Indian Administrative Service ... vs Union Of India And Ors on 11 November, 1992

Bench: A.M. Ahmadi, M.M. Punchhi, K. Ramaswamy

PETITIONER:
INDIAN ADMINISTRATIVE SERVICE (S.C.S.) ASSOCIATION, U.P. AND

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT11/11/1992

BENCH:
[A.M. AHMADI, M.M. PUNCHHI AND K. RAMASWAMY, JJ.]

ACT:
Indian Administrative Service (Regulation of Seniority) (First Amendment) Rules 1989:
Rule 3(3)(ii) Seniority of promotees/direct recruits assigning year of allotment-Procedure-Legislative intention what is-Junior officer promoted on merit superseding seniors Year of allotment of such officer Fixation of.
Interpretation of Statutes:
I.A.S. (Regulation of Seniority) (First Amendment) Rules, 1989-Rule 3(3) (ii) proviso-Construction-Whether prospective in operation-Legislative intention-What is.
Constitution of India 1950:
Articles 14 16 and Rule 3(3)(ii) proviso of I.A.S. (Regulation of Seniority) (First Amendment) Rules 1989-Constitutional validity of- Whether inconsistent with Section 3(LA) of the All India Services Act, 1957.
All India Services Act, 1951:
Section 3(1A)-Rules made under-Rule 3(3)(ii), proviso of the First Amendment Rules, 1989-Consultation-Object, importance and nature of-Failure to consult all Stares and Union Territories-Whether proviso to Rule 3(3) unconstitutional.

HEADNOTE:
On 19.1.1984, the Association [petitioner No. 1 in W.P. (C) No. 499 of 1991] requested the Union Government (Respondent) to remove the disparity prevailing in different states of promotional avenues from State Civil Services to

All India Administrative Service.

A Committee of Senior Secretaries, constituted by the Union Government, recommended an equitable principle of comparable seniority from different States for promotion to the Indian Administrative Service.

The I.A.S. (Regulation of Seniority) Rules, 1987 came into force with effect from 6.11.1987, repealing the old Rules.

In a Circular dated 9.9.1986 issued by the respondent-Union Government directed the State Governments to give weightage over and above four years the assignment of year of allotment as per the existing rules, namely, four years for the first 12 years State service with additional weightage one year for every two to the years completed service subject to a maximum of five years.

Union Government amended and published the New Seniority Rules, 1987, after considering the suggestions from the State Governments. The First Amendment Rules was published in the Gazette of India on 32.1989 which was given prospective operation from 3.2.1989.

The appellants in C.I. No. 4794 of 1992 questioned Rule 3(3) (ii) proviso of the First Amendment Rules, in an application before the CAT. at Patna. They contended that though they were found to be entitled to the total weightage of 9 years since the juniors were given 1983 as the year of allotment by operation of proviso to Rule 3(3)(ii) of the First Amendment Rules, were given 1983 as the year of allotment and thereby the appellants were denied the 3 years weightage.

The Tribunal upheld the Rules and dismissed the application, against which appeal - C.A. No. 4794 of 1992 - was filed in this Court.

The appellants in C.A. No. 4788 of 1992, some members of the Association - petitioner No. 1 of the W.P. (C) No. 499 of 1991 - filed an application before the Central Administrative Tribunal at Lucknow contending that they were promoted in 1980 onwards, and they were discriminated in fixation of their seniority.

The Tribunal held that the prospective operation of the 1987 Rules discriminated the Senior State Civil Service Officers, but refused to direct the Union Government to amend the Rules but retrospective effect. However, it requested the Government of India to reconsider the matter and to give retrospective operation to the First Amendment Rules. This decision was questioned hl an appeal - C.A. No. 4788 of 1992.

In WP(C)No. of 499 of 1991, Petitioner No. 1 - An Association representing the officers of the U.P. State Civil Service - and petitioners 2-17, its members filed the writ petition under Article 32 of the Constitution to quash the order of the respondent - Union Government dated 12.12.1990, and for a direction to extend the benefit flowing from the First Amendment Rules to its members

promoted prior to January 1988. It was contended that the First Amendment Rules operated with effect from 1992, whereas the promotee Officers were promoted between 1988 to 1991 and that they would get only partial benefit.

As these cases raised common questions of law, they were heard together.

Dismissing WP(C)No. 499/1991 and CA No. 4794 of 1992, and allowing C.A No. 4788 of 1992, this Court,

HELD: 1.01. The entry into the service is from different streams and predominantly by direct recruitment and promotion. The direct recruit gets his year of allotment from the succeeding year of his recruitment. The direct recruit officers appointed earlier to 1988 also would be adversely affected in their seniority. [403-D]

1.02. Rule 3(31 manifests the Central Govt's intention that the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held. If any such officer was permitted to join probationary training with direct recruit officers of a subsequent year of allotment then he shall be assigned that subsequent year as the year of allotment. [400-G-H]

1.03. In determining the seniority of a promotee officer in assigning year of allotment, the service rendered in the State Civil Service upto 12 years as Dy. Collector, or equivalent posts, weightage of 4 years shall be given. In addition he/she shall also be given, further benefit of one year weightage of every completed 3 years of service. beyond the period of 12 years, subject to a maximum weightage of 5 years. In its calculations fractions are to be ignored. The weightage shall be computed from the year G of appointment of the officer to the service. [402-E]

1.04. The offending proviso limits the operation of Rule 3(3) (ii) (a) and (b) that such an officer shall not be assigned an year of allotment earlier than the year of allotment assigned to the officer senior to him in that select list or appointed on the basis of an earlier select list. [1402-F]

105. The proviso aims that the State Civil Service senior officer' though had varied length of services, but because of late promotion to Indian Administrative Service, would receive and forego proportionate weightage of past service for a short period till the rules fully become operational. [406-B]

1.06. The first amendment rules doubtless provided the remedy to remove existing discriminatory results by giving graded weightage to a maximum of 9 years and would track back the year of allotment anterior to the date of inclusion in the select list under the Recruitment Rules read with Promotion Regulations. [406-C]

1.07. The Proviso intended to protect the seniority of the officers promoted/appointed earlier than the appellants and its effect would be that till rule 3 (3) (ii) fully becomes operational graded weightage was given to the

promotees. In other words it prevented to get seniority earlier to the date of his/her appointment to the Indian Administrative Service. Equally it in tended not to let endless chain reaction occur to unsettle the settled interests in seniority. These compulsive circumstances denied the benefits of full 9 years weightage to officers promoted during 1987 to 1992. The discrimination, though is discernible, but inevitable to ensure just results. In other words the proviso prevented unequals to become equals. [406-D-E]

