Supreme Court of India
M. S. Shvananda vs Karnataka State Road Transport ... on 18 September, 1979
Equivalent citations: 1980 AIR 77, 1980 SCR (1) 684
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
M. S. SHVANANDA

Vs.

RESPONDENT:
KARNATAKA STATE ROAD TRANSPORT CORPORATION AND OTHERS

DATE OF JUDGMENT18/09/1979

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
FAZALALI, SYED MURTAZA
KAILASAM, P.S.

CITATION:
1980 AIR 77 1980 SCR (1) 684
1980 SCC (1) 149
CITATOR INFO :
F 1989 SC1614 (17)
RF 1991 SC1789 (4,6)

ACT:
Karnataka Contract Carriages (Acquisition) ordinance 1976, Cl. 20(3) of Karnataka Contract Carriages (Acquisition) Act 1976, Sections 19(3) and 31(2)-Scope and effect of-Contract carriages acquired-Whether employees have a vested right of absorption.

General Clauses Act 1597 (X of 1897) S. 6-Repeal of Statute-Right acquired or accrued unaffected-Mere hope or expectation of or liberty to apply for acquiring a right nor preserved.

HEADNOTE:
The Karnataka Contract Carriage (Acquisition) ordinance, 1976 was promulgated on January 30, 1976 with the object of acquiring the contract carriages operating in the State. Sub-clause (3) to cl. 20 of the ordinance provided for absorption of certain categories of employees of contract carriage operators in the service of the Corporation, and the ratio for absorption for the different categories of employees that were entitled to be absorbed.

On the same day, the State Government made an order under sub-cl. (I) to cl. 20 of the ordinance transferring the contract carriages that vested in the State Government to the Karnataka State Road Transport Corporation.

This ordinance was subsequently replaced by the Karnataka Contract Carriages (Acquisition) Act, 1976 which was published in the Gazette dated March 12, 1976. The ordinance was repealed by the Act, which re-enacted the provisions of the repealed ordinance, with a saving clause in sub-s. (2) of s. 31 for presentation of any thing done or any action taken. The Act was substantially in similar terms, except for the difference that the ratio prescribed by proviso to sub-cl. (3) to cl. 20 of the ordinance which laid down the categories of persons who could be absorbed in the service of the Corporation, was substantially altered and a new ratio was inserted in the proviso to sub-s. (3) of s. 19 of the Act. Otherwise, sub-s. (3) of s. 19 of the Act and sub-cl. (3) to cl. 20 of the ordinance were identical in every respect. Under the Proviso to sub-cl. (3) to cl. 20, the total strength of the employees of the erstwhile Carriage operators allowable for absorption was 7.9 per vehicle while under the proviso to sub-s. (3) of s. 19 of the Act, the ratio worked out to 4.45 per vehicle. Further, while under the ordinance, conductors were entitled to be absorbed, the ratio provided under the Act showed that conductors were not included in the categories of persons who could be absorbed in the service of Corporation.

The change in the ratio of absorption from 7.9 per vehicle under. sub-cl. (3) to cl. 20 of the ordinance to 4.45 per vehicle under sub-s. (3) of s. 19 of the Act adversely affected a large number of employees of the erstwhile contract carriage operators who filed writ petitions in the High Court,

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challenging the vires of the proviso to sub-s. (3) of s. 19 of the Act, which dismissed the writ petitions.

In the appeal and the writ petitions to this Court the question for consideration was, whether the employees of the erstwhile contract carriage operators in the State of Karnataka acquired a vested right of absorption in the service with the Karnataka State Road Transport Corporation under sub-cl. (3) to cl. 20 of the Karnataka Contract Carriage (Acquisition) ordinance 1976.

