Before G.S. Sandhawalia & Jagmohan Bansal JJ.

SUCHALAL—*Petitioner*

versus

THE PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS—*Respondents*

CWP No. 716 of 2013

September 19, 2022

A. ***Constitution of India, 1950—Art. 226—The Electricity Act 1948—Punjab State Electricity Board accounts and General Services (Class I and II officers) Regulation 1972—Seeking declaration that Circular no. 10/2012 dated 04.10.2012 arbitrary and ultra vires of The Electricity Act 1948—Petitioner joined respondent as 'Worked Charged T-Mate' governed by 1972 regulations—Appointed as Information Officer-in 2011, an Information Officer possessing degree of graduation and five years of experience in line was eligible for promotion-respondent vide impugned circular amended regulation 10(2) of 1972 regulations and requirement of graduation changed to post graduation.***

Held, that the respondents in terms of Section 79 (c) of 1948 Act has power to make Regulation with respect to terms and conditions of its employees.

(Para 14)

B. Constitution of India 1950—Art. 14-The Electricity Act 1948—Whether the impugned circular is ultra vires the Article 14 of the Constitution of India and 1948 Act? Held, a provision cannot be declared invalid merely on assertion that it is arbitrary—Petitioner miserably failed to prove how impugned regulation violative of Constitution and 1948 Act—Burden lies upon the person who claims any provision invalid-respondent in terms of Section 79(c) of 1948 Act has power to make regulation with respect to terms and conditions of its employees—Higher posts require higher responsibilities—Validity of impugned regulations upheld.

Held, that higher posts always carries higher responsibilities.

(Para 14)

C. ***Constitution of India 1950—Whether the impugned circular is retrospective and has violated rights of the petitioner—Held, the petitioner has not pointed out that as to how impugned regulation is retrospective-all the legislation whether plenary or subordinate at the first instance are deemed to be prospective-a legislation is treated as retrospective if it is specifically made retrospectively or by implication it is retrospective like legislation which is clarificatory—No ambiguity whether regulation is retrospective-wrong to conclude that impugned regulation is retrospective.***

Held that, from the reading of mandate of aforesaid judgments, it is quite evident that rules framed by Legislature may be prospective as well retrospective. There is no bar in framing rules/regulations with retrospective effect provided the rules are not abridging vested or fundamental rights of parties concerned and length of retrospective is unreasonable.

(Para 15.1)

D. ***Constitution of India 1950—Whether promotion is vested right of an employee; whether employer can change criteria of eligibility of a post—Held, the right of seniority or promotion does not accrue on the basis of rules and regulations applicable on the date of joining of an employee whereas rules and regulations which are in force at the time of consideration of promotion are applicable-service conditions pertaining to seniority are always liable to alteration-the rules/regulations existing on the date of consideration for promotion are applicable, thus, no right on the basis of rules existing on the date of joining of an employee or arising of vacancy accrues or can be availed- petitioner never considered or appointed as per rules applicable prior to impugned circular—Thus no right accrued in favor of petitioner.***

Petition dismissed. Held, in view of above observations, we hold:

(i)Impugned circular No. 10/2012 dated 4.10.2012 (Annexure P-2) is neither violative of Article 14 of Constitution of India nor any provision of 1948 Act read with Regulations made thereunder.

(ii)The impugned Regulation is not retrospective.

(iii)Promotion is not right of an employee and he cannot challenge change of criteria of promotion unless he has already been promoted and there is retrospective amendment.

Held, that the right of seniority or promotion do not accrue on the basis of rules and regulations applicable on the date of joining of an employee whereas rules and regulations which are in force at the time of consideration of promotion are applicable. The service conditions pertaining to seniority are always liable to alteration.

(Para 16.1)

B.D. Sharma, Advocate, *for the petitioner.*

Mukul Aggarwal, Advocate, for the respondents.

JAGMOHAN BANSAL, J.