1.08. The new Seniority Rules were to be operative from November 6, 1987 and the First Amendment Rules from February 3, 1989 with the result that in assigning the year of allotment, full weightage of 9 years' eligible service was given to the promotee State Civil Service Officers. However, the senior officer to him/her appointed from the State Civil Service earlier in the same select list or one above him in the previous select list shall remain senior to him. Thereby the proviso averted the effect of pushing an officer who gained entry into IAS service by application of rule of weightage in Rule 3(3) (ii) of the Rules down in seniority. [402-H, 403-A-B]

1.09. By dint of merit, ability and suitability junior officer could steal a march over the senior officers in the State Civil Service and get entry into the Indian Administrative Service earlier to the senior officers and thus becomes a member of the Indian Administrative Service. Thereby he becomes senior in service. The senior State Civil Service officer, who was superseded and subsequently became qualified tor inclusion in the select list, after the new Seniority Rules or the First Amendment Rules came into force, indisputably would be junior in I.A.S. cadre to his erstwhile junior officers in State Civil Service. If he gets the benefit of the free play of the First Amendment Rules, it would have the inevitable effect of depriving the promoted erstwhile junior officer of the benefit of early promotion and he would be pushed down and would again become junior to him in the Indian Administrative Service. [405-G H; 406-A-B]

1.10. A junior officer who superseded a senior State Civil Officer became entitled to carry his year of allotment and became senior to him in the cadre of I.A.S. But for the proviso, the operation of Rule 3(3)(ii), the senior officer would have been saddled with the disability to be pushed down in seniority which would have nullified and frustrated the hard earned earlier promotion and consequential effect on seniority earned by dint of merit and ability. [403-E]

2.01. No statute shall be construed so as to have retrospective operation unless its language is such as plainly to require such a construction. The legislature, as its policy, give effect to the statute or statutory rule from a specified time or from the date of its publication in the State Gazette. 1404-A]

2.02. Court would issue no mandamus to the legislature to make law much less retrospectively.

2.03. It is the settled cannons of construction that every word, E phrase or sentence in the statute and all the provisions read together shall be given full force and effect and no provision shall be rendered surplusage or nugatory. [404-B]

2.04. The mere fact that the result of a statute may be unjust, does not entitle the court to refuse to give effect to it. However, if two reasonable interpretations are possible, the Court would adopt that construction which is just, reasonable or sensible. Courts cannot substitute the words or phrases or supply casus omissus. The court could in an appropriate case iron out the creases to remove ambiguity to give full force and effect to the legislative intention. But the intention must be gathered by putting up fair construction of all the provisions reading together. This endeavour would be to avoid absurdity or unintended unjust results by applying the doctrine or purposive construction. 1404-C-D]

2.05. Where the intention of statutory amendment is clear and expressive, words cannot be interpolated. In the first place they are not, in the ease, needed. If they should be added, the statute would more than likely fail to carry out the legislative intent. The words are the skin of the language which the legislature intended to convey. [405-B]

2.06. Where the meaning of the statute is clear and sensible, either with or without omitting the words or adding one, interpolation is improper, since the primary purpose of the legislative intent is what the statute says to be so. If the language is plain, clear and explicit, it must be given effect and the question of interpretation does not arise. [405-C]

2.07. If found ambiguous or unintended, the court can at best iron out the creases. Any wrong order or defective legislation cannot be righted merely because it is wrong. At best the court can quash it, if it violates the fundamental rights or is ultra vires of the power or manifestly illegal vitiated by fundamental laws or gross miscarriage of justice. [405-D]

2.08. The Legislature intended that the First Amendment Rules would operate prospectively from February 3, 1989, the date of their publication in the Gazette of India. Its policy is explicit and unambiguous, Rule 3(3)(ii) intended to remedy the imbalances while at the same time the proviso intended to operate prospectively to avert injustice to the officers recruited/promoted earlier than the officer promoted later to that date. The proviso carved out an exception to ward off injustice to the officers that became members of I.A.S. earlier to those dates. [405-E]

Smt. Hire Devi & Ors. v. District Board, Shahjahanpur, [1952] SCR 1131; Nalinakhaya Bysck v. Shyam Sunder Haldar &

Ors., [1953] SCR 533 at 545 and Commissioner of Sales Tax, U.P. v. Auriya Chamber of Commerce, Allahabad, 119861 2 SCR 430 at 438, referred to.

3.01. The application of the First Amendment Rules has the inevitable and insiduous effect of doing injustice to the direct recruit\promotee officer or officers promoted earlier to Feb. 3, 1989 and the proviso avoided such unjust results. Giving retrospective effect or directing to apply the rule to all the seniors irrespective of the date of promotion to I.A.S. cadre would land in or lead to inequitous or unjust results which itself is unfair, arbitrary and unjust. offending Art. 14 of the Constitution. To avoid such unconstitutional consequences the proviso to Rule 3(3)(ii) of the First Amendment Rules was made. [407-C]

3.02. But for the proviso the operation of Rule 3(3)(ii) would be inconsistent with Sec. 3(1A) of the Act. Equally though the doctrine 'Reading down' is a settled principle of law, its application to the facts of the case would lead to injustice to the officers promoted earlier to the appellants. A writ of mandamus commanding the respondents to give full benefit of weightage of Rule 3(3)(ii)(a)&(b) of the First Amendment Rules would amount to direct the executive to disobey the proviso which is now held to be intra vires of the Constitutions. [407-D]

3.03. The proviso to Rule 3(3)(ii) of the First Amendment Rules is consistent with section 3(1A) of the Act and it is not ultra vires of the power the Central Govt. nor it offends Arts. 14 and 16(1) of the Constitution. [409-A]

3.04. There is a distinction between right and interest. No one has a vested right to promotion or seniority, but an officer has an interest to seniority acquired by working out the rule. Of course, it could be taken away only by operation of valid law. [408-E]

3.05. Law itself may protect the legitimate interest in seniority while granting relief to persons similarly circumstanced like the one under sec. 3(1A) of the Act read with proviso to Rule 3(3) (ii) & (iii) of the First Amendment Rules. It was neither void nor ultra vires offending Arts. 14 and 16(1) of the Constitution. [410-C]

State of Jammu & Kashmir v. T.N. Khosa, [1974] 1 SCR 771 at 779; J. Kumar v. Union of India, [1982] 3 SCR 453 at 463 and Union of India v. P.K Roy, 11968] 2 SCR 186 at 201-202, distinguished.

D.S. Nakara v. Union of India,. [1983] 2 SCR 165; B. Prabhakar Rao v. State of A.P., [1985] 2 Supp. SCR 379 and A.K Bhatnagar v. Union of India, [1991] 1 SCC 544, referred to.