Dismissing the appeal and writ petitions;

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HELD: 1. The High Court rightly observed that there was neither anything done nor action taken and, therefore, the petitioners did not acquire any right to absorption under sub-cl. (3) to cl. 20. [692 C]

2. The ordinance promulgated by the Governor in the instant case was a 'legislative act' of the Governor under Art. 213(1) and, therefore, undoubtedly a temporary statute, and while it was still in force the repealing Act was passed

containing the saving clause in s. 31(2)(i) providing that, notwithstanding such repeal, 'anything done' or any 'action taken' under the repealed ordinance shall be deemed to have been done or taken under the corresponding provisions of the Act. [691 C-D]

3. In considering the effect of an expiration of a temporary Act, it would be unsafe to lay down any inflexible rule. It requires very clear and unmistakable language in a subsequent Act of the legislature to revive or re-create an expired right. If, however, the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. In order to see whether the rights and liabilities under the repealed ordinance have been put an end to by the Act, 'the line of enquiry would be not whether the new Act expressly keeps alive old rights and liabilities under the repealed ordinance but whether it manifests an intention to destroy them. Another line of approach may be to see as to how far the new Act is retrospective in operation. [691 F-G]

State of Punjab v. Mohar Singh, [1955] SCR 893, referred to

4. (i) Sub-s. (2) of s. 31 of the Act was not intended to preserve abstract rights conferred by the repealed ordinance. The legislature had the competence to so re-structure the ordinance as to meet the exigencies of the situation obtaining after the taking over of the contract carriage services. It could re-enact the ordinance according to its original terms, or amend or alter its provisions. [692 A]

(ii) When the ordinance came to be replaced by the Act, the Corporation felt that the number of employees of the erstwhile contract carriage operators was too large for its requirements. The legislature, therefore stepped in and reduced the scale of absorption in the proviso to sub-s. (3) of s. 19 from 7.9 per vehicle to 4.45 per vehicle. [694G]

5. The object of s. 31(2)(i) is to preserve only the things done and action taken under the repeated ordinance and not the rights and privileges acquired and accrued on the one side, and the corresponding obligation or liability
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incurred on the other side, so that if no right acquired under the repealed ordinance was preserved, there is no question of any liability being enforced. It is unlike the usual saving clauses which presented unaffected by the repeal, not only things done under the repealed enactment but also the rights acquired thereunder. [693 C, D]

6. (i) Every person eligible for absorption had to fulfil three conditions, viz., (1) he had to be a workman within the meaning of the Industrial Disputes Act, 1947; (2) he should have been, immediately before the commencement of the ordinance, exclusively employed in connection with the acquired property, and (3) he had to come within the ratio

provided in the proviso to sub-cl. (3) to cl. 20. The whole object of inserting sub-cl. (3) to cl. 20 of the ordinance was to obviate the unemployment of persons suitable for employment, for which purpose, the Corporation had necessarily to screen the applicants. [693 G]

(ii) It was only if the employee was willing to be absorbed in the service of the Corporation that the Corporation could absorb him in service, provided the other conditions specified in sub-cl. (3) to cl. 20 were satisfied. [694 E]

(iii) Thus it is clear that several steps had to be taken by the authorities before identifying and determining the persons who could be absorbed in the service of the Corporation, in accordance with sub-cl. (3) to cl. 20 of the ordinance, which indicates that automatic absorption of the employees of the erstwhile contract carriage operators was not legally permissible. [694 F]

7. The distinction between what is and what is not a right presented by the provisions of s. 6 of the General Clauses Act. is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere 'hope or expectation of', or liberty to apply for acquiring a right. [692 G]

Director of Public Works v. Ho Po Sang, [1962] 2 All. ER 721 PC, referred to.

8. The Act substitutes a 'new' proviso in sub-s. (3) of s. 19 in place cf the old proviso to sub-cl. (3) to cl. 20 of the ordinance, altering the whole basis of absorption. The new proviso is given a retrospective effect, and it holds the field from the notified date i.e., January 30, 1976. The proviso in subcl. (3) to cl. 20 laying down a particular ratio of absorption, is pro tanto avoided by an express enactment of a 'new' proviso to sub-s. (3) of s. 19 which is entirely inconsistent with it. When an ordinance is replaced by an Act which is made retrospective in operation, anything done or any action taken under the ordinance stand wholly effected. [695 C]

9. (i) The employees of the former contract carriage operators in normal course filled in the pro forma giving their service particulars and reported to duty. This was in the mere 'hope or expectation' of acquiring a right. The submission of these 'call reports' by the employees did not subject the Corporation to a corresponding statutory obligation to absorb them in service. [692 C]

(ii) The meeting of the Committee set up by the Government for laying down the principles for equation of posts and for determination of inter-sc seniority, met on June 2, 1976. The Committee decided that even in the
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case of helpers-cleaners, there should be a 'trade test' and the staff cleared by the Committee for the posts of helper 'B', helper 'A' and assistant artisans should be on the basis of their technical competence, experience, ability

etc. The Committee also decided that all other employees of contract carriage operators, who were eligible for absorption, should be interviewed by that Committee for the purpose of absorption on the basis of experience, ability duties and responsibilities. These norms were not laid down till June 2, 1976 Till their actual absorption, the employees of the erstwhile contract carriage operators had only an inchohate right. [692 E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2411 of 1978.

