S.R. Bhagwat & Ors vs The State Of Mysore on 12 September, 1995

Equivalent citations: 1996 AIR 188, 1995 SCC (6) 16, AIR 1996 SUPREME COURT 188, 1995 (6) SCC 16, 1995 AIR SCW 3918, 1995 LAB. I. C. 2809, (1995) 6 JT 444 (SC), 1995 (6) JT 444, (1995) ILR (KANT) 2971, (1995) 31 ATC 452, (1995) 2 CURLR 797, (1995) 71 FACLR 753, (1995) 2 LAB LN 1130, (1995) 4 SCT 601, 1995 SCC (L&S) 1334

Author: S.B Majmudar

Bench: S.B Majmudar, S.P Bharucha

PETITIONER:
S.R. BHAGWAT & ORS.

Vs.

RESPONDENT:
THE STATE OF MYSORE

DATE OF JUDGMENT12/09/1995

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
BHARUCHA S.P. (J)
FAIZAN UDDIN (J)

CITATION:
1996 AIR 188 1995 SCC (6) 16
JT 1995 (6) 444 1995 SCALE (5)270

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B. Majmudar, J.

William Macpeace Thakare in his lectures on "English Humorists of 18th Century" spoke of Jonathan Swift working in the household of Sir William Temple in the following terms : "His servility was so boisterous that it looked like independence". As will be highlighted in this judgment the servility of judgment-debtor, State of Mysore, the precursor of the State of Karnataka was eqally boisterous when it tried to cast off its judgment debtor's role by resorting to legislative independence, which as will be demonstrated, has remained a legally futile attempt.

This is a petition under Article 32 of the Constitution of India. The petitioners have brought in challenge the provisions of the Mysore Ordinance 1 of 1973, namely, The Mysore State Civil Services (Regulation of Promotion, Pay and Pension) Ordinance No. 1 of 1973. By an amendment to the petition they have also brought in challenge the provisions of the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 (hereinafter referred to as `the impugned Act') which replaced the State Ordinance. At the stage of arguments learned counsel for the petitioners concentrated his attack on the provisions of Sub-sections (2), (3), (4), (5), (6), and (8) of Section 4 as well as Section 11 Sub-section (2) of the Act in so far as they conflicted with the order of the High Court, which had become final between the parties. It is not necessary to refer hereinafter to the provisions of the erstwhile Ordinance which has been replaced by the Act, the provisions of which are brought on the anvil of scrutiny in this petition.

Background Facts In order to highlight the grievance of the petitioners against the impugned provisions of the Act it is necessary to note at the outset the facts leading to this petition. Petitioners Nos. 1 to 5 were civil servants of the erstwhile State of Hyderabad and Bombay. Their services stood allotted to the new State of Mysore under Section 115 of the States Reorganisation Act, 1956 (hereinafter referred to as the `Reorganisation Act'). The new State of Mysore was formed with effect from 1.11.1956 under the provisions of the Reorganisation Act, enacted by the Parliament in exercise of its powers under Articles 3 and 4 of the Constitution of India. Section 115 of the Reorganisation Act provided for allotment of civil servants of the erstwhile States territories of which were transferred to the successor State by the provisions of Part II of the Act and accordingly the petitioners' services stood statutorily allotted to the new State of Mysore. In this context the Parliament conferred the power of integration of services on the Central Government under Section 115(5) of Reorganisation Act. Accordingly integration of services took effect from 1.11.1956.

After the reorganisation of the States the Central Government for purposes of effecting integration of services laid down the principles relating to equation of posts and the preparation of seniority lists. The Central Government also directed the State Government to decide provisionally the equation of posts and also to fix seniority and to call for representations from the aggrieved officials, to send the same for final decision by the Government of India. In pursuance of the directions of the Central Government, the State Government took its own time to prepare provisional Inter-State Seniority Lists and to call for objections. The State Government also directed the appointing authorities of the new State of Mysore to make provisional promotions on the basis of the provisional inter-State Seniority Lists subject to the clear condition that promotion should be revised in accordance with the ranking in the Final Seniority Lists to be effective from 1.11.1956 as decided by the Government of India in exercise of its powers under Section 115(5) of the Reorganisation Act. Sub-section (7) of Section 115 of the Reorganisation Act laid down that,

`nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State, provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.' On account of aforesaid integration of services of employees of States which got reorganised as aforesaid, till the inter-se seniority of the concerned allotted employees of such States was finally determined by the Central Government as required by Sub-section (5) of Section 115 of Reorganisation Act, the reorganised States like the State of Mysore were permitted to act on the basis of provisional seniority list of such employees and to effect promotions on that basis so that the administration of the reorganised States might not suffer. But that was subject to the rider that the said provisional list was subject to alterations when final list was prepared and once that happened the concerned State Government had to give effect to the final list. The said principle was laid down by this Court in the case of G.S. Ramaswamy etc. etc. v. The Inspector General of Police, Mysore State, Bangalore AIR 1966 SC 175 at page 180 as under :

> "The next point that has been urged is that in any case till final integration of service was made, the State Government was not entitled to take into account the provisional list of sub- inspectors and could only proceed to give promotions and to make transfers region-wise according to the eligibility lists of former States from which the territories came to the new State and if that was done the petitioners being senior in their region could not be reverted..... We can see nothing in law which prevents the State Government from proceeding according to the provisional list after such list was prepared. We are of opinion that the view taken by the Mysore High Court in the earlier writ petitions after the framing of the provisional seniority list is correct and the State Government would be entitled to act on that list subject of course to this that if the provisional list is in any way altered when the final list is prepared, the State Government would give effect to the final list."

Petitioners Nos.1, 2 and 4 had joined service in the former State of Bombay and were on 31.10.1956 in the category of Deputy Conservator of Forests. Petitioner No.3 was also a Deputy Conservator of Forests in the former Hyderabad State. In the year 1957 the State Government made provisional equation. The posts of Senior Conservator of Forests and Assistant Conservator of Forests, were equated with the post of Deputy Conservator of Forests coming from Hyderabad and Bombay. This was objected to by the petitioners and others. The State Government again published a list in 1960 with slight modification. However, the Central Advisory Committee to whom the representations were forwarded as per the provisions of Sub-section (5) of Section 115 of the Reorganisation Act, accepted the petitioners' contentions. As a result in category III only the officials, namely, Deputy Conservator of Forests of Hyderabad and Bombay and Senior Assistant Conservator of Forests from Mysore were included. The Government of India accepted the said equation and communicated it to the State Government on 7.11.1962.

Thereafter several writ petitions were presented before the Mysore High Court being Writ Petition No.2186 of 1963 and others. They were disposed of by the High Court. The main judgment was

rendered in Shankariah v. Union of India 1965(2) Mysore Law Journal 40. The correctness of this decision was challenged before this Court. But the appeals were dismissed. Even thereafter in accordance with the directions of the Central Advisory Committee the Union Government again considered the matter and fresh notifications were issued in May 1969. These notifications were on the same line as the earlier notifications. A fresh batch of writ petitions was filed before the High Court of Mysore which dismissed them by order dated 21.9.1971. Special Leave Petitions against this decision were also dismissed by this Court on 22.12.1972. Thus final adjudication was made regarding the claim of petitioners and others similarly situated for equation and seniority.

In the background of the aforesaid settled legal position the petitioners claimed that though they were senior in the final seniority lists to many others, their juniors had got promoted in the meantime on the basis of higher ranking in the provisional seniority list which was earlier operative till it got superseded by the final seniority list as aforesaid. As their claim for being granted deemed dates of promotions with all consequential benefits was not accepted by the State of Mysore, the petitioners filed writ petitions before the High Court of Karnataka being Writ Petitions Nos. 2598 of 1970 and others. All these five writ petitions filed by the petitioners came to be allowed by a Division Bench of the High Court of Mysore at Bangalore by an order dated 21.9.1971. The State of Mysore was the first respondent in those petitions and which is the main respondent in the present writ petition. While allowing these writ petitions the Division Bench of the High Court granted relief to the petitioners in the following terms :

> "We, therefore, make a common order in all these writ petitions that the case of each of these petitioners be considered for promotion to the post next above the cadre of the post he was holding on 1.11.1956 as on the date on which any one of his juniors according to the final inter State Seniority List was for the first time so promoted and that if he is found fit and promoted he be given all including consideration for promotion to higher cadres and financial benefits. Time three months."

