Supreme Court of India
Ex. Capt. K.C. Arora And Another vs State Of Haryana And Others on 26 April, 1984
Equivalent citations: 1987 AIR 1858, 1984 SCR (3) 623
Author: R Misra
Bench: Misra, R.B. (J)

PETITIONER:
EX. CAPT. K.C. ARORA AND ANOTHER

Vs.

RESPONDENT:
STATE OF HARYANA AND OTHERS

DATE OF JUDGMENT26/04/1984

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
REDDY, O. CHINNAPPA (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1987 AIR 1858 1984 SCR (3) 623
1984 SCC (3) 281 1984 SCALE (1)651
CITATOR INFO :
RF 1991 SC1047 (8)

ACT:
The Punjab Government National Emergency (Concessions) Rules 1965 Rules 2, and 3(ii), as amended by the Haryana Government Gazette Notification No. GSR 77/Const/Art 309/Amend/(1)/76 dated August 9, 1976 amending the definition of the expression "Military Service" in Rule 2, Constitutional Validity-The vested accrued right of a Government Servant cannot be taken away by making amendments of the rules with retrospective effect.

HEADNOTE:
In 1962 an emergency was imposed by the Government of India on account of the external aggression by the Chinese forces in the Indian Territory. The Government was in great need of youngmen to join the military service at the risk of their lives to serve the nation to cope with the emergency needs of the Government of India. The Government of India as well as the State Governments decided to give certain benefits to encourage the young energetic youths to join military service at the critical juncture of national emergency and therefore issued different circulars and

advertisements on radio and the press promising certain benefits to youngmen who join the military service at the critical juncture. Later on, on the instructions of the Central Government concessions as were promised through circulars and by other means were incorporated in the rules framed by the joint Punjab Government under Article 309 of the Constitution, titled as "The Punjab National Emergency (Concessions) Rules. 1965."

Keeping in view the needs of the country and assurances and concessions contained in conditions of service in executive instructions, the petitioners and appellants and many others like them joined the army during- the emergency as commissioned officers in 1963-64 and had rendered more than five years of service reckoned from 26.10.1982 i. e. date of proclamation of emergency and after their release from the Army they were entitled to benefits vested them under the conditions of service.

The petitioners and appellants and a number of others similar to the petitioners joined the Haryana Government as Assistant Engineers. Consequent upon their appointments against the vacancies reserved for ex-army Officers, they became entitled to get their seniority fixed giving them the benefit of their military service, but the gradation list prepared however did not include their military service for the purposes of fixation of their seniority. The State of Haryana just to deprive the petitioners and others similarly situated, of military service, amended the rules with retrospective-effect from November 1,1966 vide Haryana Government Gazette Notification No. GSR 77/Const/Art 309/Amend/(1)/76 dated March 22,1976 introducing a proviso to rule 4 (ii) of the 1965 Rules and vide Haryana Government Gazette Notification No. GSR 182/Const/Art 309/Amend/(2)/
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76 dated August 9,1976 amending Rule 2 of the 1965 Rules. These notifications restricted the benefits of military service upto January 10, 1968 the date on which the first emergency was lifted with the result that the vested rights which accrued to the petitioners in 1969, 1970 and 1971 have been taken away. The two writ petitions Nos. WP 2065/1976 and WP 2065/1976 and WP 1088/1980 challenging the same were dismissed by the Punjab and Haryana High Court and hence their appeals Nos. CA 3095 and 3096/1980 by way of special leave. Some others directly filed petitions in the Supreme Court under Art 32 and they are WPs 6437 and 6436 of 1980.