Appeal by Special Leave from the Judgment and order dated 26-7-1978 of the Karnataka High Court in Writ Petition No. 10203/ 77.

And ORIGINAL JURISDICTION: Writ Petitions Nos. 4473-4474, 4415, 4488, 4528, and 4539 of 1978.

(Under Article 32 of the Constitution). D G. B. Rikar, K. R. Nagaraja and Mrs. Gayathri Balee for the Petitioner (In WP. 4473-4474, 4488, 4539/78).

R. B. Datar and Navin Sinha for the Petitioner (In WP. 4415 and 4528 and for-Appellant in CA 2411/78).

V. A. Sayield Mohammad and N. Nettar for the State of Karnataka and for Respondent No. 3 in WPs. 4473-4474, 4488, 4528 and 4539 and C.A. 2411/78.

L. N. Sinha, Attorney General, K. K. Venugopal, Additional Solicitor General, V. A. Sayied Mohammad and Vineet Kumar for Karnataka State Road Transport Corporation (in All W.P.s & C.A.).

The Judgment of the Court was delivered by SEN, J:-This appeal, by special leave, directed against a judgment of the Karnataka High Court dated July 26, 1978 and the connected petitions under Art. 32 of the Constitution, raise a common question. It would, therefore, be convenient to dispose them of by this common judgment.

The short question involved in these cases is, whether the employees of the erstwhile contract carriage operators in the State of Karnataka acquired a vested right of absorption in service with the Karnataka State Road Transport Corporation under sub-cl. (3) to cl. 20 of the Karnataka Contract Carriages (Acquisition) ordinance 1976.

It will be convenient to refer in the first place to the legislative changes. On January 30, 1976 the Karnataka Contract Carriages (Acquisition) ordinance, 1976 was promulgated by the Governor of

Karnataka under cl. (1) of Art. 213 of the Constitution. The said ordinance was promulgated with the object of acquiring contract carriages operating in the State and for certain matters connected therewith. On the same day, i.e., on January 30, 1976 the State Government issued a notification under cl. 4(1) of the ordinance vesting every contract carriage owned or operated by such contract carriage operator, along with permit, in the State Government absolutely free from all encumbrances. On the same day, the State Government made an order under sub-cl. (1) to cl. 20 of the ordinance transferring all the contract carriages that vested in the State Government under the notification issued under sub-cl. (1) to cl. 4 of the ordinance, to the Karnataka State Road Transport Corporation (hereinafter referred to as 'the Corporation'). Sub-clause (3) to cl. 20 of the ordinance provided for absorption of certain categories of employees of contract carriage operators in the service of the Corporation. It also provided the ratio for absorption for different categories of employees that were entitled to be absorbed in the service of the Corporation.

The ordinance was subsequently replaced by the Karnataka Contract Carriages (Acquisition) Act, 1976, Which was published in the gazette on March 12, 1976. The ordinance was repealed by the Act, and it re-enacted the provisions of the repealed ordinance, with a saving clause in sub-s. (2) of s. 31, for preservation of anything done or action taken. The Act was substantially in similar terms except for the difference that the ratio prescribed by proviso to sub-cl. (3) to cl. 20 of the ordinance, which laid down the categories of persons who could be absorbed in the service of the Corporation, was substantially altered and a new ratio was inserted in the proviso to sub-s. (3) of s. 19 of the Act. Otherwise, sub-s. (3) of s. 19 of the Act and sub-cl. (3) to cl. 20 of the ordinance were identical in every respect. Under proviso to sub-cl. (3) to cl. 20, the total strength of the employees of the erstwhile contract carriage operators allowable for absorption was 7.9 per vehicle, while under proviso to sub-s. (3) of s. 19 of the Act the same works out to 4.45 per vehicle. Further, while under the ordinance conductors were entitled to be absorbed, the ratio provided under the Act shows that conductors are not included in the categories of persons who can be absorbed in the service of the Corporation.

