HIGH COURT OF DELHI & ANR. A

*v.*

A.K. MAHAJAN & ORS.

(Civil Appeal Nos. 6397-6398 of 2001)

MAY 15, 2009 B

**[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]**

*Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 – rr. 3 and 7 – Schedule II – Amendment of, with retrospective effect – Selection to post of Assistant Registrar to be made by selection on merit from confirmed officers by rotation – First vacancy to be filled from Private Secretaries, second and third from amongst Superintendent and Court Master – Candidates already interviewed not called after retrospective amendment – Retrospective nature of amendment, challenge to – High Court quashing amendment to the extent of retrospectivity – Held: When amended Rules affect the benefit already given, then alone such Rules would not be permissible to the extent of retrospectivity – Retrospective effect was given after consideration of material statistics-imbalance in between three parallel posts of Private Secretaries, Court Masters and Superintendents – Date fixed was immediately after the last promotion was effected – Promotional opportunities never became crystallized – There was no absolute accrued or vested right of consideration, which could be affected by retrospective amendments – Therefore, there is no fault with the retrospective aspect – Order of High Court not sustainable and set aside.* C D E F

**By notification dated 7.8.1995, the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972, Schedule II was amended with effect from 1.07.1973. Rule 7 as amended provided that the selection** G

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A to the post of Assistant Registrar could be made by selection on merit from confirmed officers of the categories 5, 6 and 7 of class II in Schedule I by rotation. First vacancy in the post of the Assistant Registrar would be filled from Private Secretaries, the second and third B would be filled from amongst Superintendent and Court Master. The last appointment to the post of Assistant Registrar under the Rules was made on 1.6.1993. Interview of some of the candidates was already held but were not called after the amendment was made applicable C retrospectively. Some of the employees of High Court of Delhi filed writ petitions challenging the retrospective amendment to the Rules. High Court allowed the writ petitions to the extent that only the retrospective effect of the amendment was invalidated. Hence the present D appeals.

Allowing the appeals, the Court

HELD: 1. Law regarding the retrospectivity or retroactive operation regarding the Rules of selection is E that where such amended Rules affect the benefit already given, then alone such Rules would not be permissible to the extent of retrospectivity. The judgment of the High Court cannot be concurred with and is set aside. The Writ Petitions are also dismissed. [Paras 23 and 24] [462-B-C]

F 2.1. High Court observed that the benefit of consideration, which was available to the writ petitioner no. 8 prior to the retrospective amendment of the Rules, was not available to him after the amendment of the Rules. This is an incorrect notion. There can be no *benefit* G of consideration. To be considered is a right of employee but merely being considered, in itself, is not a *benefit* as it may or may not result in the selection or promotion of an employee and hence it is in the nature of a chance. A mere chance of promotion being affected by amendment

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is inconsequential. This Court has time and again held that since promotion is not a right of the employee, a mere chance of promotion if affected cannot and does not invalidate the action on the part of employer. [Para 11] [452-F-H; 453-A]

2.2. The right of consideration may accrue at a particular point of time or subsequently thereto. Merely because at a particular point of time the employee is not considered, does not mean the total denial of the consideration of the employee. In the instant case, it is not as if writ petitioner no. 8 was altogether denied the benefit of consideration for ever. He was undoubtedly considered later on and was promoted also. Therefore, it is incorrect to say that the amendment had the effect of denying him the benefit of consideration, which was available to him. He did continue with that benefit and was actually benefited under the same. The concept of consideration is an uncertain concept. One can understand a pension amount which is already decided or the promotion which is already granted or the seniority which is already conferred upon or the substantive appointment which is already made. If the amendment has the effect of denying this crystallized promotion, seniority or substantive appointment, then certainly the amendment could be held as arbitrary. In the instant case, no promotion was already granted or seniority already fixed, or any substantive appointment already made were affected by the retrospective amendment. [Paras 12 and 13] [453-B-F]

2.3. In the writ petition, though originally the whole amendment was challenged, the challenge to the substantive amendment creating three separate seniority lists and providing a principle of rotational promotion was given up. If the writ petition had to be allowed, then it was imperative that the fault should have been found not only

A with retrospective effect. Then the whole amendment would have been rendered invalid. But that did not happen. Writ petitioners severed the retrospectivity part from the other aspects of formulation of three separate seniority lists and rotational promotion; thereby they B gave a complete go-by to the seniority issue. The petitioners contended that they had no difficulty in the preparation of three seniority lists and the principle of rotational promotion which substantially affected the otherwise available chances of promotion to them (private C secretaries). Their sole contention was "please do not apply these rules to *us*. The rules may be alright for others who may be in the queue." This stance cannot be understood. [Para 14] [454-A-D]

