P.V. George & Ors vs State Of Kerala & Ors on 23 January, 2007

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

```
           CASE NO.:
Appeal (civil)  322 of 2007

PETITIONER:
P.V. George & Ors

RESPONDENT:
State of Kerala & Ors

DATE OF JUDGMENT: 23/01/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
```

J U D G M E N T [Arising out of S.L.P. (Civil) No.8305 of 2006] W I T H CIVIL APPEAL NO. 323 OF 2007 [Arising out of S.L.P. (Civil) No.8744 of 2006] S.B. SINHA, J :

Leave granted.

Application of the doctrine of prospective overruling in service matters is in question in these appeals which arises out of a judgment and order dated 31.03.2006 passed by a Division Bench of the Kerala High Court whereby and whereunder on interpretation of a Full Bench decision in Subaida Beevi v. State of Kerala [2005 (1) KLT 426] it was held to have no prospective operation.

Appellants were working in the Government Presses, Kerala. The Government of Kerala framed rules for the employees of Kerala Government Presses Subordinate Services to which cadre the appellants belonged. It consisted of several branches. Admittedly, there are several categories and sub-categories of employees working therein The mode of appointment as also the qualifications therefor has been prescribed in the rules. By reason of a Government order dated 01.07.1980, the rule framed in terms of SRO No. 1030 of 1976 was amended prescribing a ratio of 1 : 1 for the purpose of promotion between diploma-holders and certificate- holders by adding a Note thereto, which reads as under :

"Note : Promotion of persons qualified under Item 2(a) and 2(b) above shall be made in the ratio 1 : 1 starting with promotion of persons qualified under Item 2(a). If no person qualified under Item 2(a) is available for promotion, the turn of promotion

> will be given to the person qualified under Item 2(b) and vice versa.
>
> Provided that no senior diploma holder shall be superseded by a junior certificate holder and provided that the benefit of turn under the ratio of 1 : 1 forfeited by the certificate holder by virtue of the promotion the senior diploma holder, shall be restored to the certificate holder in the arising vacancy."

A further proviso was appended thereto by a Government order dated 30.08.1984 in term of SRO No. 1044 of 1984, which reads as follows :

> "Provided further that the benefit of the ratio of 1 :
>
> 1 forfeited by the certificate holder by virtue of the promotion of the senior diploma holder shall be restored to the certificate holder in the next arising vacancy."

Constitutionality of the said provision was challenged before the Kerala High Court, whereupon a Division Bench thereof in Daniel v. State of Kerala [1985 KLT 1057], declared the same to be ultra vires, stating :

> "In the light of the decisions of the Supreme Court in A.I.R. 1974 SC 1, AIR 1974 SC 1631, 1983 KLT 987, 1983 KLT 878, 1981 (2) Kerala 527 and 1975 KLT 1, we have no doubt at all that this classification on microscopic distinction could not be allowed. We would therefore strike down the notes to Branch Nos. 1 and 9 to Ex. P-2"

The correctness of the said decision was questioned before another Division Bench of the said Court in Writ Appeal No.149 of 1990. By a judgment dated 14.01.1992, Paripoornan, J. (as His Lordship then was), held :

> "Having heard counsel at length, we are of the view, that since the service involved in the present cases is the same as the one which came up for consideration in Daniel's case (1985 KLT 1057) and the Rules are also the same, the judgments appealed against, do not require interference. It is agreed that the Bench decision in Daniel's case (1985 KLT 1057) considered the identical rules in the same service (Government Presses Subordinate Service), which in issue in these two O.Ps. as well. Even so, learned Government Pleader, Mr. V.C. James, very forcefully submitted that the Bench decision in Daniel's case (1985 KLT 1057) is not good law, or, at any rate, requires reconsideration in view of the later Bench decision of this Court in Balakrishnan v. State of Kerala (1990 (1) KLT 66). We are unable to accept this plea for more reasons than one. The service rules, which came up for consideration in the later decision, Balakrishnan's case (1990 (1) KLT 66) is "Engineering Service (Radio and Electrical Branches) Rules, 1967".

The import and impact in evaluating and upholding the reason for fixing the ratio in the later case are entirely different. The perspective is also different. That apart, the earlier bench decision in

Daniel's case (1985 KLT 1057) does not appear to have been brought to the notice of the learned Judges, who rendered the decision in Balakrishnan's case (1990 (1) KLT 66). Prima facie, the later decision should be considered to be one rendered per inqurium. In these circumstances, we are satisfied that the ratio of the earlier bench decision in Danil's case (1985 KLT 1057) should govern the fate of the present two Original Petitions. That is what has been done by the two learned Judge of this Court.

