Ganga Ram Moolchandani vs State Of Rajasthan And Ors on 17 July, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2616, 2001 (6) SCC 89, 2001 AIR SCW 2596, 2001 LAB. I. C. 2795, 2002 (1) SERVLJ 197 SC, (2001) 5 JT 470 (SC), 2001 (2) UJ (SC) 1410, 2001 (7) SRJ 181, 2001 (5) JT 470, 2001 (4) SCALE 371, 2001 (4) LRI 626, 2001 SCC (L&S) 928, (2001) 90 FACLR 812, (2001) 3 LAB LN 837, (2001) 3 SCT 820, (2001) 3 SERVLR 616, (2001) 5 SUPREME 169, (2001) 4 SCALE 371, (2001) 3 ESC 460, (2001) 3 ALL WC 2290, (2001) 3 CURLR 582

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Bench: B.N. Agrawal

CASE NO.:
Appeal (civil) 6469 of 1998
Appeal (civil) 722 of 1999
Appeal (civil) 2411 of 1999

PETITIONER:
GANGA RAM MOOLCHANDANI

Vs.

RESPONDENT:
STATE OF RAJASTHAN AND ORS.

DATE OF JUDGMENT: 17/07/2001

BENCH:
G.B. Pattanaik & B.N. Agrawal

JUDGMENT:

B.N.AGRAWAL, J.

These appeals by special leave are against five judges Full Bench judgment of Rajasthan High Court passed in three different writ applications whereby by a majority of 3:2, the same have been dismissed. In the writ petition out of which Civil Appeal No. 6469 of 1998 arises, the selection of

respondent Nos. 3 to 12 who were appointed to the cadre of Rajasthan Higher Judicial Service by order dated 20th April, 1998 pursuant to advertisement dated 21st December, 1996 and recommendation of the High Court has been assailed by challenging the validity of Rules 8(ii) and 15(ii) of The Rajasthan Higher Judicial Service Rules, 1969 (hereinafter referred to as the Rules) making only those advocates eligible for consideration to the post of Rajasthan Higher Judicial Service who are practising in the Rajasthan High Court and courts subordinate thereto, on grounds, inter alia, that the same were violative of Fundamental Right, guaranteed to a citizen of India, enshrined under Articles 14 and 16 of the Constitution. In the writ petition, out of which Civil Appeal No. 2411 of 1999 arises, apart from challenging validity of the said rules on the aforesaid grounds, the decision of the High Court on its administrative side was assailed whereby candidature of the writ petitioner was not considered as he was full time-salaried Deputy District Attorney in the State of Haryana and being in State service was not eligible for consideration under Article 233 of the Constitution, apart from the ground that he was not practising in any such court. In the third writ petition, out of which Civil Appeal No. 722 of 1999 arises, the selection was challenged on the ground that the same was made in violation of the Rules.

The High Court issued an advertisement on 21st December, 1996 inviting applications for filling up eleven posts in the cadre of Rajasthan Higher Judicial Service to be filled up in terms of the Rules. The appellant in Civil Appeal No. 6469 of 1998, who was a practising Advocate in the District Court, Bareilly, a Court subordinate to the High Court of Judicature at Allahabad, applied in response to the said advertisement considering himself to be eligible though the said advertisement specifically provided that a candidate must have practised for seven years in Rajasthan High Court or courts subordinate thereto. He submitted his application through the District Judge, Bareilly. His application was processed by the Rajasthan High Court and he was called for interview. After interview, the Selection Committee found him meritorious and placed his name in the proposed select list. However, the Full Court, in its meeting held on 19th December, 1997, did not recommend the name of the appellant as it was found to be de hors the Rules not being found eligible for the reason that he had not practised for seven years in the High Court of Rajasthan or the Courts subordinate thereto, which necessitated filing of writ application before the High Court.

Appellant in Civil Appeal No. 2411 of 1999 had applied in response to the said advertisement but he was not called for interview and his candidature was not considered by the High Court on the ground that he was in the service of the State of Haryana, having been appointed there as a full-time-salaried Deputy District Attorney. According to this appellant, the period spent by him as Deputy District Attorney should have been treated to be period spent as a practising Advocate.