2.4. High Court held that a vested right of D consideration was affected by the retrospective operation of the amendment and hence the amendment was bad. Respondents also pressed the same contention. The amendments were necessitated on account of the imbalance in between the three parallel posts of Private E Secretaries, Court Masters and the Superintendents. The statistics itself suggested that out of the 9 existing Assistant Registrars, 7 were from the category of Private Secretaries. Once these three posts were held to be the parallel posts, it was thought unfair that only one F category of Private Secretaries, sheerly on the basis of their number, could walk away with the maximum number of promotional posts. Nothing wrong can be seen in such thinking on the part of the High Court. It was perfectly reasonable to make the efforts to remedy the G imbalance in between the three posts, which were on the same level. There could be no question about the *bonafides* in bringing about these amendments. That was the need of the day and was rightly done. [Para 15] [454-E; 455-B-E]

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**2.5. The last appointment to the post of Assistant Registrar was made just about a month before 1.7.1993. Thereafter, there were no appointments of the Assistant Registrar. Since the 5 posts were to be filled-in in the next interview as per the existing Rule, it was obvious that the same imbalance would have been perpetuated further. Once a decision was taken to remedy the imbalance amongst the three posts, it was pointless to create further imbalance and, therefore, the High Court was right in deciding to apply the amendments with effect from 1.7.1993. At least on this count there is no fault with the retrospectivity of the amendments. That was the need of the day and indeed the imbalance would have affected the morale of the other two categories, namely, Superintendents and Court Masters. [Para 16] [455-F-H; 456-A]**

**2.6. In** *S. B. Mathur's case* **this Court held that the Rules and more particularly, the Rule regarding equal status of the three categories were found to be valid Rules, however, to express that any right to combined seniority list was created thereto, is completely incorrect. There is no such right. What was found by this Court was that the Rule for the combined seniority list was valid and nothing more. There was no question of any right to combined seniority list. Further, there was no question of any promotional opportunities becoming crystallized. The promotional opportunities never became crystallized. What can be crystallized is a factum of promotion itself and not a chance of promotion. There was no mandamus issued by this Court in** *S. B. Mathur's case.* **Completely erroneous observation has been made that a mandamus was issued by this Court and that the same could not be nullified by resorting to the Rule making power by respondent Nos. 1 & 2 since there was no change in the circumstances. A further observation is also incorrect that the amendment could only be made when there is a**

A change in circumstances. The need for the amendment could even be felt because of the change of the policy. If the High Court came to the conclusion that there was any need for amendment on the factual situation, the amendment could always be made. In the instant case, B the amendment was necessitated on account of the statistics of promotions to the three categories, where the Private Secretaries had almost monopolized the same. Therefore, there was nothing wrong with the amendments. [Para 20] [458-B-G]

C 2.7. This Court in *S. B. Mathur's case* had also not given any mandamus that the promotions would only be in the light of the existing Rules and in no other. The Court had simply approved of the Rules, as they then stood, providing for the equal status of the three D categories and the combined seniority list for them. This did not mean that this Court directed that there could be no change in the modality or that there could be no three separate seniority lists from the three categories. The judgment is completely misunderstood by the High Court. E [Para 20] [458-H; 459-A]

2.8. If High Court found that the Rule could not be changed by amendment, the High Court could have and should have found fault with the whole amendment, not F only the retrospectivity aspect thereof. The High Court has not invalidated the amendments, creating three seniority lists for the three categories and introducing the principle of rotational promotion. It has only found fault with the retrospectivity. The retrospective effect given to G the amendments was after consideration of material statistics. The date fixed was also relevant, as it was immediately after the last promotion was effected. Therefore, there is no fault with the retrospective aspect and the High Court has wrongly found fault with the retrospective aspect on the incorrect logic that the H

**amendments affected any absolute vested or accrued rights of being considered. There is no such absolute accrued or vested right of consideration, which could not be affected by the retrospective amendments. The only condition is that such retrospective amendments should be constitutionally valid. [Para 21] [459-C-F]**

*S. B. Mathur v. Chief Justice of Delhi* **1989 Supp. (1) SCC 34;** *Chairman, Railway Board and Ors. vs. C.R. Rangadhamaiah and Ors.* **1997(6) SCC 623, explained.**