4.01. Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation.

There must be definite facts which constitute foundation and source for final decision. [415-E]

4.02. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory. [415-E]

4.03. When the offending action effects fundamental rights or to effectuate built in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or

4.04. When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal. 1415-F]

4.05. When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void. [415-G]

4.06. When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken, be put to notice of the authority or the persons to be consulted, have the views or objections, taken them into consideration, and there after, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action "after consultation". [415-H, 416-A-B]

4.07. No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate or lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and cir cumstances whether the action is "after consultation", "was in fact consulted" or was it a "sufficient consultation". [416-C]

4.08. Where any action is legislative in character, the consultation envisages like one under Sec. 3 (1) of the Act, that the Central Govt. is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Govt. or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified from need not again be communicated to all the concerned State Governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would tacitly receive the approval of the State Governments through the people's representatives when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is

not rendered void or ultra vires or invalid for non-consultation. [416-D-F]

4.09 The proposal for amending the new Seniority Rules in the draft was only for inviting discussion and suggestions on the scope and ambit of the proposed law and the effect of the operation of the First Amendment Rules. Keeping the operational effect in view the proposed amendment could be modified or deleted or altered. [416-G]

4.10 The Central Govt. is not bound to accept all or every proposal or counter proposal. Consultation with the Ministry of Law would be sufficient. Thereby the Central Govt. is not precluded to revise the draft rules in the light of the consultation and advice. [416-H]

4.11 The general consultation had by the Central Govt. with the State Govts. and Union Territories was sufficient and it was not necessary to have prior consultation again to bring the proviso on statutes as part of the First Amendment Rules. [417-B]

4.12 By operation of sub-sec. (2) of Sec. 3 the rules were laid on the floor of each House of the Parliament. There were no suggestions or alterations made by either House of Parliaments. Thus the First Amendment Rules stood approved by the Parliament. [417-C]

4.13 The failure to consult all the State Governments or Union Territories on the proviso to Rule 3(3) (ii) or (iii) of the First Amendment Rules does not render the proviso ultra vires, invalid or void. [417-D]

Union of India v. Sankalchand Himatlal Sheth & Anr., [1977] 4 SCC 193; R. Pushpam v. State of Madras, AIR 1953 Madras 392; State of U.P. v. Manmohan Lal Srivastava, [1958] SCR 533 at 542; U.R. Bhatt v. Union of India, AIR 1962 SC 1344; Ram Gopal Chaturvedi v. State of Madhya Pradesh, [1970] 1 SCR 472; N. Raghavendra Rao v. Dy. Commissioner, South Kanara, Mangalore, [1964] 7 SCR 549; Mohd. Sujat Ali & Ors. v. Union of India, [1975] 1 SCR 449 at 469-471; Chandramouleshwar Prasad v. Patna High Court & Ors., [1970] 2 SCR 666 at 674-675; Narain Sankaran Mooss v. State of Kerala & Anr, [1974] 2 SCR 60; Naraindas Indurkhya v. State of M.P. & Ors., [1974] 3 SCR 628; Hindustan Zinc Ltd. v. A.P. Electricity Board, Ors., [1991] 3 SCC 299; Rollo & Anr. v. Minister of Town & Country Planning, [1948] 1 All Eng. Reports 13; Electher & Ors. v. Minister of Town & Country Planning, [1947] 2 All. Eng. Reports 496; Sinfield & Ors. v. London Transport Executive, Law Reports 1970 Chancery Divn., Derham & Anr. v. Church Commissioners for England, 1954 Appeal Cases 245 and Port Louis Corporation v. Attorney General of Mauritius, 1965 Appeal Cases 1111, referred to.

Union of India & Ors. v. Dr. S. Krishna Murthy & Ors.,[1989] 4 SCC 689, distinguished.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (C) No. 499 of 1991. (Under Article 32 of the Constitution of India).

WITH Civil Appeal Nos. 4788 & 4794 of 1992.

C.S. Vaidyanathan, K. Lahiri, P.P.Rao, Vishwajeet Singh, R.B. Misra, 4 R.K. Khanna, Surya Kant, R. Singhvi, C.V.S. Rao, Ms. A. Subhashini, R.P. Singh, S.N. Terdol, A. Sharan, H.K. Puri, Ms. Abha Sharma and K.K. Lahiri for the appearing parties.

The Judgment of the Court was delivered by K. RAMASWAMY, J. Special leave granted.

As the trio raised common questions of law, they are disposed of by a common judgment.

The 1st petitioner in the Writ Petition is an Association representing the officers of the State Civil Service of U.P. and petitioner Nos. 2 to 17 are its members. some of them and Bihar State Officers are the appellants in the two appeals respectively. On January 19, 1984, the association represented to the Govt. of India requesing to remove wide disparity prevailing in different States of promotional avenues from the State Civil Services to All India Administrative Service. The officers from Andhra Pradesh and Kerala, on completion of 8 to 9 years of service are becoming qualified for promotion to All India Administrative Service, while the officers from States like Uttar Pradesh and Bihar would get chance only after putting 24 to 27 years of service. The Estimate Committee of Seventh Lok Sabha too in its 77th Report highlighted the injustice. A committee of A senior Secretaries constituted by the Union Govt. recommended, after due consideration, to evolve equitable principles of comparable seniority from different States for promotion to Indian Administrative Service. Pursuant thereto the Central Govt. proposed to amend the Indian Administrative Service (Regulation of Seniority) Rules, 1954, for short 'the Seniority Rules'. In the meantime the Rules were repealed and replaced by I.A.S. (Regulation of Seniority) Rules, 1987 which came with effect from Nov. 6, 1987 for short 'New Seniority Rules'. The first respondent issued (Circular letter dated September 9, 1986 to the State Govts. indicating amendments for fixation of seniority of officers promoted from State Civil Services' to I.A.S. to give weightage over and above 4 years in the assignment of year of allotment as per the existing relevant rules, namely, four years for the first 12 years State service with additional weightage of one year for every two to three years' completed service subject to a maximum of five years. After receiving suggestions or comments from State Governments, the Central India exercising the power under sub-sec. (1) of Sec. 3 of All India Service Act, 1951 for short, 'the Act' amended the New Seniority Rules, 1987 which amendment was published in the Gazette of India on February 3, 1989 for short the 'First Amendment Rules'. The proviso thereto was made limiting its operation prospectively from February 3, 1989. Putting the proviso and its prospective operation in issue, the appellants from U.P. in Civil Appeal No. 4788 of 1992[S.L.P. (C) No. 13823 of 1991] filed Original Application No. 18 of 1989 in the Central Administrative Tribunal, Allahabad at Lucknow Circuit Bench, contending that they were promoted in 1980 onwards but by limiting its application to November 6, 1987, they were discriminated. Bihar Officers questioned the Rule in O.A. No. 136 of 1989 before the C.A.T. at Patna. Therein the appellants though found to be entitled to the total weightage of 9 years since their juniors were given 1983 as the year of allotment by operation of proviso to Rule 3(3)(ii) of the First Amendment Rules

were given 1983 as the year of allotment. Thereby they were denied 3 years weightage.

