

CASE NO.:
Appeal (civil) 4459 of 2004

PETITIONER:
P.Raghava Kurup & Anr

RESPONDENT:
V.Ananthakumari & Ors

DATE OF JUDGMENT: 22/02/2007

BENCH:
A.K.MATHUR & H.S.BEDI

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

This appeal is directed against the order passed by the Division Bench of Kerala High Court in W.A.No.413 of 2001 dated 11.1.2001 whereby the appeal filed by the respondent No.1 herein was allowed by the Division Bench and the judgment of learned Single Judge of the High Court was set aside.

Brief facts which are necessary for disposal of this appeal are that the respondent No.1 \026 V.Ananthakumari (hereinafter referred to as respondent) was working as a Peon in Viswabharathi Model High School. She was appointed as a Peon on 19.6.1984 and the appointment was approved. She possessed all necessary qualification for being considered for appointment as High School Assistant (Hindi). On account of retirement, a vacancy in High School Assistant (Hindi) arose in the School on 1.4.2000. Since other incumbents in the School were not eligible and respondent alone was eligible for being considered for appointment to the said post, therefore, she made a request to management to consider her case but the Management did not accede to her request and rejected the same. Appointment was given to one P.Rajeev- the appellant herein vide Ext.P1 dated 1.8.2000. This appointment of the appellant herein was approved by the District Education Officer by order dated 23.9.2000. Thereafter the respondent (herein) approached the Kerala High Court by filing a writ petition and direction was given by the Court in O. P.No.19512 of 2000 to the District Education Officer to consider the candidature of the respondent. The District Education Officer rejected her claim. The matter was taken up in appeal before the Director of Public Instructions and the Director of Public Instructions allowed the appeal of the respondent and set aside the appointment of appellant herein. Aggrieved against the order of the Director of Public Instructions, the appellants herein filed a writ petition before the High Court of Kerala. Learned Single Judge allowed the writ petition and quashed the order of the Director of Public Instructions. Aggrieved against the order passed by learned Single Judge, the respondent herein filed a writ appeal before the Division Bench. The Division Bench set aside the order of learned Single Judge and held that the respondent herein was qualified to be appointed as High School Assistant (Hindi). Aggrieved against aforesaid order present appeal was filed.

Service condition of such employees is regulated by The Kerala Education Rules, 1959 (hereinafter to be referred to as "the Rules") and we are concerned with Chapter XIV which deals with conditions of service of aided school teachers. The Rules were framed under the Kerala Education Act, 1958 (hereinafter to be

referred to as "the Act"). Rule 1 empowers the Managers of the Private Schools to make appointment of a candidate who possesses prescribed qualification. Rule 1 reads as under :

" 1. (1) Managers of Private Schools shall appoint only candidates who possess the prescribed qualification. As far as High School classes are concerned the appointment shall be made with due regard to the requirement of subjects as determined by Director of Public Instruction with reference to the curricula of studies. Whenever vacancy occurs, the manager shall follow the directions issued by Government from time to time, for ascertaining the availability of qualified hand and for filling up vacancy.

Note:- (1) A member of the non-teaching staff under the category of Clerks, Peons, Sweepers and other staff shall also be eligible for appointment as teacher provided he has the prescribed qualifications and that there is no teacher eligible for promotion or for appointment to such post under these rules.

Note:- (2) If there are more than one claimant for appointment as teacher under these categories, preference shall be given in the order of clerks, peons, sweepers and other staff. If there are more than one claimant under a particular category, the order of preference shall be according to the date of their first appointment. If their date of first appointment be the same, then preference shall be given with reference to age, the older being given first preference.

(2) The age limit and the relaxation thereof for appointment applicable to teachers of Government Schools shall apply mutatis mutandis to teachers of aided schools. The date of determination of age for eligibility for appointment shall be the 1st January of the year in which the appointment is to be made.

(3) Subject to rule 51-A, the appointment of teachers in schools managed by Panchayats shall be made from among the qualified hands advised by the Employment Exchange.

