

S. Prakash & Anr vs K.M. Kurian & Ors on 13 May, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2094, 1999 (5) SCC 624, 1999 AIR SCW 1822, 1999 LAB. I. C. 2341, 1999 (3) SCALE 540, 1999 (3) LRI 603, 1999 (6) ADSC 125, (1999) 3 JT 607 (SC), (1999) 2 SERVLR 595, (1999) 2 ESC 1531, (1999) 4 ANDH LT 18, 1999 SCC (L&S) 997, (1999) 82 FACLR 856, (1999) 2 KER LT 710, (1999) 3 LAB LN 424, (1999) 4 SCT 45, (1999) 5 SUPREME 479, (1999) 3 SCALE 540

Bench: M Jagannadha Rao, M.B.Shah

PETITIONER:

S. PRAKASH & ANR.

Vs.

RESPONDENT:

K.M. KURIAN & ORS.

DATE OF JUDGMENT: 13/05/1999

BENCH:

M Jagannadha Rao, M.B.Shah

JUDGMENT:

Shah, J.

Leave granted.

These appeals are filed against the common judgment and order passed in Original Petition Nos.11764 of 1996, 6540, 12539 and 13871 of 1997 and W.A. Nos.1842 and 1938 of 1996, 84 and 351 of 1997 by the Division Bench of the Kerala High Court on 16th April, 1998. Persons selected to the post of Sales Tax Officers in the Agricultural Income Tax and Sales tax Department by the Kerala Public Service Commission filed petitions in the High Court. They were selected and included in the ranked list published by the Commission on 13th May, 1995 which was to expire on 12th May, 1998. As authorities failed to appoint them against the vacancies that arose in the quota earmarked for direct recruits and since only a limited number of candidates have been appointed, they approached the Court for a mandamus and consequential directions. The learned Single Judge of the High Court of Kerala arrived at the conclusion that Rule 5 deals with the subject-matter governed by the Special Rules and both have to be harmoniously read and understood. Therefore, direct recruitment to 20% of the vacancies provided in the Special Rules shall be worked out on the basis of the provisions

contained in Note 3. The Court also held that there is no repugnancy between Kerala Agricultural Income Tax and Sales Tax Rules Category 3 and Rule 5 of the General Rules. The said judgment and order was set aside in writ appeal. The Division Bench of the High Court held that the amendment brought to the General Rules [Kerala State and Subordinate Service Rules] as per notification dated 5th December, 1992 would take away the rights of the petitioners for appointment against 20% of the successive substantive vacancies arising in the cadre of Sales Tax Officers and that the view taken by the Government was unsustainable. Secondly, it was held that amendment to the General Rules was in conflict with the Special Rules and it will not hamper the rights of persons arising out of Special rules. Hence petitions/appeals were allowed and the Secretary, Board of Revenue (Taxes) was directed to work out 20% of the successive substantive vacancies for direct recruitment as on 11th August, 1987 and arising thereafter as per the Special Rules so as to enable the Public Service Commission to appoint the eligible candidates. That order is challenged before us in this appeal by special leave. Before appreciating the contentions raised by the learned counsel for the parties and for deciding the issue involved, it would be necessary to refer first to the relevant rules of the Kerala State and Subordinate Services Rules, 1958 which is divided in Parts I, II and III. Part I contains definitions; Part II contains General Rules and Part III contains rules applicable to each Service or class of service. Rules 2(8) provides that General Rules means rules in Part II of these rules. Rules 2 and 5 of the General Rules are as under:- 2. Relation to the Special Rules:- If any provision in the general rules contained in the part is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III, the later shall in respect of that service, prevail over the provision in the general rules in this part.

5. Method of recruitment: - Where the normal method of recruitment to any service, class or category is neither solely by transfer but is both by direct recruitment and by transfer: -

(a) the proportion or order in which the Special Rules concerned may require vacancies to be filled by persons recruited direct and by those recruited by transfer shall be applicable only to substantive vacancies in the permanent cadre;

(b) a person shall be recruited direct only against a substantive vacancy in such permanent cadre, and only if the vacancy is one which should be filled by a direct recruit under the Special Rules referred to in clause (a) and © recruitment to all other vacancies shall be made by transfer.

Note: (1) All permanent vacancies and temporary vacancies except those of short duration shall be treated as substantive vacancies.

(2) Leave vacancies and vacancies of less than 6 months duration shall be treated as vacancies of short duration.