Appellant in Civil Appeal No. 722 of 1999 is a practising Advocate in the Courts at Deeg (District Bharatpur) which is a court subordinate to the Rajasthan High Court. He had applied for the post in response to the said advertisement. He was interviewed. The Selection Committee did not find him suitable for appointment. His grievance is that two candidates, who had duly been selected and appointed, viz., Shri Seeta Ram and Shri Ram Singh Meena had been selected by allowing relaxation in the minimum marks fixed by the Selection Committee and as the Selection Committee was not competent to relax the minimum marks, their appointments were void, being de hors the Rules, and prayed that the entire selection process be quashed as the same stood vitiated.

All the writ applications were contested by the High Court which was respondent no. 2 therein on grounds, inter alia, that the Rules in question do not suffer from the vice of Articles 14 and 16 of the Constitution as the condition of qualification of seven years practice as an Advocate in Rajasthan High Court or courts subordinate thereto prescribed in the Rules had a reasonable nexus with the object underlying the Rules in view of the fact that seven years practice will enable a person to be recruited to have sufficient knowledge of local laws, local conditions as well as regional language which are necessary for the discharge of duties of District and Sessions Judge efficiently and thus the Rules were based upon a reasonable classification founded on intelligible differentia having a reasonable nexus to the object sought to be achieved and thus were valid. The claim of the appellant in Civil Appeal No. 2411 of 1999 was resisted by the High Court on the ground that he being salaried employee of Haryana Government was already in the service of that State as such was not eligible for being considered on this ground as well apart from the fact that he never practised in any such court. In Civil appeal No. 722 of 1999, the High Court took the stand that there had been no relaxation whatsoever in favour of any candidate as there was no minimum marks fixed by the Committee.

All the three writ applications were first placed before a Division Bench of the High Court which having entertained doubt regarding correctness of Division Bench judgment of Rajasthan High Court in the case of Daulat Raj Singhvi v. State of Rajasthan, 1970 Rajasthan Law Weekly 214 and three judges Full Bench judgment of that Court in Muni Lal Garg v. State of Rajasthan and others, AIR 1970 Raj. 164, wherein validity of the aforesaid Rules had been challenged and upheld, as such the matter was referred to a larger Bench and the same was accordingly placed before a Full Bench of five judges. The Full Bench by a majority of 3:2 has approved the law laid down by the High Court in its previous decisions upholding validity of the Rules and consequently, writ application filed by appellant of Civil Appeal No. 6469 of 1998 was dismissed. So far writ application filed by appellant of Civil Appeal No. 2411 of 1999 is concerned, the High Court unanimously held that an Advocate employed with the Government as its law officer, even on terms of payment of salary would not cease to be an Advocate in terms of the Rules if the condition is that such an Advocate is required to act or plead in courts on behalf of the employer and in the case on hand, it was held that as the appellant was engaged on payment of salary to act and plead on behalf of the Government of Haryana in a court of law as an Advocate, he was eligible to be called for interview inasmuch as the High Court was not justified in refusing to call him for interview. Even after the majority dismissed the writ application of this appellant as the Rules were held to be intra vires but the Court refused to grant any relief to him in view of the fact that selected candidates had joined their duties and this appellant was yet to be interviewed and it was not certain that he would be selected in the interview. In view of these facts, the Court did not think it proper to quash the entire selection and upset the appointments and accordingly, no relief was granted in favour of this appellant but direction was given to the Court on its administrative side to process the applications of the candidates like him for direct recruitment in Rajasthan Higher Judicial Service in future in the light of the aforesaid observations. So far the writ application filed by appellant in Civil Appeal No. 722 of 1999 is concerned, the High Court unanimously dismissed the same having found the same devoid of any substance. While dismissing the writ application, the Court has passed severe strictures against the appellant observing that the writ application was filed by him without any sense of responsibility as the appellant who was practising Advocate had filed the writ application in a cavalier manner which

was shocking to judicial conscience. While dismissing the writ application, the Court awarded cost of Rs. 5000/- against this appellant. Hence, these appeals by special leave.