*Tamil Nadu Teachers Association vs. State of Tamil Nadu* **AIR 1998 SC 2267;** *N.T. Devin Katti and Ors. Vs. Karnataka Public Service Commission and Ors.* **1990 (3) SCC 157;** *Marripati Nagaraja and Ors. Vs. Government of Andhra Pradesh and Ors.* **2007 (11) SCC 522;** *Virender Singh Hooda and Ors. vs. State of Haryana and Anr.* **2004 (12) SCC 588;** *State of J&K vs. Triloki Nath Khosa* **1974 (1) SCC 19, referred to.**

**Case Law Reference:**

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|---|---|---|
| **1989 Supp. (1) SCC 34** | **Explained** | **Para 3, 18, 19, 20** |
| **1997 (6) SCC 623** | **Explained** | **Para 10, 17** |
| **AIR 1998 SC 2267** | **Referred to.** | **Para 19** |
| **1990 (3) SCC 157** | **Referred to.** | **Para 22** |
| **2007 (11) SCC 522** | **Referred to.** | **Para 22** |
| **2004 (12) SCC 588** | **Referred to.** | **Para 22** |
| **1974 (1) SCC 19** | **Referred to.** | **Para 22** |

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6397-6398 of 2001.

From the Judgment & Order dated 01.03.2001 of the High Court of Delhi in C.W.P. No. 2944 of 1995 and C.W.P. 500 of 1996.

A WITH

C.A. Nos. 6399-6400 of 2001.

P.P. Rao, Maninder Singh, Prathiba Singh, Gaurav Sharma, Surbhi Mehta, Sumeet Bhatia, Naveen R. Nath, Lalit B Mohini Bhat and Hetu Arora for the Appellants.

Rani Chhabra, Rajesh Goyal, Shrish Kumar Misra, Pushkin, Sunita Gautam and S.P. Sharma for the Respondents.

C The Judgment of the Court was delivered by

**V.S. SIRPURKAR, J.** 1. This judgment shall govern Civil Appeal Nos. 6397-6398 of 2001 and Civil Appeal Nos. 6399-6400 of 2001. Civil Appeal Nos. 6397-6398 are filed by the High Court of Delhi and Civil Appeal Nos. 6399-6400 by some D employees of the High Court of Delhi. In all the Appeals, a common judgment passed by the High Court is in challenge. By the said judgment, Writ Petitions filed by some of the High Court employees were allowed. In the said Writ Petitions, notification dated 7.8.1995, making amendment in Schedule II E of the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 (hereinafter called "the Rules of 1972" for short), that pertain to the selection to the posts of Assistant Registrar, was in challenge. Rule 3 of these Rules dealt with joint inter-se seniority of confirmed employees F in categories of equal status posts. There was a joint seniority list for three categories of employees, they being:-

(1) Superintendents

(2) Court Masters

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(3) Private Secretaries.

Rule 7 provided the mode of appointment. It provided that the appointment to the post of Assistant Registrar could be made by selection on merit from confirmed officers of

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categories 5, 6 and 7 of Class I mentioned in Schedule I. These categories were none other, but the Superintendents, Court Masters and Private Secretaries, meaning thereby that these were the feeder posts to the post of Assistant Registrar. The last appointment to the post of Assistant Registrar under the said Rules of 1972 was made on 1.6.1993. In the year 1994, 5 vacancies arose in the post of Assistant Registrar and the selection process was initiated and a Committee, consisting two Hon'ble Judges of that Court, was constituted. However, on 2.7.1994, a representation came to be made by the Superintendents and the Court Masters that if the promotions were made as per the existing Rules on the basis of the combined seniority list, all the 5 post were likely to be filled only by the Private Secretaries, since they were much more in number and they were promoted in large numbers. It was, therefore, necessary to correct the imbalance. On 12.7.1994, the Hon'ble Chief Justice of the High Court directed the representation to be placed before the Committee constituted for selection to the post of Assistant Registrar.