(1) Invoking jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner is seeking declaration that circular No. 10/2012 dated 4.10.2012 (Annexure P-2) issued by Punjab State Power Corporation Limited (for short 'respondent-corporation') being arbitrary is ultra vires the Electricity (supply) Act, 1948 (for short '1948 Act') as well Article 14 of the Constitution of India.

Brief Facts

(2) The brief facts emerging from record and arguments of both sides which are necessary for the adjudication of present writ petition are that the petitioner on 5.3.1980 joined respondent-corporation as 'Worked Charged T-mate'. The recruitment and conditions of services of the petitioner were governed by Punjab State Electricity Board Accounts and General Services (Class I & II Officers) Regulations, 1972 (for short '1972 Regulations'). The petitioner came to be appointed as Information Officer w.e.f. 3.8.2006. The appointment was made in terms of advertisement No. CRA 253/2005 which permitted employees working within the respondent-corporation to apply for the post against direct recruitment.

(2.1) In 2011, a post of Public Relations Officer became vacant and as per regulations applicable in 2011, an Information Officer possessing degree of Graduation and five years experience in line was eligible for the promotion. The petitioner was working as Information Officer since 2005, and was possessing five years experience in the line. He was also a Graduate and member of scheduled caste category, thus, he was eligible for promotion as Public Relations Officer. The post of Public Relations Officer was re-designated as Information and Public Relations Officer (for short “IPRO”) and vide order dated 23.11.2011, three posts of IPRO were created.

(2.2) The respondent vide circular No. 10/2012 dated 4.10.2012 (Annexure P-2) made an amendment in regulation 10(2) of 1972 Regulations to the effect that the minimum qualification for IPRO instead of Graduation shall be Post Graduation in Arts or Science from any recongnized University. The relevant extracts of circular No. 10/2012 dated 4.10.2012 are reproduced as below:-

Reg. No.	**Existing Regulation**	**Proposed Regulation**
10(2)	The post of Public Relations Officer may be filled up by promotion from the Publicity Supervisor(s) who are Graduates and possess experience of atleast five years in the line	The post of Public Relations Officer (now I.P.R.O.) shall be filed up by promotion from the Publicity Supervisor(s) now Information Officer. AIPRO who posses the following qualification:- a) Post Graduate Degree in Arts or Science from any recognized university b) Punjabi pass up to Matric level And five years experience of working in Public Relation Department.

The afore-stated amendment made petitioner ineligible to post of IPRO because petitioner was not Post Graduate. Hence, the petitioner has preferred present writ petition seeking declaration that circular No. 10/2012 whereby qualification for the post of IPRO has been improved from Graduation to Post Graduation is invalid.

Contention of petitioner

(3) Learned counsel for the petitioner contended that the impugned amendment is arbitrary and violative of 1948 Act and Regulations made thereunder as well Article 14 of the Constitution of India. He further contended that amendment is retrospective in nature and respondent- corporation had no authority to make amendment from retrospective effect. The amendment has infringed right of the petitioner to get promotion to the post of IPRO, thus, amendment is bad in the eye of law and deserves to be declared invalid.

Contention of respondents

(4) Per contra, learned counsel for the respondent submitted that there was no promotion to the post of IPRO from the post of Information Officer. There was one post of Public Relations Officer which was being filled on seniority-cum-merit basis. The respondent-corporation vide office order No/136 Cadre-I dated 23.11.2011 created three posts of IPRO in the higher scales. The petitioner was not appointed as IPRO as he was not possessing required qualification and promotion is not a fundamental or vested right of an employee. An employee has right of consideration for the promotional post, however, it is discretion of the competent authority to prescribe terms and conditions, qualification and required experience for the post to be filled either through promotion or direct recruitment. The petitioner has pleaded that there is violation of Article 14 of the Constitution of India whereas there is nothing on record to indicate that rights of the petitioners have been violated or impugned rule is unreasonable or arbitrary. Learned counsel drew our attention to the fact that petitioner after obtaining Post Graduation degree has already been promoted to the post of IPRO.

(5) On being confronted with the fact that the petitioner has already been promoted, learned counsel for the petitioner submitted that petitioner has challenged vires of impugned circular and if impugned circular is declared ultra virus, the petitioner would be entitled to promotion from 2011, thus, vires of impugned circular may be tested.