It is not in dispute between the parties that pursuant to the aforesaid direction issued by the Division Bench of the High Court the respondent-State has considered the cases of all the petitioners for being granted deemed dates of promotions and they have been given such deemed dates of promotions. The aforesaid decision of the Division Bench has become final between the parties. As consequential monetary benefits on the grant of deemed promotions to the petitioners as directed by the aforesaid decision were not made available to the petitioners they filed contempt petitions in the High Court. These contempt petitions were got adjourned from time to time before the High Court by the respondent-State. In the meantime the respondent-State resorted to its legislative powers and issued the impugned Ordinance which ultimately culminated into the impugned Act. By the impugned provisions of the Ordinance and the Act 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 are sought to be taken away as can be seen from the scrutiny of the Act. It is under these circumstances that the petitioners filed this petition under Article 32 for getting a declaration that the impugned provisions in so far 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 over-ruling of binding judicial decisions and seek to

deprive them of their fundamental rights guaranteed under the Constitution. Rival Contentions Learned counsel for the petitioners in support of his submission has relied upon a number of decisions of this Court with a view to submitting that the impugned provisions clearly seek to nullify final binding dicisions of the High Court against the State and in favour of the petitioners. It is an admitted position that common decision of the Division Bench of the High Court, has not been challenged higher up by the respondent-State. Learned senior counsel for the respondent Shri Madhava Reddy on the other hand fairly submitted that he could not support provisions which attempted to bypass the High Court's directions. His principal submission, however, was that consequential financial benefits directed by the High Court did not cover monetary benefits flowing from deemed promotions. He also in passing submitted that the foundation of the High Court judgment was displaced by the impugned Act but ultimately did not pursue the point any further. Hence we need not dilate on that additional aspect any further. Conclusion and Reasons for the same Having given our anxious consideration to rival contentions we have reached the conclusion that the impugned provision of the Act, namely, Section 11 Sub-section (2) is clearly ultra vires the powers of the State Legislature as it encroaches upon the judicial field and tries to over-rule the judicial decision binding between the parties and consequently the relevant sub-sections of Section 4 which are also in challenge will have to be read down as indicated hereinafter in this judgment. Before we advert to the relevant provisions of the impugned Karnataka Act it will be appropriate to keep in view the settled legal position governing the present controversy.

It is now well settled by a catena of decisions of this Court 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 over-rules 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 an enactment having retrospective effect. We may only refer to two of these judgments.

A Constitution Bench of this Court in the case of Cauvery Water Disputes Tribunal (1993 Supp. (1) SCC 96(II) had to pronounce on the validity of Karnataka Kauvery Basin Irrigation Protection Ordinance, 1991 by which an interim order passed by a statutory Tribunal supported by the decision of this Court dated 26th April 1991 which had ruled that the Tribunal had power to consider the question of granting interim relief since it was specifically referred to it, was sought to be displaced. Sawant, J., speaking for the Constitution Bench held that the said provisions were unconstitutional and ultra vires. In paragraph 76 of the Report the following observations were made :

> "The principle which emerges from these authorities is that 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 of the State and to functioning as an appellate court or tribunal."

In the case of G.C. Kanungo V. State of Orissa (JT 1995 (4) SC 589) a Division Bench of this Court speaking through Venkatachala, J., had to consider the validity of Arbitration (Orissa Second

Amendment) Act, 1991 which sought to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by the Act itself. Striking down the provisions as ultra vires and illegal Venkatachala, J., made the following observations in paragraph 28 of the Report :

