Virender Singh Hooda And Ors vs State Of Haryana And Anr on 27 October, 2004

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CASE NO.:
Writ Petition (civil) 215 of 2002

PETITIONER:
VIRENDER SINGH HOODA AND ORS.

RESPONDENT:
STATE OF HARYANA AND ANR.

DATE OF JUDGMENT: 27/10/2004

BENCH:
Y.K. SABHARWAL & M. DHARMADHIKARI

JUDGMENT:

JUDGMENT 2004 Supp(5) SCR 720 The Judgment of the Court was delivered by Y.K. SABHARWAL, J. In these matters the validity of the Haryana Civil Service (Executive Branch) and Allied Services and Other Services. Common/Combined Examination Act, 2002 (for short 'the Act') is under challenge to the extent of its retrospective application. The Act was enforced on 27th March, 2002. Section 1(2) of the Act provides that the Act is deemed to have come into force with effect from 29th August, 1989. Section 1(3) provides that the Act shall apply to those persons who have been appointed or are offered appointment to the services/posts, recruitment to which is made by holding common/combined examination. Section 3 repeals the executive instructions contained in various circulars issued from time to time. We are concerned with circulars dated 22nd March, 1957 and 26th May, 1972. Section 4(1) provides that no appointment shall be made to any post or service to which the Act applies beyond the number of posts advertised. Section 4(2) provides that notwithstanding anything to the contrary contained in any judgment, order, decree or decision of the court of law, Act, rule, regulation or executive instructions, no candidates, from the date of commencement of the Act, shall, on the basis of his merit or placement in a common/combined examination, have right to seek appointment to Haryana Civil Service (Executive Branch) and Allied Services or other services beyond the number of advertised posts. Section 4(3) provides that State Government shall not be competent to offer appointment to a candidate, who is placed in waiting

list or, claims himself to be in the waiting list on the basis of the common/combined examination, for a post for which his name was not recommended by the Commission. Proviso to sub-section (3) of Section 4 stipulates that if a candidate has been appointed or offered appointment over and above advertised posts for any reason, the service of such candidate shall be dispensed with. However, he shall be entitled to be appointed to the service/posts, if any, for which his name was originally recommended by the Commission. It has further been provided that no recovery of higher salary, emoluments or any other financial benefits drawn by such candidate as a result of his appointment in excess of the advertised posts, shall be made from him but his pay shall be fixed in the scale of the post to which he is found entitled for appointment under the Act.

The contention urged on behalf of the petitioners is that the Act amounts to usurpation of judicial power by the State Legislature with a view to overrule the decisions of this Court in Virender S. Hooda and Ors. v. State of Haryana and Anr., [1999] 3 SCC 696 and Sandeep Singh's case (C.A.No.7422 of 1999 decided on 9th November, 2000). It has also been contended that the impugned legislation is violative of Articles 14 and 16 of the Constitution of India. Supporting the legislation and controverting that the Act is violative of Articles 14 and 16, it has been urged on behalf of the State that the Act has removed the basis of the aforesaid decisions which is a legal and legitimate mode of exercise of legislative power and the effect on employees is only incidental, as a consequence of the enforcement of the Act and it would not be correct to label the legislative power, a usurpation of judicial power.

Before we examine the contentions and questions of law that have been raised, it is necessary to note the background which led to the passing of the Act.

In the year 1989, Haryana Public Service Commission (hereinafter referred to as 'the Commission') advertised for recruitment to the Haryana Civil Services (Executive Branch) (for short 'Executive Branch) and other Allied Services through combined competitive examination. The advertisement included 12 posts in the Executive Branch (7 general and 5 reserved) and number of posts in Allied Services. A common written examination was held in February, 1991, the result was declared in December 1991, interviews were held between 31st March, 1992 and 9th June, 1992 and the final result was declared on 19th June, 1992. The Commission on 22nd June, 1992 made recommendations for making appointment against 12 posts in Haryana Civil Service and 48 posts in the Allied Services to the State Government. The appointments to the 12 posts were made in December, I992 and to the 48 posts on various dates between December, 1992 and April, 1993. The three petitioners in Writ Petition (Civil) No.215 of 2002, Virender Singh Hooda, Amarjit Singh Mann and Dinesh Singh Yadav, having regard to their position in the merit list being at serial Nos.8, 10 and 12 respectively were not appointed to the posts in the Executive Branch as only 7 general category posts were advertised. One of them was already holding the post of Excise and Taxation Officer and other two were appointed to posts in the Allied Services, one as Excise and Taxation Officer and other as Tehsildar.

On 24th November, 1992, another advertisement was issued by the Commission for filling up of 12 posts (9 general and 3 reserved) in Executive Branch and 50 in Allied Services. The written examination for these posts was held in October, 1993 but the result of the said examination was

declared on 20th January, 1996. The interviews were held between 29th January, 1996 and 11th March, 1996. The final result was declared on 15th March, 1996 and on the same day recommendations were made by the Commission for the appointments as per merit and options exercised by the candidates. The appointments to the 12 posts in the Executive Branch were made on 25th June, 1997 and to the posts in the Allied Services on different dates between June and July, 1997. Sandeep Singh, Lalit Kumar, Virender Lather and Virender Singh Dahiya were appointed to posts in Allied Services and not Executive Branch in view of their merit.

On 24th May, 1996, another advertisement was issued by the Commission for filling up 10 posts in the Executive Branch and 33 in the Allied Services. By a corrigendum to this advertisement, 10 more posts in the Executive Branch were added. The written examination was held in December, I997/ January, 1998, interviews were held between 16th March. 1999 and 7th April, 1999 and the final result was declared on 29th April, 1999. On 4th May, 1999, the Commission made the recommendations for appointments and thereafter on 1st June, 1999 the State Government made 20 appointments to the Executive Branch and 33 appointments to the Allied Services were also made on different dates from 23rd June, 1999 to 28th July, 1999.

Writ Petition (Civil) No.6G57 of 1994 filed by Virender Singh Hooda who could not be appointed to the Executive Branch in view of his merit position as aforenoticed seeking such appointment against the posts of the Executive Branch advertised on 24th November, 1992, was dismissed by the High Court of Punjab and Haryana on 12th May, 1994. In a Special Leave Petition filed in this Court, Amarjit Singh Mann, Dinesh Singh Yadav being similarly placed as Virender Singh Hooda, were impleaded as parties and the said petition was disposed of on 30th October, 1995 by this Court granting liberty to the aforesaid persons to file proper petition before the High Court. That petition was filed but it was also dismissed by the High Court. The decision of the High Court was, however, set aside by this Court in terms of the judgment dated 13th April, 1999 in Hooda's case (supra) and the State Government was directed to consider their cases for appointment to the posts in Executive Branch.

On 3rd December, 1999, in compliance with the judgment of this Court, the aforesaid 3 persons were appointed to the posts in Executive Branch.

Relying upon the decision in Hooda's case, the claim of Sujan Singh, Pushpindar Singh and Pardeep Goodra (petitioners in Writ Petition No.216/02) being similarly placed as the petitioners in Hooda's case, was accepted by the High Court for being appointed against posts advertised in the year, 1992. The Special Leave Petition filed by the State Government challenging the judgment of High Court dated 13th January. 2001 was dismissed on 12th October, 2001. Review Petition was also dismissed on 19th February, 2002. As a result, these three were also appointed to the posts in Executive Branch on 4th March, 1992. The case of the aforesaid six officers concerns the advertisement issued in the year 1989 and their claim for appointment to the posts in Executive Branch is based on the advertisement in respect of posts advertised in the year 1992 as aforesaid.

On publication of advertisement in the year 1996 as aforenoted, a writ petition was filed in the High Court by Sandeep Singh, Lalit Kumar, Virender Lather and Virender Singh Dahiya (petitioners in

Writ Petition Nos.217, 218 and 224/02) claiming right to be appointed to posts in Executive Branch relying upon the decision of this Court in Hooda 's case. These four candidates as already noticed pursuant to their position on merit list (1992 advertisement) had been appointed to the posts in Allied Services and not in the Executive Branch. The writ petition was dismissed by the High Court but the judgment of the High Court was set aside by this Court on 9th November, 2000 in Civil Appeal No.7422 of 1999. In implementation of the judgment, these 4 candidates were appointed to the posts in Executive Branch on 5th December, 2000.