(4) In determining the requirement of subjects, the Director shall also issue such instructions as he may deem necessary for giving protection to teachers-

(i) who are in service and would have continued in service; and
(ii) who stand relieved as per rule 49 or 52 or on account of termination of vacancies and who would have been eligible for reappointment under rule 51A had there been no change in requirement of subjects."

Rule 43B deals with appointment of a language teacher to which we are concerned. Rule 43 is a general rule but Rule 43B especially deals with the appointment of a particular category I.e. language teacher in such schools. Rule 43B reads as under :

" 43B. (1) Notwithstanding anything contained in rule 43, posts of full time High School Assistants in a particular Language shall be filled up by promotion in the following order of preference:-

(i) Lower Grade Language Teachers who have the prescribed qualifications in that

Language for promotion to the post of High School Assistants in that language at the time of occurrence of the vacancy and who had given option in writing as per G.O.(Ms) 612/Edn. Dated 10-11-1964 to continue as Lower Grade Language Teachers;

(ii) Part time High School Assistant in that Language;

(iii) Other Lower Grade Language Teachers in that Language;

(iv) Regular Primary Teachers having the prescribed qualifications;

(v) Craft and Specialist teachers having the prescribed qualifications;

(vi) If no teacher with the prescribed qualifications is available in the categories mentioned above, Lower Grade Language Teachers in any other Language having the prescribed qualifications.

Note:- Promotion under this sub-rule shall be made according to seniority from person possessing the prescribed qualifications at the time of occurrence of vacancy.

(2) If qualified teachers as mentioned in sub-rule (1) are not available in schools under the same Educational Agency for promotion to the post of High School Assistants in that language, qualified candidates from outside may be appointed to that post."

Note:-1 to Rule 1 contemplates that members of the non-teaching staff shall also be eligible for appointment as a teacher provided he has the prescribed qualifications and there is no teacher eligible for promotion or for appointment to such post under these Rules. That means non teaching staff like Clerks, Peons, Sweepers and other staff if they possess necessary qualifications they would also be eligible for being appointed as teacher provided there is no teacher eligible for promotion or for appointment to such post under these rules. Rule 43B which starts with non-obstante clause clearly contemplates that notwithstanding anything contained in rule 43, posts of full time High School Assistants in a particular language shall be filled up by promotion in the following order of preference i.e. from a Lower Grade Language Teacher to the higher post and if a person is not available in the category (i) then category (ii) i.e. part time High School Assistant in that Language and likewise the descending order as per Rule 43B. Therefore, on reading of Rule 43B with Note(i) to Rule 1, it transpires that in case candidates in all these categories mentioned in Rule 43B are not available, then persons from the non-teaching staff are also made eligible for consideration for appointment. The Manager of the School proceeded for recruitment from outside when he found that the persons mentioned in category Rule 43B are not available. This was protested by the respondent herein. But this was overruled by the District Education Officer and ultimately the Director of Public Instruction accepted the contention of the respondent herein. Therefore, the question is whether on reading of Rule 43B along with Note (1) under Rule 1 of the Rules, can such appointment be held to be valid. It may also be relevant to mention here that Note(1) was inserted by the amendment of the Rule 1 on 19.10.1982 and the Rules were framed way back 1959. Therefore, it was subsequent amendment to the original Rules and the idea behind this insertion of the Note (1) was that in case candidates mentioned in Rule 43B or under Rule 43 are not available, then in that case one more category is also added to, i.e. member of non-teaching staff under the category of Clerks, Peons, Sweepers, and other staff. Therefore, reading of the note (1) under Rule 1 with Rule 43B harmoniously it transpires that if persons mentioned in the

categories mentioned in Rule 43B are not available, then any non-teaching staff who possesses all necessary qualifications being available, can be considered for appointment of Language teacher. This has been done by the Director of Public Instruction when he allowed the petition of the respondent and appointed her as a Language teacher. In fact Note (1) to Rule 1 covers all appointments not only under Rule 43B but Rule 43 also.