2. On 7.11.1994 and 8.11.1994, the Committee interviewed 14 senior most officers for the aforementioned 5 posts of Assistant Registrar. However, no decision was taken. The said representation made by the Superintendents and Court Masters, however, came to be considered on 19.4.1995 and the Committee, therefore, recommended that the existing Rules should be amended, providing for 1/3rd quota each for Superintendents, Court Masters and Private Secretaries. It was also observed that if the recommendations were not accepted, then the vacant posts of Assistant Registrar could be filled from the candidates already interviewed. On 19.4.1995, the Hon'ble Chief Justice of that Court directed the then pending promotions to be made on the basis of the existing Rules and *also held* that the amendment of the said Rules should be made. However, that was to be only for the future posts. Another representation came to be filed on 26.4.1995 by the Superintendents and the Court Masters, pointing out that over

A the years on account of the existing Rules, the feeder category of Private Secretaries had gained maximum promotions to the posts of Assistant Registrar at the cost of the two remaining feeder posts, namely, Superintendents and Court Masters. It was pointed out that in the last 10 years, out of 28 promotions
B made to the post of Assistant Registrar, 15 were from the Private Secretaries, while only 13 came from the categories of Superintendent and Court Master combined. It was also pointed out that out of the 9 Assistant Registrars already working, 7 were from the category of Private Secretary and only
C 2 were from the Superintendents and Court Masters. This representation was directed to be placed before the same Committee. On 10.5.1995, the Committee recommended that suitable amendment should be made to the Rules and also noted that if the present vacancies were allowed to be filled on
D the basis of the existing Rules and the interviews already held, it would lead to a lot of frustration amongst the Superintendents/ Court Masters. The Committee, therefore, reiterated its earlier recommendation that a quota should be provided for each feeder category. The recommendations were approved by the
E Hon'ble Chief Justice of that Court. Thereafter, the draft amendments were considered by the Committee. Those amendments were recommended to be effective from 1.7.1993, as the last appointment to the post of Assistant Registrar was made only on 1.6.1993. On 7.8.1995, the Hon'ble Chief Justice of that Court approved the amendment to the Rules, so
F suggested with retrospective effect from 1.7.1993. By that amendment, existing Rule 7 was amended and it was provided that the first vacancy in the post of Assistant Registrar would be filled from Private Secretaries and the second and third vacancies would be filled from amongst the Superintendents
G and Court Masters. For that purpose, separate seniority list of Private Secretaries and Superintendents/Court Masters would be prepared. A fresh selection process thereafter was started on 9.8.1995 and on 11.8.1995. First senior most 8 officers from amongst the Private Secretaries and 11 officers from the

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seniority list of Superintendents/Court Masters were shortlisted for interview. The Committee was reconstituted on account of the retirement of Hon'ble P.K. Bahri, J., who was replaced by Hon'ble Arun Kumar, J. On 11.8.1995, the Committee interviewed candidates and made the recommendations. It was on the same day that Writ Petition No. 2944 of 1995 was filed by Shri A.K. Mahajan & Others, who belonged to the category of Private Secretaries. By that Writ Petition, the retrospective amendment to the Rules was challenged. On 19.8.1995, the Chief Justice of that Court granted approval to the promotions of 7 persons to the posts of Assistant Registrar with effect from 17.8.1995. Another Writ Petition, being CW No. 500 of 1996 came to be filed by Shri S.D. Sharma, wherein again the same amendment with retrospective effect was challenged. His grievance was that though he was called for the interviews held in November, 1994, he was not so called for the interview held in August, 1995. The Writ Petitions came to be allowed by the High court to the extent that only the retrospective effect of the amendment was found fault with and was invalidated. It is this common judgment, disposing of both the Writ Petitions, which has fallen for our consideration in the present matters.

3. Shri P.P. Rao, Learned Senior Counsel appearing on behalf of the appellants urged that the judgment of the High Court is not correct and proceeds on the wrong premise that the amendments took away the crystallized rights of the Writ Petitioners. The Learned Senior Counsel urged that there is no question of there being any crystallized rights as there can be no right for the promotion. According to Shri Rao, the extensive reliance by the appellants on decision in *S.B. Mathur Vs. Chief Justice of Delhi* reported in 1989 Supp. (1) SCC 34 was totally uncalled for and the ratio in that judgment was completely misunderstood by the High Court. Shri Rao further argued that there can be no question of there being any crystallized right or vested right in favour of the Writ Petitioners. It is further pointed out by the Learned Senior Counsel that the whole exercise was bonafide and taken with the sole objective of

A avoiding injustice to a particular class of employees like Superintendents/Court Masters in comparison to the Private Secretaries.