Allowing the appeals and the Petitions, the Court
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HELD : 1:1. The Parliament as also the State Legislature have plenary powers to legislate within the field of legislation committed to them and subject to certain constitutional restrictions they can legislate prospectively as well as retrospectively. [632C-D]

1:2. It is, however, a cardinal principle of construction that every statute is prima facie prospective

unless it is expressly or by necessary implication made to have retrospective effect. But the rule in general is applicable where the object of the statute is to affect the vested rights or to impose new burden or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to effect existing rights, it is deemed to be prospective only. Provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. The Governor can also exercise the same powers under Art. 309 of the Constitution and there is not the slightest doubt that the impugned amendment brought in has been made retrospective. The impugned amendments in the instant case by necessary implication have undoubtedly retrospective effect. [632D-F]

Harbhajan Singh v. State of Punjab [1977] 2 S.L.R. 180 ; Ex. Major. N.C Singhal v. Director General Armed Forces Medical Service : A.I.R. 1972 S.C. 628;State of Mysore v. M.N. Krishna Murty & Ors., [1973] 2 S.C.R. 575; Raj Kumar v. Union of India & Ors., [1975] 3 S.C.R. 963 ; Wing Commander J. Kumar v. Union of India & Ors. [1982] 2 S.C.C. 116 ; B.S. Vadera v. Union of India & Ors., [1968] 3 S.C.R. 575 ; discussed.

1:3. The Haryana Government cannot take away the accrued rights of the petitioners and the appellants by making amendment of the rules with retrospective effect. The impugned rule 4 (ii) of the Punjab Government National Emergency (Concessions) Rule, 1965, as amended by the Haryana Government Gazette Notification No. GSR. 77/Const /Art. 309/Amend/(1)/76 dated 22nd March, 1976 and the Notification No. G.S.R. 182/Const/Art/309/Amend. (2)/76 dated 9th August, 1976 amending the definition of the expression `military service' in rule 2, are ultra vires the Constitution, in so far as they effect prejudicially persons who had acquired rights. [639B-C-D-E]

State of Gujarat v. Raman Lal Keshav Lal Soni, [1983] 2 S.C.C. 33 ; followed.

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JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 6436-37 of [Under Article 32 of the Constitution of India] AND Civil Appeals Nos. 3095-96 of 1980 Appeal by Special leave from the Judgment and Order dated the 10th October, 1980 of the Punjab and Haryana High Court in C. Writ Petition No. 2065 of 1976 & 1088 of 1980) P.C. Bhartari for the Appellant.

Dr. Y.S. Chitale and M.G. Ramachandran for Respondents in Writ Petitions.

V.C. Mahajan, I.S. Goel and R.N. Poddar for Respondent. The Judgment of the Court was delivered by MISRA, J. The present writ petitions under Article 32 of the Constitution and the civil appeals by special leave arising out of petitions under Article 226 of the Constitution raise common questions of law and are, therefore, being disposed of by a common judgment.

The pattern of facts in the present group of cases is the same and therefore, it is not necessary to give the facts of each case separately. In order to bring out the points for consideration in these cases we would like to give the facts of writ petition No. 6436 of 1980.

In 1952 an emergency was imposed by the Government of India on account of the external aggression by the Chinese forces on the Indian territory. The Government was in great need of youngmen to join the military service at the risk of their lives to serve the nation to cope with the emergency needs of the Government of India. The Government of India as well as the State Governments decided to give certain benefits to encourage the young energetic youths to join military service at the critical juncture of national emergency. The Government in the States and the Centre issued different circulars and advertisements on radio and the press promising certain benefits to be given to yougmen who join the military service at the critical juncture.

In July 1963 a circular was issued by the Financial Commissioner, Punjab with regard to the concessions to civilian employees and others who joined military service, which will account for increments, seniority and pension in civil employment. Later on, on the instructions of the Central Government concessions as were promises through circulars and by other means were incorporated in the rules framed by the joint Punjab Government under Article 309 of the Constitution.

Keeping in view the needs of the country and assurances contained in conditions of service in executive instructions the petitioners and the appellants and many others like them joined the army during the emergency as Commissioned Officers in 1963-64. They were commissioned officers in the Indian Army for more than five years and after their release from the Army they were entitled to benefits vested in them under the conditions of service.

The Haryana Government in the year 1969 advertised 16 posts of temporary Assistant Engineers in P.W.D., B & R Branch. At the time of the advertisement on 28th of January, 1969 8 posts out of the total of 16 were reserved for ex- emergency commissioned officers and servicemen. Although the advertisement was for 16 posts but at the time of selection 55 appointment were made, out of which 20 posts were reserved for ex-emergency commissioned officers. Out of this quota of 20 posts only 7 appointments from amongst the ex- emergency commissioned officers were made. Requisite qualifications for ex-emergency commissioned officers and servicemen were as follows :

"1. Diploma in civil engineering from a recognised institution.