(3) Whenever a ratio or percentage is fixed for different methods of recruitment/appointment to a post the number of vacancies to be filled up by candidates from each method shall be decided by applying the fixed ratio or percentage to the cadre strength of the post to which the recruitment/transfer is made and not to the vacancies existing at that time.

The aforesaid Note (3) was added by the Rules called the Kerala State Subordinate Services (Amendment) Rules, 1992. The object and reason for amending the said rule is mentioned in the Explanatory Note which inter alia provides that for various posts in the Departments of Government, appointments are to be made by direct recruitment and by transfer; the vacancies are filled up on the basis of ratio or percentage fixed in the respective special rules; Government considered it necessary to clarify that proportionate vacancies to be filled up by different methods should be calculated on the basis of the cadre strength and not on the basis of total number of vacancies. For achieving the said objects the Rules were amended. Further, the aforesaid Rules are to be construed along with the Kerala Agricultural Income Tax and Sales Tax Services (Rules). These Rules provides that the said service shall consist of categories 1,1A, 2, 3 and 4. Agricultural Income Tax Officers and other are mentioned in Category 3. Rule 2 provides that appointment to the various categories shall be made as follows: - Category Method of appointment

1. -----

2. -----

3. Agricultural income tax 20% of the successive Officers, Intelligence substantive vacancies shall be Officers, Sales Tax filled or reserved to be filled Officers, Additional by direct recruitment and the Law Officer, Manager, remaining shall be filled or Agricultural Income reserved to be filled by transfer Tax and Sales Tax of Assistant Sales Tax Officers, Appellate Tribunals, Sales Tax Inspectors, Agricultural Superintendents in the Income Tax Inspectors, Agricultural Office of the Board of Income Tax and Sales Tax Revenue (Taxes) and Inspectors, Intelligence Inspectors, Managers in the Check-Post Inspectors and Junior Offices of the Deputy Superintendents of the Kerala Commissioners of Agricultural Income Tax and Agricultural Income Sales Tax Subordinate Service. Tax and Sales Tax.

Notwithstanding anything contained In Rule 2(12) of Part I of the Kerala State and Subordinate Service Rules, 1958 persons employed in the Agricultural Income Tax and Sales Sub-ordinate Service shall be allowed relaxation of age limit up to five years to compete for direct recruitment. This amendment shall be deemed to have come into force with effect from 1st April, 1981.

Learned Counsel for the appellants submitted that Note (3) to Rule 5 of the General Rules was added in to bring uniformity in calculating the ratio or percentage of direct recruit and appointment by transfer in all services in the State of Kerala. Therefore, the services that are covered by Special Rules also would be covered by Rule 5 including Note (3). As against this, learned counsel for the direct recruits whose names are appearing on select list submitted that there is conflict between Note (3) to Rule 5 of the General Rules and the method of appointment provided in the Kerala Agricultural Income Tax and Sales Tax Services (Special Rules) as amended. Note (3) provides that the number of vacancies are to be filled in from the direct recruits and transferees by applying a fixed ratio or percentage to the cadre strength, while the Special Rule contemplates that the percentage or ratio should be fixed by taking into account the successive substantive vacancies arising at a point of time. It is, therefore, submitted that in view of the aforesaid conflict Special Rules would prevail particularly because of Rule 2 of General Rules provides that in case of

repugnancy between the two, special rule would prevail. He relied upon the principle expressed in the maxim *generalalia specialibus non derogant* which means general things do not derogate from special things and *generalibus specialias derogant* which according to Osborns Law Dictionary means special things derogate from general things. Before appreciating the rival contentions, we would first refer to the established principles for interpreting the effect of amendment in Rule 5 of General Rules vis a vis the special rules for recruitment, which prescribes ratio or percentage of appointment by direct recruitment, and by transfer. The law on this point is well settled to the effect that from the consideration of the general enactment if the intention of the legislature was to establish a rule of universal application, in such cases, a special provision must give way to the general provision. (Re: Maharaj Shree Umaid Mills Limited vs. Union of India [1963 Suppl. (2) SCR 515 at 531]. Dealing with similar situation in the case of M/s Dalmia Dadri Cement Co. Ltd. vs. The Commissioner of Income Tax [1959 SCR 729 at 737], this Court observed: - Now the rule of construction expressed in the maxim *generalalia specialibus non derogant* is well settled, and we shall also assume in favour of the appellant that the agreement Ex.A, is a special law in the nature of a private Act passed by the British Parliament, and that accordingly s. 3 of the Ordinance should not be construed, unless the contrary appears expressly or by necessary implication, as repealing the provisions of Ex. A. But ultimately, the question is what does the language of the enactment mean?