On 29th January, 1999 another advertisement was issued by the Commission for filling up 14 posts in Executive Branch and 53 in the Allied Services. The written examination was held in December, 2000 and January, 2001, interviews were held between 22nd October, 2001 and 19th November, 2001 and the final result was declared on 3rd May, 2002. The Commission made recommendations on 6th June, 2002. The candidates who were selected and recommended as a result of this advertisement have filed Writ Petition No. 114/2003 supporting the Act and the stand of State of Haryana.

The impugned Act was passed on 27th March, 2002, i.e. before the declaration of the final result in respect of posts advertised on 29th January, 1999.

The claim of the State Government is that various petitions and appeals were pending before this Court and High Court involving the claims by candidates to the posts in Executive Branch and Allied Services which had arisen subsequent to the advertisement under which those candidates had applied. The State was facing serious legal difficulties. According to the State Government, on the one hand, there was long line of decisions of this Court starting with Hoshiar Singh v. Slate of Haryana and Ors., [1993] Supp. 4 SCC 377 holding that appointment on additional posts not covered by the requisition sent to the Commission on the basis of the selection and recommendations made at one time would deprive the candidates who are not eligible for appointment to the posts advertised on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment, would be entitled to apply for the same. The second line of decisions, according to the State Government, are in Hooda and Sandeep Singh's cases, which gave effect to aforesaid two circumstances and on that basis claims were made to the posts in Executive Branch and other Allied Services which had arisen subsequent to the advertisement under which those candidates had applied. In view of these difficulties, the Act in question was passed removing the basis of these decisions.

In respect of the Hooda and Sandeep Singh's cases giving effect to the circulars dated 22nd March, 1957 and 26th May, 1972, the case of the State Government also is that no argument seems to have been advanced before this Court based on long line of decisions that the posts beyond the number advertised could not be filled. The stand of the State further is that it appears that it was not pointed out to this Court that the posts advertised in 1992 were already filled up in the year 1996 itself and. therefore, there were no vacancies for giving effect to the directions of the Court in favour of candidates who appeared in the examination conducted for the posts advertised in the year 1989.

This has resulted in State Government making appointments in excess of sanctioned posts and of persons with lower in merit, thus, adversely affecting public interest.

In respect of the circulars aforenoticed, the stand of the Government is as follows :

> "In fact, the circular dated 22.03.1957 refers to an earlier circular dated 12.07.1937 of the composite State of Punjab which is not available. A reading of the circular dated 22.03.1957 gives the impression that it was really intended to permit filling up of the pre-existing vacancies which were not included in the requisition sent to the Commission. They could he filled up within a time limit of six months from the date of recommendations made by the Public Service Commission of the selected candidates. However, the circular dated 26.05.1972 has gone beyond the original intendment as reflected in the circular dated 22.03.1957 and permitted appointments to be made to vacancies which arise within' a period of six months after the recommendations have been made by the Service Commission. This circular did not visualize much less deal with the contingency of the selection process taking a very long time, i.e., more than one year and at times several years due to litigation or other unforeseen reasons and the consequential effect on the claims of candidates who become eligible in the meanwhile and who have a right to be considered under Article 14 and 16(1) of the Constitution for appointment against vacancies which arise in the years subsequent to the year of the advertisement in question. These circulars were issued at a time when the law declared in Hoshiar Singh (1993) and other cases was not known.
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> One more aspect which was not considered either in Virender Singh Hooda, Sandeep Singh's etc. cases is that the Haryana Civil Services (Executive Branch) Rules, 1930, contemplate annual competitive examination for selection of candidates for Register 'B'. These statutory rules confer a statutory' right on candidates who become eligible in the subsequent year to be considered for vacancies which arose subsequent to the advertisement given in the previous year. This statutory right could not be and was not intended to be taken away by the circulars dated 22.03.1957 and 26.05.1972. It is well settled that administrative circulars cannot override the right to equality conferred by Articles 14 and 16(1) of the Constitution or a statutory provision like Rule 9 of the said Executive Branch Rules, 1930."

At this stage, we may reproduce the statement of objects and reasons of the Act which read as under:-"

> STATEMENT OF OBJECTS AND REASONS Hon'ble Supreme Court, in Virender Singh Hooda's case reported as [1999] 3 SCC 696 held that in the light of Government circular letter dated March 22, 1957 and May 26, 1972 all those vacancies which had occurred in Haryana Civil Service (Executive Branch) upto the period of six months from the date of recommendations made by the Haryana Public Service Commission were required to be filled out of the same selection. Thereafter,

the Hon'ble Supreme Court in its judgment dated 9th November, 2000 in Civil Appeal No.7422 of 1999 'Sandeep Singh and Ors. v. Slate of Haryana and Ors.,' relating to Haryana Civil Service (Executive Branch) and Allied Services Examination, 1993, has inter alia held that even on first principle, it appeals to us to commend that the vacancies available in any particular service till the date of interview at least should be filled in from the very same examination unless there is any statutory embargo for the same.

There is another set of decisions by the Hon'ble Supreme Court starting with Hoshiar Singh v. State of Haryana. [1993] Suppl.4 SCC 377, in which it has been held that appointments beyond the advertised posts cannot be made as it deprives the candidates who were not eligible at the time of original advertisement but have acquired eligibility subsequently, of the opportunity to compete for public employment against such additional posts which did not form part of the original advertisement. The Hon'ble Supreme Court found such appointments to be violative of Articles 14 and 16 of the Constitution of India. This view has been followed by the Apex Court in several subsequent decisions. However, in Virender Singh Hooda's case or in Sandeep Singh's case no argument was advanced before the Apex Court based on the judgment in Hoshiar Singh's case and other similar cases.

The judgments in cases of Virender Singh Hooda, Sandeep Singh and Sujan Singh etc. have thus created multiplicity of litigation inasmuch as various candidates who were originally selected for one of the allied services are claiming appointment to Haryana Civil Service (Executive Branch) or some other allied service. Also the Haryana Public Service Commission calls candidates for interview equivalent to thrice the number of advertised vacancies. In case subsequent vacancies are clubbed with the advertised vacancies at a later stage, it would lead to more litigation even from those who were not called for interview but otherwise would have been eligible for being called for interview had the subsequent vacancies been clubbed initially. Further, as a result of above-mentioned judgments of Hon'ble Supreme Court, two sets of candidates have got appointments against one post.

This has brought about total uncertainty at such a late stage in the selection for Haryana Civil Service (Executive branch) and Allied Service made by the Haryana Public Service Commission. Considerations like efficiency and availability of equal opportunity to candidates who become eligible for taking up subsequent examinations have been kept in view. Since the entire problems has arisen as a result of recruitments made pursuant to advertisement dated 30th August, 1989, hence this Bill has been proposed w.e.f. 29th August, 1989" Sub-sections (2) and (3) of Section 1 and Sections 3 and 4 read as under:

"1, (2) It shall be deemed to have come into force with effect from the 29th August, 1989 and shall cover recommendations made by the Commission after that date except section 5 of this Act which shall come into force at once.

(3) It shall apply to those persons who have been or are appointed or offered appointment to the service/posts recruitment to which is made by holding Common/Combined Examination.

3. The executive instructions contained in circulars No.814-GS-37/ 3237-S, dated June, 1937, No. 4596/1178-GS-37/9276 dated 10th September. 1937, No. 475 P.S. C.37, dated 12th July, 1937, No.1637-G-11-56, dated 22nd March, 1957, No.2311-GSE-72/l6727. dated 26th May, 1972, No. 66/32/88-7/GSI, dated 28th October, 1993 and No.66/80/97-7GS1, dated 27th February, 1998 and the notification No.G.S.R./Const./ Art.309/2002, dated 28th March, 2001 are hereby repealed.

4.(1) No appointment shall be made to any post or service to which this Act applied beyond the number of posts advertised.