Mr. Rao, learned senior counsel for the appellants has strenuously urged before us that when there is general rule which lays down that if persons mentioned in Rule 43B (1) are not available then reading along with Note (2) appended to Rule 43B, appointment can be made from open market. Learned counsel submitted that general provisions would prevail over the particular rule. We considered the submissions of learned counsel but we regret to say that this submission is not sustainable. The maxim, general principle of "Generalia specialibus non derogant" means, particular provision will override the general provision. In the present case, appointment of a teacher in language is a special provision in Rule 43B and the Rule 43 deals with appointment of teacher other than language teacher. In fact, language teacher is a specific category. Rule 1 empowers Manager of private school to make appointment of teachers who possess requisite qualification. Note 1 is enabling provision. If the note had not been there, then perhaps the argument of Mr. Rao would have been accepted. But the note which was specifically inserted with the avowed purpose to make non-teaching staff eligible for appointment, in case persons for promotion are not available and if they possess necessary qualifications required for the post then such members of the non-teaching staff can be considered. Thus, Note :-1 contemplates a particular contingency that in the event the persons are not available by way of promotion, under Rule 43B or under Rule 43, then in that case, such class of persons can be considered for appointment provided they fulfil the requisite qualifications. But so long as the categories of persons mentioned in Rule 43B are available, then there is no necessity for the Manager of the Private Schools to go in for appointment by other method under the Rules. In fact, learned Division Bench has quoted the object for insertion of this rule which makes it abundantly clear that in order to achieve the above purpose, this Note (1) was added by notification dated 19.10.1982. The purpose reads as under :

" Since there is no avenues for promotions of non-teaching staff Government have decided to make provisions for promotion of qualified non-teaching staff to the post of Clerk and teachers. The amendment is intended to achieve this object."

Therefore, the intention of the rule framing authority can be brought forth by reading these two provisions harmoniously. The settled principle of interpretation of statute is that if two rules can be read harmoniously and the object sought to be achieved can be achieved without violation to any rule then it should be so read. Secondly, it may also be relevant to mention that the Note (1) to Rule 1 was inserted in 1982 subsequently knowing fully well that Rule 43B starts with non-obstante clause. Therefore, the note which is subsequent to the Rules of 1959 can be read harmoniously without doing any violence to Rule 43B.

Mr. Rao has invited our attention to a decision of this Court in *Shrimati Hira Devi & Ors. v. District Board, Shahjahanpur* [(1952) S.C.R.1122]. In that case, their Lordships observed that when express powers have been given to the Board in terms of this Section it would not be legitimate to resort to general or implied powers under the law of master and servant or under section 16 of the U.P. General Clauses Act. This was a case in which when the

general power is already there then it was not legitimate to resort to general or implied powers. That is not the case here.

Mr.Rao placed reliance on a decision of this Court in Nalinakhya Bysack v. Shyam Sunder Halidar & Ors. [(1953) S.C.R. 533], their Lordships observed as follows:

" In construing a statute it is not competent to any court to proceed upon the assumption that the Legislature has made a mistake and even if there is some defect in the phraseology used by the Legislature, the Court cannot aid the defective phrasing of an Act or add and amend, or by construction, make up deficiencies which are left in the Act."

No attempt is made in this case to add or subtract any word. It is only after reading the two provisions of the Rules harmoniously the result can be achieved without any violence to any of the provisions of the Act or Rule. The object as already indicated above, was to provide promotional avenues to the non-teaching staff for the post of teacher provided they fulfil requisite qualifications. Therefore, this case is of no help to the appellants.

In the case of Delhi Financial Corporation & Anr. v. Rajiv Anand & Ors. [(2004) 11 SCC 625], their Lordships in paragraph 17 observed that the Court must proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said. Even if assuming there is a defect or an omission in the words used by the legislature, the court cannot correct or make up the deficiency. As already mentioned above, there is no such defect because the intention of the Legislature is clear and that can be achieved by reading Note (1) under Rule 1 with Rule 43B. Neither the Rule framing authority has made any mistake nor is this Court going to assume anything more than what has been intended by the rule framing authorities.