> "Thus, the impugned 1991 Amendment Act seeks to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by that Act itself. When, the awards made under the 1984 Amendment Act by the Special Arbitration Tribunals in exercise of the State judicial power conferred upon them which cannot be regarded as those merged in Rules of Court or judgments and decrees of Courts, are sought to be nullified by 1991 Amendment Act, it admits of no doubt that legislative power of the State Legislature is used by enacting impugned 1991 Amendment Act to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself, a judicial power. [See Re:
>
> Cauvery Water Disputes Tribunal (1991) Supp. 2 SCR 497]. From this, it follows that the State Legislature by enacting the 1991 Amendment Act has encroached upon the judicial power entrusted to judicial authority resulting in infringement of a basic feature of the Constitution - the Rule of Law. Thus, when the 1991 Amendment Act nullifies the awards of the Special Arbitration Tribunals, made in exercise of the judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, we have no option but to declare it as unconstitutional having regard to the well settled and undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid and not binding, for such powers, if exercised, would not be legislative power exercised by it, but judicial power exercised by it encoaching upon the judicial power of the State Vested in a judicial Tribunal as the Special Arbitration Tribunals under 1984 Amendment Act. Moreover, where the arbitral awards sought to be nullified under the 1991 Amendment Act are those made by Special Arbitration Tribunals constituted by the State itself under 1984 Amendment Act to decide arbitral disputes to which State was a party, it cannot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power for grant of such permission as could result in allowing the State, if nothing else, abuse of its power of legislation."

In view of the aforesaid settled legal position let us see how far the impugned provisions of the Act bear scrutiny.

We may note at the very outset that in the present case the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions. 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.

As already mentioned earlier the petitioners have attacked the impugned provisions only to the extent they seek to deprive consequential financial benefits to them on the basis of deemed promotion given to them by the State in compliance with the decision of the Division Bench aforesaid. Consequently we will examine the challenge only from this limited angle. But before we do so it would be appropriate to refer to the statutory settings in which the impugned provisions saw the light of the day. The impugned Karnataka Act 11 of 1974 is headed by very instructive Preamble. It will be profitable to glance at the provisions of the Preamble to the impugned Act :

> "An Act to provide for the prospective promotions of civil servants, and to regulate the pay, seniority, pension and other conditions of service of civil servants in the State of Karnataka including those that are allotted or deemed to be allotted to serve in connection with the affairs of the State of Karnataka under or in pursuance of section 115 of the States Reorganisation Act, 1956:
>
> Whereas on the basis of the ranking of civil servants in the several inter- State seniority lists prepared in pursuance of sub-section (5) of section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), courts have directed the making of retrospective promotions to statutory and other offices;

And whereas as held by the Supreme Court in Ajit Singh Vs. State of Punjab, reported in All India Reporter 1967, Supreme Court 856 and in Income-Tax Officer, Alleppy Vs. N.C. Ponnoose, reported in All India Reporter 1970, Supreme Court 385 appointments of civil servants to offices in which statutory functions are exerciseable cannot be made with retrospective effect;

And whereas retrospective promotions involve payment of sums of money to persons who have not worked in the promotional posts of officers concerned, to the detriment of the finances of the State, besides involving retrospective reversions rendering invalid the statutory functions discharged by the persons reverted;

And whereas retrospective promotions preclude the determination of the suitability of the civil servants to hold the promotional posts or offices and will enable them to continue in such posts or offices only on the ground of their eligibility to promotions, resulting in the continuance of even unsuitable civil servants in promotional posts or offices to the detriment of public interest;

And whereas it is necessary and expedient to provide against the said consequences:

> And whereas the Central Government has given previous approval under the proviso to sub-section (7) of section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) communicated in letter No. 5/5/73-SR (S) dated 22nd February 1973 of the Government of India, Cabinet Secretariat, Department of Personnel and Administrative Reforms;"

A mere look at the third and fourth paragraphs of this preamble shows the legislative intent to bypass the final directions contained in the Division Bench judgment of the High Court or any other same final judgment in favour of concerned parties that they may be given retrospective promotions and all monetary benefits pursuant thereto. Keeping in view the aforesaid key to the passing of the Act, we will turn now to the relevant provisions of the Act. As per sub-section (2) of Section 1 of the Act, Section 1 as well as Sections 2 to 10 and 12 shall be deemed to have come into force on the first day of November 1956. It is to be noted that 1st November 1956, was the date on which the States Reorganisation Act, 1956 was brought into force and which date under the Reorganisation Act was treated as the appointed day. Section 2 Clause (a) defines an `allottee' to mean, `a Government servant allotted or deemed to have been allotted to serve in connection with the affairs of the State of Karnataka under or in pursuance of Section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956)'. It is necessary to note that State of Mysore subsequently got re-designated as State of Karnataka. As per clause (c) of Section 2 `final seniority list' means, `an inter-State seniority list of allottees prepared in accordance with the decisions of Central Government under the provisions of sub-section (5) of Section 115 of the States Reorganisation Act, 1956 (Central Act 37 of 1956)'.