(2) Notwithstanding anything to the contrary contained in any judgment, order, decree or decision of a Court of law, Act, rule, regulation or executive instructions, no candidates, from the date of commencement of this Act, shall, on the basis of his merit or placement in a Common/Combined Examination, have right to seek appointment to Haryana Civil Services (Executive Branch) and Allied Services or Other services beyond the number of advertised posts.

(3) The State Government shall not be competent to offer appointment to a candidate, who is placed in the waiting list or who claims himself to be in the waiting list on the basis of Common/Combined Examination, for a post for which his name was not recommended by the Commission:

Provided that if a candidate has been appointed or offered appointment over the above advertised posts for any reason, the services of such candidate shall be dispensed with. However, he shall be entitled to be appointed to the service/posts, if any, for which his name was originally recommended by the Commission:

Provided further that no recovery of higher salary, emoluments or any other financial benefits drawn by such candidate as a result of his appointment in excess of the advertised posts, shall be made from him but his pay shall be fixed in the scale of the post to which he is found entitled for appointment under this Act."

The questions that fall for determination are:-

(1) Whether the Act, to the extent of its retrospectivity, is ultra vires as it amounts to usurpation of judicial power by the legislature or it removes the basis of decisions in Hooda and Sandeep Singh's cases (supra)?

(2) Is the Act violative of Articles 14 and 16 of the Constitution of India?

Undoubtedly, the legislature has no jurisdiction to set aside a decision of a court of law. The decisions in Hooda and Sandeep Singh's cases have to be assumed to be correct and on that basis it is to be considered whether the Act has removed the basis of those decisions or, in fact, in that

disguise, it has usurped the judicial power. The contention that the Hooda's case was not properly argued is of no relevance.

Likewise, there is also no doubt that the legislature has power to remove the basis of a decision rendered by a Court by enacting a valid piece of legislation.

One of the facets of the first question is whether a writ of mandamus can be made ineffective by an Act of legislature.

The circular dated 22 March. 1957 considered in Hooda's case reads as under:-"

> Circular dated 22.03.1957 Copy of U.O. Circular No. 1673-G-II-56 dated March 22, 1957 from Chief Secretary to Government, Punjab, to all Administrative Secretaries to Government. Punjab.
>
> Subject: Procedure to be observed by Administrative Department of the Punjab Government in their dealing with the Punjab Public Service Commission.
>
> ********** Will the Administrative Secretaries to Government Punjab, kindly refer to the procedure noted above as subject, circulated with Punjab Government letter No.814-GS-37/3237-3 dated June, 1937, and subsequent correspondence contained in Punjab Government letter No.4596/1178-GS-37/9276 dated the 10th September, 1937 and letter No.475 P.Sc.37, dated the 12th July, 1937 and from the Secretary, Punjab and North West Frontier Province, Joint Public Service Commission, reproduced on page 29 to 35 of the booklet entitled "Regulation and Instructions Governing the work of the Provincial Public Service Commission in the Punjab".

Z In paragraph 5 of the Public Service Commission letter No.475 P.S.C.37, dated the 12th July, 1937, at page 35, a time limit of 6 months has been prescribed for filling up, out of the names recommended by the Public Service Commission, additional vacancies which were not intimated to the Public Service Commission when inviting recommendations. After the expiry of six months a fresh reference to the Public Service Commission will be necessary to fill up an additional vacancy not intimated to the Commission earlier. Government have noticed that there is no uniformity regarding the observance of this time limit. They desire that the procedure outlined above should be rightly adhered to. The time limit of six months will not, however, apply to a case where a candidate had declined to accept the post offered to him against a vacancy which was intimated to the Public Service Commission. Such a vacancy can be filled up even after the expiry of six months out of the approved list of candidates initially received from the Commission."

The aforesaid circular is general in nature and does not refer to any particular service or service rules. In law if an executive instruction is contrary to Statutory Rules, the Rules will prevail and not the executive instructions. Further reading of aforesaid circular shows that it is applicable to pre-existing vacancies.

We may also reproduce the circular dated 26th May, 1972 as under :

> "Circular doted 26.05.1972 No. 2311-GSE-72/15727 dated the 26th May, 1972. Subject: Appointment of candidates out of the waiting list prepared by the Haryana Public Service Commission/Haryana Subordinate Services Selection Board.
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> ********** I am directed to invite your attention to the composite Punjab Govt. Circular letter No.I673-GII-66 dated 22nd March, 1957 (copy enclosed) and to say that according to the instruction contained in the circular referred to such vacancies as arise within six months of the receipt of the recommendations of the Public Service Commission have necessarily to be filled in out of the waiting list maintained by the Commission. In respect of the vacancies which arise after the expiry of a period of six months it is necessary to send a requisition to the Commission. It is, however, not clear as to how this time limit of six months is to be counted. In this connection, it may be mentioned that in the past commission used to recommend names which were double the number of vacancies intimated in the Commission at the time of sending the requisition by the department but such a practice does not exist now. The Government have re-examined the instructions issued in the composite Punjab on the above subject with a view to bring them up-to-date and it has been decided that they should be revised as under:-
>
> (a) At the time of making their recommendations to the concerned department for the posts to be filled in through direct appointment in Haryana Public Service Commission/Haryana Subordinate Services Selection Board will also intimate to the department whether waiting list for filling the additional vacancies occurring thereafter is available with them or not. If the number of additional qualified candidates be less than five then two recommendations only to the extent of the number of qualified candidates will be made by the Commission/ Board.
>
> (b) If the Commission/board make recommendations regarding a post to the department and additional vacancies occur in that department within a period of six months of the receipt of these recommendations then the vacancies which occur later on can be filled in from amongst the five additional candidates/recommended by the Commission/Board. In case the number of vacancies which occur subsequently exceeds five then it will be necessary to obtain more names from the waiting list maintained by the Commission/Board. The date on which the department makes a reference to the Commission/Board will be relevant in regard to the prescribed limit of six months from making appointments after obtaining additional names from the waiting list maintained by the Commission/Board within period of six months of the receipt of the original recommendations of the Commission/Board but the information regarding additional names is received after the expiry of a period of six months even then the regular appointments can be made out of the additional names recommended by the Commission/Board. If the Commission/Board have not made any recommendations regarding filling up of any post by direct recruitment during

the past period or if had made any recommendations but these were made earlier than the period of last six months then it will not be necessary for the department to ask for the additional names but out of the waiting list prepared by the Commission/Board

(c) In those cases where the Commission/Board have been asked to send additional names out of the waiting list, but the Commission/ Board fails to make their recommendations regarding additional names within a period of 15 days then the department will be competent, in such situation; to make appointments against such vacancies on ad hoc basis.

(d) Additional vacancies which have been referred to above will be those vacancies which have occurred within a period of six months of the receipt of original recommendations of the Commission/Board and these vacancies will not include such vacancies which have actually not occurred within a period of six months but there is possibility to their occurrence in future.

2. It may also be clarified in this connection that if a letter of appointment is issued to a candidate on the basis of the recommendations made by the Commission/Board against the vacancy which was intimated by the department to the Commission/Board and the candidate refuses to join the appointment, then in such cases the time limit of six months will not be applicable and in such a contingency, vacancy can be filled up even after the expiry of six months from the five additional names referred to above or from the waiting list prepared by the Commission/Board.

3. I am to request that in future, action may be taken in accordance with the above instructions."

What we have stated above in respect of 1957 circular is equally applicable to 1972 circular as well. In addition, it seems that this circular has not correctly read 1957 circular but in view of decision in Hooda's case, it is neither necessary nor possible for us to go into this question.

Now, we may also notice relevant Punjab Civil Service (Executive Branch) Rules, 1930 (for short 'the Rules') as amended from time to time. We are concerned with the Rules as applicable in Haryana. Rule 3 deals with strength of Haryana Civil Service (Executive Branch) Cadre. The said rule reads as under:

"Rule 3. Strength of Cadre-(1) The strength and composition of the Haryana Civil Service (Executive Branch) Cadre shall be such as may be determined by the Government from time to time.

(2) The Government shall, at the interval of every three years, re-examine the strength and composition of the Haryana Civil Service (Executive Branch) Cadre and may make such alterations therein as it deems fit:

Provided that nothing in this rule shall be deemed to affect the power of the Government to alter the strength and composition of the Cadre at any time."