2. Five years continuous service with distinguished record.

3. Adequate knowledge of Hindi.

Note : For purpose of counting five years' continuous service, the period commencing from 26.10.1962 will only be taken into consideration."

Again in November, 1970 38 posts of temporary Assistant Engineers were advertised out of 18 posts were reserved for ex-emergency commissioned officers. At the time of making appointments, however, 99 persons were appointed and out of these 99 posts 90 posts were declared reserved for ex-emergency commissioned officers. But again only 7 ex-emergency commissioned officers were appointed in response to the advertisement.

Petitioner No. 1 on selection had joined service on 17th of August, 1971. The second advertisement also contained the same qualifications as were in the first advertisement. Thus the two petitioners in writ petition Nos. 6436-37 served the Indian Army for more than five years and thereafter those petitioners were appointed in the service of the Haryana Government as temporary Assistant Engineers against the posts reserved for the ex-emergency commissioned officers. There were a number of other persons similar to the petitioners who were also appointed against the vacancies reserved for ex-Army officers.

The Government of Punjab prior to the formation of Haryana made statutory rules under Article 309 of the Constitution which are called `The Punjab National Emergency (Concession) Rules, 1965. The relevant rules 2, 3, 4, and 5 of these rules are as under :

"2. Definition :- For the purpose of these rules, the expression `military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as Military Service.

3. Maximum age-limit and minimum qualification :

i) The maximum age-limit prescribed for appointment to any service or post shall be relaxed in favour of a person who has rendered military service to the extent of his military service, provided he produces a certificate from the competent authority that he had rendered continuous military service for a period of not less than six months and was discharged because of demobilisation or reduction not more than three years prior to the date of his registration at an employment exchange or the date of his application for employment under the Government.

ii) A person who has become disabled while in military service shall also be entitled to exclude from his age the period from the date he was disabled up to the date of his application for appointment to any service or post under the Government, or till the end of the present emergency, whichever is shorter.

iii) In case a person who has rendered military service does not possess the minimum qualification prescribed for any service or post, he shall be deemed to possess these qualifications if the appointing authority certifies that such a person has acquired by experience or otherwise qualification equivalent to those prescribed for that service or post.

4. Increments, seniority and pension : period of military service shall count for increments, seniority and pension as under :-

(i) Increments : The period spent by a person on military service, after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for increments. Where no such minimum age is prescribed the minimum age shall be as laid down in rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules Volume II. This concession shall, however, be admissible only on first appointment.

(ii) Seniority : The period of military service mentioned in clause (1) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.

(iii) Pension : The period of military service mentioned in clause (i) shall count towards pension only in the case of appointments to permanent services or posts under the Government subject to the following conditions :

(1) The person concerned should have earned a pension under military rules in respect of the military service in question.

(2) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government.

(3) The period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government.

5. Seniority, promotion, increment, pension and leave of Government employees:- The period spent on military service by a Government employee shall count for seniority promotion, increment and pension in the service or post held by him immediately before his joining military service. A permanent Government employee who renders military service, shall earn leave during such service according to the leave rules applicable to him immediately before his joining military service. A temporary Government employees shall during military service, be governed by the military rules in all respects. The employee concerned shall be entitled to proforma promotion in his parent department under the 'next below' rule and also to seniority in higher posts to which he would otherwise have been entitled if he had not joined military service.

According to these rules and the previous assurances given by the Government the petitioners were to be given seniority by counting period of military service for the purpose of determining seniority, increments and pension etc. Immediately on appointment of the petitioners as temporary Assistant Engineers they became entitled to get their seniority fixed giving them the benefit of their military service but the gradation list prepared, however, did not include the military service of the petitioners for the purpose of fixation of their seniority. The State of Haryana just to deprive the petitioners, and others similarly situated, of military service amended the rules with retrospective effect from 1st November, 1966 vide Haryana Government Gazette Notification No. G.S.R. 77/Const/Art. 309/Amend/(1)/76 dated 22nd March, 1976. The Amendment was made in the rule 4(ii) by adding a proviso, which is in the following terms:

> "Provided that a person who has availed of concession under sub-rule (3) of rule (3) shall not be entitled to the concession under this clause." The Government also issued a notification No. G.S.R.