(6) We have heard arguments of both sides and perused the record.

(7) The conceded position emerging from record and arguments of both sides is that the petitioner joined respondent-corporation on 5.3.1980 and he was appointed Information Officer on 3.8.2006. A post of Public Relations Officers became vacant in 2011 and at that point of time, Graduation was minimum education qualification for the said post. The respondent-corporation as per Section 79 (c) of 1948 Act was the competent authority to make regulation with respect to duties of the officers and employees of the Board and their salaries, allowances and others conditions of service. The respondent-corporation by impugned circular has carried out amendment in regulations prescribing qualification for the post of IPRO. Minimum education qualification has been improved from Graduation to Post Graduation. The grouse of petitioner is that improvement of qualification from Graduation to Post Graduation is arbitrary and contrary to 1948 Act and Regulations made

thereunder, thus, deserves to be declared invalid.

(8) Learned counsel for the petitioner has raised two fold arguments. First and prime argument of petitioner is that amendment i.e. change of qualification from Graduation to Post Graduation for the post of IPRO is arbitrary, thus, violative of Article 14 of the Constitution of India. The second line of argument of petitioner is that impugned amendment is retrospective and it has affected the rights of the petitioner, thus, amendment should be declared prospective and made applicable to posts which became vacant after aforesaid amendment.

Issues for consideration

(9) From the perusal of record and arguments of both sides, we find that following questions do arise for the consideration of this Court:-

(i) Whether Circular No. 10/2012 dated 4.10.2012 issued by respondent-corporation is ultra vires the Article 14 of Constitution of India and 1948 Act?

(ii) Whether impugned circular is retrospective and has violated rights of the petitioner?

(iii) Whether promotion is vested right of an employee?

(iv) (iv)Whether employer can change criteria of eligibility of a post?

(10) The respondent-corporation has amended Regulation 10(2) of 1972 Regulations and amendment was carried out in exercise of power conferred by Section 79 of the 1948 Act. The respondent-corporation has framed regulations in exercise of power conferred by 1948 Act and impugned amendment has been made in the Regulations. There is no iota ofdoubt that Regulations framed under 1948 Act are a piece of subordinate, delegated Legislation.

Judicial Pronouncement

(11) Before adverting with vires of subordinate Legislation, it would be appropriate to look at judicial pronouncements qua vires of delegated Legislation.

(11.1) A two Judge Bench of Hon'ble Supreme Court in ***T.N.***

versus ***P. Krishnamurthy***[1], while dealing with validity and scope of Rule 38A of the Tamil Nadu Minor Mineral Concession Rules, 1959 in Para 15 expounded grounds to challenge subordinate Legislation which is reproduced as below:

> "Whether the Rule is valid in entirety?
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> 15. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a sub-ordinate legislation can be challenged under any of the following grounds:-
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> a) Lack of legislative competence to make the sub-ordinate legislation.
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> b) Violation of Fundamental Rights guaranteed under the Constitution of India.
>
> c) Violation of any provision of the Constitution of India.
>
> **d)** Failure to conform to the Statute under which it is made or **exceeding the limits of authority conferred by the enabling Act.**
>
> e) Repugnancy to the laws of the land, that is, any enactment.
>
> f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such rules).
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> The court considering the validity of a subordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity"

[1] 2006 (4) SCC 517

(11.2) In ***Cellular Operators Association of India*** *versus* ***Telecom Regulatory Authority of India***[2], Hon'ble Supreme Courtwhile holding Regulations framed under Telecom Regulatory Authority of India Act, 1997 as ultra vires adverted with its earlier judgments and held:-

> **"Violation of fundamental rights**
>
> **42.** We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. (See **Indian Express Newspapers (Bombay)** ***(P) Ltd. v. Union of India (1985) 1 SCC 641****, SCC at p. 689, para 75.*
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> 43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In **Khoday Distilleries Ltd. v. State of Karnataka (1996) 10 SCC 304**, this Court held: (SCC p. 314, para 13)
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> "13. It is next submitted before us that the amended rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In **Indian Express Newspapers (Bombay) (P) Ltd. v. Unionof India (1985) 1 SCC 641**, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the