Rule 5 deals with the appointments from among accepted candidates. The concept of accepted candidates is given in Rule 6 which sets out various registers to be maintained. Rule 7 concerns selection of candidates for Register A-I and Rule 8 selection of candidates for Register A-II. Rule 9 deals with the yearly holding of competitive examination for selection of candidates for Register B and Rule 12 for selection of candidates for Register C. Rule 17 deals with the appointment of registered candidates to service. Rules 5 and 6 read as under :

> "Rule 5. Members to be appointed by the Governor of Havana from among accepted candidates.-Members of the Service shall be appointed by the Governor of Haryana from time to time as required from among accepted candidates whose names have been duly entered in accordance with these rules in one or other of the registers of Accepted Candidates to be maintained under these rules:
>
> Provided that if in the opinion of the State Government the exigencies of the Service so require, the State Government may make special recruitment to the Service by such methods as it may by notification specify, after consultation with the Public Service Commission.
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> Rule 6. Registers to be maintained.-The following Registers of Accepted Candidates shall be maintained by the Chief Secretary, namely:-
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> (a) Register A-I of District Revenue Officers, Tahsildars and Naib-

Tahsildars accepted as candidates:

> (b) Register A-II of members of Class III Services accepted as candidates;
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> (c) Register B of persons accepted as candidates on the result of competitive examination; and
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> (d) Register C of Block Development and Panchayat Officers.

The present is a case of appointments as a result of competitive examination. Therefore, the relevant register would be register B. Rule 9 which provides for competitive examination reads as under:

> "Rule 9. Competitive examination to he held yearly for selection of candidates for Register B-(1) A competitive examination hereinafter called 'the examination' the regulations of which are contained in Appendix I to these rules, shall be held at any place in Haryana each year in or about the month of January for the purpose of selection by competition of as many candidates for the Service as the Governor of Haryana may determine.
>
> (2) Notice of the date fixed for the examination shall be published in the Haryana Government Gazette."

Rule 11 which deals with selection of candidates for register B reads as under :

> "Rule 11. Selection of candidates for Register B.-Subject to the provisions of rule 15, the Governor of Haryana may include in register B in order of merit, the names of such number of candidates as it may from time to time determine, from amongst those who have been declared as qualified in the examination by the Haryana Public Service Commission.
>
> Provided that for purpose of ensuring adequate representation qualified Scheduled Caste Candidates their names may be brought on Register B, in order of merit inter se, irrespective of their position on the list of qualified candidates as a whole with effect from the examination held in February, 1952."

Rule 17 which deals with appointment of registered candidates reads as under :

> "Rule 17. Appointment of registered candidates to service.-The Governor of Haryana shall ordinarily make appointments to the Service in pursuance of rule 5 from amongst candidates whose names are entered in the various registers in rotation as follows:-
>
> From Register B From Register A-1 From Register B From Register A-II From Register B From Register A-II From Register C From Register B From Register A-I From Register B From Register A-II From Register B From Register A-I From Register B From Register C ... two candidates ... one candidate ... two candidates ... one candidate ...three candidates ... one candidate ... one candidates ...three candidates ... one candidate ... two candidates ... one candidate ... two candidates ... one candidate ...three candidates ... one candidate and [hereafter in the same rotation beginning again from Register B. Rules do not contemplate any waiting list for the filling up of vacancies in excess of the number determined by initiating the recruitment process. Hooda's decision is based on aforesaid two circulars. We, as already stated, are concerned with the question whether the basis of that decision has been removed by the impugned legislation. We cannot go into the question of correctness of the said decision.
>
> The legislative power to make law with retrospective effect is well recognised. It is also well settled that though the legislature has no power to sit over Court's judgment or usurp judicial power, but, it has, subject to the competence to make law, power to remove the basis which led to the Court's decision. The legislature has power to enact laws with retrospective effect but has no power to change a judgment of court of law either retrospectively or prospectively. The Constitution clearly defines the limits of legislative power and judicial power. None can encroach upon the field covered by the other. The laws made by the legislature have to conform to the constitutional provisions. Submissions have also been made on behalf of the petitioners that by enacting law with retrospective effect, the legislature has no power to take away

vested rights. The contention urged is that the rights created as a result of issue of writ of mandamus cannot be taken away by enacting laws with retrospective effect. On the other hand, it was contended on behalf of the respondent-State that the power of the legislature to enact law with retrospective effect includes the power to take away vested rights including those which may be created by issue of writs.

Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes power to give it retrospective effect. Craies on Statute Law (7th Edn.) at page 387 defines retrospective statutes in the following words. "A statute is deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past".

Judicial Dictionary: (13th Edition) K.J. Aiyar, Butterworth, pg.857, states that the word 'retrospective' when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) re-opening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases: Permanent Edition: Vol.37A page 224/225. defines a 'retrospective' or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.

In 73rd volume of Harvard Law Review, page 692 it was observed that "it is necessary that the legislature should be able to cure inertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administration of government outweighs the individual's interest in benefiting from the defect," The above passage was quoted with approval by the Constitution Bench of this Court in the case of The Assistant Commissioner of Urban Land Tax and Ors. v. The Buckingham and Carnatic Co. Ltd., etc., [1969] 2 SCC 55. In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not, various factors.have to be considered. It was observed in the case of Stott v. Stott Realty Co., 284 N. W, 635,640,288 Mich. 35, (as noted in Words and Phrases, Permanent Edition, Volume 37A, page 225) that "The constitutional prohibition of the passage of 'retroactive laws' refers only to retroactive laws that injuriously affect some substantial or vested right, and does not refer to those remedies adopted by a legislative body for the purpose of providing a rule to secure for its citizens the enjoyment of some natural right, equitable and just in itself, but which they were not able to enforce on account of defects in the law or its omission to provide the relief necessary to secure such right." Crates on Statute Law (7th Edn.) at page 396 observes that "If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right." Thus public interest at large is one of the relevant considerations in determining the constitutional validity of a retrospective legislation.

In respect of recruitment to posts in Haryana Civil Service (Executive Branch) and other Allied Services, under the Rules, it was observed in Ashok Kumar Yadav and Ors. v. State of Haryana and Ors,, [1985] 4 SCC 417 that where there is a composite test consisting of a written examination followed by a viva voce test, the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest thrice the number of vacancies to be filled. The judgment does not make reference to any circular. It does not appear from material on record that for recruitment to these posts for which combined competitive examination takes place, these circulars were ever applied. The circulars, it seems, were relied upon for the first time in Hooda's case.

Now, we may note the line of decisions on the aspect of filling up of more vacancies than advertised with a view to properly appreciate the problem which the State, as above noticed, was facing.

In Hoshiar Singh's case (supra), the Director General of Police on 23rd October, 1987 had sent a requisition to the Selection Board duly constituted under Article 309 of the Constitution and vested with the provision of selecting and recommending candidates for selecting suitable candidates for appointment on six posts of Inspector of Police. The Selection Board issued an advertisement dated 22nd January, 1988 inviting applications for the said posts. The applicants who applied in response to the advertisement took written test and on the basis of result thereof, candidates were called for physical efficiency and measurement test and viva voce between 28th January, 1991 and 31st January', 1991. The Director General of Police, however, on 24th January, 1991 sent a revised requisition for eight posts of Inspector of Police. By letter dated 29th March, 1991, the Board forwarded to Director General of Police, the names of 19 candidates who were recommended in the order of merit for appointment to the post of Inspector of Police. The appointment letters were issued between 3rd April and 6th April, 1991 to 18 persons since there was an order of the High Court for reserving one post for ex-serviceman. The selection, recommendation and appointments were challenged by various candidates who were not selected by filing writ petitions under Article 226 in the High Court. One of the grounds urged was that number of posts that could be filled could not exceed the number of posts that were advertised and that the number of candidates called for interview could not exceed three times the number of posts that were advertised. Various other contentions were also urged but the same are not relevant for our purposes. As regards the number of posts for which selection could be made by the Selection Board, the High Court noticed that the original requisition was for six posts which was subsequently revised to eight posts and that the appointments beyond eight posts were not legally sustainable. The High Court further observed that as only eight posts were liable to be filled in, while calling the candidates for the viva voce, the Board was entitled to call only thrice the number of vacancies in each category originally requisitioned. In this view, the High Court quashed the selection and appointments made with respect to 19 posts and directed that the authorities would be entitled to make selection for eight posts on the basis of the written examination already held and for that purpose, all candidates who secured the qualified marks would be entitled to be called for physical tests and the candidates who have passed all the five items of the test would be eligible to be called for interview subject to the qualification that the number of such candidates would not exceed thrice the number of posts in each category. Upholding the decision of the High Court on the aforesaid two contentions that had been urged and accepted by the High Court, it was held by this Court that since the requisition was for eight posts, the Board was

required to send its recommendations for eight posts only and could not recommend names of 19 persons for appointment. It was held by this Court that the appointments on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the post on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. It was held that the High Court was right in coming to the conclusion that the selection of 19 persons was not sustainable.