If the language is clear and unqualified, general rule would prevail. Similarly, in the case of Ajay Kumar Banerjee vs. Union of India [1984 (3) SCC 127 (page 153)] the Court dealt with the rule of interpretation with regard to the general law as well as the special law and held as under: - The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied: (i) The two are inconsistent with each other. (ii) There is some express reference in the later to the earlier enactment. If either of these two conditions is fulfilled, the later law, even though general, would prevail.

The Court further held: From the text and the decisions, four tests are deducible and these are (i) The Legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provision, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist though no express provision in that behalf is found in the general law, and

(iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, Maxwell on the Interpretation of Statutes, Twelfth Edition, pages 196-198.

Further, in the case of R.S. Raghunath vs. State of Karnataka and Another (1992) 1 SCC 335, the Court dealt with the Karnataka General Services (Motor Vehicle Branch) (Recruitment) Rules, 1976. In concurring judgment, Kuldip Singh, J. observed: Even the general law later in time, prevails over the earlier special law if it clearly and directly supercedes the said special law is an unexceptionable proposition of law.

In the aforesaid case, Jayachandra Reddy, J. referred to the decision in Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. 1987(1) S.C.C. 424 wherein the Court observed: interpretation is best which makes the textual interpretation match the contextual and relied upon the following paragraph 33 of the said judgment: Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute- maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

Learned counsel for the appellant also referred to Craze on Statute Law, page 381 which is as under :- (iii) Special enactment repealed by implication if utterly repugnant to subsequent general Act.

But the rule must not be pressed too far, for, as Bramwell L.J. said in Pellas vs. Neptune Marine Insurance Co. (1980) 5 C.P.D. 34, 40 a general statute may repeal a particular statute/ And if a special enactment, whether it be in a public or a private Act, and a subsequent general Act are absolutely repugnant and inconsistent with one another, the courts have no alternative but to declare the prior special enactment repealed by the subsequent general Act. Thus in Bramston vs. Colchester Corpn. (1856) 6 E & B. 246, 253, 254 it was held that the provisions of a local Act, under which certain arrangements had been made for maintaining borough prisoners in county goals, were repealed by section 18 of the general Prisons Act 1842 for, said Lord Campbell C.J., I think it was the intention of the legislature to sweep away all local peculiarities, though sanctioned by special Acts, and to establish one uniform system except in so far as these are express exceptions; and Wightman J. added It was intended to make one general law superseding all local laws as to prisons and repealing all local Acts.

As against this, learned counsel for the respondents referred to the decision in A. B. Krishna and Others vs. State of Karnataka and Others [(1998) 3 SCC 495] and submitted that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, special rule cannot be held to be indirectly repealed or altered merely by force of such general words without any indication of a particular intention to do so. From the aforesaid discussion, it is clear that if the intention of the rule making authority was to establish a rule of universal application to all the services in the State of Kerala for which special rules are made, then special rules will give way to the general rules enacted for that purpose. This has to be found out from the language used in the rules which may be express or by implication. If the language is clear and unqualified, subsequent general rule would prevail despite repugnancy. If the intention of the rule-making authority is to sweep away all the special rules and

to establish a uniform pattern for computation of the ratio or percentage of direct recruits and by transfer, in such case, the special rules will give way. On the basis of the aforesaid settled principles, let us interpret rule 5 as well as Note (3) and the method of recruitment prescribed under the special rules. Rule 5 quoted above provides method of recruitment to any service, class or category where the method of recruitment is neither solely by direct recruitment nor by transfer but is both by direct recruitment and by transfer. It is made specifically applicable to the special rules. Clause (a) provides that the proportion or order will be applicable only to substantive vacancies in permanent cadre; clause (b) provides that direct recruitment shall be only against substantive vacancy in permanent cadre; and recruitment to all other vacancies shall be made by transfer. Note (1) and (2) provide that all permanent vacancies and temporary vacancies except those of short duration shall be treated as substantive vacancies. Note (3) specifically provides that whenever a ratio or percentage is fixed (in special Rules) for different methods of recruitment to a post, the number of vacancies to be filled up by candidates from each method is to be decided by applying a fixed ratio or percentage to the cadre strength of the post to which the recruitment is made and not to the vacancies existing at that time. Therefore, the entire Rule 5 deals with the special rules which provide for filling up of the vacancies to any service, class or category by direct recruitment and by transfer. The language of Note (3) is crystal clear and is for removal of any ambiguity by using positive and negative terms. It applies to all special rules whenever a ratio or percentage is prescribed in the Rules. It also emphatically states that it has to be computed on the cadre strength of the post to which the recruitment is to be made and not on the basis of the vacancies existing at that time. Further, the special rules that provide for different categories and method of appointment, mention for the posts of Agricultural Income Tax Officers and Ors. in category