The Tribunal at Lucknow held that the prospective operation discriminated the Senior State Civil Service Officers but it refused to direct the Union Govt. to amend the Rules with retrospective effect. However, the Govt. of India was requested to reconsider the matter to give retrospective operation to the First Amendment Rules. The Tribunal at Patna upheld the rules and dismissed the application. The Officers from Uttar Pradesh through their Association filed the Writ Petition under Art. 32 of the Constitution seeking writ of certiorari to quash the order dated December 12, 1990 made by the Ministry of Personnel, Public Grievance and Pension Department and for a mandamus to extend the benefits flowing from the First Amendment Rules to its members promoted prior to January 1988 and to the petitioners Nos. 2 to 17 in particular. It is needless to state that the First Amendment Rules would operate with full effect from 1992, while the Promotee Officers promoted between 1988 to 1991 would reap partial benefit.

Rule 3 of the Seniority Rules, 1954 postulated assignment of the year allotment as per the Rules to every officer appointed to the Indian Administrative Service, be it a direct recruit or a Promotee officer. The Promotee officer appointed in accordance with rule 9 of the IAS Recruitment Rules read with regulation 9 of IAS Promotion Regulations shall be allotted an year of allotment next below the junior most direct recruit officer recruited in accordance with rule 7 of the Recruitment Rules (Direct Recruitment Rules) and who officiated continuously in a senior post from a date earlier than the date of the commencement of such officiation by the Promotee officer. Under the New Seniority Rules 1987, rule 3(1) postulates that every officer shall be assigned year of allotment in accordance with the provisions hereinafter contained in the rules. The year of allotment of an officer in service at the commencement of the amended Seniority Rules shall be the same as per the rule 3(2) as has been assigned to him by the Central Govt. in accordance with the orders and instructions in force immediately before the commencement of the New Seniority Rules. Sub-rule (3) of Rule 3 provides thus:

> "3(3) The year of allotment of an officer appointed to the Service after the commencement of these rules shall be as follows:
>
> 3(3)(i) the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held:
>
> Provided that if a direct recruit officer is permitted to join probationary training under rule 5(1) of the IAS (Probation) Rules, 1954, with direct recruit officers of a subsequent year of allotment, then he shall be assigned that subsequent year as the year of allotment.
>
> 3(ii) The year of allotment of a promotee officer shall be determined in the following manner]:-
>
> (a) For the service rendered by him in the State Civil Service upto twelve years, in the rank not below that of a Deputy Collector or equivalent, he shall be given a weightage

of four year towards fixation of the year of allotment;

(b) He shall also be given a weightage of one year for every completed three years of service beyond the period of twelve years, referred to in sub-clause (a), subject to a maximum weightage of five years. In the calculation, fractions are to be ignored.

(c) The weightage mentioned in sub-

clause (b) shall be calculated with effect from the year in which the officer is appointed to the service:

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior, to him in that select list or appointed to the service on the basis of an earlier Select List.

3(3) (iii) The year of allotment of an officer appointed by selection shall be determined in the following manner:

a) for the first 12 years of gazetted service, he shall be given a weightage of 4 years towards fixation of the year of allotment;

(b) he shall also be given a weightage of one year for every completed 3 years of service beyond the period of 12 years, referred to in sub-clause (a), subject to a maximum weightage of 5 years. In this calculation, fractions are to be ignored;

(c) the weightage mentioned in sub-

clause (b) shall be calculated with effect from the year in which the officer is A appointed to the service:

Provided that he shall not become senior to another non-State Civil Service Officer already appointed in the service.

Provided further that he shall not be allotted a year earlier than the year of allotment assigned to an officer already appointed to the service in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, whose length of class I continuous service in the State Civil Service in the State Civil Service is equal to or more than the length of Class I continuous service of the former in connection with the affairs of the State".

A plain and fair reading of the sub-rules manifests the Central Govt's intention that the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held. If any such officer was permitted to join probationary training with direct recruit officers of a subsequent year of allotment then he shall be assigned that subsequent year as the year of allotment. In

determining the seniority of a promotee officer in assigning year of allotment, the service rendered in the State Civil Service upto 12 years as Dy. Collector, or equivalent posts, weightage of 4 years shall be given. In addition he/she shall also be given further benefit of one year weightage of every completed 3 years of service, beyond the period of 12 years, subject to a maximum weightage of 5 years. In its calculations fractions are to be ignored. the weightage shall be computed from the year of appointment of the officer to the service. The offending proviso limits the operation of Rule 3(3)(ii)(a) and (b) that such an officer shall not be assigned an year of allotment earlier than the year of allotment assigned to the officers senior to him in that select list or appointed on the basis of an earlier select list. Under rule 3(3) (iii) also, though not relevant for the purpose of the case but serves as an analogy, that the year of allotment of an officer appointed by selection shall also be given the year of allotment in the same manner as adumbrated in sub-rule 3(3) (ii) and its effect also was circumscribed under the proviso that he shall not become senior to another non-State Civil Service Officer already appointed to the service. It is, therefore, clear that the New Seniority Rules were to be operative from November 6, 1987 and the First Amendment Rules from February 3, 1989 with the result that in assigning the year of A allotment, full weightage of 9 years' eligible service was given to the promotee State Civil Service Officers. However, the senior officer to him/her appointed from the State Civil Service earlier in the same select list or one above him in the previous select list shall remain senior to him. Thereby the proviso averted the effect of pushing an officer who gained entry into IAS service by application of rule of weightage in 3(3)(ii) of the rules down in seniority. It is settled law that ability, merit and suitability are the criteria to select an officer of the State Civil Service for inclusion in the select list for promotion under regulation 9 of the IAS Promotion Regulations, 1955 read with rule 9 of the IAS Recruitment Rules, 1954. In that behalf no change was brought about. A junior officer who thus superseded a senior State Civil Officer became entitled to carry his year of allotment and became senior to him in the cadre of l.A.S. But for the proviso, the operation of Rule 3(3)(ii), the senior officer would have been saddled with the disability to be pushed down in seniority which would have nullified and frustrated the hard earned earlier promotion and consequential effect on seniority earned by dint of merit and ability. Moreover, the entry into the service is from different streams and predominantly by direct recruitment and promotion. The direct recruit gets his year of allotment from the succeeding year of his recruitment. The direct recruit officers appointed earlier to 1988 also would be adversely effected in their seniority.