[2] 2016 (7) SCC 703

> ground that it is unreasonable; `unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law inEngland and in India, the Court further observed that in England the Judges would say, `Parliament neverintended the authority to make such rules; they are unreasonable and ultra vires'. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."
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> 44. Also, in **Sharma Transport v. State of A.P. [(2002) 2 SCC 188]**, this Court held: (SCC pp. 203-04, para 25) "25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described asarbitrary, it must be shown that it was not reasonableand manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

(11.3) A two Judge Bench of Hon'ble the Supreme Court in ***Indian Express Newspapers (Bombay) Private Ltd., and others*** *versus* ***Union of Indian and others***[3] while dealing with validity of import duty on newsprint imported from outside the country held:

> "71. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is

[3] 1985 (1) SCC 641

unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires".

(11.4) A Constitution Bench of Hon'ble Supreme Court in ***Shayara Bano*** *versus* ***Union of India***[4] has adverted with scope and ambit of challenge to validity of plenary and subordinate Legislation. The Supreme Court after noticing its precedents has concluded:

> "100. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In **Cellular Operators Association of India v. Telecom Regulatory Authority of India, (2016) 7 SCC 703**, this Court referred to earlier precedents, and held:
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> **"Violation of fundamental rights**
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> 42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. (See **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641**, SCC at p. 689, para 75)
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> 43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In **Khoday Distilleries Ltd. v. State of Karnataka (1996) 10 SCC 304**, this Court held (SCC p. 314, para 13):
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> "13. It is next submitted before us that the amended rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which

[4] 2017 (9) SCC 1

apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which couldnot be reasonably expected to emanate from an authority delegated with the law-making power. In **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641**, this Courtsaid that a piece of subordinate legislation doesnot carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; `unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, `Parliament never intended the authority to make such rules; they are unreasonable and ultra vires '. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must beso arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

44. Also, in **Sharma Transport v. State of A.P. [(2002) 2 SCC 188]**, this Court held: (SCC pp. 203-04, para 25)

"25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

Conceded position

(12) From the perusal of above-cited judgments, it can be culled out that subordinate Legislation can be declared invalid on more grounds than plenary Legislation. A subordinate Legislation primarily can be declared invalid if (i) there is lack of Legislative competency to

make alleged subordinate Legislation; (ii) there is violation of fundamental rights guaranteed under Chapter III of the Constitution; (iii) there is violation ofany provision of Constitution of India; (iv) the subordinate Legislation is contrary to statute under which subordinate Legislation has been made; (v) the authority has made subordinate Legislation beyond its jurisdiction/authority; (vi) there is repugnancy between subordinate Legislation and any other Legislation; and (vii) the subordinate Legislationis manifestly arbitrary.

Findings

(13) In the case in hand, the petitioner has not alleged that impugnedRegulation has been framed by an incompetent authority or it is violative of any provision of Constitution other than Article 14 or it is contrary to any particular provision of 1948 Act under which Regulation has been framed. The only bald averment and contention of petitioner is that impugned Regulation is arbitrary. It is settled proposition of law that any action whether executive or Legislative, which is arbitrary is violative of Article 14 because arbitrariness and reasonableness are sworn enemies. Reasonableness is facet of fundamental right of equality before law as well as rule of law which governs our nation. A provision cannot be declared invalid merely on assertion that it is arbitrary. The petitioner has miserably failed to point out that as to how impugned Regulation is violative of Constitution of India or 1948 Act or it is arbitrary.