4. As against this, Shri Shrish Kumar Mishra, Learned Counsel appearing on behalf of the respondents pointed out B that the amendments and more particularly, the retrospective effect given thereto, completely annihilated the vested rights for being considered for the promotion. The argument of Shri Mishra was that in 1994 interviews, one of the Writ Petitioners was called, the interviews were also held and it was at that C juncture, that the High Court chose to change the parameters of the selection, which was totally incorrect. He further pointed out that the said amendments resulted in completely wiping out the chances of one of the Writ Petitioners particularly and the Private Secretaries generally for being considered for the D promotion, which was a fundamental right under Articles 14 and 16 of the Constitution of India. According to the Learned Counsel, therefore, the said amendments were unconstitutional.

5. It is on these rival pleadings that we have to consider E the present controversy.

6. Before we take up the contested issues for consideration, few things must be noted:-

(i) At this juncture, one of the original Writ Petitioners, F who was called for interview in 1994, but was not called for the interviews held in 1995 due to the amendment, has actually been promoted to the post of Assistant Registrar, though subsequently. Therefore, his grievance now remains only insofar G as the seniority is concerned.

(ii) That at the stage of the argument, though the Rule was extensively amended, the challenge was restricted only to the retrospective operation of the Rule, so amended.

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The other changed structure of the Rule was not assailed by the writ petitioners. A

7. This means that what falls for our consideration is only the effect of retrospective operation of the amendment.

8. We have already pointed out the original Rule No. 7 in the opening paragraphs of this judgment. We will point out now as to what the amendment was and for that purpose, we will quote the Original Rule No. 7, as amended, from Schedule II:- B

**"AMENDMENT IN SCHEDULE II** C

| S. No. | Category of Post | Minimum Qualification | Mode of appointment |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| 3. | Assistant Registrar | | By selection on merit from confirmed officers (Selection of the category 5, 6 & 7 Post) of Class II mentioned in Schedule I by rotation in the following manner:-<br><br>(a) First vacancy shall be filled in from the officers of category 7 of Class II mentioned in Schedule I (Private Secretary).<br><br>(b) Second and third vacancies shall be filled in from the officers of categories 5 & 6 of Class II mentioned in |

D E F G H

| | | | |
|---|---|---|---|
| | | | Schedule I (Superintendent and Court Masters) and so on. For the purposes of selection, two seniority lists, one of the officers of category 7 of Class II mentioned in Schedule I (Private Secretary) and other jointed seniority list of officers of categories 5 & 6 of Class I (Superintendent and Court Master) shall be maintained. |

Provided that if there be no officer available or found not fit for promotion out of the officers falling in consideration zone in any one of the above said categories, the vacancy may be filled from the other category by rotation as above subject to adjustment at the future selection/selections but without prejudice to the seniority of the person (s) already appointed.

The above amendment shall come into force w.e.f. 01.03.1993."

A glance at the Rule, therefore, suggests that the Rule now provided creation of three separate categories and the selection on merit shall be distributed in the three categories by rotation. Very surprisingly, this part of the Rule, which challenged the whole tenor of the earlier Rule, was not challenged before the High Court at the stage of the argument and the challenge was only limited to the retrospective nature of the amendment, which was to come in force with effect from 1.7.1973.

9. At the beginning of the debate itself, Shri Mishra, Learned Senior Counsel appearing on behalf of the respondent, very fairly stated that the respondents were not subscribing to some uncharitable remarks in the judgment regarding the amendment process, as well as, the interviews, which remarks were also directed against the Committee formulated by the Hon'ble Chief Justice of that Court and Chief Justice himself. It is unfortunate that such remarks have been passed. The Learned Counsel submitted that the respondent did not question the bonafides in the matter. In that view, we will leave the matter at that.

10. The only question that has remained to be decided is as to whether because of the retrospective nature of the amendment, the amendment itself could be invalidated to the extent of retrospectivity. In our opinion, the answer is negative. The High Court has mainly relied on the reported decision in 1997(6) SCC 623 *Chairman, Railway Board & Ors. Vs. C.R. Rangadhamaiah & Ors.* and more particularly, para 24 thereof. Shri Mishra, Learned Counsel for the respondents also very heavily relied on this decision. The said para 24 is as follows:-

> "24. In many of these decision the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions, which had been given retrospective operation, so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule, which was sought to be altered with effect from an anterior date and thereby, taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary,

A discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshal Lal Tandon* (AIR 1967 SC 1889), *B.S. Yadav* (AIR 1969 SC 118) and *Raman Lal Keshav Lal Soni* (1983(2) SCC 33)."