3. In the said category, method of appointment is (i) 20% of the successive substantive vacancies is to be filled or reserved to be filled by direct recruitment and (ii) the remaining is to be filled or reserved to be filled by transfer. But, how the successive substantive vacancies of permanent nature as provided in Rule 5 clauses (a), (b) and note (1) are to be calculated or computed is not provided. It nowhere provides that vacancies which are to be filled up should be calculated on the basis of existing vacancies at a particular point of time or year or at the time of recruitment. For filling up the said lacuna and also for avoiding any controversy as well as to have a uniform pattern in all services with regard to filling up of vacancies in all cadres in the State services on the basis of fixed ratio or percentage between the direct recruit and appointment by transfer, Note (3) is added. If we take an illustration that cadre strength of a particular post is 1000 and the recruitment is to be made to 100 substantive vacancies, the authority has to find out how many direct recruits and transferees are holding the said post. If transferees are holding 700 posts and direct recruits are holding 200 posts then in such a situation 20% quota of direct recruit is already filled up. Therefore, appointment would be required to made only by transfer. As against this, if direct recruits are holding only 100 posts and remaining 800 posts are held by transferees, then 100 posts would be required to be filled up by direct recruit (20% of 1000) and remaining 100 posts would be required to be filled up by transfer. This would remove the imbalance of percentage between direct recruit and the transferees for most of the times. The result would be the question of reserving the post either for the direct recruit or for the transferee might not survive, as all throughout the proportion or ratio would be maintained. Further, by adding Note (3) to Rule 5, the object of the Government was to achieve uniformity of calculating the successive substantive vacancies for appointment. The

learned counsel for the respondent vehemently contended that as per Rule 2 of the General Rules quoted above, if there is any repugnancy between the general rule and the special rules applicable to any particular service, then, special rules are to prevail in respect of said service over the provisions in the general rules. It is submitted that Rule 5 and Note (3) of that Rule are part of the general rule and, therefore, the special rule in the Kerala Agricultural Income Tax and Sales Tax Services prescribing method of appointment would prevail. It is contended that the said rule specifically provides that 20% of the successive vacancies shall be filled up by direct recruit and remaining shall be filled by transfer. It is, therefore, submitted that whenever substantive vacancies are to be filled in, 20% of the said vacancies are required to be filled in by direct recruit and remaining vacancies are required to be filled in by transfer. He referred to the maxim *generalia specialibus non derogant* meaning thereby general things do not derogate from special things and *generalibus specialias derogant* which means special things derogate from general things. In our view, the aforesaid submission is without any substance. As discussed above, rule 5 of the General Rule is enacted to govern special rules with regard to the method of recruitment in cases when appointments are by direct recruitment and by transfer in any substantive vacancies in permanent cadre. The language used in Rule 5 is clear and unqualified. The intention of the legislature of adding Note 3 is also clear and is added to fill in existing lacuna in the method of recruitment provided in special rules. As stated above, for appointment to category 3, i.e. to the post of Agricultural Income Tax Officers and others, method of appointments only provides that 20% of successive substantive vacancies shall be filled or reserved to be filled by direct recruitment and the remaining vacancies are to be filled or reserved to be filled by transfer. On what basis the substantive vacancies are to be determined was not provided and therefore that lacuna is filled up by the aforesaid Note (3) in Rule 5. In any case, even if there is repugnancy or inconsistency, the law is settled to the effect that general rule later in time prevails over earlier special rule if it clearly and directly supercedes the special rule. It is also well settled that special rule can be altered, abrogated or repealed by general rule by an express provision. In the present case, the language of Note (3) specifically makes it applicable to general rule stating whenever the ratio or percentage is fixed for different methods of recruitment, the method prescribed therein would apply. So the word whenever would cover special rule prescribing ratio or percentage of appointment between direct recruit and by transfer and the Rule making authority has specifically provided that ratio or percentage for the vacancies is to be computed on the basis not to the vacancies existing at that time, but on the basis of the cadre strength. Hence, there is no question of repugnancy between Rule 5, Note (3) and the method of appointment provided in special rules. Further, in the present case, Note 3 was added by amending Rules with effect from 5th December, 1992 while list of persons selected by Public Service Commission for appointment to the Cadre was published on 13th May, 1995. Therefore, persons who were selected and whose names are included by the Public Service Commission in the select list would have no right to say that their recruitment should be governed by the Rules which were existing prior to 1992. However, it has been contended by learned counsel for the selected candidates whose names are appearing in the Select List that process of recruitment started on 11th August, 1987 when the Public Service Commission issued advertisement inviting applications for the post of Sales Tax Officers by direct recruitment (The number of notified vacancies was 16) and that their appointments should be made on the basis of the Rules existed at the relevant time. It is submitted that the amended Rules would govern the future selection and will have no retrospective effect. In our view, in the present case, there is no question of giving