Under sec. 3(2) of the Act, every rule made by the Central Govt. under sec.3(1) and every regulation made thereunder or in pursuance of any such rules, shall be laid, as soon as may be, after such or regulation is made, before each House of Parliament while in session. Before the expiry of the session, if both Houses agree to make any modification to such rules or regulations or both Houses agree to make any modification to such rules or regulations or both Houses agree that such rules or regulations should not be made, the rule or regulation shall thereafter have effect,

only in such modified form or be of no effect as the case may be. SO, however, that any such modification or annulment shall be, without prejudice to the validity of anything previously done under that rule or the regulation. Thereby the rules or regulations made in exercise of the power under sec. 3(1) of the Act regulating recruitment and the conditions of service for persons appointed to an All India Service are statutory in character.

No statute shall be construed so as to have retrospective operation unless its language is such as plainly to require such construction. The Legislature, as its policy, give effect to the statute or statutory rule from a specified time or from the date of its publication in the State Gazette. It is equally settled law that court would issue no mandamus to the legislature to make law much less retrospectively. It is the settled cannons of construction that every word, phrase or sentence in the statute and all the provisions read together shall be given full force and effect and no provision shall be rendered surplusage or nugatory. I is equally settled law that the mere fact that the result of a statue may be unjust, does not entitle the court to refuse to give effect to it. However, if two reasonable interpretations are possible, the court would adopt that construction which is just, reasonable or sensible. Courts cannot substitute the words or phrases or supply casus omissus. The court could in an appropriate case iron out the creases to remove ambiguity to give full force and effect to the legislative intention. But the intention must be gathered by putting up fair construction of all the provisions reading together. This endeavour would be to avoid absurdity or unintended unjust results by applying the doctrine of purposive construction.

In Smt. Hire Devi & Ors. v. District Board, Shahjahanpur, [1952] SCR 1131, the constitution bench of this court interpreting sections 70 and 90 of the U.P. District Board Act, in particular, the expression. "orders of any authority whose sanction is necessary", held that "

No doubt it is the duty of the court to try to harmonise various provisions of an Act passed by the Legislature. But it is certainly not the duty of the court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act". In Nalinakhaya Bysck v. Shyam Suder haldar 7 Ors.[1953] SCR 533 at 545, this court held that it is not competent to any court to proceed upon the assumption that the Legislature has made a mistake. The court must proceed on the footing that the Legislature intended what it has said. Even if there is some defect in the phraseology used by the Legislature the court cannot aid the Legislature's defective phrasing of an act or add or amend or, by construction make up deficiencies which are left in the Act. The approach adopted contra by the High Court was held illegal. In Commissioner of Sales Tax, U.P. v. Auriya Chamber of Commerce, Allahabad, [1986] 2 SCR 430 at 438, this court held that in a developing country like ours any legal system may permit judges to play a creative role and innovate to ensure justice without doing violence to the norm as set by legislation. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of in strumentalities.

Thus it is settled law that where the intention of statutory amendment is clear and expressive, words cannot be interpolated. In the first place they are not, in the case, needed. If they should be added, the statute would more than likely fail to carry out the legislative intent. The words are the skin of the language which the Legislature intended to convey. Where the meaning of the legislative intent is what the statute says to be so. If the language is plain, clear and explicit, it must be given effect and the question of interpretation does not arise. If found ambiguous or unintended, the court can at best iron out the creases. Any wrong order or defective legislation cannot be righted merely because it is wrong. At best the court can quash it, if it violates the fundamental rights or is ultra vires of the power or manifestly illegal vitiated by fundamental laws or gross miscarriage of justice. It could thus be held that the legislature intended that the First Amendment Rules would operate prospectively from February 3, 1989, the date of their publication in the Gazette of India. Its policy is explicit and unambiguous. Rule 3(3) (ii) intended to remedy the imbalances while at the same time the proviso intended to operate prospectively to avert injustice to the officers recruited/promoted earlier than the officer promoted later to that date.

Whether the proviso is violative of Art. 14 and Art. 16(1) of the Constitution of India? Undoubtedly all the promotees form the state civil service constitute a class preceding or succeeding or succeeding the First Amendment Rules. The purpose of temporary truce carved out by the proviso is self-evident. By dint of merit, ability and suitability a junior officer could seal a march over the senior officers in the state civil service and get entry into the Indian Administrative services earlier to the senior officers and thus becomes a member of the Indian Administrative services officer, who was superseded and subsequently became qualified for inclusion in the select list, after the New seniority Rules or the First Amendment Rules came into force, indisputably would be junior in I.A.S. cadre to his erstwhile junior officers in state civil services. If he gets benefit of the free play of the First Amendment Rules, it would have the inevitable effect of depriving and he would be pushed down and would again become junior to him in senior officer, though had varied length of services, but because of late promotion to Indian Administrative service, would receive and forego proportionate weightage of past service for a short period till the rules fully become operational. The first Amendment Rules doubtless provided the weightage to a maximum of 9 years and would track back the year of allotment anterior to the date of inclusion in the select list under the Recruitment Rules read with Promotion Regulations. The proviso intended to protect the seniority of the officer promoted/appointed earlier than the appellants and its effect would be that till rule 3(3) (ii) fully becomes operational graded weightage was given to the promotees. In other words it prevented to get seniority earlier to the date of his/her appointment to the Indian Administrative service. Equally it intended not to let endless compulsive circumstances denied the benefits of full 9 years weightage to officers promoted during 1987 to 1992. The discrimination, though is prevented unequals to become equals. The contention of sri P.P Rao, therefore, that invidious discrimination was meted out to senior officers and that they are similarly circumstanced are devoid of force.

This Court by a Constitution Bench in the state of Jammu & Kashmir V. T. N. Khosa, [1974] 1 SCR 453 at 463, held that the amended rules varying the conditions of service would operate in future and governs the future rights of the existing personnel. The promoted state civil Service Officers who had already the year of allotment in I.A.S cadre are not discriminated. But the benefit o f full weightage of 9 years was cut down and applied in varied degree to officers promoted during the

transitional period to prevent unjust results and to mete out justice to the junior officers or officers promoted earlier and upto 1992.