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The Learned Counsel pointed out as held by the High Court that any provision with retrospective operation, having an adverse effect in the matter of promotion, seniority, substantive C appointment etc. of the employees would be bad in law and would be in breach of Article 14 and 16 of the Constitution of India. The High Court also proceeded to hold that since one of the Writ Petitioners, who were invited for interview in the year 1994 was not invited in the year 1995, the vested right of the D Writ Petitioner had been adversely affected by the retrospective operation of the Rules. We must observe that the para is being interpreted in an erroneous way. Its clear language suggests that where the amendment, having retrospective operation, which has the effect of taking away a *benefit already available* E to the employee, then such a provision is arbitrary, discriminatory and violative of the rights guaranteed under Article 14 and 16 of the Constitution of India.

11. Now, we find no discussion in the whole judgment as F to what was the benefit which was available to the said employee. The High Court has observed that the benefit of consideration, which was available to the Writ Petitioner No. 8 prior to the retrospective amendment of the Rules, was not available to him after the amendment of the Rules. In our opinion, this is an incorrect notion. There can be no benefit of G consideration. To be considered is a right of employee but merely being considered, in itself, is not a benefit as it may or may not result in the selection or promotion of an employee and hence it is in the nature of a chance. A mere chance of promotion being affected by amendment is in our opinion

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inconsequential. This Court has time and again held that since promotion is not a right of the employee, a mere chance of promotion if affected cannot and does not invalidate the action on the part of employer.

12. That right of consideration may accrue at a particular point of time or subsequently thereto. Merely because at a particular point of time the employee is not considered, does not mean the total denial of the consideration of the employee. In the present case, it is not as if the concerned Writ Petitioner No. 8 was altogether denied the benefit of consideration for ever. He was undoubtedly considered later on and was promoted also. Therefore, it is incorrect to say that the amendment had the effect of denying him the benefit of consideration, which was available to him. He did continue with that benefit and was actually benefited under the same.

13. This is apart from the fact that the concept of consideration is an uncertain concept. One can understand a pension amount which is already decided or the promotion which is already granted or the seniority which is already conferred upon or the substantive appointment which is already made. If the amendment has the effect of denying this crystallized promotion, seniority or substantive appointment, then certainly the amendment could be held as arbitrary. But that has not happened here. Here, no promotion was already granted or seniority already fixed, or any substantive appointment already made were affected by the retrospective amendment. The observations in above quoted para 24 have to be understood in that sense.

14. The Writ Petitioners did not challenge the creation of three seniority lists. Earlier, there used to be one single seniority list for the three categories of employees. After the amendment, it was converted into three separate seniority lists, also introducing the rotational promotion, vis-à-vis, the post. This made a huge difference in the inter-se seniority of the three

A categories. In fact, in the Writ Petition, though originally the whole amendment was challenged, the challenge to the substantive amendment creating three separate seniority lists and providing a principle of rotational promotion was given up. If the Writ Petition had to be allowed, then it was imperative
B that the fault should have been found not only with retrospective effect. Then the whole amendment would have been rendered invalid. But that did not happen. The Writ Petitioners severed the retrospectivity part from the other aspects of formulation of three separate seniority lists and rotational promotion; thereby
C they gave a complete go-by to the seniority issue. In short the petitioners contended that they had no difficulty in the preparation of three seniority lists and the principle of rotational promotion which substantially affected the otherwise available chances of promotion to them (private secretaries). Their sole
D contention was "please do not apply these rules to us. The rules may be alright for others who may be in the queue." We fail to understand this stance.

15. The High Court then proceeded to hold that a vested right of consideration was affected by the retrospective
E operation of the amendment and hence the amendment was bad. Shri Mishra, Learned Counsel for the respondents also pressed the same contention. According to the Learned Counsel, the denial of consideration was writ large, particularly in respect of the Writ Petitioner No. 8 since he was actually
F called for interview in the year 1994, but not in 1995, after the amendments were made applicable retrospectively. It was pointed out that a particular individual, after the amendments, was pushed back substantially. The Learned Counsel also grudged that even when the interviews were conducted in
G 1994, yet no appointments were made and instead, the Committee recommended framing of fresh Rules with the result that some persons who were the Private Secretaries were denied the chance of being considered for promotion. The Learned Counsel feebly complained against this and tried to
H address us that the recommendations of the Committee should

have been accepted by the Hon'ble Chief Justice of that Court and no amendments should have been made, affecting the rights of those who were interviewed in 1994. At this juncture itself, we must make it clear that such was not the challenge. We have already clarified that it is difficult to find out any lack of benefits on the part of either the Committee or the Hon'ble the Chief Justice. The amendments were necessitated on account of the imbalance in between the three parallel posts of Private Secretaries, Court Masters and the Superintendents. The statistics itself suggested that out of the 9 existing Assistant Registrars, 7 were from the category of Private Secretaries. Once these three posts were held to be the parallel posts, it was thought unfair that only one category of Private Secretaries, sheerly on the basis of their number, could walk away with the maximum number of promotional posts. We do not see anything wrong in such thinking on the part of the High Court. It was perfectly reasonable to make the efforts to remedy the imbalance in between the three posts, which were on the same level. As we have already pointed out, there could be no question about the bonafides in bringing about these amendments. That was the need of the day and was rightly done.

