Supreme Court of India
Government Of Tamil Nadu & Ors vs S. Balasubramanian & Ors on 31 October, 1995
Equivalent citations: 1995 SCC (6) 642, JT 1995 (8) 110
Author: S Agrawal
Bench: Agrawal, S.C. (J)

PETITIONER:
GOVERNMENT OF TAMIL NADU & ORS.

Vs.

RESPONDENT:
S. BALASUBRAMANIAN & ORS.

DATE OF JUDGMENT31/10/1995

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1995 SCC (6) 642 JT 1995 (8) 110
1995 SCALE (6)170

ACT:

HEADNOTE:

JUDGMENT:

[WITH Civil Appeal No. 1097/1995 & Civil Appeal No. 9696 of 1995 (arising out of S.L.P. (Civil) No. 10107/1995)] J U D G M E N T S.C. AGRAWAL, J. :

Leave granted in S.L.P. (Civil) No. 10107 of 1995.

These appeals raise common questions relating to reservation in the matter of appointment on the post of Deputy Tahsildar in the State of Tamil Nadu. The appointment to the post of Deputy Tahsildar in the Tamil Nadu Revenue Subordinate Service is governed by the Special Rules for the Tamil Nadu Revenue Subordinate Service (hereinafter referred to as `the Special Rules'). In the matter of reservation, provision is made in Rule 6 of the Special Rules. Prior to its amendment in 1977, the said Rule provided as under :

> "Rule 6. Reservation of appointments: Subject to the provisions of Rule 5(d), rule of reservation of appointments (General rule 22) shall apply to appointments to the category of Deputy Tahsildars in each district."

General Rule 22 of the Tamil Nadu State and Subordinate Services Rules (hereinafter referred to as `the General Rules') prior to its amendment in 1967 provided as under :

> "Rule 22, Reservation of appointments; Where the Special Rules lay down that the principle of reservation of appointments shall apply to any service, lass or category, appointments thereto shall be made on the following basis:-
>
> (a) The unit of appointments for the purpose of this rule shall be hundred of which sixteen shall be reserved for the Scheduled Castes and the Scheduled tribes and twenty-five shall be reserved for the Backward Classes and the remaining fifty-nine shall be filled on the basis of merit.
>
> (b) The claims of members of the Scheduled Castes and the Scheduled Tribes and the Backward Classes shall also be considered for the fifty-nine appointments which shall be filled up on the basis of merit; and where a candidate belonging a Scheduled Caste, Scheduled Tribe or a Backward class is selected on the basis of merit, the number of posts reserved for Scheduled Castes and Scheduled Tribes or for Backward classes, as the case may be, shall not in any way be affected.
>
> (c)....."

By G.O.Ms. No.1588 dated July 11, 1967, Rule 22 of the General Rules was substituted by the following provision :-

> "Rule 22, Reservation of appointments; Where the Special Rules lay down that the principle of reservation of appointments shall apply to any service, class or category, selection for appointment thereto shall, with effect on and from the Ist July, 1967, be made on the following basis:-
>
> (a) The unit of selection for appointment for the purpose of this rule shall be hundred of which sixteen shall be reserved for the Scheduled Castes and the Scheduled tribes and twenty-five shall be reserved for the Backward Classes and the remaining fifty-nine shall be filled on the basis of merit.
>
> (b) The claims of members of the Scheduled Castes and the Scheduled Tribes and the Backward Classes shall also be considered for the fifty-nine appointments which shall be filled up on the basis of merit; and where a candidate belonging to a Scheduled Caste, Scheduled Tribe or a Backward class is selected on the basis of merit, the number of posts reserved for Scheduled Castes and Scheduled Tribes or for Backward classes, as the case may be, shall not in any way be affected.

(c)....."

By G.O.Ms. No. 695 dated June 6, 1971, the percentage of reservation for Scheduled Castes and Scheduled Tribes was raised to eighteen percent and reservation for the Backward Classes was raised to thirty one percent. By G.O.Ms No. 1256 dated June 20,1977, Rule 6 of the Special Rules was amended and substituted by the following provision :-

> "Rule 6, Reservation of appointments: Subject to the provisions of Rule 5(d), rule of reservation of appointments (General rule 22) shall apply to appointments to the category of Deputy Tahsildars in each district at the time of selection for inclusion in the list."