Shri Jagdeep Dhankhar, learned Senior Counsel appearing on behalf of the appellant in Civil Appeal No. 6469 of 1998 submitted that Rules 8(ii) and 15(ii) of the Rules requiring that only those Advocates are entitled to be considered for direct recruitment to Rajasthan Higher Judicial Service who have practised in Rajasthan High Court or Courts subordinate thereto for a period of not less than seven years and thereby debarring all other Advocates practising outside the State of Rajasthan though within the territory of India are ultra vires as the same violates fundamental rights of a citizen guaranteed under Articles 14 and 16 of the Constitution inasmuch as such a classification was not reasonable as founded on no intelligible differentia having a reasonable nexus sought to be achieved as laid down by a Constitution Bench of this Court in J.Pandurangarao v. Andhra Pradesh Public Service Commission 1963(1) SCR 707. Learned Counsel appearing on behalf of the appellant in Civil Appeal No. 2411 of 1999 submitted that the rejection of his candidature on the ground that he was already in the service of the State of Haryana by holding a salaried post of Deputy District Attorney having been found to be unjustified, the High Court should not have refused to grant relief in his favour. Learned Counsel appearing on behalf of the appellant in Civil Appeal No. 722 of 1999 submitted that in the facts and circumstances of the case, the High Court was not justified in passing severe strictures and awarding heavy costs against this appellant.

Shri P.P.Rao, learned Senior Counsel appearing on behalf of the Rajasthan High Court (respondent No.2) on the other hand, submitted that the aforesaid Rules are valid piece of legislation which have been framed by the Governor of Rajasthan in consultation with the High Court and the same cannot be said to be violative of Articles 14 and 16 of the Constitution as the classification has a reasonable nexus with the object underlying the Rules, i.e., to secure services of persons having knowledge of local laws as well as regional language and sufficient experience at the Bar with a view to secure fair and efficient administration of justice and the Rules were framed in the year 1969, i.e., six years after the law was laid down by a Constitution Bench of this Court in the case of J.Pandurangarao (supra) incorporating a criteria expressly approved therein as such the Rules cannot be questioned as constitutionally invalid. It has been further submitted that as validity of the Rules has been repeatedly approved by the High Court and all the recruitments and appointments have been made in accordance therewith, it would not be expedient to unsettle the law which has been settled by several decisions of the High Court. Shri Rao, in the alternative, submitted that in case this Court comes to the conclusion that the aforesaid Rules are ultra vires, the operation of the decision may be made prospective as during this long period of 32 years, when the Rules remained in force, a number of selections have been made in accordance with the Rules and even after the impugned judgment passed by the High Court, one post which was kept vacant by virtue of the interim order passed by the High Court in writ application filed by appellant in Civil Appeal No. 6469 of 1998 has been filled up by appointing one Shri Uma Kant Aggarwal who has been confirmed also after completion of probation period and has been discharging judicial functions. It was submitted that after the impugned selection, one more selection process started and the same has been also completed by making appointments. Thereafter, another process of selection has also started and the same will cause complications and delay the further selection in case the decision of this Court is not made prospective. In view of the rival submission, the question that calls for decision of this

Court is as to whether Rules 8(ii) and 15(ii) are ultra vires Articles 14 and 16 of the Constitution?

Rajasthan Higher Judicial Services Rules, 1969 have been framed by the Governor of Rajasthan in consultation with the Rajasthan High Court and Rule 3(b) whereof defines the Court as the High Court of Judicature for Rajasthan. Rule 8(ii) and Rule 15(ii) of the Rules require that direct recruitment to Rajasthan Higher Judicial Service is to be made from amongst the Advocates who have practised in the Rajasthan High Court or courts subordinate thereto, for a period not less than seven years. The provisions in these Rules thus debar all Advocates practising throughout the country, excepting those practising in the State of Rajasthan, even from applying to the post of Rajasthan Higher Judicial Service much less recruited. Under Rule 20, applications received from eligible persons have to be scrutinized. Sub Rule (2) of Rule 20 provides for the interview of eligible candidates by a Committee of Judges of the High Court of Rajasthan headed by its Chief Justice for recruitment to the post in question and no written test at all has been prescribed. Under Rule 20(3) of the Rules, recommendations made by a Committee pursuant to the interview are required to be placed before full court with relevant records which is required to make final selection of the candidate suitable for appointment to the service in order of merit. Under Rule 21, the High Court is required to recommend names of the candidates to the Governor of the State for their appointment to the service. For better appreciation, it will be useful to refer to Rules 3(b), 8 and15 of the Rules which run thus:-

> 3(b): Court means the High Court of Judicature for Rajasthan.
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> 8: Sources of recruitment-Recruitment to the service shall be made-
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> (i) by promotion from amongst the members of the Rajasthan Judicial Service; or
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> (ii) by direct recruitment from the advocates who have practised in the Court or Courts subordinate thereto for a period of not less than seven years.