Clause (d) of Section 2 defines `inter-State seniority list' to mean, `an inter-State seniority list prepared from time to time, on the basis of the seniority in which the eligibility of an allottee to promotion to higher post or posts is considered. As the petitioners are allottees within the meaning of the said term as defined by Section 2(a) we may straightaway turn to Section 4 of the Act which deals with such allottees. As some parts of sub-sections of Section 4 are brought in challenge in these proceedings it will be profitable to reproduce entire Section 4 with its sub-sections at this stage :

"4. Promotions, etc., of allottees -(1) Where the seniority of an allottee as specified in the provisional inter-State seniority list in any class of post or office has been altered in the final seniority list relating to that class, every promotion made on any date after the first day of November 1956, on the basis of seniority-cum-merit, shall be reviewed with reference to the qualifications and other conditions laid down in the rules of recruitment applicable at the relevant time for such promotion and the ranking in the final seniority list assigned to the allottees in that class of post or office. If any person senior in rank than the person promoted is held to be suitable for promotion on such date (hereinafter in this section referred to as the date of eligibility), an order shall, subject to section 9, be made promoting the said person to officiate in the said post or office with effect from a prospective date to be specified in the order.

(2) As soon as may be, after the person promoted under sub-section (1) is declared to have satisfactorily completed the period of officiation in the promoted post or office an order shall, subject to section 9, be made directing that he shall be entitled to initial pay on the date of actual promotion to the post or office as if he was holding

the said post or office from the date of eligibility and drawn the pay and allowances accordingly, but such person shall not be entitled to payment of any arrears for the period prior to the date of his actual promotion. His rank in the seniority list of persons in the class or grade of service to which he is promoted shall be fixed as if he had been promoted to that class or grade of service on the date of eligibility. (3) Where consequent upon the review of promotions made under sub-section (1), it is found that an allottee, who, before the coming into force of sections 3, 11 and 13 had been promoted to a higher class or grade of service found eligible for promotion to that higher class or grade of service from a date prior to the date of actual promotion and subject to section 9, is declared to have satisfactorily completed the period of officiation in the promoted post or office, an order shall be made directing that he shall be entitled to initial pay on the date of actual promotion to the post or office as if he was holding the said post or office from the date on which he is found eligible for promotion and drawn the pay and allowances accordingly, but he shall not be entitled to payment of any arrears for the period prior to the date of the actual promotion. [Where, on such review he is found eligible for promotion to a higher class or grade of service from a date subsequent to the date of his actual promotion to such class or grade of service, his pay on the date of eligibility shall be refixed as if he had been promoted on such date but he shall not be liable to refund the excess pay and allowances drawn by him up to the date of issue of the order fixing the date of eligibility]. His rank in the seniority list of persons in the class or grade of service to which he is promoted shall be fixed as if he had been promoted to that class or grade of service on the date on which he is found eligible for promotion.

(4) Where an order is made in respect of any allottee under sub-section (2) or, as the case may be, under sub-

section (3), and the ranking in the seniority list of persons in the promoted class or grade of service, as fixed by such order, stands revised, the promotions made from that class or grade of service to the next higher class or grade of service shall be reviewed in accordance with and subject to the provisions of sub-section (1) as if reference therein to the final seniority list were references to the aforesaid revised seniority list and the provisions of sub-section (2) shall, mutatis mutandis, be applicable to every promotion so made.

(5) The provisions of sub-section (4), mutatis mutandis, be applicable in respect of promotions of allottees to the next higher classes or grades of the same service.

(6) The provisions of sub-section (3) shall, mutatis mutandis, be applicable in respect of review of promotions of allottees made under sub-sections (4) and (5).

(7) Where in respect of promotions on the basis of seniority-cum-merit from any class or grade of service to the next higher class or grade of service, the rules of recruitment require service for a minimum period in the former class or grade to become eligible for promotion, the said period shall in its application to an allottee eligible for promotion under this section, be deemed to be the period

during which he satisfactorily completes the period of officiation in the post or office of that class or grade of service and no such minimum service shall be necessary in the case of an allottee whose record of service was satisfactory on the relevant dates of eligibility or the relevant dates on which he is found eligible for promotion.