182/Const/Art/. 309/Amend/(2)/76 dated 9th August, 1976 making amendment in the definition of the expression 'military service' in rule 2 just to retreat from their previous commitments. It reads:

> "For the purpose of these rules the expression military service' means the service rendered by a person, who had been enrolled or commissioned during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on 26th October, 1962 in any of the three wings of the Indian Armed Forces (including the service as a Warrant Officer) during the period of the said emergency or such other service as may hereafter be declared as military service for the purpose of these rules. Any period of military training followed by military service shall also be reckoned as military service."

This notification has been issued with retrospective effect from 1st of November, 1966 and restricted the benefits of military service upto 10th of January, 1968, the date on which the first emergency was lifted with the result that the vested rights which accrued to the petitioners in 1969, 1970 and 1971 have been taken away.

Some of the ex-military officers challenged the impugned amendment and the consequent gradation list by filing two petitions, writ petition No.1088 of 1980 and writ petition No. 2065 of 1976 in the High Court of Punjab and Haryana under Article 226 of the Constitution. Both these writ petitions were dismissed by the High Court and they gave rise to civil appeal Nos. 3096 and 3095 of 1980 respectively. Some of the ex-military officers have filed writ petitions directly before this Court under Article 32 of the Constitution and they are writ petition Nos. 6436 and 6437 of 1980.

The petitioners in the writ petitions under Article 226 of the Constitution before the High Court challenged the amendment of the Punjab Government National Emergency (Concession) Rules 1965 with retrospective effect as violative of Arts. 14, 16, 19,31 and 311 of the Constitution and prayed for the following relief:

1. The Punjab Government National Emergency (Concession) Haryana First Amendment Rules, 1976 be declared ultras. Article 16 of the Constitution of India.

2. A writ in the nature of certiorari quashing the seniority list of Haryana Service of Engineers, PWD (B & R Branch), Class II be issued.

3. A writ in the nature of mandamus directing respondents 1 and 2 to declare the petitioners senior to respondents.

The High Court came to the conclusion that the petitioners have availed of the concession under sub-rule (3) of rule 3 of 1965. Rules inasmuch as the educational qualifications in the case of the petitioners had been relaxed in terms of sub-rule (3) of rule 3 and they had availed of these concessions at the time of their recruitment as temporary Assistant Engineers. Now by the impugned amendment the concession of double benefit has been withdrawn by adding the proviso to cl. (ii) of rule 4 introduced in 1976. previously an ex-servicemen could avail of the concession of relaxation in the educational qualification at the time of recruitment on the basis of his military service. Under rule 4 he could count military service towards seniority. The proviso has taken away the second benefit. The ex-serviceman who has been recruited after availing of the concession in academic qualifications cannot count his military service towards seniority in the civil post held by him. This concession has been withdrawn by the Governor in exercise of his powers under proviso to Art. 309 of the Constitution and the amendment having been made in exercise of the legislative powers conferred on the Governor by the Constitution are valid and suffer from no infirmity. The High Court also took the view that there is no estoppel against the Government in the exercise of its legislative sovereign or executive powers. The State could amend the 1965 Rules and take away the benefits bestowed on the petitioners. It also held that the rules can be framed with retrospective effect and they can take away even vested rights. In the opinion of the Eight Court the diploma holders in engineering on the basis of their educational qualification formed one class separate from other ex- emergency commissioned officer who are degree holders in engineering and that classification in the service can be made on the basis of educational qualifications and such a classification is not bad.

The appellants in the appeals against this judgment of the High Court reiterated the same contentions before this Court. In the two petitions under Art. 32 of Constitution also similar points have been raised. The main contention on behalf of the appellants as well as on behalf of the petitioners is that the rules could not be amended with retrospective effect to deprive them of the vested rights and if the appellants and the petitioners are entitled to the benefits of military service per force they would be much more senior to others and the gradation list prepared in complete ignorance of the military service will not be according to law.