It is equally settled law that in an affirmative action the court strike down a rule which offends the right to equality enshrined in Arts. 14 and 16(1) of the Constitution like the one arose in D.S. Nakara v. Union of India, [1983] 2 SCR 165 and B. Prabhakar Rao v. state of A.P., [1985]2 suppl, SCR 379, this court extended parity in an affirmative action by reading the rule down without doing violence to the language or injustice to others. The application of the First Amendment Rule has the inevitable and insiduous effect of doing injustice to the direct recruit/promotee officers or officers promoted earlier to Feb. 3 1989 and the proviso avoided such injustice to the date of promotion to I.A.S the rule to all the senior irrespective of the date of promotion to I.A.S. cadre would land in or lead to inequitous or unjust results which itself is unfair, arbitrary and unjust results which itself is unfair, arbitrary and unjust, offending Art. 14 of the Constitution. To avoid such unconstitutional consequences the proviso to rule 3(3) (ii) of the First Amendment Rules was made. The doctrine or kicking down or picking up, put forth in Union of India v. P.K. Roy, [1968] 2 SCR 1986 at 201-202, equally cannot be extended to the facts of the case. But for the proviso the operation of rule 3(3) (ii) would be inconsistent with sec. 3(1A) of the Act. Equally though the doctrine of reading down is a settled principle of law, its application to the facts of the case would lead to injustice to the officers promoted earlier to the appellants. A writ of mandamus commanding the respondents to give full benefit of weightage of rule 3(3) (ii) and (b) of the First Amendment Rules would amount to direct the executive to disobey the proviso which is now held to be intra vires of the Constitution. In the light of the above discussion no directions could be given to the central Govt. to amend to Rules. Therefore, we have no hesitation to hold that though Govt. of India has power to amend the New Seniority Rules by First Amendment Rules prospectively giving weightage of total 9 years services to promotee officers of state Civil services in assigning a year of allotment, no direction or mandamus could be issued commanding the Central Govt. To disobey the proviso or to apply the rules retrospectively to all the officers even to word out monetary benefits as contended by sri Vaidyanathan. His further contention that the First Amendment Rules would be applied with effect form the date of the New seniority Rules or date of intimation of the proposed First Amendment Rules to the state Government for limited retrospectivity also cannot be acceded to for the same reasons.

In this context it is necessary to note that Sec. 3(1A) of the Act which provides:

> "3(1A) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable."

Its bare reading clearly indicates that the Rules made under the Act shall not be given retrospective effect so as to prejudicially affect the "interest of any person to whom such rules may be applicable". The attempt of Sri Vidyanathan that this rule may be so read as applicable only to the promotee officers vis-a-vis the senior promotee officers cannot be accepted. The Lucknow Bench of the C.A.T

glossed over it by adopting strange construction that since the offending proviso to rule 3(3) (ii) of the First Amendment Rules would apply to promotee officers inter se , sub-section (1) (a) of section 3 of the Act would not apply to the direct recruits, to say the least, is disparate construction. There is a distinction between right and interest. No one has vested right to promotion or seniority, but an officer has an interest to seniority , But an officer has an interest to seniority acquired by working out the rule. Of course, it could be taken away only by operation of valid law. Sub-section (1A) of sec. 3 of the Act enjoins the authorities not to give retrospective effect to such a rule or regulation so as to avoid "Prejudicial affect to the interest" of any person to whom such rule may be applicable. The operation of law may have the effect of postponing the future consideration of the claims or legitimate expectation of interest for promotion. Take a case as an illustration. Articles 14 16(1), 16(4) ,335 and 46 read with proviso to Art. 309 of the Constitution empowers the President or the Governor to make satutory rules of reservation, where there is no adequate representation to persons belonging to scheduled castes and scheduled Tribes in a service or posts in connection with the affairs of the Central Govt. or the state Government. By operation of rule of reservation appointments or promotions given to a Scheduled Caste or Scheduled Tribe officer, though prejudicially affect the interest of officers of general category on parity of merit, in the larger public interest by the operation of the rule of reservation discrimination in favour of scheduled castes and scheduled Tribes ins constitutionally permissible as class. Therefore, the proviso to rule 3(3) (ii) of the Amendment Rules is consistent with section 3(1A) of the Act, and that therefore, it is not ultra vires of the power of the central Govt. nor it offends Arts. 14 and 16(1) of the constitution.

Counsel for the appellants/petitioners are their contention that there is no vested right to seniority and is variable and defeasible by operation of law. In A.K. Bhatnagar v. Union of India,[1991] 1 SCR 544 this court held that seniority is an incidence of services and when rules prescribe the method of computation, It is squarely governed by such rules. This would be amplified by following hypothetical illustrations. In a direct recruitment the seniority would be arranged in the order of merit and it starts from the date of joining the duty. Suppose 'A' to 'D' were appointed on the same day and 'A' was senior most among them. But 'A' did not pass the prescribed tests and for varied reasons 'A's probation was confirmed after a long period. In the meanwhile 'B' to 'D' were confirmed 'B' to 'D' thereby became senior to 'A' though appointed in the same day and 'A' was no. I among them. Suppose probation was not declared mala fide resulting in delayed confirmation and 'A' challenged it in a court of law issued by the court to confirm 'A' challenged it in court of law and succeeded in proving mala fide action and consequential direction was issued by the court to confirm 'A' from the date of his appointment. Though 'B' to 'D' become seniors to 'A' later confirmation and the consequential defeasance of acquired seniority. An empolyee has an interest in the accrued seniority which by operation of law also is liable to be varied. by 'A' later confirmation and the consequential defeasance of acquired seniority. An employee has an interest in the accrued seniority which by operation of law also is liable to be varied. Suppose 'A' to 'D' were appointed on the same day by direct recruitment 'A' and 'D' are general candidates and 'B' and 'C' though far below in merit and yet were assigned 2nd and 3rd places as per roster and 'D' lost seniority though secured at the competitive examination due to operation of roster system 'D' became junior to 'B' and 'C'. BY operation of law 'D' s legitimate interest was thereby defeated. suppose in promotion posts also similar situation may emerge. 'A' though senior most in the feeder cadre, due to pendency of charges, he was superseded by 'B' to 'D' and thereby they gained early entry into promoted posts

and thereby was promoted. Though 'B' to 'D' became initially seniors to 'A' he was rested to his seniority in 'D' became initially seniors to 'A' he was restored to his seniority in promotion posts as well and 'B' to 'D' interest was defeated. Suppose the promotion was on the basis of merit and ability 'D' was found to be more meritorious and was promoted earlier to `A' to `C', `D' thereby would become senior to `A' to `C' though he was junior most in the feeder service. The right to seniority and interest thereby were varied by operation of law. Suppose `B' and `C' also have the benefit of reservation in promotion as well and by its application they were promoted earlier to `A' though the latter was more meritorious. `A' was later on promoted. He cannot claim his seniority over `B' and `C' who scaled a march over `A' and became senior to `A' in promoted cadre or service. The seniority of `A' thereby was varied. However, law itself may protect the legitimate interest in seniority while granting relief to persons similarly circumstanced like the one under sec. 3(1A) of the Act read with proviso to Rule 3(3)(ii) & (iii) of the First Amendment Rules. It was neither void nor ultra vires offending Arts. 14 and 16(1) of the Constitution.