15: Qualifications:-A candidate for direct recruitment to the service-

> (i) must be a citizen of India, and
>
> (ii) must be an advocate who has practiced in the Court or Courts subordinate thereto for a period of not less than seven years.

[Emphasis added] At this place, it may be relevant to refer to certain provisions of Rajasthan Judicial Service Rules, 1955 (hereinafter referred to as `Subordinate Judicial Service Rules) which relates to appointment to Rajasthan Subordinate Judicial Service, i.e., munsifs at the grass root level. Qualification for munsif is prescribed by Rule 11 of the said Rules to be a person having at least three years practice as a lawyer which would obviously mean that a lawyer of three years standing irrespective of the place of practice whether within the jurisdiction of the Rajasthan High Court or outside its jurisdiction. It further prescribes that a candidate must possess thorough knowledge of Hindi written in Devnagari Script. For proper appreciation, it would be necessary to quote aforesaid

Rule which reads thus:-

> 11. Qualification:-(1) No candidate shall be eligible for recruitment to the service unless:-
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> (a) he is a Bachelor of Laws (Two years Course under the old scheme) or Bachelor of Laws (Professional) of any University established by Law in India and recognised for the purpose by the Governor or a Barrister of England or Northern Ireland or a member of the faculty of Advocates in Scotland: and
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> (b) he has not less than three years practice as a lawyer. (2) Every candidate must possess a thorough knowledge of Hindi written in Devnagri Script.

[Emphasis added] Learned counsel appearing on behalf of both the parties have heavily relied upon Constitution Bench decision of this Court in the case of J.Pandhurangarao (supra) in which it was noticed that all the High Courts have the same status; all of them stand for the same highest traditions of the Bar and the administration of justice, and Advocates enrolled in all of them are presumed to follow the same standards and to subscribe the same spirit of serving the cause of the administration of justice. In that case, the appellant J. Pandurangarao belonged to a family which has been settled in the district of Guntur within the State of Andhra Pradesh for several generations past, he was born, brought up and educated in the said district, he secured Bachelor of Arts degree from a college within the State of Andhra Pradesh, whereafter, he took his LL.B. degree from the Nagpur University and got himself enrolled as an Advocate of the Mysore High Court in the year 1954 and started practice in a court within Guntur district in the State of Andhra Pradesh. In January 1961, the Andhra Pradesh Public Service Commission invited applications for selection for the posts of District Munsifs in the State of Andhra Pradesh for which the said appellant applied but his candidature was rejected on the ground that he did not fulfil the conditions set out in paragraph 4A(1) of the Commissions Notification published on 17th December, 1960, by which the applications were invited. According to said paragraph which was based upon Rule 12(b) of the Andhra State Judicial Service Rules framed by the Governor of Andhra Pradesh for making appointment in subordinate judiciary in the State of Andhra Pradesh according to which only those Advocates could apply for direct recruitment as District Munisfs who have been practising as an Advocate in Andhra Pradesh High Court and actually practising in courts of civil or criminal jurisdiction in India for a period not less than three years. The appellant before the Supreme Court fulfilled only second condition as he was practising in subordinate court but he did not fulfil the first condition as he had never practised in the Andhra Pradesh High Court. As the candidature of the appellant J. Pandurangarao was rejected, he moved this Court by filing a writ application under Article 32 of the Constitution for striking down Rule 12(b) and Notification aforesaid on the ground that the same were ultra vires Articles 14 and 16 of the Constitution.

While considering the attack on the Rule, the Court observed that when any Rule or a statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of

the group; and the second is that the differentia in question must have a reasonable relation to the object sought to be achieved by the Rule or a statutory provision in question. It was observed that the object of the Rule was to recruit suitable and proper persons to the judicial service in the State of Andhra Pradesh with a view to secure fair and efficient administration of justice, and so there can be no doubt that it would be perfectly competent to the authority concerned to prescribe qualifications for eligibility for appointment to the said service. Knowledge of local laws as well as knowledge of regional language and adequate experience at the Bar may be prescribed as a qualification which the applicants must satisfy before they apply for the post. In that case, it was contended before this Court that the Rules were framed to require an applicant to possess knowledge of local laws. Though this Court in the case of Pandurangaro (supra) has expressly laid down that validity of such a rule can be sustained on the ground that the object intended to be achieved thereby is that the applicant should have adequate knowledge of local laws and regional language, but while saying so, it has observed that for achieving this object, the proper course could be to prescribe a suitable examination which a candidate should pass whereby knowledge of local laws can be tested.