It appears that although as many as 785 contract carriages were A notified for acquisition, only 601 vehicles were actually acquired. The change in the ratio of absorption from 7.9 per vehicle under sub-cl. (3) to cl. 20 of the ordinance to 4.45 per vehicle under sub-s. (3) of s. 19 of the Act adversely affected a large number of employees of the erstwhile contract carriage operators. A large number of writ petitions were, therefore, filed in the High Court challenging the vires of the proviso to sub-s. (3) of s. 19 of the Act on various grounds, but by the judgment under appeal the High Court has repelled all the contentions. Thereafter, the remaining writ petitions were all withdrawn.

The appeal is against the judgment of the High Court and the employees have also directly approached the Court under Art. 32.

Before dealing with the contention advanced in the appeal, it is necessary to set out the relevant provisions. Sub-clause (3) to cl. 20 of the ordinance read as follows:

> "20.(3) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) and has been immediately before the

commencement of this ordinance exclusively employed in connection with the acquired property, shall', on and from the notified date, become an employee of the corporation on the same terms and conditions applicable to the employees holding corresponding posts in the corporation. Any person not willing to become such an employee of the corporation shall be entitled to retrenchment compensation as provided in the Industrial Disputes Act:

Provided that the number of workmen that shall become employees of the corporation under this sub- section shall not exceed the following scale, the junior most being excluded:- -

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Scale per vehicle

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1. Drivers	1.5
2. Conductors	2.65
3. Supervision	0.125

4. Higher Supervision staff and Managers . 0.075

5. Ministerial and Secretariat staff . . . 0.8

6. Technical staff including Foreman . . . 2.75

Sub-section (3) of s. 19 of the Act, which replaced sub-cl. (3) to cl. 20 of the ordinance, provides:

"19.(3) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) and has been immediately before the commencement of this Act exclusively employed in connection with the acquired property, shall, on and from the notified date, become an employee of the corporation on the same terms and conditions applicable to the employees holding corresponding posts in the corporation. Any person not willing to' become such an employee of the Corporation shall be entitled to retrenchment compensation as provided in the Industrial Disputes Act.

Provided that the number of workmen that shall become employees of the Corporation under this sub-section shall not exceed the following scale, the junior most being excluded:-

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Scale per vehicle

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1. Drivers	1.5
2. Supervision staff and managers	0.1
3. Ministerial and Secretariat Staff. . .	0.1
4. Technical staff including foreman. . .	2.75
	4.45"

The saving clause to be found in sub-s. (2) of s. 31 of the Act, so far as material, runs thus:

> "31 (2) Notwithstanding such repeal:-
>
> (i) anything done or any action taken under the said ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act."

It is strenuously argued that it is clear from the language of subcl. (3) to cl. (20) of the ordinance that there was, by operation of law, automatic absorption of the employees of the erstwhile contract carriage operators to the extent provided therein with effect from January 30, 1976, the date on which the notification was issued under sub-cl. (1) to cl. 4 and the date on which the Government made an order under sub-cl. (1) to cl. 20. It is submitted that the words "shall become an employee of the Corporation", ill sub-cl. (3) to cl. 20 are clear and unambiguous and they must result in the consequence that all persons employed in connection with the acquired contract carriages, became employees of the Corporation. It is said A that, though the process of absorption may take time, as and when the necessary steps were taken to fit in such employees falling within the categories mentioned in the proviso to sub-cl. (3) to cl. 20, their absorption relates back to the notified date, i.e. January 30, 1976. In other words, the submission was that the legal effect of absorption of such' employees under sub-cl. (3) to cl. 20 of the ordinance is automatic. That being so, their right of absorption could not be whittled down by the subsequent enactment of the new proviso to sub-s. (3) of s. 19 of the Act, inasmuch as they had acquired a vested right to absorption in the ratio mentioned in sub-cl. (3) to cl. 20 of the ordinance. C The ordinance promulgated by the Governor in the instant case was a 'legislative act' of the Governor under Art. 213(1) and, therefore, undoubtedly a temporary statute, and while it was still in force the Repealing Act was passed containing the saving clause in s. 31(2) (i) providing that, notwithstanding such repeal, 'anything done' or any 'action taken' under the repealed ordinance shall be deemed to have been done or taken under the corresponding provisions of the Act. The enquiry is, therefore, limited to the question whether anything was done or action taken under the repealed ordinance. If that be so, a further question arises on the submission whether the words 'things done' in s. 31 (2) (i) reasonably interpreted can mean not only things done but also the legal consequences flowing therefrom.