16. The only question is as to whether the amendments could be introduced with effect from 1.7.1993. Here, it must be pointed out that the last appointment to the post of Assistant Registrar was made just about a month before that date. Thereafter, there were no appointments of the Assistant Registrar. Since the 5 posts were to be filled-in in the next interview as per the existing Rule, it was obvious that the same imbalance would have been perpetuated further. Once a decision was taken to remedy the imbalance amongst the three posts, it was pointless to create further imbalance and, therefore, the High Court was right in deciding to apply the amendments with effect from 1.7.1993. At least on this count, we do not find any fault with the retrospectivity of the amendments. That was the need of the day and indeed the

A imbalance would have affected the morale of the other two categories, namely, Superintendents and Court Masters.

17. The things do not stop here. The substantial argument is that in this, the vested right of consideration was being affected. We have already explained the observations in para 24 of the judgment in *Chairman, Railway Board & Ors. Vs. C.R. Rangadhamaiah & Ors.* (cited supra). We have also indicated as to how those observations have to be read and understood. In our opinion, when the Writ Petitioners suggested that their vested rights or accrued rights were affected because of the retrospective operation, they completely forgot that the observations pertained to the benefits which were already made available. We have, in the earlier paragraphs, already explained this concept.

18. The High Court has relied on a decision in *S.B. Mathur Vs. Chief Justice of Delhi* (cited supra). Very significantly, this decision also related to the selection to the same post of Assistant Registrar or the same three categories with which we are concerned here. There, the Writ Petition was filed by the Superintendents, objecting to their being treated on par with Private Secretaries and the Court Masters and being included in the joint seniority list alongwith them for the purposes of promotion to the next higher post of Assistant Registrar. It was submitted that the three categories could not be treated as equal status posts, as the duties etc. for all the three posts were different. That challenge was repelled by this Court by holding that it was not necessary that the duties must be same. The Court held that for treating the certain posts as equated posts or equal status posts, even the sources of recruitment need not be the same nor the qualifications for appointment have to be identical. The Court held that all that was reasonably required was that there must not be such difference in the pay scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant

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factor, that it would be unjust to treat the posts alike. The Court also noted that there was no challenge to the validity of Delhi High Court Staff (Seniority) Rules, 1971 generally or any other Rule particularly and, therefore, even if the duties and responsibilities attached to these posts were not the same, they were not so materially different as to render it inequitable that they should be treated on the same footing for the purposes of promotion and transfer. Ultimately, the Court repelled the argument that the three posts could not be treated as of equal status.

19. The High Court has quoted a paragraph from the said judgment and referred to the argument on behalf of the Writ Petitioners that the issue of selection to the posts of Assistant Registrar on the basis of joint seniority of Superintendents/ Court Masters and Private Secretaries already stood settled by this Court and, therefore, the High Court had no power to amend the Rules by way of retrospective effect. The High Court also noted the further arguments that by way of retrospective amendment, the effect of the decision of this Court could not be set at naught. The High Court also referred to the decision in *Tamil Nadu Teachers Association Vs. State of Tamil Nadu* reported in AIR 1998 SC 2267. While commenting on the case of *S.B. Mathur Vs. Chief Justice of Delhi* (cited supra), the High Court observed:-

> "We have perused the judgment of the Supreme Curt in *S.B. Mathur's* case (supra), heavily relied upon by the learned counsel for the petitioners. The process of making appointments to the post of Assistant Registrar in Delhi High Court was dealt with in details by the Supreme Court. *Right to combine seniority list, as well as, the promotional opportunities provided in the pre-amended rules became crystallized in the said writ of mandamus issued by the Supreme Court* and the same could not be taken away by resorting to the rule making power by respondent Nos. 1 & 2. There is no change in the circumstances. The

A amendment could only be made when there is such a change in the circumstances that in the given circumstances, the Supreme Court would not have passed such an order." (Emphasis Supplied)