Admittedly, the draft of the First Amendment Rules, as circulated to the State Government did not contain the offending proviso. It is stated in the counter affidavit filed on behalf of the Central Govt. that some of the State Government had suggested to incorporate the proviso and after necessary consultation the proviso was added to the First Amendment Rule. Section 3(1) of the Act provide thus:

> "3(1) Regulation of recruitment and conditions of services. (1) The Central Govt. may, after consultation with the Governments of the State concerned (including the State of Jammu and Kashmir), (and by notification in the Official Gazette) make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All India Service."

It is thereby clear that sec. 3(1) empowers the Central Govt. to make any rule regulating the recruitment and the conditions of service of All India Service, which include amendment from time to time, but the rider it engrafted is that the power should be exercised "after consultation with the Governments of the State concerned". It is already held that by operation of sub-section (2) of section 3 of the Act, the rules or regulations are statutory in character. The meaning of the word `consultation' was considered in catena of case. This Court in Union of India v. Sankalchand Himatlal Sheth & Anr.,[1977] 4 SCC 193, held that the word "consult" implies a conference of two or more persons or an impact of two or more minds in respect of a topics in order to enable them to evolve a correct or at least a satisfactory solution. In order that the two minds may be able to confer and produce a mutual impact it is essential that each must have for its consideration full and identical facts which can at one contitute both the source and foundation of the final decision. In that case the question related to the transfer of a High Court from one High Court to another. In that context this court considered whether sounding of the Chief Justice of India without meaningful consultation would be proper discharge of the constitutional obligation by the President. In that context the principle of law laid was that the respective view point of the Govt. and the Chief Justice must be known to each other and both were to the discuss and examine the merits of the proposed transfer. The meaning of the word "consultation" was evaluated in that backdrop. This Court approved the dictum laid by K. Subba Rao. J., as he then was, in R.Pushpam v. State of Madras, AIR

1953 Madras 392.

In State of U.P. v. Manmohan Lal Srivastava, [1958] SCR 533 at 542, the word "consultation" in Art. 320 of the Constitution of India was considered by a Constitution Bench. It was held that the word "consultation" did not envisage mandatory character for consultation, but the Constitution makers allowed the discretion to the appointing authority to consult the Public Service Commission. But the executive Govt. cannot completely ignore the existence of the Public Service Commission or to pick up and choose cases in which it may or may not be consulted. However, prior consultation was held to be not mandatory for removal of a Govt. servant as the Central Govt. has not been tied down by the advice of the U.P.S.C. This court did not extend the rule of consultation to making the advice of the Commission on those matter binding on the Govt. In the absence of a binding character, this Court held that non-compliance of Art. 320(3)(c) would not have the effect of nullifying the final order passed by the Govt. of removal of the Govt. servant from service. In U.R. Bhatt v. Union of India, AIR 1962 SC 1344, this Court held that the absence of consultation of the Public Service Commission or any irregularity in consultation under Art. 320 does not effect the ultimate decision taken by the authority under Art. 311 of the Constitution. In Ram Gopal Chaturvedi v. State of Madhya Pradesh, [1970] 1 SCR 472, the same view was reiterated. In N. Raghavendra Rao v. Dy. Commissioner, South Kanara, Mangalore, [1964] 7 SCR 549, words "prior approval"

> of the Central Govt. in construing the proviso to sec. 115(7) of S.R. Act of the words of varying the conditions of service the Constitution Bench held that "prior approval"

would include general approval to the variation in the conditions of service with certain limits indicated by the Central Govt. Same view was reiterated by another Constitution Bench in Mohd. Sujat Ali & Ors. v. Union of India., [1975] 1 SCR 449 at 469-471.

In Chandramouleshwar Prasad v. Patna High Court & Ors. [1970] 2 SCR 666 at 674 & 675, construing the word "consultation" in Art. 233 of the Constitution, another Constitution Bench in the context of removal of a District Judge by the Governor on the recommedation of the High Court, held that "consultation" or "deliberation" is not complete or effective unless the parties thereto, i.e., the State Govt. and High Court make their respective points of view known to each other and discuss and examine the relative merits of their views. If the one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation. In that case it was held that the absence of any consultation with the High Court rendered the order to removal dated October 17, 1968 passed by the State Govt. illegal.

In Narain Sankaran Mooss v. State of Kerala & Anr., [1974] 2 SCR 60, the facts were that the State Govt., exercising the power under Sec. 4 (1) of the Electricity Supply Act, cancelled the licence of the appellant without consulting the Electricity Board. The question was whether cancellation would be ultra vires of the power. While examining that question, this court considered whether consultation was mandatory or directory, and held that the revocation of the licence trenches into the right to carry on business guarantee under Art. 19(1)(g) of the Constitution. Therefore, when the Act prescribed prior consultation of the Electricity Board such condition was incorporated to prevent

abuse to power and to ensure just exercise of the power. Section 4 of the Electricity Supply Act enjoins, in public interest, to consult the Board before revocation of the licence. Consultation provided an additional safeguard to the license and when revoking the licence the Govt. act in two stages. Before and after the explanation was received and when the Govt. considered the explanation, it is mandatory that it should consult the Electricity Board and non-consultation rendered the order as void. Consultant of the Board, was therefore, held to be a condition precedent for making order of revocation.

In Naraindas Indurkhya v. State of M.P. & Ors., [1974] 3 SCR 628, M.P. Madhyamik Siksha Adhiniyam Act, 1973 provided that before prescribing the text-books the Chairman of the Board was to be consulted. Its infraction was considered and held that any attempted exercise of the power by the State Govt. without complying with this condition would be null and void. On the facts of the case, it was held that the notification issued by the State Govt. without consultation of Chairman was invalid being in breach of mandatory requirement of the proviso to Sec.4 (1) of the Act.