In considering the effect of an expiration of a temporary Act, it would be unsafe to lay down any inflexible rule. It certainly requires very clear and unmistakable language in a subsequent Act of the legislature to revive or re-create an expired right. If, however, the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. In order to see whether the rights and liabilities under the repealed ordinance have been put an end to by the Act, 'the line of enquiry would be not whether', in the words of Mukherjea J. in State of Punjab v. Mohar Singh(1), 'the new Act expressly keeps alive old rights and liabilities under the repealed ordinance but whether it manifests an intention to ' destroy them'. Another line of approach may be to see as to how far the new Act is retrospective in operation.

It is settled both on principle and authority, that the mere right existing under the repealed ordinance, to take advantage of the pro- 11 visions of the repealed ordinance, is not a right accrued. Sub-section (2) of s. 31 of the Act was not intended to preserve abstract right conferred by the repealed (ordinance. The legislature has the competence to so re-structure the ordinance as to meet the exigencies of the situation obtaining after the taking over of the contract carriage services. It could re-enact the ordinance according to its original terms, or amend or alter its provisions.

What were the 'things done' or 'action taken' under the repealed ordinance ? The High Court rightly observes that there was neither anything done nor action taken and, therefore, the petitioners did not acquire any right to absorption under sub-cl. (3) to cl. 20. The employees of the former contract carriage operators in normal course filled in the pro form giving their service particulars and reported to duty. This was in the mere 'hope or expectation' of acquiring a right. The submission of these 'call reports' by the employees did not subject the Corporation to a corresponding statutory obligation to absorb them in service. As a matter of fact, nothing was done while the ordinance was in force. The Act was published on March 12, 1976. on May 29, 1976, the Corporation sent up proposals for equation of posts to be filled in by the employees of the former contract carriage operators. The meeting of the Committee set up by the Government for laying down the principles for equation of posts and for determination of inter-se seniority, met on June 2, 1976. The Committee decided that even in the case of helpers-cleaners, there should be a 'trade test' and' the staff cleared by the Committee for the posts of helper 'B' helper 'A' and assistant artisans should be on the basis of their technical competence, experience, ability etc. The Committee also decided that all other employees of contract carriage operators who were, eligible for absorption, should be interviewed by that p Committee for the purpose of absorption on the basis of experience, ability, duties and responsibilities. These norms were not laid down till June 2, 1976. Till their actual absorption, the employees of the erstwhile contract carriage operators had only an incohate right.

The distinction between what is, and what is not a right preserved by the provisions of s. 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere 'hope or expectation of', or liberty to apply for, acquiring a right. In Director of Public Works v. Ho Po Sang(') Lord Morris speaking for the Privy Council observed:

> "It may be, therefore, that under some repealed enactment, a right has been given, but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether so to right should be or should not be given. On a repeal the former is preserved by the Interpretation Act. The latter is not." (Emphasis supplied) It must be mentioned that the object of s. 31(2) (i) is to preserve only the things done and action taken under the repealed Ordinance, and not the rights and privileges acquired and accrued on the one side, and the corresponding obligation or liability incurred on the other side, so that if no right acquired under the repealed ordinance was preserved, there is no question of any liability being enforced.

Further, it is significant to notice that the saving clause that we are considering in s. 31(2) (i) of the Act, saves things done while the ordinance was in force; it does not purport to preserve a right acquired under the repealed ordinance. It is unlike the usual saving clauses which preserve unaffected by the repeal, not only things done under the repealed enactment but also the rights acquired thereunder. It is also clear that even s. 6 of the General Clauses Act, the applicability of which is excluded, is not intended to preserve the abstract rights conferred by the repealed Ordinance. It only applies to specific rights given to an individual upon the happening of one or other of the events specified in the statute.