In State of Bihar and Ors. v. Secretariat Assistant Successful Examinees Union 1986 and Ors., [1994] 1 SCC 126, the Selection Board issued an advertisement in the year 1985 inviting applications for the posts of Assistants falling vacant up to the year 1985-86. The number of vacancies as then existing was announced on August 25, 1987, the examination held in November 1987 and the result was published only in July 1990. Immediately thereafter out of successful candidates 309 candidates were given appointments and the rest, empanelled and made to wait for release of further vacancies. Since the vacancies available up to December 31, 1988 were not disclosed or communicated to the Board, no further appointments could be made. The empanelled candidates approached the High Court which directed the State Government to appoint them in vacancies available on the date of publication of the result as well as the vacancies arising up to 1991. Setting aside the High Court's decision on the appeal filed by the State Government, this Court held that the direction of the High Court for appointment of the empanelled candidates against the vacancies till 1991 was not proper and cannot be sustained. It was further noticed that since no examination had been held since 1987, persons who became eligible to compete for appointment were denied the opportunity to take the examination and directions of the High Court would prejudicially affect them for no fault of theirs. The callousness of the State in delaying the holding of examination, declaration of result was also adversely commented upon since it resulted in great hardship to the successful candidates. Having regard to the fact situation, the judgment of the High Court was modified by setting aside that part of the judgment which directed filling up of vacancies of 1989, 1990 and 1991 from out of the list of candidates who had appeared in the examination held in 1987. The stand of the Government in the case in hand is that the impugned enactment was brought in so as to make the appointments for which advertisements were subsequently issued in consonance with Articles 14 and 16 and, therefore, the question of the Act violating the rights of the petitioners under those constitutional provisions does not arise.

On the aforesaid line there are other decisions as well. {See Gujarat State Dy. Executive Engineers' Association v. Stale of Gujarat and Ors., [1994] Supp. 2 SCC 591 and State of Bihar and Anr. v. Madan Mohan Singh and Ors.. [1994] Supp. 3 SCC 308}. If the same list has to be kept subsisting for the purpose of filling up other vacancies also, that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the advertisement and selection process. In Madan Lal and Ors. v. State of J and K and Ors.. [1995] 3 SCC 486, the contention that was accepted by this Court was that since the advertisement was only for 11 vacancies, the merit list of 20 was bad and violative of the rules. It was observed that the moment those 11 posts are filled up within two years of the publication of the list, the list will get exhausted

and if for any reason these 11 vacancies could not be filled up by the time one year from the date of publication of the list is over, even then the list would get exhausted and fresh recruitment will have to be made in the light of fresh requisition from the State.

In Hooda's case, it was held that in terms of the circulars dated 22nd March, 1957 and 26th May, 1972 when vacancies arise within six months from the receipt of the recommendations of the Commission, they have to be filled up out of the waiting list maintained by the Commission. Further, it was held that when these vacancies arise within a period of six months from the date of previous selection, these circulars are attracted and hence the view of the High Court that vacancies arose after selection process commenced has no relevance and is contrary to the declared policy of the Government in the matter to fill up such posts from the waiting list. Sandeep Singh's case basically follows the decision in Hooda's case. The problem faced by the State, in the light of the above interpretation, was that during long gap of years between one advertisement and the other as is evident from the facts abovementioned, number of other persons attained eligibility who would be deprived of opportunity to compete for the posts advertised subsequently besides there being absence of waiting list provision in the statutory rules. The State Government says that to overcome these difficulties, the legislature stepped in, repealed the circulars with effect from the year 1989 and clarified the position for future. Clearly, in our view, the large public interest demanded the grant of opportunity to all eligible candidates.

Reverting to present cases, there are three categories of employees- (i) those who in implementation of decision in Hooda and Sandeep Singh's cases, before passing of the impugned Act, had already been appointed (ii) those, though not so appointed, have judgments of High Court passed in their favour relying upon Hooda and Sandeep Singh's cases, and claim a right to appointment but would be deprived of it if the validity of the Act is upheld and on that basis the judgments of the High Court upturned (iii) those, who would be covered by law laid down in Hooda's case on interpretation and applicability of the aforenoted two circulars, in case the Act is quashed to the extent of its retrospective applicability, and on that basis would be entitled to be considered for appointments. If the repeal of the circulars by the Act is not valid they will get the antage of interpretation and applicability of those circulars placed in Hooda's case. As already noticed, some matters have been filed by those who took competitive examinations conducted by the Commission and on account of their position on merit list, have been appointed to the advertised posts and, thus, are supporting the stand of the State Government contending that the Act is a valid piece of legislation.

It is well settled that if the legislature has the power over the subject- matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject- matter and whether in making the validation it removes the defect which the courts had found in the existing law.

It is equally well settled that the legislature cannot by a bare declaration, without anything more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary power conferred on it by the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field, fundamentally altering or changing with retrospective,

curative or neutralising effect the conditions on which such decision is based {I.N. Saksena and Anr. v. State of Madhya Pradesh [1976] 4 SCC 750]}. In Saxena's case facts in brief were that the appellant attained the age of 55 years on 22nd August 1963. On 28th February, 1963, by a memorandum, the State Government raised the age of compulsory retirement to 58 years. It, however, empowered the Government to retire an employee after the age of 55 years. This provision, however, was not incorporated in the statutory rules. On 11th September, 1963, the respondent passed an order retiring the appellant. The order of retirement of the appellant was quashed by this Court. The Government, however, amended the rules under which the retirement age was raised to 58 years and the Government was empowered to retire the Government servant after completion of 55 years of age. By a deeming clause, the rules were made effective from March 1, 1963. By Act of 1967, the State Legislature validated the retirement of certain Government servants including the appellant, despite the judgment of this Court. Upholding the validity of 1967 Act, this Court held that adjudication of the rights of the parties according to the law enacted by the legislature is a judicial function. In the performance of this function, the Court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the laws prescribing norms of conduct which will govern parties and transactions and to require the court to give effect to that law. It was held that the rendering ineffective of judgments of courts and tribunals by changing their basis by legislative enactment is a well-known pattern of all validating Acts, it would be useful to reproduce para 22 as under :

> "While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based. As pointed out by Ray, C.J. in Indira Nehru Gandhi v. Raj Narain. [1975] Supp SCC 1, the rendering ineffective of judgments or orders of competent courts and tribunals by changing their basis by legislative enactment is a well known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power."

There is a distinction between encroachment on the judicial power and nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but the latter is within its permissible limits [M/s. Tirath Ram Rajindra Nath, Lucknow v. State of U.P. and Anr. [1973] 3 SCC 585]. The reason for this lies in the concept of separation of powers adopted by our constitutional scheme. The adjudication of the rights of the parties according to law is a judicial function. The legislature has to lay down the law prescribing norms of conduct which will govern parties and transactions and to require the court to give effect to that law [I.N. Saksena's case (supra)].

The legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside

an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and to function as an appellate court or tribunal, which is against the concept of separation of powers. {Re: Cauvery Water Disputes Tribunal, [1993] Supp. I SCC 96(11)]}.