(14) Applying the afore-stated judgments, we are of the considered opinion that petitioner has failed to point out any infirmity in the impugned Regulation which could compel us to declare the impugned Regulation invalid. Even otherwise, it is settled proposition of law that Legislature knows the need of its people and Courts must be loath in interfering in Legislative and policy matters. Burden lies upon a person who claims any provision invalid. The Courts are supposed to presume alleged provisions are constitutional and valid. It is duty of the person who challenges validity of the provision to prove that provision is unconstitutional. In the case in hand, the petitioner, except making bald averments, has failed to point out any infirmity or illegality in the impugned Regulation. Neither there is averment in writ petition nor learned counsel could point out any material to indicate mala fide of the respondent-corporation. The respondent in terms of Section 79(c) of 1948 Act has power to make Regulation with respect to terms and conditions of its employees. Higher posts always carries higher responsibilities. The respondent-corporation originally framed

Regulationsin 1972 and at that point of time qualification of Graduation was considered reasonably good. However, during last 25 years there is revolution ineducation sector and Post Graduation is a very common qualification, thus,it is difficult to perceive that qualification prescribed is unreasonable or contrary to post under consideration. We do not find the impugned Regulation violative of Chapter III of the Constitution or any other Articleof the Constitution or any provision of 1948 Act. Thus, we are left with no option except to uphold the validity of impugned Regulation.

Question No.2: Whether impugned circular is retrospective and hasviolated rights of the petitioner?

(15) A two Judge Bench of Hon'ble Supreme Court *in* ***State of Madhya Pradesh and others*** *versus* ***Yogendra Shrivastava***[5] while dealing with a proviso inserted in exercise of power conferred by proviso to Article 309, has held:-

> "15. It is no doubt true that rules under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing rules cannot be taken away by amending the rules with retrospective effect."

A two Judge Bench of Hon'ble Supreme Court in ***T.R. Kapur and others*** *versus* ***State of Haryana and others***[6], while dealing with Constitutional validity of a notification issued by State ofHaryana has held:-

> "16. It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect:
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> B.S. Vadhera v. Union of India, [1968] 3 SCR 575, Raj Kumar v. Union of India, [1975] 3 SCR 963, K. Nagaraj & Ors. v. Sate of A.P. & Anr., [1985] 1 SCC 523 and State of J & K v. Triloki Nath Khosla & Ors., [1974] 1 SCR 771. It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay

[5] 2010 (12) SCC 538
[6] 1986 (Supp.) SCC 584

> down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a ruleunder the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessary satisfy the tests of Arts. 14 and 16(1) of the Constitution: State of Mysore v. M.N. Krishna Murty & Ors., [1973] 2 SCR *575 B.S. Yadav & Ors. v. State of Haryana & Ors., [1981] 1 SCR 1024 State of Gujarat & Anr. v. Ramanlal Keshavlal Soni & Ors., [1983] 2 SCR 287 and Ex- Captain K.C. Arora & Anr. v. State of Haryana & Ors., [1984] 3 SCR 623.*

A Constitution Bench of Hon'ble Supreme Court in ***State of Gujarat & Anr.*** *versus* ***Raman Lal Keshav Lal Soni & Ors.***[7] while considering constitutional validity of proviso to Section 102(1)(a) of the Gujarat Panchayat Act, 1961 has held:-

> "52. 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 fight acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution neither prospective nor retrospective laws can be made so a 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 fights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are

[7] 1983 (2) SCC 33

> concerned with today's rights 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. That would be most arbitrary, unreasonable and a negation of history."

(15.1) From the reading of mandate of aforesaid judgments, it is quite evident that rules framed by Legislature may be prospective as well retrospective. There is no bar in framing rules/regulations with retrospective effect provided the rules are not abridging vested or fundamental rights of parties concerned and length of retrospective is unreasonable. It is also evident that conditions of service which include avenues of promotion may be changed. The appointment of an employee may at the first instance be outcome of a contract, however, as soon as an employee is appointed, he holds a status and is governed by rules and regulations applicable to post held by employee concerned. A rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Article 14 and 16 of the Constitution. A rule cannot deprive an employee from promotion which he has already got. As soon as an employee is promoted, right accrues and by way of retrospective amendment he cannot be demoted.