The amended Rule 6 was not published in the Tamil Nadu Government Gazette. The validity of the said amended rule was challenged before the Madras High Court in a writ petition (writ petition No. 3691/1983) which was allowed by a learned single Judge of the High Court by judgment dated December 2, 1983 and the said G.O.Ms. dated June 20, 1977 was quashed on the ground that the same was snot published in the Tamil Nadu Government Gazette. The State of Tamil Nadu filed an appeal (Writ Appeal No. 1028/1984) against the said judgment of the learned single Judge. At the same time G.O.Ms. No. 1256 dated June 20, 1977 was published in the Tamil Nadu Government Gazette dated January 30, 1984. The validity of the said publication in the Gazette dated January 30, 1984 was challenged before the High Court in writ petition No. 3353/84. While Writ Appeal No. 1028/1984 and writ petition No. 3353/1984 and other connected writ petitions were pending before the high Court, the Government of Tamil Nadu issued a fresh order, G.O.Ms. No. 660 dated April 19, 1988, which was published in the Tamil nadu Government Gazette April 20, 1988. By the said G.O.Ms. No. 660 dated April 19, 1988, Rule 6 of the Special Rules, as substituted by G.O.Ms. No. 1256 dated June 20, 1977, was reintroduced in the same terms with retrospective effect from June 20, 1977. In view of the notification dated April 19, 1988, writ appeal No. 1028/84 and writ petition No. 3353/84 and other connected writ petitions were dismissed by the Division Bench of the High Court on September 20, 1988 stating that they have become infructuous and that writ petition No. 6691/83 which had been allowed by the learned single Judge on the ground of non-publication of the modification had also become infructuous. It was, however, observed that the petitioners who had filed the writ petitions were at liberty to question G.O.Ms. No. 660 dated April 19, 1988. Thereupon, the respondents filed D.A.No. 1131/1990 and other petitions before the Tamil Nadu Administrative tribunal (hereinafter referred to as `the Tribunal') wherein they challenged the validity of G.O.Ms. No. 660 dated April 19, 1988.

The respondents were originally appointed as Junior Assistants in the Revenue Department in the Tamil Nadu Ministerial Service. They were recruited against posts falling in the open competition (O/C) category. Thereafter they were promoted as Assistants in the said Service. Rule 3 of the Special Rules makes provision for recruitment by transfer on the post of Deputy Tahsildar from amongst members of the Madras Secretariat Service or Madras Ministerial Service employed in the offices of the Board of Revenue and the Director of Settlements, etc. Till 1977, there was reservation to the extent of 16% for Scheduled Castes and Scheduled Tribes and 25% for Backward Classes. In 1977, the percentage for such reservation was modified to 18% and 31% respectively and in 1980 it

was further enhanced to 18% and 50% respectively. The respondents, who belong to non-reserved category, assailed before the Tribunal the applicability of the Special Rules regarding reservation for appointment on the post of Deputy Tahsildar on the ground that the said post of Deputy Tahsildar is a promotion post and the rule regarding reservation applied only at the stage of initial appointment and not at the stage of promotion. They also submitted that the amendment introduced in Rule 6 of the Special Rules by G.O.Ms. No. 660 dated April 19, 1988 with retrospective effect from June 20, 1977 was invalid inasmuch as retrospective operation of the said amendment would affect the promotion of the respondents.