In the case of Pandurangarao (supra), this Court found that even according to stand of the State, the Rules could not be sustained as the object that a person must have adequate knowledge of local laws could not be achieved by the Rules in view of the fact that according to requirement, only that person is entitled to apply for recruitment to the post of subordinate judicial service in the State of Andhra Pradesh who is practising as an Advocate of Andhra Pradesh High Court and has been actually practising in courts of civil or criminal jurisdiction throughout the territory of India.

In the present case, the attack to the Rule has been resisted on the sole ground that the classification, confining Advocates practising in the Rajasthan High Court or courts subordinate thereto for being eligible for consideration to Rajasthan Higher Judicial Service, has reasonable nexus that they have knowledge of local laws and regional language. Question is whether, in fact, this ground, exists or not? Rule 11 of the Rajasthan Judicial Service Rules which relates to appointment in subordinate Judicial Service in Rajasthan lays down that any Advocate who has practised in any court throughout the territory of India is eligible for the post of Munsif. For the post of Munsif, knowledge of local law and regional language is much more required. The said Rule 11 further lays down that a candidate must possess a thorough knowledge of Hindi written in Devnagri Script. Thus for recruitment to the post of Munsif, there is no requirement that a person should have knowledge of local laws and regional language. If for appointment in subordinate judicial service, neither there is any requirement of knowledge of local laws nor regional language, we really fail to understand how the same is required for higher judicial service in the very same State, i.e., in the State of Rajasthan. Thus, we find that the ground taken by respondent No.2, that purpose of framing such a rule is knowledge of local law and regional language in order to stand the test of Article 14 of the Constitution, is fallacious Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely, supremacy of the Constitution, division of power between the Union and States and existence of an independent judiciary. From Kashmir to Kanyakumari, the country is one and there is no intelligible differentia which distinguishes Advocates practising within the State of Rajasthan and those practising outside Rajasthan but within the territory of India. In the case of Pandurangarao(supra), this Court observed that throughout the country in the curriculum, study of important local laws is generally included apart

from general laws, which would meet the requirement of knowledge of important local laws. In that very case, as already stated, it was further observed that for knowledge of local laws, a suitable examination may be conducted which a candidate should pass. The Court thus observed in that case at page 717 which runs thus:-

> It is not clear that the impugned rule can effectively meet the alleged requirement of the knowledge of local laws. If the object intended to be achieved is that the applicant should have adequate knowledge of local laws, the usual and proper course to adopt in that behalf is to prescribe a suitable examination which candidates should pass, or adopt some other effective method. No material has been placed before us to show that the alleged requirement about the knowledge of local laws can be met on the two grounds suggested in support of the validity of the rule. Besides, study of general laws prevailing in the country as a whole, and the study of important local laws are generally included in the curriculum prescribed for the law Degree, and obtaining a Law Degree which would entitle a person to be enrolled as an Advocate, in substance, meets the requirement of the knowledge of important local laws.
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> [Emphasis added] The matter may be examined from another angle as a lawyer is required to be well versed with the first principles of law for practising in any court and even local laws are based upon first principles and the requirement can be met either by prescribing a written test incorporating local laws as well or in cases where there is practice of taking interview alone, by putting questions in relation to local laws as well and in that manner knowledge of a person in relation to local law can be tested. The appellant in Civil Appeal No. 6469 of 1998 was interviewed by Committee of Judges of the High Court headed by its Chief Justice which found him fit for appointment to the post of Higher Judicial Service in Rajasthan and made recommendations in his favour but his candidature was rejected by Full Court of the High Court as he was not eligible under the Rules. Thus, we find that none of the two tests enumerated in the case of J.Pandurangarao to sustain validity of Rule on the ground of infraction of Article 14 of the Constitution is available as it could not be shown that the classification on which the Rules were founded was based on an intelligible differentia and the same had a reasonable relation to the object sought to be achieved in framing it.
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> The view taken in the case of Pandurangarao (supra) is on the same lines as decided by earlier Constitution Bench of this Court in the case of Rameshwar Dayal v. State of Punjab and others, AIR 1961 S.C. 816 in which the appointment of five persons in Punjab Higher Judicial Service was challenged before the Punjab High Court by filing writ application on the ground that these persons had not practised for a period of seven years in the Punjab High Court but out of the period of seven years, for few years, they had practised in Lahore High Court before partition of the country and after partition, the Punjab High Court. The writ application was dismissed on the ground that for reckoning the period of seven years, the period of practice in both the High Courts shall be counted for the purpose of Article 233 of the Constitution and