(8) In respect of promotions from any class or grade of service by selection to the next higher class or grade of service, where an allottee would have been eligible for consideration if he had been promoted to the former class or grade of service on the basis of his seniority in the final seniority list, such allottee, shall, subject to section 9, be considered for selection to the next higher class or grade of service, immediately after he satisfactorily completes the period of officiation in the said former class or grade of service. If he is selected and promoted to the higher class or grade of service and satisfactorily completes his period of officiation in the said class or grade, he shall be entitled to initial pay on the date of actual promotion to the said class or grade as if he was holding the said post or office from the date on which his immediate junior in the lower class or grade was promoted to the said class or grade of service, but he shall not be entitled to payment of any arrears for the period prior to the date of his actual promotion. His rank in the seniority list of the persons in the said class or grade shall be fixed as if he had been promoted on the date immediately preceding the date on which his immediate junior in the lower class or grade was promoted to the selection class or grade of service.

(9) An order under sub-section (2) in respect of an allottee who had been reduced to a lower stage in a time scale and whose increment had been withheld shall be subject to such modification as the State Government may, by order direct.

(10) No promotions of allottees made on the basis of any provisional inter-State seniority list, shall be reviewed except after the publication of the final seniority list and in the manner provided in this section.

Explanation :- For purposes of this sub- section provisional inter-State list includes every inter-State seniority list used as the basis for carrying on the day-to-day administration whether prepared by the State Government or declared by court as operative until the publication of the final seniority list."

We may recapitulate at this stage that the petitioners have mounted a limited attack on the impugned provisions of the Act in so far as they deprive them of the monetary benefits flowing from the deemed promotion to be given to them pursuant to the orders of the Division Bench of the High Court which have become final between the parties. We have extracted the aforesaid Section with its relevant sub- sections wherein the impugned provisions of the concerned clauses have been indicated by underlining them. Petitioners contend that underlined portions of sub-sections (2), (3) and (8) of Section 4 clearly fall within the teeth of binding decision of the Division Bench of the High Court and they are in clear conflict with the said binding decision. As we are not concerned with other provisions of the Act except Section 11(2) we may straightaway turn to Section 11. The said provision deals with over-riding effect of the Act. It reads as under :-

"Over-riding effect. - (1) The provisions of this Act or of any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law or order having the force of law or rules made under the proviso to Article 309 of the Constitution of India for the time being in force or any provision regulating the conditions of service of any allottee or in any order made by virtue of any such law, rules or provisions.

(2) Notwithstanding anything contained in any judgment, decree or order of any court or other competent authority the rights to which a civil servant is entitled to in respect of matters to which the provisions of this Act are applicable, shall be determined in accordance with the provisions of this Act, and accordingly, any judgment, decree or order directing promotion or consideration for promotion of civil servants and payment of salaries and allowances consequent upon such promotion shall be reviewed and orders made in accordance with the provisions of this Act."

A mere look at sub-section (2) of Section 11 shows that the respondent, State of Karnataka, which was a party to the decision of the Division Bench of the High Court against it had tried to get out of the binding effect of the decision by resorting to its legislative power. The judgments, decrees and orders of any court or the competent authority which had become final against the State were sought to be done away with by enacting the impugned provisions of sub- section (2) of Section 11. Such an attempt cannot be said to be a permissible legislative exercise. Section 11(2), therefore, must be held to be an attempt on the part of the State Legislature to legislatively over-rule binding decisions of competent courts against the State. It is no doubt true that if any decision was rendered against the State of Karnataka which was pending in appeal and had not become final it could rely upon the relevant provisions of the Act which were given retrospective effect by sub-section (2) of Section 1 of the Act for whatever such reliance was worth. But when such a decision had become final as in the present case when the High Court clearly directed respondent-State to give to the concerned petitioners deemed dates of promotions if they were otherwise found fit and in that eventuality to give all benefits consequential thereon including financial benefits, the State could not invoke its legislative power to displace such a judgment. Once this decision had become final and the State of Karnataka had not thought it fit to challenge it before this Court presumably because in identical other matters this Court had upheld other decisions of the Karnataka High Court taking the same view, it passes one's comprehension how the legislative power can be pressed in service to undo the binding effects of such mandamus. It is also pertinent to note that not only sub-section (2) of Section 11 seeks to bypass and over-ride the binding effect of the judgments but also seeks to empower the State to review such judgments and orders and pass fresh orders in accordance with provisions of the impugned Act. The respondent-State in the present case by enacting sub-section (2) of Section 11 of the impugned Act has clearly sought to nullify or abrogate the binding decision of the High Court and has encroached upon the judicial power entrusted to the various authorities functioning under the relevant statutes and the Constitution. Such an exercise of legislative power cannot be countenanced.