retrospective effect to the Rules which are amended in 1992. Its effect is to be given after its amendment and in the present case after 1995 when the selection process was over. It is to be stated that the addition of Note 3 does not deal with the selection process which was started in 1987 and the selection process is not altered or amended. It is also well settled that a candidate selected and kept on select list does not acquire any absolute right to appointment. Therefore, it is open to the Government to decide how many selected candidates are to be appointed in service on the basis of ratio or percentage prescribed in the service rules. Learned counsel for the respondents have relied upon the G.O.M.S. No. 233/85/GAD dated 27.6.1985. That G.O. reads as follows: - The G.O. read above lays down among other things, that any change made in the qualifications, age or method of appointment etc. prescribed for a post after the issue of the notification by the Kerala Public Service Commission inviting applications in the Gazette in respect of that post will be given effect to for future selections only. In the letter read above the Secretary, Kerala Public Service Commission has advised that the clarification may be issued regarding the scope and ambit of the above Government order.

2. Government have accepted the advice of the Public Service Commission and are please to clarify that the changes in qualifications, method of appointment, age or other conditions of recruitment introduced after the issue of a notification for selection to the post by the Public Service Commission will be given effect to in future selections only, except in cases where the changes announced amount to concessions or exemptions to which persons already included in the ranked list as well as prospective candidates will be entitled and where the changes are of such a minor nature that they can be given effect without the necessity of upsetting any selection procedure under way or of revising the ranked lists already prepared.

3. The sub-para (2) of the G.O. read above will stand modified to the above extent.

From the aforesaid G.O., it is clear that during the selection process, Government had accepted the advice of the Public Service Commission that the changes in the qualifications, method of appointment, age or other conditions of recruitment introduced after the issue of notification for selection to the post by the Public Service Commission will be given effect to in future selections only with an exception as mentioned therein. As stated earlier, in the present case selection process was not over till the list of selected candidates was published by the Public Service Commission on 13th May, 1995 and the impugned Note (3) does not change qualifications, method of appointment, age or other conditions of recruitment. It only fills up the lacuna or clarifies the ambiguity prevailing for computation of ratio or percentage for appointment by direct recruitment and by transfer. Because of the aforesaid factual position, in our view, it is not necessary to discuss judgments cited by the learned counsel for the respondents. However, we would refer to one decision rendered by this Court in Rajasthan Public Service Commission vs. Chanan Ram and Another [(1998) 4 SCC 202] wherein after considering the decision in the P.Ganeshwar Rao vs. State of Andhra Pradesh [(1998) Supp SCC 740], this Court held that if the recruitment rules underwent amendment prior to actual filling up of the advertised posts, the amended rules would apply. The Court also referred to a three-Judge Bench judgment of this Court in Jai Singh Dalal vs. State of Haryana [1993 Supp (2) SCC 600] wherein it has been held that when the special process of recruitment had not been finalised and culminated into select list, the candidate did not have any right to appointment and

that recruitment process could be stopped by the Government at any time before a candidate has been appointed and as the candidate has no vested right to get the process completed except that the Government could be required to justify its action on the touchstone of Article

14. In this view of the matter, we hold that the amendment brought to the general rules (Kerala State and Subordinate Services Rules) by the Notification dated 5th December, 1992 or as pointed out when it was published in the gazette, i.e. 2nd February, 1993 is not repugnant to special rules and that there is no question of taking away the rights of the candidates who were selected by the Public Service Commission. In the result, the appeals are allowed, the impugned judgment and order passed by the Division Bench is set aside and the order passed by the learned Single Judge is restored.