It may be pointed out at the very outset that the Parliament as also the State Legislature have plenary powers to legislate within the field of legislation committed to them and subject to certain constitutional restrictions they can legislate prospectively as well as retrospectively. It is, however, a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect. But the rule in general is applicable

where the object of the statute is to affect the vested rights or to impose new burden or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to effect existing rights, it is deemed to be prospective only. Provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. The Governor can also exercise the same powers under Art. 309 of the Constitution and there is not the slightest doubt that the impugned amendment brought in has been made retrospective. The impugned amendment in the instant case by necessary implication have undoubtedly a retrospective effect.

For the petitioners it was contended that the benefits acquired could not be taken away by an amendment with retrospective effect. It was further contended that the amendment was discriminatory and that the retrospectivity given to the provisions of the Amending Act could not cure the discrimination introduced by the Act and sought to be perpetuated by it. In support of this contention reliance was placed upon Harbhajan Singh v. The State of Punjab.

In that case the question that fell for consideration before the Constitution Bench of the Punjab and Haryana High Court was regarding the interpretation of rule 3(iii)(cc)(ii)(b) of the Demobilised Indian Armed Forces Personnel (Reservation of Vacancies) in Punjab Civil Service (Judicial Branch) (First Amendment) Rules, 1976. The Demobilised Indian Armed Forces Personnel (Reservation of Vacancies) in the Punjab Civil Service (Judicial Branch) Rules, 1969, had been repealed and the Demobilised Indian Armed Forces Personnel (Reservation of Vacancies) in the Punjab Civil Service (Judicial Branch) Rules, 1975, as amended, were in force and these excluded from the category of released Armed Forces Personnel, persons who had joined a civil service of the Union or a State or a civil post under the Union or a State after their release from the Armed Forces of the Union. The Court dealing with the question observed:

> "Now the rule-making authority must have been aware that a competitive examination for appointment to the service had been held under the old rules and appointments were yet in the offing. Surely, the rule- making authority did not intend to exclude from appointment candidates who were eligible under the old rules but became ineligible by reason of an amendment of the rules made after the process of selection had almost reached a final stage. The amendment did not in any manner touch the qualifications of the candidates. Had the amended rule been in force from the beginning, persons in the position of the petitioner might not have accepted any employment and preferred to wait for selection and appointment to the Punjab Civil Service (judicial Branch). Are they to be penalised "by barring their entry into the Punjab Civil Service (Judicial Branch) because they accepted employment at a time when acceptance of such employment was not a bar to appointment to the service ? We do not think that we will be justified in attributing such an unreasonable intention to the rule-making authority. In our view, the only reasonable interpretation of the amended rule, consistent with the prevailing situation, is to hold that only those persons who having joined the service of the Union or the State or a post under the Union or the State previously continued to hold the post on the date of the coming into force of the rule, are excluded from appointment to the Punjab Civil

> Service (Judicial Branch). The expression 'joined or joins' must be given a reasonable interpretation in the context of the situation and we think that our interpretation does not strain the language or attributes unreasonableness to the rule-making authority. In that view, the petitioner cannot be said to be ineligible for appointment."

Next reliance was placed upon Ex-Major N.C. Singhal v.

Director General, Armed Forces Medical Service. In that case the conditions of service of the appellant were governed by paragraph 13 of the Army Instruction No I/S of 1954 and his previous full pay commissioned service should have been taken in the matter of 'antedate' for the purpose of his pay. The conditions of service were, however, sought to be altered by Army Instruction No. 176 of 1965 to the prejudice of the appellant. This Court held that the conditions of service in this regard were not liable to be altered or modified to the prejudice of the appellant by a subsequent administrative (Army?) instruction which was given retrospective effect from 26th October, 1962.

Reliance was also placed upon State of Mysore v. M.N. Kirshna Murthy & Ors. In that case also the rules of 1959 had been amended which sought to disintegrate the service which had been integrated. This Court held that such amendment made for the purpose of justifying the illegal promotion made, in the teeth of the protection conferred by Articles 14 and 16(1) of the Constitution of India upon Indian citizens in Government service, could not be upheld. The power of making rules relating to recruitment and conditions of service under the proviso to Article 309 could not be used to validate unconstitutional discrimination in promotional chances of Government servants who belonged to the same category.