(15.2) The petitioner has alleged that the impugned provision is retrospective. The petitioner has not pointed out that as to how impugned Regulation is retrospective. There is just an averment that petitioner became eligible for promotion in 2011 and respondent-corporation made amendment in 2012, thus, impugned Regulation is retroactive in nature. The Circular amending Regulation is dated 4.10.2012. It is settled proposition of law that the provision unless and until it is specifically or by implication made retrospective, it is prospective or retrospective in nature. All the Legislation whether plenary or subordinate at the first instance are deemed to be prospective. A Legislation is treated as retrospective if it is specifically made retrospectively or by implication it is retrospective like a Legislation which is clarificatory.

(15.3) In the case in hand, there is nothing in the circular indicating that it has come into force prior to 4.10.2012. There is neither specific provision nor by implication it can be called as retrospective. The petitioner became eligible to promotion in 2011. Promotion is not a fundamental or vested right of an employee. The

contention of an employee is highly misconceived when he claims that impugned Regulation is retrospective and it had violated his vested right. From the perusal of impugned Regulation, we find that there is no ambiguity which could create doubt that whether Regulation is retrospective. The impugned Regulation is prospective/retroactive and it is wrong to conclude that impugned Regulation is retrospective.

Question Nos. (iii): Whether promotion is vested right of an employee? and (iv)Whether employer can change criteria of eligibility of a post?

(16) Questions No. (iii) and (iv) are inter-twined, thus, are adjudicated jointly.

In ***Chairman, Railway Board and others*** *versus* ***C.R. Rangadhamaiah and others***[8], Hon'ble Supreme Court has held that employer is competent to frame rules altering the criteria of eligibility for promotion. The rules which operates futuro so as to govern future rights of those employees who are already in service cannot be assailed on the ground of retroactivity. The authority competent to lay down qualification for promotion is also competent to change the qualification. The rules defining qualifications and suitability for promotion are conditions of service and can be changed prospectively as well retrospectively. Thus, rule is, however, subject to well recognized principle that benefit acquired under existing rules cannot be taken away by an amendment with retrospective effect. Therefore, the employees who are already promoted before the amendment cannot be reverted and their promotion cannot be recalled. The Supreme Court has held:-

> "16. It is no doubt true that once a person joins service under the Government the relationship between him and the Government is in the nature of status rather than contractual and the terms of his service while he is in employment are governed by statute or statutory rules, which may be unilaterally altered without the consent of the employees. It has been so held by this Court in Roshan Lal Tandon (supra) and State of Jammu & Kashmir v. Triloki Nath Khosa, [1974] 1 SCR at pp. 779, 780. It may, however, be mentioned that in Roshan Lal Tandon (supra) the petitioner was invoking his rightsunder the contract of service and the said conten-tion was rejected by the Court with the

[8] 1997 (6) SCC 623

observations:

"We are therefore of the opinion that the petitioner has no vested contractual light in regard to the terms of his service and that the counsel for the petitioner has been unable to make good his submission on this aspect of the case." (p. 196) (emphasis supplied)

19. In Triloki Nath Khosa and Ors. (supra) rules had been framed altering the criterion of eligibility for promotion from the post of Assistant Engineer to the post of Executive Engineer and the same were challenged on the ground of retrospectivity by the Assistant Engineers who were in service on the date of making of these rules. Rejecting the said contention, this Court said:

"16.....It is wrong to characterise the operation of a service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates in futuro, in the sense that it governs the future right of promotion of those who are already in service. The judgment rules do not recall a promotion already made or reduce a pay scale already granted. They provide for a classification by prescribing a qualitative standard, the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retrospectivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective."

20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in

> service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

In ***T.R. Kapur*** *(supra),* Hon'ble Supreme Court has recognized retrospective amendment and has further held that employees who are already promoted before amendment can be reverted provided amending rules satisfies test of Articles 14 and 16 of the Constitution.

In ***Roshan Lal Tandon and another*** *versus* ***Union of India and another***[9], a five Judge Bench of Hon'ble Supreme Court while dealing with validity of a notification issued by Railway Board in so far as it granted protection to the existing Apprentice Train Examiners and laid down the procedure to fill upgraded vacancies, has opined that origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emoluments of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of juris- prudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties

[9] AIR 1967 SC 1889

concerned.