against said judgment, when appeal was brought to this Court, judgment of the High Court was upheld and it was laid down that for reckoning seven years standing of a person at Bar period of practice in both the High Courts shall be counted.

Shri Rao appearing for the respondent No.2 submitted that as the Rules have been holding the field for the last more than 32 years, the law settled by Division Bench and Full Bench decisions of Rajasthan High Court in all these years should not be unsettled by reversing the same. In support of his submission, learned Counsel has placed reliance upon various decisions of this Court as well as of Privy Council. In the case of Collector of Central Excise, Madras vs. M/s Standard Motor Products and others, (1989) 2 SCC 303, it has been laid down that long standing settled practice of the Court would not be disturbed. In the case of Kattite Valappil Pathumma and others v. Taluk Land Board and others, AIR 1997 SC 1115, it has been observed that no interference should be made with old decision unless and until it is manifestly found to be wrong or unfair. In the case of Andhra Pradesh State Road Transport Corporation v. M.Gurivi Reddy and others, (1992) 4 SCC 72, it was ruled that if Supreme Court by its interim orders permitted State Government to act on a scheme and also giving opportunities to the operators to apply to the Government for modification of the scheme if they feel aggrieved and the scheme remained in operation without any objection from the operators, as such the interim order passed by this Court should not be disturbed. In the case of Inder Mohan Lal vs. Ramesh Khanna, (1987) 4 SCC 1, it has been laid down that where a settled law laid down by the High Court prevailing in an area for long and transaction completed in accordance with the law so laid down, this Court would not normally interfere with it. In the case of Thamma Venkata Subbamma (dead) by LR v. Thamma Rattamma and others, (1987) 3 SCC 294, it has been observed that there is long series of decisions of High Courts laying down uniformly that a gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to his relation without the consent of the other coparceners is void and as this state of law has prevailed for decades, the Court should not upset such law except under compelling circumstances. In the case of Assistant District Registrar, Co-operative Housing Society Ltd. vs. Vikrambhai Ratilal Dalal and others, 1987 (Supp) SCC 27, the vires of Section 96(1)(c) of the Gujarat Co-operative Societies Act, 1961, was struck down by the High Court and this Court while finding no justification to interfere with the view taken by the High Court observed that as the decision operated for sixteen years on this ground as well no interference is called for. In the case of Attorney-General of Ontario and others vs. Canada Temperance Federation and others AIR 1946 Privy Council 88, Ambika Prasad Mishra vs. State of U.P.and others(1980) 3 SCC 719 and Mahesh Kumar Saharia vs. State of Nagaland and others (1997) 8 SCC 176, the Courts refused to reconsider correctness of its own decisions on the ground that the same have been followed in several cases.

From a perusal of these decisions, it appears that the same do not support the respondents much rather run more counter to their submission. It has been observed that there should be no interference with the law laid down in the old decisions merely on the ground that different view is possible but the Court would be justified in interfering if decision is manifestly wrong or unfair. In the present case, we have clearly held that the Rules are violative of Articles 14 and 16 of the Constitution, as such Division Bench and Full Bench decisions of Rajasthan High Court are manifestly wrong and if the law laid down therein is approved, the same would be unfair to members of the Bar practising in all the courts throughout the country, excepting the State of

Rajasthan. Thus, we have no option but to hold that Rules 8(ii) and 15(ii) are ultra vires Articles 14 and 16 of the Constitution and liable to be struck down.