Employees in excess of the scale prescribed for the categories specified under proviso to sub-s. (3) of s. 19 of the Act are clearly not entitled for absorption. Though sub- cl. (3) to cl. 20 of the ordinance provided for absorption of certain classes of employees in a particular ratio with effect from January 30, 1976, it does not follow that there was an automatic absorption as from that date. Every such person eligible for absorption had to fulfill three conditions, viz., (1) he had to be a workman within the meaning of the Industrial Disputes Act, 1947; (2) he should have been immediately before the commencement of the ordinance, exclusively employed in connection with the acquired property, and (3) he had to come within the ratio provided in the proviso to sub-cl. (3) to cl. 20. The whole object of inserting sub-cl. (3) to cl. 20 of the ordinance was to obviate the unemployment of persons suitable for employment. For this purpose the Corporation had necessarily to screen the applicants.

It is necessary to mention that cl. 5 of the Ordinance, which corresponds to s. 5 of the Act, provided that every contract carriage 8-625SCI/79 operator shall within 15 days from the notified date or within such further time as the State Government may allow, furnish to the State Government or any officer authorised by it in this behalf, complete particulars among others of persons who were in their employment immediately before the notified date. It was only after such information was received that steps had to be taken for the purpose of ascertaining as to who were entitled to be absorbed in the service of the Corporation in accordance with sub-cl. (3) to cl. 20 of the ordinance. The authorities after collecting the necessary information had to determine not only the corresponding posts to which the erstwhile employees of the contract carriage operators could be absorbed in the service of the Corporation but also their relative seniority, for the purpose of excluding the employees who were in excess of the scale for the purpose of absorption.

As sub-cl. (3) to cl. 20 itself provides that a person who is not willing to become an employee of The Corporation is entitled to retrenchment compensation as provided for in the Industrial Disputes Act, the authorities were also required to ascertain as to whether the employee, who was entitled to be absorbed in service, was willing to become an employee of the Corporation or not. It was only if the employee was willing to be absorbed in the service of the Corporation that the Corporation could absorb him in service, provided the other conditions specified in sub-cl. (3) to cl. 20 were satisfied. Thus it is clear that several steps had to be taken by the authorities before identifying and determining the persons who could be absorbed in the service of the Corporation, in accordance with sub-cl. (3) to cl. 20 of the ordinance.

The very fact that all these Various steps were necessary to be taken, which necessarily takes time, shows that automatic absorption of the employees of the erstwhile contract carriage operators was not legally permissible. When the ordinance came to be replaced by the Act, the Corporation felt that the number of employees of the erstwhile contract carriage operators was too large for its requirements. The legislature, therefore, stepped in and reduced the scale of absorption in the proviso to sub-s. (3) of s. 19 from 7.9 per vehicle to 4.45 per vehicle.

This is, in our judgment, sufficient for the determination of the appeal. But, as we have formed a clear opinion on the other aspect, we do not hesitate to express that opinion. That contention is of this nature. It is pointed out that the employees of the erstwhile contract carriage operators acquired vested right to absorption in the service of the Corporation by virtue of sub-cl. (3) to cl. 20 of the repealed ordinance with effect from January 30, 1976, which cannot be taken away by the proviso to sub-s. (3) of s. 19. Even if-contrary to the decision reached by us, it were possible to hold that they had some kind of such right, that right is expressly taken away by the legislature. The contention does not take note of the fact that by sub-s. (1) of s. 1 the Act was brought into force with effect from January 30, 1976, i.e., the date on which the ordinance was promulgated. The Act substitutes a 'new' proviso in sub-s. (3) of s. 1 in place of the old proviso to sub-cl. (3) to cl. 20 of the ordinance, altering the whole basis of absorption. The new proviso is given a retrospective effect, and it now holds the field from the notified date i.e., January a 30, 1976. The proviso in sub-cl. (3) to cl. 20 laying down a particular ratio of absorption, is pro tanto avoided by an express enactment of a 'new' proviso to sub-s. (3) of s. 19 which is entirely inconsistent with it. When an ordinance is replaced by an Act which is made retrospective in operation, anything done or any action taken under the ordinance stand wholly effected.

In the result, the appeal as well as the writ petitions must fail and are dismissed. There shall be no order as to costs.

N.V.K. Appeal and Petitions dismissed.