When a particular Rule or the Act is interpreted by a court of law in a specified manner and the law-making authority forms the opinion that such an interpretation would adversely affect the rights of the parties and would be grossly inequitous and accordingly a new set of rules or laws is enacted, it is very often challenged on the ground that the legislature has usurped the judicial power. In such a case the Court has a delicate function to examine the new set of laws enacted by the legislature and to find out whether in fact the legislature has exercised the legislative power by merely declaring an earlier judicial decision to be invalid and ineffective or the legislature has altered and changed the character of the legislation which ultimately may render the judicial decision ineffective {S.S. Bola and Ors. v. B.D. Sardana and Ors., [1997] 8 SCC 522]}.

In The Government of Andhra Pradesh and Anr. v. Hindustan Machine Tools Ltd., [1975] 2 SCC 274, the respondent had constructed its factory and other buildings within the limits of Gram Panchayat 'K' without its permission. Gram Panchayat passed a resolution to collect permission fee from the respondent on the capital value of the factory building at a specific rate. They also imposed house tax and demanded payment for the period 1966 to 1969. A writ petition was filed challenging the power to levy house tax and other fees. The High Court issued a mandamus prohibiting the Gram Panchayat from collecting the amounts, the High Court held that as per the definition of the 'house' under the Act, the factory and other buildings were not 'house'. Pending appeal in this Court, the legislature amended the definition of expression 'house' with retrospective effect so as to eliminate the impediment on which the High Court rested its judgment. It also made validation of the actions by Section 4 of the Validation Act with retrospective effect. This Court rejecting the contention that the legislature has overruled or set aside the judgment of the High Court, held that the legislature has amended the definition of the expression 'house' by substituting a new section in place of the old one and has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. It was held that the legislature has not set aside the judgment of the high court but has removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances.

In State of Haryana and Ors. v. Karnal Co-op. Farmers ' Society Limited and Ors., [1993] 2 SCC 363, after noticing various decisions, this Court concluded that a legislature while has the legislative power to render ineffective earlier judicial decisions, by removing or altering or neutralizing the legal basis in the unamended law on which such decision were founded, even retrospectively, it does not have the power to render ineffective the earlier judicial decision by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon by a legislature under our Constitution. Whether retrospective or prospective the law has to be consistent with the provisions of Part III of the Constitution It is not possible to accept the contention that vested rights cannot be taken away by legislature by way of retrospective legislation. Taking away of such right

would, however, be impermissible if violative of Articles 14, 16 and any other constitutional provision. In Stale of Tamil Nadu v. Aroorran Sugars Ltd., [1997] 1 SCC 326], this Court held that whenever any amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be affected one way or the other. In every case, it cannot be urged that the exercise by the legislature while introducing a new provision or deleting an existing provision with retrospective effect per se shall be violative of Article 14 of the Constitution. If that stand is accepted, then the necessary corollary shall be that legislature had no power to legislate retrospectively, because in that event a vested right is affected.

In the instant case, none has questioned the competence of the Haryana Legislature to pass the impugned Act. The question is whether the impugned legislation has encroached upon judicial power or has rendered the judicial decision ineffective by removing the legal basis on which it was based with retrospective effect. According to the respondent-State, the basis of the decision was circulars of 1957 and 1972 and the said circulars having been repealed, the basis of the judgment has been altered. The contention is that the judgment in Hooda's case would not have been rendered if these circulars were not there.

Having noticed the principles laid down by this Court in various decisions, let us now examine the decisions relied upon by learned counsel for the petitioners. In support of the contention that the Act is an attempt to overreach this court and is ultra vires, reliance has been placed on the decision in Indian Aluminium Co. and Ors. v. State of Kerala and Ors.. [1996] 7 SCC 637]. After extensively considering the earlier decisions on the subject, it was observed that in exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision.

The contention strenuously urged on behalf of the petitioners is that a mandamus issued by a court cannot be nullified by enactment of law. Strong reliance has been placed on behalf of the petitioners to a Constitution Bench decision of Seven Judges in the case of Madam Mohan Pathak and Anr. v. Union of India and Ors,, [1978] 2 SCC 50. The observations relied upon are in para 9 to the effect that the judgment given by the Calcutta High Court, which was relied upon by the petitioners is not a mere declaratory judgment holding an impost or tax to be invalid so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. It is a judgment giving effect to the right of the petitioners to annual cash bonus under the settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy lay by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. On the basis of these observations, it was sought to be contended that in the case of mere declaratory judgment, the legislature can remove the defects pointed out by the Court by amending the law with retrospective effect but when the rights accrue under writ of mandamus, the said rights cannot be taken away by retrospective legislation. The observations in para 9 relied upon have to be understood in the context of the facts of the case and what was noticed in para 8 of the judgment.

The facts in brief were that under a settlement between LIC and its employees, annual cash bonus was payable to Class-Ill and IV employees. The settlement was effective for the period from 1st April, 1973 to 31st March, 1977. As per the terms of settlement, bonus was paid for the first two years. The Payment of Bonus (Amendment) Act, 1976 was brought into force retrospectively from 25th September, 1975 declaring that employees of the establishments which were not covered by Payment of Bonus Act (LIC was covered by Payment of Bonus Act) would not be eligible for payment of bonus but ex-gratia payment in lieu of bonus would be made. LIC was advised by the Ministry of Finance not to make further payment of bonus to their employees. All India Insurance Employees Association filed writ petition in Calcutta High Court for a writ of mandamus and prohibition directing the LIC to act in accordance with the terms of settlement. The writ petition was allowed against the said judgment. LIC preferred a Letters Patent Appeal against said judgment. On the enactment of the Amending Act, the LPA was withdrawn. Section 3 of 1976 Amending Act provided as follows:-

> "Notwithstanding anything contained in the Industrial Disputes Act, 1974, the provisions of the settlement in as far as they relate to the payment of an annual cash bonus to every Class III and Class IV employee of the Corporation at the rate of fifteen per cent, of his annual salary, shall not have any force or effect and shall not be deemed to have had any force or effect on and from the 1st day of April, 1975."

This Court declaring the Act to be void noticed in para 8 of the report that judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of the judgment. The writ of mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year 1st April, 1975 to 31st March, 1976 was concerned, it became crystallized in the judgment and thereafter they became entitled to enforce the writ of mandamus granted by the judgment and not any right to annual cash bonus under the settlement. The Court held 'this right under the judgment was not sought to be taken away by the impugned Act.' The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus in obedience of the writ of mandamus. It was further noticed that the error committed by the LIC was that it withdrew the LPA and allowed the judgment of the learned single judge to become final. By the time LPA came up for hearing, the impugned Act had already come into force and the Life Insurance Corporation could, therefore, have successfully contended in the Letter Patent Appeal, that, since the settlement, in so far as it provided that payment of annual cash bonus, was annihilated by the impugned Act with effect from 1st April, 1975, Class III and Class IV employees were not entitled to annual cash bonus for the year 1st April, 1975 to 31st March, 1976 and hence no writ of mandamus could issue directing the Life Insurance Corporation to make payment of such bonus. It is noteworthy that the Court observed that 'if such contention had been raised, there is little doubt, subject of course to any constitutional challenge to the validity of the impugned Act, that the judgment of single judge would have been upturned and the writ petition dismissed.' It was then noticed that on account of some inexplicable reason, which is difficult to appreciate, the Life Insurance Corporation did not press the LPA and the result was that the judgment of the learned single judge granting writ of mandamus became final and binding on the parties. This is the

background under which the observations were made by the Constitution Bench in para 9.

In fact, the aspect noticed above supports the contention put forth by the State that the Act could nullify the effect of the writ issued by the Court. Unlike the facts of the present case, in Pathak's case LPA was withdrawn by LIC and, therefore, it could not be contended that the decision of single Judge had become ineffective in view of the Act that had been enacted. In the present case, the decisions of the High Court are under challenge in CA Nos.8385-8393/2002 and pending that the Act has been passed which in terms notices the difficulties arising out of interpretation placed by the court on circulars in Hooda's case.