Last submission of Shri Rao is that in case the Rules are held to be ultra vires, the decision may be made prospective in operation as for a period of 32 years, when the Rules remained in force, innumerable appointments have been made thereunder which should not be disturbed to avoid lot of complications. It is now well settled that the courts can make the law laid down by it prospective in operation to prevent unsettlement of the settled positions and administrative chaos apart from meeting the ends of justice. In the well-known decision of this Court in I.C.Golak Nath & Ors. vs. State of Punjab & Anrs. , (1967) 2 SCR 762 the question had arisen as to whether the decision in that case should be prospective or retrospective in operation and the Court took into consideration the fact that between 1950 and 1967, as many as twenty amendments were made in the Constitution and the legislatures of various States had made laws bringing about an agrarian revolution in the country which were made on the basis of correctness of the decisions in Sri Sankari Prasasd Singh Deo vs. Union of India and State of Bihar, 1952 SCR 89 and Sajjan Singh vs. State of Rajasthan, (1965) 1 SCR 933 viz., that the Parliament had the powers to amend the Fundamental Rights and that Acts in regard to estates were outside the judicial scrutiny on the ground they infringed the said rights. To meet the then extraordinary situation that may be caused by the said decision, the Court felt that it must evolve some doctrine which had roots in reason and precedents so that the past may be preserved and the future protected. In that case it was laid down that the doctrine of prospective overruling can be invoked only in matters arising under the Constitution and the same can be applied only by this Court in its discretion to be moulded in accordance with the justice of the cause or matter before it.

Accepting the lead given in the above decision, this Court has since extended the doctrine to the interpretation of Ordinary statues as well. In the cases of Waman Rao & Ors. vs. Union of India & Ors., (1981) 2 SCC 362, Atam Prakash vs. State of Haryana & Ors., (1986) 2 SCC 249, Orissa Cement Ltd. vs. State of Orissa & Ors., 1991 Supp. (1) SCC 430, Union of India vs. Mohd. Ramzan Khan, (1991) 1 SCC 588 and Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors., (1993) 4 SCC 727 the device of prospective overruling was resorted to even in the case of Ordinary statutes. We find in the fitness of things, the law decided in this case be declared to be prospective in operation.

Appellant in Civil Appeal No. 6469 of 1998 who was found eligible by the Committee, appeared in the interview, found fit by it and recommended for appointment to the Higher Judicial Service but could not be appointed as the Full Court found that he was not eligible and one post for him was kept reserved by virtue of interim order of the High Court but in view of dismissal of the writ application, the said post has been filled up by appointing one Shri Uma Kant Aggarwal-respondent No. 13. We feel it would be just and proper to direct the High Court to recommend his name to the Governor for appointment to Rajasthan Higher Judicial Service against one of the existing vacancies as according to the stand taken by the High Court, posts are still vacant.

So far appellant in Civil Appeal No. 2411 of 1999 is concerned, the High Court has in view of decision of this Court in Civil Appeal No. 3021/97 (Sushma Suri vs. Govt. of National Capital Territory of

Delhi and another) declined to grant relief in his favour. Learned counsel appearing on behalf of the appellant could not point out any error in the aforesaid judgment rendered by the High Court. Therefore, it is not possible to grant any relief to him. We may, however, observe that the High Court would process the applications of the candidates like this appellant for direct recruitment to the Rajasthan Higher Judicial Service in future as this appellant has been found eligible to be considered.

In Civil Appeal No. 722 of 1999, the only ground of attack is the strictures passed by the High Court against the appellant and imposition of costs. In the facts and circumstances of the case, we are of the view that it will be just and proper to expunge the remarks against the appellant from the impugned judgment and to upset the order awarding costs.

In the result, Civil Appeal No. 6469 of 1998 is allowed, the impugned judgment passed by the High Court upholding the Rules is set aside and Rules 8(ii) and 15(ii) are struck down being violative of Articles 14 and 16 of the Constitution. It is made clear that this judgment will not affect any appointment made prior to this date under the Rules which have been found to be invalid hereinabove. The High Court would be well advised to take up the process of selection, already started, de novo in accordance with this judgment and will now recommend name of the appellant-Ganga Ram Moolchandani to the Governor of Rajasthan for making appointment to Rajasthan Higher Judicial Service against one of the existing vacancies. Civil Appeal No. 722 of 1999 is allowed, the strictures passed in the impugned judgment against the appellant are expunged and the order, awarding costs upon him, is set aside. Civil Appeal No. 2411 of 1999 is dismissed subject to the observations above. In the circumstances, there will be no order as to costs.