A two Judge Bench of Hon'ble Supreme Court in a little recent judgment in ***Union of India and others*** *versus* ***Krishna Kumar and others***[10], after noticing its earlier judgments in ***Deepak Aggarwal*** *versus* ***State of U.P.***[11] and ***State of Tripura*** *versus* ***Nikhil Ranjan Chakraborty***[12] has concluded that right to be considered for promotion accrues on the date of consideration of the eligible candidates. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancies arose. A candidate has right to be considered in the light of existing rules which implies 'rule in force' on the date the consideration takes place. In the absence of mandate that vacancy must be filled invariably by the law existing on the date when vacancy arose, no right accrues in favour of an employee and State has right to stipulate that vacancy shall be filled in accordance with amended rules.

From the perusal of judgments of Hon'ble Supreme Court in ***Yogendra Shrivastava*** *(supra),* ***T.R.Kapur*** *(supra),* ***Raman Lal Keshav Lal Soni*** *(supra),* ***C.R. Rangadhamaiah*** *(supra),* ***Wing Commander J. Kumar*** *(supra),* ***Roshan Lal Tandon*** *(supra) and* ***Krishna Kumar*** *(supra),* it can be culled out that an employee may be appointed against a contract, however, as soon as an employee is appointed, he acquires a status and his right and obligations are no longer determined by consent of both parties but by statute or rule made thereunder which may be altered unilaterally by the government. The right of seniority or promotion do not accrue on the basis of rules and regulations applicable on the date of joining of an employee whereas rules and regulations which are in force at the time of consideration of promotion are applicable. The service conditions pertaining to seniority are always liable to alteration. An employee who has already been promoted can claim his right as accrued right whereas no employee has right to claim his right as a vested or accrued right unless he has already been promoted. The rules/regulations existing on the date of consideration for promotion are applicable, thus, no right on the basis of rules existing on the date of joining of an employee or arising of vacancy accrues or can be claimed.

In view of judgments of Hon'ble Supreme Court, we are of the

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[10] 2019 (4) SCC 319
[11] 2011 (6) SCC 725
[12] 2017 (3) SCC 646

considered opinion that no right accrued in favour of the petitioner prior to amendment of 2012 and the respondent-corporation had every right to change the criteria of eligibility of a post.

As per petitioner, vacancy arose in 2011 and at that point of time the required qualification was Graduation. As per respondent-corporation, no vacancy was filled in 2011 and vide order dated 23.11.2011, three posts of IPRO in the higher scales were created. The post of Public Relations Officer was re-designated as IPRO. The post of IPRO was filled after impugned amendment.

From the undisputed facts emerging from record, it is quite evident that vacancy of Public Relations Officer arose in 2011, however, no employee was appointed against the vacancy and in 2011, vide order dated 23.11.2011, three posts of IPRO were created and thereafter filled as per amended rules. The petitioner after amendment of 2012 became ineligible as he was possessing qualification of Graduation whereas required qualification was Post Graduation. It is not case of petitioner that he was considered or promoted as per rules applicable prior to impugned amendment. The petitioner was never considered or appointed as per rules applicable prior to impugned circular, thus, no right accrued in favour of the petitioner. Thus, claim of petitioner that respondent-corporation was bound to make his appointment as per regulations applicable prior to 2012 isunsustainable and deserves to be rejected.

(17) In view of above observations, we hold:

(i) Impugned circular No. 10/2012 dated 4.10.2012 (Annexure P-2) is neither violative of Article 14 of Constitution of India nor any provision of 1948 Act read with Regulations made thereunder.

(ii) The impugned Regulation is not retrospective.

(iii) Promotion is not right of an employee and he cannot challenge change of criteria of promotion unless he has already been promoted and there is retrospective amendment.

In view of above findings, there is no merit in the present petition and the same is hereby dismissed.

Kirti Sharma Avasthi