Learned counsel for the appellants invited our attention to a decision of this Court in Maharaja Pratap Singh Bahadur v. Thakur Manmohan Deo & Ors. ([1966] 3 S.C.R.663). In this case a comparative study of two Acts i.e. The Bengal Ghatwali Lands Act, 1859 and the Courts of Wards Act, 1870 were considered and their Lordships observed that the Act of 1859 namely the Bengal Ghatwali Lands Act, 1859 was a special Act dealing with ghatwali lands. The Court of Wards Act, 1870 was a general enactment. Their Lordships held that special statute will override the general statute. In that context, their Lordships quoted from Maxwell on the Interpretation of Statutes which reads as under :

" A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or in other words, ' where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislature indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act'."

Therefore, the general principle which emerges is that the general

law does not abrogate any special law by mere implication. This principle so far as the present case is concerned, is not of much relevance because here the intention of the Rule framing authority was to provide for the non-teaching staff an opportunity, in case eligible persons from the promotional quota are not available. Therefore, it is a particular provision for particular contingency which does not run counter to the general principles. The general principle as contained in Rule 43B is that first priority will be given to the categories of persons mentioned under sub-rule (1). In case, persons are not available, then this class of persons will also be eligible for promotion. This does not override the general provisions, it only caters for a particular contingency i.e. in the event the particular class of persons are not available, then another category of persons has also been made eligible.

Our attention was invited to a decision of this Court in *S.Prakash & Anr. v. K.M.Kurian & Ors.* [(1999) 5 SCC 624] their Lordships have very clearly held that if language of general provision is clear and unqualified, it prevails over special provision, and special provision must give way to general provision if legislative intent was to establish a rule of universal application. Their Lordships have further held by referring to an earlier decision of this Court in *Ajoy Kumar Banerjee & Ors.v. Union of India & Ors.* [(1984) 3 SCC 127] as follows"

"The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.
If either of these two conditions is fulfilled, the later law, even though general, would prevail."

But so far as the present case is concerned, there is no such conflict. In fact the situation is to the contrary i.e. the particular law has followed the general law. The general law was to fill up the post mentioned in Rule 43B and in case if any person is not available in the category mentioned in Rule 43B, then persons belonging to the non-teaching category could be considered provided they possess necessary qualification.

Our attention was invited to a decision of this Court in *The Bengal Immunity Company Limited v. The State of Bihar & Ors.* ([1955] 2 S.C.R.603). In this case their Lordships have clearly mentioned at page 791 as follows:

" It is a cardinal rule of construction that when there are in a Statute two provisions which are in conflict with each other such that both of them cannot stand, they should, if possible, be so interpreted that effect can be given to both, and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort. This is what is known as the rule of harmonious construction."

Both these provisions appear in Chapter XIV and both are dealt with the method of recruitment and so far as non-teaching staff is concerned it is provided under Note (1) to Rule 1 as a particular provision but that is not derogatory to Rule 43B. It is rather supplemental that if persons mentioned in Rule 43B are not available for promotion then persons in the category of non-teaching staff are available with requisite qualification then such person can be considered for appointment. These two provisions can be read

together and the purpose for which this rule has been made can be achieved. Therefore, the Note 1 to Rule 1 read with Rule 43B can be read harmoniously, it will effectuate the intention of the rule framing authority. Therefore, this rule which was inserted in 1982, can be harmoniously read and it is not derogatory to Rule 43B.

In the case of P.S.Sathappan (Dead) by LRs. v. Andhra Bank Ltd. & Ors. [(2004) 11 SCC 672] this Court held that harmonious construction should be preferred than the purposive construction and in the guise of purposive construction one cannot interpret a section in a manner which would lead to a conflict between two sub-sections of the same section. Therefore, the Constitution Bench by majority held that as far as possible harmonious construction should be preferred and this is what has been held by us above.

As a result of our above discussion, we are of the opinion that the view taken by the Division Bench of the Karnataka High Court appears to be justified. Hence, we find no merit in this appeal and the same is dismissed. No order as to costs.