It was contended by Shri Madhava Reddy that even assuming that the Division Bench judgment remained binding on the State despite the provisions of the impugned Act, all that the Division Bench has directed the State is to consider the case of the petitioners for deemed promotions on the basis of the final seniority list. That has already been done and the petitioners have no grievance for

the same. So far as the consequential financial benefits are concerned they would not cover the monetary benefits flowing from such deemed promotions. Even this submission cannot be countenanced. We have already extracted earlier the operative portion of the judgment of the Division Bench. It has been in terms directed that if petitioner is found fit and promoted he may be given all the benefits consequential thereto including the financial benefits. It is, therefore, obvious that once the deemed date of promotion is given to the concerned petitioners it cannot be merely notional promotion re-fixing his pay in the promotional cadre with increments etc. but also would bring in its wake all consequential financial benefits, namely, the salaries that have accrued to them on account of such deemed promotions. Whether such deemed promotions can also entail actual monetary benefits when the concerned employees had not worked on the promotional posts, is a question which could have been agitated by the respondent-State, if so advised, by challenging the order of the Division Bench before this Court. That was not done. Instead it resorted to its legislative power for undoing the said directions of the Division Bench by arming itself with the power to review that judgment by resort to its legislative function. That was clearly not permissible as it was an act of encroachment on the judicial pronouncement of the High Court which had remained binding on the respondent-State. The ratio of the decisions of this Court as discussed earlier clearly get attracted on the facts of the present case and on the same grounds on which this Court invalidated the relevant provisions of Arbitration (Orissa Second Amendment) Act, 1991 in G.C. Kanungo (supra). Section 11 sub-section (2) of the impugned Act also has to be declared ultra vires and invalid.

We, therefore, strike down Section 11 sub-section (2) as unconstitutional, illegal and void. So far as the underlined impugned portions of Section 4 sub-sections (2), (3) and (8) are concerned, they clearly conflict with the binding direction issued by the Division Bench of the High Court against the respondent-State and in favour of the petitioners. Once respondent-State had suffered the mandamus to give consequential financial benefits to the allottees like the petitioners on the basis of the deemed promotions such binding direction about payment of consequential monetary benefits cannot be nullified by the impugned provisions of Section 4. Therefore, the underlined portions of sub-sections (2), (3) and (8) of Section 4 will have to be read down in the light of orders of the court which have become final against the respondent-State and in so far as these provisions are inconsistent with these final orders containing such directions of judicial authorities and competent courts, these impugned provisions of Section 4 have to give way and to the extent of such inconsistency must be treated to be inoperative and ineffective. Accordingly the aforesaid provisions are read down by observing that the statutory provisions contained in sub- sections (2), (3) and (8) of Section 4 providing that such persons who have been given deemed promotions shall not be entitled to any arrears for the period prior to the date of their actual promotion, shall not apply in cases where directions to the contrary of competent courts against the respondent-State have become final.

In the result, this writ petition succeeds. Section 11 sub-section (2) is struck down as ultra vires the legislative powers of the State. Sub-sections (2), (3) and (8) of Section 4 are read down as aforesaid. The respondent- State shall comply with the directions contained in the binding decision of the High Court of Karnataka dated 21.9.1971 in Writ Petition Nos. 2598, 3302-3304 and 4586 of 1970 and shall make available all consequential financial benefits to the concerned petitioners as directed by

the High Court within a period of eight weeks from the receipt of the orders of this Court at its end. Rule issued in the Writ Petition is accordingly made absolute with costs.