Shri Mahajan appearing for respondent No. 1 in reply on the other hand contended that the rules made under the proviso to Article 309 of the Constitution are legislative in character and, therefore, can be given effect retrospectively. In support of his submission he counted upon Raj Kumar v. Union of India & Ors.

He also relied on Wing Commander J. Kumar v. Union of India & Ors. In that case a contention was raised that the impugned rule not having been specifically declared to be retrospective in operation, its provisions cannot be applied to the appellant inasmuch as he had been inducted into the R & D cadre long prior to the promulgation of the new rules. This Court dealing with the point observed:

> "We have already found that, as a matter of fact the practice generally followed in the R & D Organisation even prior to the promulgation of the impugned rules, was to reckon seniority with reference to the date of attainment of the rank of substantive major/equivalent. Even otherwise, when a statutory rule governing seniority is issued in respect of a service, the said rule would govern the personnel in the service with effect from the date of its promulgation and in so giving effect to the rule in future, there is no element of retroactivity involved. Of course, the rules will not operate to deprive any person of promotions already earned in the past, but, for purposes of future promotions and seniority in the department, the principles laid down in the

impugned rule will necessarily govern all the personnel alike."

This case instead of supporting the contention of Shri Mahajan goes to strengthen the contention raised on behalf of the appellant and the petitioners.

Much emphasis was laid by Shri Mahajan on the case of B.S. Vadera v. Union of India & Ors. In that case the petitioners, who were working as Assistants, were reverted as Upper Division Clerk in 1967 by the operation of the Railway Board's Secretariat Clerical Service (Reorganisaion) Scheme. The said scheme was framed on February 5, 1957 but was brought into effect from December 1, 1954. Certain modifications to the scheme relating to the manner of filing up of permanent and temporary vacancies in Grade I of the Service were made in 1963. The petitioners challenged the orders of reversion as illegal inasmuch as their promotion as Upper Division Clerks and later as Assistants had been on a permanent basis and could not be disturbed and that the scheme as well as the various orders passed by the respondents were violative of Articles 14 and 16 of the Constitution, that the Railway Board had no power in law to frame either the scheme or to modify the scheme so as to have retrospective effect from December 1, 1954. This Court held that the ranking given to the petitioners as a result of which the impugned orders of reversion were passed was in accordance with the scheme as modified in 1963, and once it is held that the petitioners did not satisfy the requirement of the scheme for being retained as Assistants, there was no question of any discrimination under Article 14 or violation of Article 16, and that the Indian Railway Establishment Code had been issued by the President in exercise of the powers vested in him by the proviso to Article 309 of the Constitution. Rule 157 of the Code gives the Railway Board full powers to make rules of general application to non- gazetted railway servants under their control, and the power to make rules with retrospective effect cannot be denied to the Railway Board. Accordingly, the scheme framed by the said Board in 1957 could be made retrospectively effective from December 1, 1954. This case undoubtedly supports Shri Mahajan in his contention that the rules can be made with retrospective effect and there is nothing wrong in such a rule. This case, however, did not deal with the point specifically raised in the present case.

The question, however, has been pointedly considered recently by a Constitution Bench of this Court in State of Gujarat v. Raman Lal Keshav Lal Soni. In that case the Gujarat Panchayats Service was initially constituted soon after the passing of the Gujarat Panchayats Act. There were three cadres : the district cadre, the taluqa cadre and the local cadre. Secretaries, Officers and servants of the old village panchayats under the Bombay Village Panchayats Act, 1958 became secretaries, officers and servants of the new gram panchayats under s.325(2)(x) of the Gujarat Panchayats Act, 1961. Talatis and kotwals, who were government servants were secretaries and officers of the old village panchayats under the Bombay Village Panchayats Act and so they became secretaries and officers of the new gram panchayats under the Gujarat Panchayats Act. 1961. Some municipalities constituted for municipal districts and municipal boroughs under the Bombay District Municipal Act and the Bombay Municipal Boroughs Act, as applied to areas in the State of Gujarat, were converted into Gram and Nagar Panchayats under section 307 of the Gujarat Panchayats Act and all officers and servants in the employ of such municipalities became officers and servants of interim Panchayats and allocated to the panchayat service. Thus, secretaries and officers of dissolved municipalities also became secretaries and officers of Gram and Nagar panchayats. District Local Boards constituted