By the impugned judgment dated July 6, 1993, the Tribunal has held that the appointment by transfer from the ministerial staff in the Revenue Department on the post of Deputy Tahsildar has to be construed as promotion and not direct recruitment and that, in view of the decision of this Court in Indira Sawhney & Ors. v. Union of India & Ors., 1992 Supp. (3) SCC 217, reservation was not permissible in the matter of promotion. The Tribunal has further held that G.O.Ms. No. 660 dated April 19, 1988 does not suffer from any infirmity on account of lack of authority inasmuch as the orders of the Governor had been obtained for the issue of the amendment. The Tribunal has, however, held that the notification which was issued in 1977 was admittedly issued without proper authority and any action under the said notification issued in 1977 which was published in 1984 was lacking in authority and the said action is sought to be validated by retrospective amendment of Special Rule 6 in 1988. According to the Tribunal as a result of the said retrospective amendment there was denial of promotional prospects to the respondents and that an amendment of the rules could not be given retrospective effect so as to deny the right of promotion under the Rules in respect of vacancies which had arisen before the date on which the amendment was introduced. The Tribunal, therefore, directed that vacancies that had arisen till the date of issue of the amendment in 1988 should be filled up in accordance with the rules as they were before the amendment and persons already promoted will have their seniority refixed and persons who are eligible to be promoted, but not promoted, should be promoted with consequential benefits in the vacancies arising hereafter with seniority from the date on which the person placed next to them in the list on this basis was promoted.

As regards the applicability of the provision relating to reservation in the matter of appointment on the post of Deputy Tahsildar by transfer, the submission of learned Additional Solicitor General is that the appointment from the Tamil Nadu Ministerial Service to Tamil Nadu Sub- ordinate service by way of transfer is in the nature of a fresh appointment and it cannot be regarded as promotion and, therefore, the decision in Indira Sawhney & Ors. v. Union of India & Ors. (supra) in that regard has no application. The learned Additional Solicitor General has also submitted that even as per the decision in Indira Sawhney case (supra) the existing Rules regarding reservation have been allowed to remain in operation for a period of five years and, therefore, reservation as per existing Rules cannot be questioned.

Since in Indira Sawhney case (supra) this Court has held that the existing rules providing for reservation in the matter of promotion can be continued for a period of five years, the appointments that have been made on the post of Deputy Tahsildar by applying the principle of reservation cannot be questioned on the basis of the law laid down in Indira Sawhney case (supra) that the principle of

reservation cannot be applied at the stage of promotion. It is, therefore, not necessary to go into the question whether appointment to the post of Deputy Tahsildar by transfer from Tamil Nadu Ministerial Sub-ordinate Service amounts to promotion.

The question which survives is regarding the validity of the retrospective operation given to the amendment introduced in Rule 6 of the Special Rules by G.O.Ms. No. 660 dated April 19, 1988. The learned Additional Solicitor General has urged that the amendment introduced in Rule 6 of the Special Rules only clarifies the existing position regarding applicability of Rule 22 of the General Rules and has pointed out that by virtue of rule 6 of the Special Rules, as it stood prior to the amendment, the general rule regarding reservation (General Rule 22) was made applicable to appointment to the category of Deputy Tahsildars in each district. In our opinion, this submission merits acceptance. By Rule 6 of the Special Rules, as it stood before the impugned amendment the provisions of Rule 22 of the General Rules containing the Rule of reservation regarding appointment were made applicable to appointments to the category of Deputy Tahsildar in each district. The manner of applicability of the said provisions was to be governed by the provisions of Rule 22 of the General Rules. Rule 22 of the General Rules, prior to is amendment in 1967, made provision for reservation at the stage of appointment By the amendment which was introduced in Rule 22 of the General Rules by G.O.Ms. No. 1588 dated July 11, 1967 reservation has to be applied at the stage of selection for appointment. This is the procedure which has been followed in the matter of appointment to the post of Deputy Tahsildar under the Special Rules as per Rule 6 of the Special Rules as it existed prior to the impugned amendment. The amendment Introduced in Rule 6 of the Special Rules by G.O.Ms. No. 660 dated April 19, 1988 only clarifies this position and says that the rule of reservation of appointments (General Rule

22) shall apply to the category of Deputy Tahsildars in each district at the time of selection for inclusion in the list. We are unable to agree with the view of the Tribunal that Rule 6, as amended, alters the position as it existed prior to the said amendment in the matter of applicability of the Rules regarding reservation and that the retrospective effect that has been given to the said amendment, by validating action taking during earlier period without authority, results in denial of promotion prospects.