In these circumstances, we are of the view that no interference is called for in these writ appeals. The judgments appealed against are confirmed. The writ appeals are dismissed. There shall be no order as to costs."

It is, however, not in dispute that Jagannadha Rao, J. (as the His Lordship then was) in Ravindran v. State of Kerala [1992 (1) KLT 524], took a different view, opining :

> "In the present case the Government has filed a counter stating that after considering various aspects, the Government prescribed the necessary qualification for the various supervisory posts 'according to the requirement of duties and functions of the post'. It is also stated that special rules were made for the petitioner and other similarly situated persons. It is also stated that Government considered that seniors who are not diploma holders may be prejudiced by the rules as they stood in 1976, and that the ratio of 1 : 1 fixed for promotion between the certificate holders and diploma holders is quite reasonable and rational and hence valid. Having regard to the technical nature of the posts in the government presses we do not think that the ratio prescribed between diploma holders and certificate holders is in any way unreasonable. In view of the subsequent decision of the Supreme Court in Roop Chand's case, AIR 1989 SC 307, and also in view of the two judgments of the Division Bench in Balakrishnan's case and in Cheru's case, O.P. No. 1851 of 1984, we are not inclined to follow the decision of the Division Bench in Daniel v. State of Kerala, 1985 KLT 1057."

The conflict in the said decisions was noticed and eventually referred to a Full Bench in the Subaida Beevi (supra) by another Division Bench of the said Court. By a judgment dated 04.11.2004, the Full Bench held that the amended special rules for the Government Presses Subordinate Services Rules were not suffering from any infirmity and fixation of ratio of 1 : 1 for promotion to higher posts between diploma-holders and certificate-holders needs no interference. Whereas the decision in Daniel (supra) was expressly overruled, the decision in Ravindran (supra) was upheld, holding :

> "We hold that the impugned amendment made in the Special Rules for the Government Presses Subordinate Service providing ratio of 1 : 1 for promotion to higher posts between diploma holders and certificate holders is not discriminatory and it is not violative of articles 14 and 16 of the Constitution of India. Government is bound to effect promotions on the basis of the amended Special Rules."

A special leave petition filed thereagainst was dismissed by this Court by an order dated 04.03.2005.

Appellants were issued notices as to why they shall not be reverted from the post of Assistant Superintendent pursuant to or in furtherance of the said decision of the Full Bench of the Kerala High Court. Legality of the said notices was questioned by the appellants herein in a writ petiton. By reason of the impugned judgment, the said writ petition has been dismissed by the High Court, opining :

> " Since the Government has accepted the Full Bench decision and has taken steps, but, did not implement the same, only because of the stay order passed in the other writ petitions and has undertaken, since the vacation of the stay order, the judgment would be implemented, the contempt petitions are closed recording the undertaking that the judgment will be implemented within three months from today. With the above observations, all the writ petitions are dismissed and the contempt court petitions are closed."

Mr. C.S. Rajan, learned Senior Counsel appearing on behalf of the appellants, submitted that the High Court committed a manifest error insofar as it failed to take into consideration that in service matters ordinarily doctrine of prospective overruling would apply. Reliance in his behalf has been placed on Managing Director ECIL, Hyderabad v. B. Karunakar [(1993) 4 SCC 727], R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745], Union of India and Others v. Virpal Singh Chauhan and Others [(1995) 6 SCC 684], Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201], Ajit Singh-II v. State of Punjab [(1999) 7 SCC 209], Baburam v. C.C. Jacob [(1999) 3 SCC 362], E.A. Sathyanesan v. V.K. Agnihotri and Others [(2004) 9 SCC 165], M. Nagaraj & Others v. Union of India & Others [(2006)10 SCALE 301].

It was furthermore submitted that the promotions were given to the appellants when the law laid down by the Kerala High Court in Daniel (supra) and Ravindran (supra) were in force and, thus, as the law was declared by the Full Bench only in the year 2005, the same was not applicable in their case.

Mr. Uday U. Lalit, learned Senior Counsel appearing for the respondents, would, however, support the judgment.