under the Bombay Local Boards Act stood dissolved on the passing of the Gujarat Panchayats Act and all officers and servants in the employment of the Board were deemed to be transferred to the service of the successor District Panchayat under section 326 of the Gujarat Panchayats Act. Also allocated to the panchayat service were those government servants who are transferred to the panchayat under section 157 and such other officers and servants employed in the state service as were necessary. All these secretaries, officers and servants became members of a service under the State as soon as they were allocated to the panchayat service But, by the Amending Act, secretaries, officers and servants of Gram and Nagar Panchayat who were allocated to the panchayat service from the ranks of the ex-municipal employees were sought to be meted out differential treatment from the other members of the panchayat service, more particularly the secretaries, officer and servants of Gram and Nagar Panchayats who were drawn from the ranks of secretaries, officer and servants of old village panchayats, that is, the Talatis and Kotwals. Their status as members of a service under the state was to go with no option to them. Retrospectivity was sought to be given to the Amending Act so that they could not claim that they were ever government servants and so could not be made to cease to be government servants and so that they could not claim that they were singled out for differential treatment for if they were never in the panchayat service they could not complain of being taken out of the panchayat service. Brother O. Chinnappa Reddy speaking for the Court emphatically observed:-

> Now in 1978 before the Amending Act was passed thanks to the provisions of the principle Act of 1961 the ex-municipal employees who had been allocated to the panchayat service as Secretaries Officer and servants of Gram and Nagar Panchayats, had achieved the status of government servants. Their status as government servants could not be extinguished so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Article 311 of the Constitution. Nor was it permissible to single them out for differential treatment. That would offend Article 14 of the Constitution. An attempt was made to justify the purported differentiation on the basis of history and ancestry as it were. It was said that Talatis and Kotwals who became secretaries, officers and servants of Gram and Nagar Panchayats were government servants, even to start with, while municipal employees who became such secretaries, officers and servants of Gram and Nagar Panchayats were not. Each carried the mark or the 'brand' of his origin and a classification on the basis of the source from which they came into the service, it was claimed, was permissible. We are clear that it is not. Once they had joined the common stream of service to perform the same duties, it is clearly not permissible to make any classification on the basis of their origin. Such a classification would be unreasonable and entirely irrelevant to the object sought to be achieved. It is to navigate around these two obstacles of Article 311 and Article 14 that the Amending Act is sought to be made retrospective, to bring about an artificial situation as if the erstwhile municipal employees never became members of a service under the State. Can a law be made to destroy today's accrued constitutional rights by artificially reverting to a situation which existed 17 years ago ? No. The legislation is pure and simple self-deceptive if we may use such an expression with reference to a legislature made law. The legislature is undoubtedly competent to legislate with retrospective

> effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history.....Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act 1978 is unconstitutional as it offends Articles 311 and 14 and is arbitrary and unreasonable."

In view of this latest pronouncement by the Constitution Bench of this Court, the law appears to be well settled and the Haryana Government cannot take away the accrued rights of the petitioners and the appellants by making amendment of the rules with retrospective effect.

For the foregoing discussion the writ petitions as well as the appeals are allowed and the orders of the High Court dated October 10, 1980 are quashed and the impugned rule 4(ii) of the Punjab Government National Emergency (Concessions) Rules 1965 as amended by the Haryana Government Gazette Notification No.GSR 77/ Const/Art. 309/Amend/(1)/76 dated 22nd March 1976 and the Notification No. GSR. 182/Const/Art. 309/Amend/(2)/76 dated 9 August 1976 amending the definition of the expression 'military service' in rule 2 are declared to be ultra vires the Constitution in so far as they affect prejudicially persons who had acquired rights as stated above. A writ in the nature of mandamus is issued directing respondents Nos. 1 and 2 to prepare the seniority list afresh in the light of the decision of this Court taking into consideration the military service rendered by the petitioners as well as the appellants.

In the circumstances of the case however there will be no order as to costs.

S.R. Appeals & Petitions allowed.