Shri A.B.Krishna & Ors vs The State Of Karnataka & Ors on 14 January, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1050, 1998 AIR SCW 827, (1998) 1 JT 613 (SC), 1998 (2) SCT 57, (1998) 3 SERVLJ 1, 1998 (1) SCALE 496, 1998 (2) ADSC 45, 1998 (3) SCC 495, (1998) 3 KANT LJ 330, (1998) 1 SERVLR 742, (1998) 2 SUPREME 365, (1998) 3 LAB LN 924, (1998) 3 MAD LJ 73, (1998) 1 SCALE 496, 1998 SCC (L&S) 906

Author: S.Saghir Ahmad

Bench: S. Saghir Ahmad, D.P. Wadhwa

PETITIONER:
SHRI A.B.KRISHNA & ORS.

Vs.

RESPONDENT:
THE STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT: 14/01/1998

BENCH:
S. SAGHIR AHMAD, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

THE 14TH DAY OF JANUARY, 1998 Present :

Hon'ble Mr. Justice S.Saghir Ahmad Hon'ble Mr. Justice D.P.Wadhwa P.Mahale, Adv. for the appellants M.Veerappa, Adv. for t he Respondents J U D G M E N T The following Judgment of the Court was delivered:

S.SAGHIR AHMAD. J.

Section 39 of the Fire Force Act, 1964 under which Mysore Fire Force has been established gives rule-making power to the State Government, in exercise of which the State Government made Mysore Fire Force (Cadre Recruitment)Rules, 1971. Under these Rules, promotion to the post of Leading Firemen is made from the post of Firemen/Firemen Drivers.

2. In 1982, an examination was conducted for making promotion to the post of Leading Firemen in accordance with the procedure indicated in the Rules, and a select list of 43 persons including Respondent 4 and 5 was prepared out of which nineteen persons, ten in one batch and nine in the other, were promoted but thereafter the select list was not operated. In June, 1982, the select list was not operated. In June, 1982, the Government of Karnataka, however, took a policy decision that promotion to the post of Head of Department or to the posts of Additional Head of Department would be made by Selection while promotion on all other posts would be made on the basis of seniority-cum-merit and not by selection, including selection through a qualifying examination, irrespective of the method specified in the Rules of Recruitment. In view of this policy decision, the Karnataka Civil Services (General Recruitment) Rules, 1971 were amended. This was followed by a Circular which was issued to all the Departments indicating therein that examination, if any, prescribed under the Rules, may not be held for purpose of promotion.

3. In 1986, after the amendment of the General Rules, as indicated above, the appellants were promoted to the post of Leading Firemen on the basis of their seniority. Their promotion was challenged by respondents 4 and 5 on the ground that the Karnataka Civil Services (General Recruitment) Rules, 1977 were not applicable to the posts under the present establishment and that promotion to the post of Leading Firemen shall continue to be government by the Rules made by the State Government under Section 39 of the Fire Force Act, 1964, under which a qualifying examination had to be passed before promotion which was not passed by the appellants who were promoted merely on the ground of seniority. This contention has been upheld by the Karnataka Administrative Tribunal. It is against this Judgment that the present appeal has been filed. 4 It is contended by the learned counsel for the appellants that the Karnataka Civil Services (General Recruitment) Rules, 1971 were amended in 1977 by Rules made by the Government under Article 309 of the Constitution and, therefore, the Mysore Fire Force (Cadre Recruitment) Rules, 1971 shall be deemed to have been superseded at least to the extent that t hey make provision for an examination to be passed before promotion which under the General Rules, have to be made on the basis of seniority alone and, therfore, the promotion of the appellants made on the basis of seniority could not have been set aside. It is contended, in the alternative that Rules made under Section 39 of the Act have been made by the Government and not by the Legislature and, therefore, if any Rule is made by the Government under Article 309 of the Constitution, it will positively displace the Rule made under Section 39 by the same authority namely, the Government and, therefore, those Rules shall be deemed to have been impliedly superseded.