Strong reliance was placed on behalf of the petitioners to the case of A.V. Nachane and Anr. v. Union of India and Anr., [1982] 1 SCC 205] in support of the contention that the Amendment Act could not nullify the writ issued by this Court. It was observed that Rule 3 cannot make the writ issued by this Court nugatory in view of the decision of a majority in the case of Madan Mohan Pathak, (supra). The observations made in para 12 on which strong reliance has been placed have to be understood in the light of Section 48(2B). The Court noticed that the said section only gave limited power of retrospective rule making to the Central Government, i.e., "the power to add, vary or repeal the regulations and "other provisions' referred to in sub-section (2-A) with retrospective effect from a date not earlier than June 20, 1979". After the noticing the limited scope of retrospective rule making power, the Court held that "clearly a writ issued by this Court is not regulation nor can it be described as 'other provisions' which expression possibly includes circulars and administrative directions". The Court held that the rule making power did not permit varying or repealing the judgment of a court in that case. Nachane 's case has not altered a well settled proposition lay down in various Constitution Bench decisions referred to above that the vested rights can be taken away by retrospective legislation by removing the basis of a judgment so long as the amendment does not violate the fundamental rights. We are unable to accept the broad proposition sought to be contended for the petitioners that the effect of the writs issued by the courts cannot be nullified by legislature by enacting a law with retrospective effect. The question, in fact, is not of nullifying the effect of writs which may be issued by the High Court or this Court. The question is of removing the basis which resulted in issue of such a writ. If the basis is nullified by enactment of a valid legislation which has the effect of depriving a person of the benefit accrued under a writ, the denial of such benefit is incidental to the power to enact a legislation with retrospective effect. Such an exercise of power cannot be held to be usurpation of judicial power. In our view, repeal of the circulars was permissible. The circulars were validly repealed by the impugned Act and it made the law declared in Hooda's case ineffective.

The learned counsel for the petitioners has, however, placed strong reliance on observations made in Para 15 of S.R. Bhagwat and Ors. v. State of Mysore, [1995] 6 SCC 16 to the effect that where on interpretation of existing law, the High Court has given certain benefits to the petitioners by issue of writ of mandamus that cannot be nullified by enactment of law. Such an enactment would be impermissible in legislative exercise. The facts in Bhagwat 's case briefly are that the petitioners therein were Deputy Conservators of Forests in the former State of Bombay and Hyderabad. Subsequent to reorganisation of States, their services stood allotted to the new State of Mysore under Section 115 of the States Reorganisation Act, 1956. Under the provisions of the said Act, the

Central Government issued certain directions for equation of posts and promotions on the basis of provisional inter-State Seniority Lists subject to revision of such promotions in accordance with the ranking in the Final Seniority Lists. When the claims of the petitioners and counter-claims by others regarding equation of posts and seniority were finally settled, the petitioners, in view of their seniority in the final list, claimed deemed dates of promotion with all consequential benefits as their junior had by then been promoted to higher ranks on the basis of the provisional seniority list. This claim, although, not accepted by the State, was ultimately allowed by a Division Bench of the Mysore High Court. Thereafter, the State of Mysore, enacted Kamataka State Services (Regulation of Promotion, Pay and Pension) Act, 1973, whereby the actual financial benefits directed to be made available to the petitioners pursuant to the orders of the Division Bench of the High Court, which had become final, were sought to be taken away. The petitioners filed a petition under Article 32 of the Constitution seeking declaration that the impugned provisions insofar as they tried to confiscate the financial benefits made available to them by the writs of mandamus issued by the High Court are null and void as they amount to legislative overruling of binding judicial decisions and seek to deprive them of their fundamental rights guaranteed under the Constitution. The principal submission voiced before this Court was that the consequential financial benefits directed by the High Court did not cover monetary benefits flowing from deemed promotions. The contention that the foundation of the High Court judgment was displaced by the impugned Act was not pressed. It was conceded by the State that the impugned Act did not displace the basis or foundation of the judgment, Reiterating the well settled proposition that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such enactment having retrospective effect, it was observed in Para 15, on which strong reliance has been placed on behalf of the petitioner that 'this is a case where on interpretation of existing law, the High Court had given certain benefits to the petitioners. That order of mandamus was sought to be nullified by the enactment of the impugned provisions in a new statute. This in our view would be clearly impermissible legislative exercise." These observations cannot be read to mean that where on interpretation of existing law certain benefit is given that cannot be nullified by the legislature even by removing the basis or foundation which led to such an interpretation. As can be seen from the above, the contention that the impugned legislation had displaced the foundation of the High Court judgment was not pressed and in that light these observations were made in Para 15 as aforesaid. The Court was not departing from well settled principles.

In State of Gujarat and Anr. v. Raman Lal Keshav Lal Soni and Ors,, [1983] 2 SCC 33 the Amending Act was held to be violative of Articles 14 and 311. It was held by the Constitution Bench that the status of the employees as Government servants could not be extinguished, so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Article 311 of the Constitution. Nor was it permissible to single them out for differential treatment in violation of Article 14. The classification was held to be unreasonable and entirely irrelevant to the object sought to be achieved. At the same time, it was held by the Constitution Bench that the legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws. What was, however, required was that since the laws are made under

written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The Amending Act was not held ultra vires on the ground that it takes away or impairs any vested right but was declared ultra vires on the ground of it being violative of Article 14 and 311.

There are various decisions which have settled the legal proposition that where on interpretation of existing law the Court has given the benefits, the same can be nullified by a legislature with retrospective effect, so long as law enacted does not contravene Chapter-III of the Constitution of India and other constitutional provisions. We may, however, note two other decisions on which reliance was placed by learned counsel for the petitioners.

Reliance has also been placed to the observations made in para 14 of the decision in the Union of India and Ors. v. Tushar Ranjan Mohanty and Ors,, [1994] 5 SCC 450 to the effect that 'when a person is deprived of an accrued right vested in him under a statute or under the Constitution he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.' It is necessary to bear in mind the background under which the aforesaid observations were made to properly and correctly understand the real intent thereof. The observations were made in the context of contention one and two referred to in para 8 of the report. The first contention was that the retrospective operation of the amended rule takes away the vested rights of the general category candidates senior to respondents 2 to 9 and it is settled proposition of law that the vested rights cannot be abrogated by retrospective legislation. The second contention was that the retrospective operation of the amended rule is arbitrary and, as such, violative of Articles 14 and 16 of the Constitution of India. Both these contentions were considered in para 9 of the report. It was noticed that the rule in question gives a statutory right to Grade- IV officers to be considered for promotion in the order of their seniority and the said right is further strengthened by the proviso contained therein which made it obligatory that when a junior officer in Grade-IV is eligible and is considered for promotion all officers senior to him in that grade shall also be considered for promotion. On facts, it was also noticed that the senior general category Class-IV officers had a vested right under the rules as also under Article 16(1) of the Constitution to be considered for promotion when persons junior to them were being considered and in fact promoted. Respondents 2 to 9 were admittedly junior to Mohanty and as such they could not be promoted without considering the case of Mohanty. Under these circumstances, it was noticed that senior officers had a vested right to be considered for promotion when their juniors were promoted. The question posed was whether such a right can be rendered nugatory by retrospective legislation. Under these circumstances, the observations were made that the accrued vested rights of senior officers cannot be made nugatory by enacting retrospective legislation. The retrospective amendment divesting the seniors from right of consideration was held to be violative of Article 16 of the Constitution since every law, whether retrospective or prospective, if made in contravention of the constitutional provisions would be void. The judgment renders no assistance to the petitioners.

Reliance was also placed upon observations made in National Agricultural Cooperative Marketing Federation of India Ltd. and Anr. v. Union of India and Ors., [2003] 5 SCC 23 to the effect that the power to amend the law with retrospective effect is subject to several judicial recognised limitations, one of which being that the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional and another being that where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis thereof. There can be no quarrel with these propositions. If we had come to the conclusion that the retrospectivity is unreasonable, harsh or excessive or the basis of Hooda's case has not been removed, in the present case, too, the position would have been different.

Before concluding, a useful reference can also be made to the decision in the case of Pram Singh and Ors. v. Haryana State Electricity Board and Ors., [1996] 4 SCC 319 holding that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf.

