents of a common cadre to be treated alike for all other available service benefits flowing from the common cadre.

13. In this connection, we may usefully refer to a decision of Constitution Bench

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of this Court in the case of State of Gujarat & Anr. v. Raman Lal Keshav Lai Soni & Ors (1983 (2) SCR 287). At pages 319 & 320 Chinnappa Reddy, J. speaking for the court has made following pertinent observations:-

"The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made

under a written Constitution, and have t

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conform to the do's and don'ts of the Constitution neither prospective nor prospective laws can be made so as to

contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say twenty years ago the parties had no rights: therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's right and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. This would be most arbitrary, unreasonable and a negation of history. It was pointed out of a Constitution Bench of this Court in B.S. Yadav & Ors. etc. v. State of Haryana and & Ors. etc., Chandrachud C.J., speaking for the Court, "Since the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate, must be shown to bear either from the face to rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case." Today's equals cannot be made unequal by saying that they were unequal twenty years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tempered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws."

14. It is equally well settled that even a statutory rule which can have retrospective effect should not resulting discrimination or any violation of constitutional right. In the case of K. Narayanan and Ors. v. State of Karnataka and Ors. (1994 Supp (1) SCC 44), R.M. Sahai, J. speaking for this court has made the following observation in this connection:-

"Rules operate prospectively. Retrospectivity is exception. Where the statute permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right so as to affect vested right. The rule making authority should not be permitted normally to act in the past. Th

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impugned rule made in 1985 permitting appointment by transfer and making it operative from 1976 subject to availability of vacancy in effect results in appointing a Junior Engineer in 1986 with effect from 1976.

Retrospectivity of the rules is a camouflage for appointment of Junior Engineers from a back date. The rule operates viciously against all those Assistant Engineers who were appointed between 1976 to 1985."

15. In view of the settled legal position, therefore, it must be held that the Act in so far as it sought to introduce by Section 2(1) (i), retrospective bifurcation of the common cadre of Junior Engineers into two cadres of Junior Engineers (Division-I for graduates and Junior Engineers (Division-II) for non-graduates from 1.11.1956 is inoperative at law. It must be held, on a parity reasoning which appealed to the High Court when it held in writ petition no.3182 of 1973 and connected matters, that Section 2(1)(ii) could not operate retrospectively to destroy common pay scales available to both the Junior Engineers graduates and non-graduates. Section 2(1)(i) also could not operate retrospectively to bifurcate the said common cadre with effect from 1.11.1956. It will also have only prospective effect. Consequently, the bifurcation of pay scales as well as of the common cadre of Junior Engineers would legally become effective at the highest from 9.1.1974 when the Government order of even dated introducing such a scheme saw the light of the day. It could also not have any retrospective effect.

16. Once the above conclusion is reached, the result becomes obvious. Both the appellants were belonging to the common cadre of Junior Engineers upto 8.1.1974. That cadre got bifurcated into the cadre of Junior Engineers (Division I) for graduates and Junior Engineers (Division II) for non-graduates with effect from 9.1.1974. Therefore, on 9.1.1974 respondents were required to fit in the appellants in the proper cadre. Obviously and admittedly on 9.1.1974 the appellants were having graduation degrees. In fact both of them had got their degrees since long from 1967 and 1970 respectively as seen by us earlier. Consequently, when the question of allotting the appellants to the proper bifurcated cadre of Junior Engineers with effect from 9.1.1974 came up, the respondents were bound to treat the appellants as belonging to the bifurcated cadre of Junior Engineers (Division-I) for graduates with effect from 9.1.1974. We cannot accept the extreme contention put forward by appellants that they may be treated as belonging to the Junior Engineers (Division-I) from 1967 and 1970 retrospectively as on our own finding such a separate cadre of Junior Engineers (Division-I) did not exist during that period. To recapitulate, from July 1969 till 8.1.1974 there was a common cadre of Junior Engineers to which the appellants belonged along with other incumbents. The cadre of Junior Engineers (Division-I) saw the light of the day on 9.1.1974 as we have discussed earlier.

17. So, there is no question of treating the appellants as belonging to bifurcated cadre of Junior Engineers (Division-I) from any date prior to 9.1.1974 as claimed by them. The appellants are therefore entitled to a partial relief to the following extent. The respondent authorities are directed to treat the appellants as belonging to the cadre of Junior Engineers (Division-I) (Assistant Engineer, as now designated) with effect from 9.1.1974 and fix the salary of the appellants in the scale applicable to Assistant Engineers with effect from that date and also to give to the appellants all consequential benefits including arrears of salary, ranking and seniority in the cadre of Assistant Engineer on that basis.

18. The appeals stand allowed to the aforesaid extent. The

common judgment and order of the Tribunal shall stand set
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aside and substituted by the present decision. In facts and
circumstances of the case there will be no order as to
costs.

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