In Hindustan Zinc Ltd. v. A.P Electricity Board & Ors., [1991] 3 SCC 299 the revision of tariff was effected without consulting the Consultative Council. This Court held that the revision of tariff was a question of policy under Sec 78A of the Indian Electricity Supply Act. The failure of the Board to consult the Consultative Council whether rendered the revision of tariff invalid. It was held that the consequence of non-compliance of Sec. 16 was not provided and the nature of the function of the Consultative Council and force of its advice being at best only persuasive, it cannot be said that the revision of tariff, without seeking the advice of the Consultative Council, rendered the revision of tariff itself invalid. On the other hand the Board after revision of the tariff has to place the revised tariff on the table of the House or Houses of the Stat Legislature and such statement is open to discussion therein, the Board is bound to take into consideration such modification, if made, or any comments made on such statement by the State Legislature. Under those circumstance it was held that the non-compliance of Sec 16(5) did not render the revision of tariff invalid.

In Rollo & Anr. v. Minister of Town & Country Planning [1948] 1 All Eng. Report 13, Sec. 1(1) of the Towns Act, 1946 envisages the Minister of Town & Country Planning after consultation with the local authorities, if satisfied that it is expedient in the national interest that any area of land should be developed as a new town by the Corporation established under the Act, he may make an order designating that area as a site of the proposal of the new town. On October 7, 1946 press notice was issued giving the date of meeting of the representatives of the local authorities and the Minister explained in the meeting what he had in his mind in arriving at the boundaries of the area. Objections were raised and public enquiry was held. But actual explanation was not sought from any local authorities. In those circumstance contention was raised that there was no consultation as adumbrated under Sec. 1(1). Repelling the contention, the House of Lords held that in the meeting the local authorities clearly were informed of the general nature of the proposal, the areas suggested, it size and what the Minister wished and intended to do. Discussion was followed. Minutes were prepared and press notice was issued stating what had happened. In those circumstance it was held that there was consultation and the requirement was complied with. The ratio of Morris, J. in Elecher & Ors. v. Minister of Town & Country Planning, [1947] 2 All. Eng. Reports 496, was approved. The same view was reiterated in Sinfield & Ors. v. London Transport Executive Law

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In Derham & Anr. v. Church Commissioners of England, 1954 Appeal Cases 245, the Judicial Committee was to consider the question of consultation with Church Commissioners of effecting the union of beneficers under Sec. 3(1) of the Pastoral Reorganisation Measure, 1949 which postulates of "consultation so far as is practicable". Construing the language it was held that a meeting was held explaining the proposed scheme, the members of the Church though opposed the scheme, it was approved. As such it was held that the action was valid and their was proper consultation.

In Port Louis Corporation v. Attorney General of Mauritius, 1965 Appeal Cases 1111, the local Govt. of Mauritius was empowered under the Local Government Ordinance, 1962 by sec. 73 (1) to alter the boundries of any town, district or village, after consultation with the local authorities concerned. The Governor and Council of Ministers in May 1963 had in their minds to alter the boundaries of Port Louis, so that the villages surrounding Port Louis Township would be embraced within and would enlarge the area of the town of Port Louis. The Minister by a letter asked the views of the local authorities, enclosing the details of the proposed alternation and the map. Majority Councillors had resigned on the ground that they has no mandate to express any views. On subsequent nomination, those Councillors raised certain points and asked for information, which was duly complied with. Further information was called for, but the Minister refused to extend time nor supplied information. The Governor in Council has issued a proclamation extending the boundaries of Port Louis Action was initiated by the local authorities for declaration that the proclamation was ultra vires, null and void in so far as it related to the extended boundries of the town of Port Louis, contending that there had been no consultation as required by Sec. 73 (1) of the Ordinance. The Judicial Committee construing the word "after consultation" in that setting held that the local authorities has received a clear proposal. The failure to supply information by detailed answers to their questions would not render the proclamation as invalid. Accordingly uphold the action as affirmed by the Supreme Court of Mauritius.

The ratio in Union of India & Ors. v. Dr. S. Krishna Murthy & Ors., [1989] 4 SCC 689, renders little assistance to the appellants. In that case the question was the year of allotment under the Forest Service (Regulation of Seniority) Rules, 1968. By fixation of the year of allotment it had retrospective effect from the dated when the promotee was brought into select list or the date of appointment whichever was later. Under those circumstance it was held that retrospective operation of the rules did not prejudicely affect any vested right much less any fundamental rights of the officers recruited from the State service.

The result of the above discussion leads to the following conclusions:

> (1) Consultation is a process which requires meeting of minds between the parties involved to evolve a correct or at least satisfactory solution. There should be meeting of mind between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2) When the offending action effects fundamental rights or to effectuate built in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken, be put to notice of the authority or the persons to be consulted; have the views or objections, taken them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstance it amounts to an action "after consultation".

(6) No hard and fast rules could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation";

"was in fact consulted" or was it a "sufficient consultation".

(7) Where any action is legislative in character, the consultation envisages like one under Sec. 3(1) of the Act, that the Central Govt. is to intimate to the State Governments concerned of the proposed action in general outline and on receiving the objections or suggestions, the Central Govt. or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation Rules or Regulations being legislative in character, would tacitly receive the approval of the State Government through the people's representative when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non-consultation.

The proposal for amending the new Seniority Rules in the draft was only for inviting discussion and suggestions on the scope and ambit of the proposed law and the effect of the operation of the First Amendment Rules. Keeping the operational effect in view the proposed amendment could be modified or deleted or altered. The Central Govt. is not bound to accept all or every proposal or counter proposal. Consultation with the Ministry of Law would be sufficient. Thereby the Central Govt. is not precluded to revise the draft rules in the light of the consultation and advice. The

Central Govt. had prior consultation with the State Governments concerned and the Law Department.

In the light of the above principle and applying them to the facts of this case we have no hesitation to hold that the general consultation has by the Central Govt. with the State Govts. and Union Territories was sufficient and it was not necessary to have prior consultation again to bring the proviso on statutes as part of the First Amendment Rules. The contention of Sri Vaidyanathan that the proviso is rendered void for the absence of consultation of the State Govts. is devoid of any force.

By operation of sub-sec. (2) of Sec. 3 the rules laid on the floor of each House of the Parliament. There were no suggestions or alterations made by either House of Parliament. Under the circumstance we have no hesitation to hold that the failure to consult all the State Governments or Union Territories on the proviso to rule 3(3)(ii) or

(iii) of the First Amendment Rules does not render the proviso ultra vires, invalid or void. Accordingly, we do not find any merit to issue the writ as prayed for in the writ petition. The Writ Petition and Civil Appeal arising out of S.L.P. (C) No. 12469/90 are dismissed. The appeal arising out of S.L.P. (C) No. 13823/91 is allowed and the order of the Central Administrative Tribunal, Allahabad Bench at Lucknow is set side. But in the circumstance parties are directed to bear their own costs throughout.

VPR. WP (C) No. 499/91-dismissed.
C.A. No. 4794/92-dismissed.
C.A. No. 4788/92-allowed.