For the views we propose to take, it is not necessary for us to consider all the decisions relied upon by Mr. Rajan. The legal position as regards the applicability of doctrine of prospective overruling is no longer res integra. This Court in exercise of its jurisdiction under Article 32 or Article 142 of the Constitution of India may declare a law to have a prospective effect. The Division Bench of the High Court may be correct in opining that having regard to the decision of this Court in L.C. Golak Nath and Others v. State of Punjab and Another [AIR 1967 SC 1643) the power of overruling is vested only in this Court and that too in constitutional matters, but the High Courts in exercise of their jurisdiction under Article 226 of the Constitution of India, even without applying the doctrine of prospective overruling, indisputably may grant a limited relief in exercise of their equity jurisdiction.

We are, however, in this case not concerned with such a situation. The law was in a state of flux in the sense that as far back as in the year 1992, the two Division Benches took contrary views; while one applied the ratio laid down in Daniel's (supra), another refused to follow the same.

The Full Bench of the Kerala High Court upheld the views of the Division Bench of the said Court in Ravindran (supra) and overruled Daniel (supra).

The Full Bench of the High Court indisputably did not say that the promotions which had already been granted would not be disturbed. The judgment of the Full Bench attained finality as special leave petition filed thereagainst was dismissed. Rules as amended by the State of Kerala on 01.07.1980 and 30.08.1984 were upheld.

If the said Rules ultimately were held to be constitutional, it was required to be given effect to. The law declared by a court is ordinarily affects the rights of the parties. A court of law having regard to the nature of adversarial system of our justice delivery system exercises adjudicatory role. Legal consequences are determined in respect of the matters which had taken place in the past.

It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.

As would be noticed by us hereafter in Dr. Suresh Chandra Verma and Others v. The Chancellor, Nagpur University and Others [(1990) 4 SCC 55], this Court held :

> "The second contention need not detain us long. It is based primarily on the provisions of Section 57(5) of the Act. The contention is that since the provisions of that section give power to the Chancellor to terminate the services of a teacher only if he is satisfied that the appointment "was not in accordance with the law at that time in force" and since the law at that time in force, viz., on March 30, 1985 when the appellants were appointed, was the law as laid down in Bhakre's case which was decided on December 7, 1984, the termination of the appellants is beyond the powers of the Chancellor. The argument can only be described as naive. It is unnecessary to point out that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. This being the case, since the Full Bench and now this Court has taken the view that the interpretation placed on the provisions of law by the Division Bench in Bhakre's case was erroneous, it will have to be held that the appointments made by the University on March 30, 1985 pursuant to the law laid down in Bhakre's case were not according to law. Hence, the termination of the services of the appellants were in compliance with the provisions of Section 57(5) of the Act."

The ratio laid down by this Court, as noticed hereinafter, categorically shows the effect of a decision which had not been directed to have a prospective operation. The legal position in clear and unequivocal term was stated by a Division Bench of this Court in M.A. Murthy v. State of Karnataka & Others [(2003) 7 SCC 517] in the following terms :

> "Learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective over-ruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath and Ors. v. State of Punjab and Anr. In Managing Director, ECIL, Hyderabad and Ors., v. B. Karunakar and Ors., the view was adopted. Prospective over-ruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. and Baburam v. C.C. Jacob. It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective over-ruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective over-ruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma's casa No. II. All the more so when the subsequent judgment is by way of Review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set, aside.
>
> The effect of declaration of law, the rue of stare decisis and the consequences flowing from a departure from an earlier decision has been considered in great details by the House of Lords in National Westminster Bank plc v. Spectrum Plus Limited and Others [(2005) UKHL 41]: [2005 (3) WLR 58], opining :
>
> "8. People generally conduct their affairs on the basis of what they understand the law to be. This 'retrospective' effect of a change in the law of this nature can have

disruptive and seemingly unfair consequences. 'Prospective overruling', sometimes described as 'non-retroactive overruling', is a judicial tool fashioned to mitigate these adverse consequences. It is a shorthand description for court rulings on points of law which, to greater or lesser extent, are designed not to have the normal retrospective effect of judicial decisions.

9. Prospective overruling takes several different forms. In its simplest form prospective overruling involves a court giving a ruling of the character sought by the bank in the present case. Overruling of this simple or 'pure' type has the effect that the court ruling has an exclusively prospective effect. The ruling applies only to transactions or happenings occurring after the date of the court decision. All transactions entered into, or events occurring, before that date continue to be governed by the law as it was conceived to be before the court gave its ruling.