5 Rule-making power, so far as services under the Union or any State, are concerned, are vested in the President or the Governor, as the case may be, under Article 309 of the Constitution which provides as under :-

"309.Recruitment and conditions of service of persons serving the Union or a State-Subject to the provisions of this constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of services of person appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

6. It is primarily the Legislature, namely, the Parliament or the State Legislative Assembly, in whom power to make law regulating the recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State, is vested. The legislative field indicated in this Article is the same as is indicated in Entry 71 of List I of the Seventh Schedule of Entry 41 of List II of that Schedule. The Proviso, however, gives power to the President or the Governor to make Service Rules but this is only a transitional provision as the power under the Proviso can be exercised only so long as the Legislature does not make an Act whereby recruitment to public posts as also other conditions of service relating to that post are laid down.

7. The Rule-making function under the Proviso to Article 309 is a legislative function. Since Article 309 has to operate subject to other provisions of the Constitution, it is obvious that whether it is an Act made by the Parliament or the State Legislature which lays down the conditions of service or it is the Rule made by the President or the Governor under the Proviso to that Article, they have to be in conformity with the other provisions of the Constitution specially Article 14, 16 310 and 311.

8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section 39 of the Act that the State Government made Service Rules regulating the conditions of Fire Service. Since Fire Service had been specially established under an Act of the Legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions validly made for Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a Legislature intervenes to enact a law regulating the conditions of service, the power of Executive, including the President or the Governor, as the case may be, is totally displaced on the principle or "Doctrine of Occupied Field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a Rule under Article 309 in respect of th at matter.

9. It is no doubt true that the Rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the Government (to be precise, Governor, under Article 309 and Govt. under Section 39), but the two jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is occupied. In that situation, Rules can be made under the Law so made by the legislature and not under Article 309. It has also to be noticed that Rules made in exercise of the rule- making power given under an Act constitute Delegated or Sub- ordinate legislation, but the Rules under Article 309 cannot be treated to fall in that category and, therefore, ont he principle of "occupied field", the Rules under Article 309 cannot supersede the Rules made by the legislature.

10. So far as the question of implied supersession of the Rules made under Section 39 of the Act by the General Recruitment Rules, as amended in 1977, is concerned, it may be pointed out that the basic principle, as ser out in Maxwell's Interpretation of Statutes (11th edn., page 168), is that :-

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

11. This principle was reiterated in Vera Cruz's case, (1884) 10 AC 59, as under :-

> "Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation... that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words without nay indication of a particular intention to do so."

12. Vera Cruz's case was followed in Eileen Louise Nicolle v. John Winter Nicolle, (1992) 1AC 284, as under :-

> "It is no doubt a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one."

13. To the above effect, is also the decision of this Court in Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dev, AIR 1966 SC 1931 = (1966) 3 SCR 663, in which it was indicated that an earlier Special Law cannot be held to have been abrogated by mere implication. That being so, the argument regarding implied supersession has to be rejected for both the reasons set our above.

14. Applying the above principle to the instant case, it will be noticed that the Rules made by the State Government under Section 39 of the Act prescribe the qualifying examination as a condition precedent for promotion to t he post of Leading Firemen. These Rules have not been touched, altered or amended and they exist in their original form. What had been done by the Government is that it has amended the General Recruitment Rules by providing therein the at any promotion made ont he higher post would not be on the basis of examination, if any prescribed, but on the basis of seniority. This is a Rule made by the Executive, namely, the Governor under Article 309 of the Constitution. The amendment in the General Recruitment Rules would not have the effect of displacing or altering the Rules made under Section 39 of the Fire Force Act, 1964 as the Act of the Legislature would have precedence over any Rule made by the Executive under the Proviso to Article 309.

15. As pointed out earlier, fire service was created and established under Fire Force Act, 1964 made by the State Legislature which gave rule-making power to the State Government. Instead of amending the General Recruitment Rules, the Government could well have exercised its power under Section 39 of the Fire Force Act, 1964 and amended the Rules specially made for the fire services. The Government, however, in its wisdom, did not do it obviously because it n ever intended to touch the fire services specially created by the State Legislature.

16. In view of the above, the appeals have no merits and the same are dismissed but without any order as to costs.