The result of the aforesaid discussions is that retrospectivity in the Act cannot be held to be ultra vires except to a limited extent which we will presently indicate. It is not a case of usurpation of judicial power by the legislature. The legislature has removed the basis of the decision in Hooda and Sandeep Singh's cases by repealing the circulars. The Act is also not violative of Articles 14 and 16 of the Constitution of India. The candidates have right to posts that are advertised and not the one which arise later for which a separate advertisement is issued. A valid law, retrospective or prospective, enacted by legislature cannot be declared ultra vires on the ground that it would nullify the benefit which otherwise would have been available as a result of applicability and interpretation placed by a superior court. A mandamus issued can be nullified by the legislature so long as the law enacted by it does not contravene constitutional provisions and usurp the judicial power and only removes the basis of the issue of the mandamus.

Despite the aforesaid conclusion, the Act [proviso to Section 4(3)] to the extent it takes away the appointments already made, some of the petitioners had been appointed much before enforcement of the Act (ten in number as noticed hereinbefore) in implementation of this Court's decision, would be unreasonable, harsh, arbitrary and violative of Article 14 of the Constitution. The law does not permit the legislature to take back what has been granted in implementation of the court's decision. Such a course is impermissible In Lohia Machines Ltd. and Anr. v. Union of India and Ors., [(1985) 2 SCC 197], on the aspect of reasonableness and arbitrariness of amending law, it was observed that the power and competence of Parliament to amend any statutory provision with retrospective effect cannot be doubted. Any retrospective amendment to be valid must, however, be reasonable and not arbitrary and must not be violative of any of the fundamental rights guaranteed under the Constitution. In considering the question as to whether the legislative power to amend a provision

with retrospective operation has been reasonably exercised or not, it becomes relevant to enquire as to how the retrospective effect of the amendment operates.

In Chairman, Railway Board and Ors. v. C.R. Rangadhamaiah and Ors., [1997] 6 SCC 623] the Constitution Bench while holding that the rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retro-activity as being violative of Articles 14 and 16 of the Constitution, observed that a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively. (emphasis supplied) In the said decision, the respondents-Railway Employees belonging to category of running staff had retired from service on 1st January, 1973 and their pensionary benefits were to be calculated on the basis of 'average emoluments'. The 'running allowance' upto maximum of 75% was taken as part of 'average emoluments' for determination of pension and gratuity of the employees. By letter dated 22nd March, 1976, the percentage of 'running allowance' was reduced from 75% to 45% retrospectively w.e.f. 1st April, 1976. This was quashed by the Central Administrative Tribunal which order became final since it was not further challenged. The Railway Board, however, issued statutory notification dated 5th December, 1988 in which the existing percentage of 'running allowance' which form part of 'average emoluments' was reduced to 45% w.e.f. 1st Jaunary, 1973. The said notification was quashed by the Central Administrative Tribunal to the extent it reduced the rate retrospectively on the ground that they were violative of Article 14 of the Constitution. The decision of the Tribunal was upheld to the extent it had the effect of reducing the amount of pensionary benefits of the employees but, at the same time, it was held that rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution. The Constitution Bench also made reference to the case of Triloki Nath Khosa, [1974] I SCC 19. In Triloki Nath's case rules had been framed altering the criteria of eligibility for promotion from the post of Assistant Engineer to the post of Executive Engineer and the same was challenged on the ground of retrospectivity by the Assistant Engineers who were in service on the date of making these rules. Rejecting the said contention, it was held that the impugned rules do not recall a promotion already made or reduce a pay-scale already granted, (emphasis supplied) It was also observed that the rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If the rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirements in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective.

Before concluding, we may note that the facts of C.A.Nos.3937-38/2001 are somewhat different and peculiar. These appeals have been filed by.the State Government challenging the impugned judgment of the High Court granting relief to the two respondents who belong to 1989 batch. The respondents in these two appeals-Ajay Malik and Arvind Malhon in 1989 merit list prepared by the Commission are at serial Nos.9 and 11 respectively. Virender Singh Hooda, Amerjeet Singh Mann and Dinesh Singh Yadav who were appointed to posts in Executive Branch as noticed hereinbefore

were on the merit list at serial Nos.8, 10 and 12 respectively. These three were appointed on 3rd December, 1989 in compliance of the decision in Hooda's case dated 13th April, 1989. We have held that the appointment given to these three cannot be taken back. It would be iniquitous to deny relief to Ajay Malik and Arvind Malhon when it has been granted to other candidates who are lower in merit position than the these two respondents. In this view despite the conclusion as aforesaid on the question of law, the direction contained in the impugned judgment of the High Court does not call for any interference qua the respondents in these appeals.

On the aforesaid analogy, l.A.No.4 of 2004 in Writ Petition No.215 of 2002 filed by Jagdish Sharma and Mahavir Singh is allowed since the applicants are higher in merit than Lalit Kumar and Virender Lather aforenoted and also satisfy condition placed in Sandeep Singh's case by this Court. They are thus entitled to be given similar treatment as Ajay Malik and Arvind Malhan in view of peculiar tacts of their case. In this view, the direction of the High Court in judgment dated 3rd July, 2004 in CWP No.7281 of 2000 also does not call for any interference.

Before parting with the case, it deserves to be noticed that to a large extent the State Government itself was responsible for the difficulties because of long gap of number of years between advertisement and appointments to the posts. Rule 9 postulates that the competitive examination shall be held each year but the same are held after 3/4 years. If timely steps are taken by sending the requisitions, in issue of the advertisement holding of examination, completion of selection processes and in making appointments, the difficulties in all likelihood, would not arise. On the other hand, as in these cases, if there are long gap of years in taking any of aforesaid steps, the difficulties are likely to arise. In the present case 3 to 4 years were taken in making appointments in respect of posts advertised on all the four occasions i.e. in the year 1989, 1992, 1996 and 1999. We hope that such a situation would not arise in future. When Rule requires examination to be held in the month of January, it is implicit that the entire process up to the appointment shall be completed as soon as possible thereafter and not later than the end of the year so that when the examination is held in the month of January of the next year, the entire selection process of the previous advertisement is over. Another aspect required to be noticed is about special recruitment under proviso to Rule 5 in the exigencies of the service. In such mode of appointments, the compromise with, in so far as merits of the candidates is concerned, cannot be ruled out. Mr.Rao appearing for State of Haryana has informed us that in the recent years resort to special recruitment was made only in the year 1997. That was challenged and quashed by the judgment of Punjab and Haryana High Court which has attained finality. Ordinarily if the steps under the Rules are taken in time as above indicated there would hardly be an occasion to resort to special recruitment avoiding unnecessary litigation of aforesaid nature which led to the setting aside of the special recruitment of 1997. This is yet another aspect which is required to be borne in mind by the State Government. Be that as it may, in view of aforesaid discussion our conclusions are as under:

> (1) The impugned Act, to the extent of its retrospectivity, except to the limited extent indicated above, does not amount to usurpation of judicial powers by the Legislature. It is not ultra vires. It has removed the basis of decisions in Hooda and Sandeep Singh 's cases.

(2) The Act is not violative of Articles 14 and 16 of the Constitution of India except to a limited extent noticed below.

(3) The first proviso to Section 4(3), to the limited extent it provides for dispensing the services of candidates already appointed, is harsh, excessive, arbitrary and violative of Article 14 of the Constitution, The benefits already granted to the petitioners in Writ Petition "Nos. 215 to 218 and 224 of 2002 could not be taken back. To this extent, retrospectivity is ultra vires. In all other respects, it is valid.

(4) The directions of the High Court in favour of respondents Ajay Malik and Arvind Malhan subject matter of Civil Appeal Nos.3937-38 of 2001 are maintained. For the same reason, Jagdish Sharma and Mahavir Singh being higher in merit than Lalit Kumar and Virender Lather would also be entitled to similar treatment.

(5) The judgments of the High Court in Civil Appeal Nos.8385 to 8393 of 2000. in view of the provisions of the Act, are set aside.

Delay condoned. The special leave petition is disposed in the aforesaid terms.

Interlocutory Application No.4 of 2004 is allowed in above terms.

All the writ petitions and Civil Appeals are also disposed of in the aforesaid terms leaving the parties to bear their own costs.