We may, in this context, point out that, in law, a distinction is drawn between a mere reference or citation of a statute into another and incorporation of a particular provision of a statute. While in the former case a modification, repeal or re-enactment of the statute that is referred will also have effect for the statute in which it is referred, but in the latter case any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute. [See : The Collector of Customs v. Nathella Sampathu Chetty & Anr., 1967 (3) SCR 786 at p. 831; G.P. Singh, Principles of Statutory Interpretation, 4th Edn., pp. 178-179]. The provisions of Rule 6 of the Special Rules, as they stood prior to the impugned amendment, applied the rule of reservation in the matter of appointments as contained in Rule 22 of the General Rules to appointment to the post of Deputy Tahsildar in each district. The said Rule 6 only referred to the provisions contained in Rule 22 of the General Rules and it cannot be construed as incorporating by reference Rule 22 of the General Rules into the said Special Rule. This means that a subsequent amendment in rule 22 of the General Rules would be applicable in the matter of appointment to the category of Deputy Tahsildar under the

Special Rules and the amendments that were introduced in Rule 22 of the General Rules in 1967 and thereafter were applicable in the matter of such appointments. It was not necessary to make an amendment in Rule 6 of the Special Rules to incorporate the amendment that was introduced in rule 22 of the General Rules in 1967. Moreover, the principle that where a subsequent enactment incorporates the provisions of a previous enactment, then the borrowed provisions become an integral and independent part of the subsequent enactment and are totally unaffected by any repeal or amendment in the previous enactment is subject to certain exceptions. One such exception excluding the applicability of this principle is where the subsequent Act and the previous Act are supplemental to each other, [See : State of Madhya Pradesh v. M.V. Narasimhan, (1976) 1 SCR 6, at p. 14] The instant case would fall under this exception because Rule 6 of the Special Rules and Rule 22 of the General Rules are supplemental to each other. In our opinion, therefore, the Tribunal was not right in holding that the amendment introduced in Rule 6 by G.O.Ms. No. 660 dated April 19, 1988, insofar as it gives retrospective effect to the said amendment, is invalid. The judgment of the Tribunal dated July 16, 1993 cannot, therefore, be upheld and C.A.Nos. 1093 to 1096 of 1995 filed against the said judgment have, therefore, to be allowed. In the other appeals (C.A.Nos. 1097 of 1995 and Civil Appeal arising out of SLP (C) No. 10107 of 1995) the Tribunal has allowed the applications on the basis of its judgment dated July 6, 1993 and for the same reasons the said appeals have also to be allowed.

Before we conclude, we would like to mention that all these matters have been heard by the Vice Chairman of the Tribunal sitting singly. The Vice-Chairman of the Tribunal was an Administrative Member. In Amulya Chandra Kalika v. Union of India & Ors., 1991 (1) SCC 181, a two-Judge bench of this Court, having regard to Section 5(2) of the Administrative Tribunals Act, 1985, has held that an Administrative Member alone cannot decide a case and the Bench must also have a Judicial Member. A three-Judge Bench of this Court in Dr. Mahabal Ram v. Indian Council of Agricultural Research & Ors., 1994 (2) SCC 401, keeping in view the provisions of Sections 5(2) and 5(6) of the Administrative Tribunals Act, 1985, has held that the expression `single Member' in Section 5(6) means Judicial as well as Administrative Member. The Court has directed that the Chairman should keep in view the nature of the litigation and where questions of law and/or interpretation of constitutional provisions are involved they should not be assigned to a Single Member. The Court has, however, pointed out that the vires of Section 5(6) was not under challenge before the court. In Union of India & Ors. v. Tushar Ranjan Mohanty & Ors., 1994 (5) SCC 450, the Court has taken note of both these decisions and has referred the matter to be heard by a Bench of three Judges since the validity of sub- section (6) of Section 5 was challenged in the said case. It is not clear as to what directions had been given by the Chairman of the Tribunal in the matter of listing the cases before a Single member. Since the question as to the validity of a statutory rule made under Article 309 of the Constitution was raised in the present case we are of the view that it should have been heard by a Bench having two Members.

In the result, the appeals are allowed, the judgment of the Tribunal dated 6, 1993 in O.A.Nos. 1131/90, 2633/90, 2634/90 and 3674/91, the judgment dated October 6, 1993 in O.A.No. 5909/93 and judgment dated March 16, 1994 in O.A.No. 1148/93, are set aside and the original applications submitted by the respondents are dismissed. The parties are left to bear their own costs.