10. Other forms of prospective overruling are more limited and 'selective' in their departure from the normal effect of court decisions. The ruling in its operation may be prospective and, additionally, retrospective in its effect as between the parties to the case in which the ruling is given. Or the ruling may be prospective and, additionally, retrospective as between the parties in the case in which the ruling was given and also as between the parties in any other cases already pending before the courts. There are other variations on the same theme.

11. Recently Advocate General Jacobs suggested an even more radical form of prospective overruling. He suggested that the retrospective and prospective effect of a ruling of the European Court of Justice might be subject to a temporal limitation that the ruling should not take effect until a future date, namely, when the State had had a reasonable opportunity to introduce new legislation: Banco Popolare di Cremona v Agenzia Entrate Uffficio Cremona (Case C-475/03, 17 March 2005), paras 72-88."

[See also Lord Rodger of Earsferry - 'A Time for Everything under the Law : Some Reflections on Retrospectivity' [(2005) 121 LQR 55, 77].

Lord Nicholls of Birkenhead speaking for the House of Lords clearly held that the power to apply prospective overruling is available to the House of Lords also.

In Queen (on the Application of Ernest Leslie Wright) v. Secretary of State for the Home Department [(2006) EWCA Civ. 67], it was observed :

"42. The English law in this respect is developing rapidly. Prospective rulings seemed anathema to Lord Wilberforce in Launchbury v Morgans [1973] AC 127, 137 and Lord Goff of Chieveley in Kleinwort Benson Ltd v Lincoln City Council [1999] 2 AC 349, 379. By the time of Regina v Governor of Brockhill Prison, ex p Evans (No. 2) [2001] 2 AC 19, Lord Slynn at p. 26 H considered that the effect of judicial rulings being prospective might in some situations be "desirable and in no way unjust", though

> Lord Steyn at p. 28 B thought the point was a "novel one". With some perspicacity Lord Hope of Craighead foresaw at p. 36 that "the issue of retrospectivity is likely to assume an added importance when the Human Rights Act 1998 is brought into force". Lord Hobhouse at p.48 F would have none of it. The latest in this line of authority seems to be In re Spectrum Plus Ltd (in liquidation) [2005] UKHL 41, [2005] 3 WLR 58 where the danger was acknowledged that prospective overruling "would amount to judicial usurpation of the legislative function", per Lord Nicholls at para. 28 but nonetheless he noted that, especially in the human rights field, " 'Never say never' was a wise judicial precept", (para. 42).
>
> 43. The question has attracted interest in the academic journals. See Arden L.J., "Prospective Overruling", (2004) LQR 7; Lord Rodger of Earlsferry, "A Time for Everything under The Law; Some Reflections on Retrospectivity", (2005) 121 LQR 57 and Duncan Sheehan and T. T. Arvind, "Prospective Overruling and Fixed/Floating Charge Debate", (2006) 122 LQR 20."

In service matters, this Court on a number of occasions have passed orders on equitable consideration. But the same would not mean that whenever a law is declared, it will have an effect only because it has taken a different view from the earlier one. In those cases it is categorically stated that it would have prospective operation.

We are not oblivious that in Union of India v. Madras Telephone SC & ST Social Welfare Association [2006) 9 SCALE 626], this Court observed that where the rights had been determined in favour of some employees in a duly constituted proceeding, which determination had attained finality, a subsequent judgment of a Court or Tribunal taking a contrary view would not adversely affect the applicants in whose cases the orders had attained finality.

The rights of the appellants were not determined in the earlier proceedings. According to them, merely a law was declared which was prevailing at that point of time; but the appellants were not parties therein. Thus, no decision was rendered in their favour nor any right accrued thereby.

In E.A. Sathyanesan (supra), a Division Bench of this Court) of which one of us was member) noticed :

> "In view of the aforementioned authoritative pronouncement we have no other option but to hold that the Tribunal committed a manifest error in declining to consider the matter on merits, upon, the premise that Sabharwal and Ajit Singh-I had been given a prospective operation. The extent to which the said decisions had been directed to operate prospectively, as noticed above, has sufficiently been explained in Ajit Singh-II and reiterated in M.G. Badappanavar (spura)."

Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court

will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf.

We, therefore, do not find any merit in these appeals, which are dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.