B 20. In our opinion, the observations are erroneous. True it is that in case of *S.B. Mathur Vs. Chief Justice of Delhi* (cited supra), this Court came to the conclusion that the Rules and more particularly, the Rule regarding equal status of the three categories were found to be valid Rules, however, to express that any right to combined seniority list was created thereto, is C completely incorrect. There is no such right. What was found by this Court was that the Rule for the combined seniority list was valid and nothing more. There was no question of any right to combined seniority list. Further, there was no question of any promotional opportunities becoming crystallized. As we have D explained earlier, the promotional opportunities never became crystallized. What can be crystallized is a factum of promotion itself and not a chance of promotion. Last but not the least, there was no mandamus issued by this Court in the aforementioned judgment. Completely erroneous observation has been made E that a mandamus was issued by this Court and that the same could not be nullified by resorting to the Rule making power by respondent Nos. 1 & 2 (therein) since there was no change in the circumstances. A further observation is also incorrect that the amendment could only be made when there is a change in F circumstances. The need for the amendment could even be felt because of the change of the policy. If the High Court came to the conclusion that there was any need for amendment on the factual situation, the amendment could always be made. In the present case, the amendment was necessitated on account of G the statistics of promotions to the three categories, where the Private Secretaries had almost monopolized the same. Therefore, there was nothing wrong with the amendments. This Court had also not given any mandamus that the promotions would only be in the light of the existing Rules and in no other. H The Court had simply approved of the Rules, as they then stood,

providing for the equal status of the three categories and the combined seniority list for them. This did not mean that this Court directed that there could be no change in the modality or that there could be no three separate seniority lists from the three categories. In our opinion, the judgment is completely misunderstood by the High Court.

21. Further, if this was the situation found by the High Court that the Rule could not be changed by amendment, the High Court could have and should have found fault with *the whole* amendment, not only the retrospectivity aspect thereof. But that has not happened. The High Court has not invalidated the amendments, creating three seniority lists for the three categories and introducing the principle of rotational promotion. It has only found fault with the retrospectivity. We have already pointed out that the retrospective effect given to the amendments was after consideration of material statistics. Further, the date fixed was also relevant, as it was immediately after the last promotion was effected. We, therefore, find no fault with the retrospective aspect and in our opinion, the High Court has wrongly found fault with the retrospective aspect on the incorrect logic that the amendments affected any absolute vested or accrued rights of being considered. There is no such absolute accrued or vested right of consideration, which could not be affected by the retrospective amendments. The only condition is that such retrospective amendments should be constitutionally valid.

22. In the decision in *N.T. Devin Katti and & Ors. Vs. Karnataka Public Service Commission and & Ors.* reported in 1990 (3) SCC 157, the Court was considering the right of the candidates to be considered. The question in that case was that as to which Rules were applicable, particularly, when there were amendments in the Rules after the advertisement was issued. The Court clearly held that under such circumstances, normally the existing Rules on the date of advertisement would be applicable, however, if there is an amendment in the Rule

A with retrospective effect, then it would be the amended Rules, which would be applicable. The Court observed that it was on the date of the advertisement that the right of the candidate crystallizes. However, the Court observed that he had no absolute right in the matter. The Court further observed:-

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> ".....If the Recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules."

C The Court also observed that:-

> "a candidate, on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in
D accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. *He cannot be deprived of that limited right on the amendment of*
E *rules during the pendency of selection unless the amended rules are retrospective in nature."* (Emphasis supplied).

This judgment was relied upon further in case of *Marripati Nagaraja & Ors. Vs. Government of Andhra Pradesh & Ors.*
F reported in 2007(11) SCC 522. This Court observed:-

> "The State, in exercise of its power conferred upon it under the proviso to Article 309 of the Constitution is entitled to make rules with retrospective effect and retroactive
G operation. Ordinarily, in the absence of any rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied. But, if some rule has been given a retrospective effect which is within the domain of the State, unless the same is set aside as being unconstitutional, the
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consequences flowing therefrom shall ensue. In such an event, the applicable rule would not be the rule which was existing, but the one which had been validly brought on the statute book from an anterior date....."

In *Virender Singh Hooda & Ors. Vs. State of Haryana & Anr.* reported in 2004(12) SCC 588, in paragraph 45, this Court recognized the power and competence of the Legislature to make a valid law and make it retrospectively, so as to bind even past transactions. In para 67 and 68, the Court explained the aspect of retrospectivity and came to the conclusion that there was nothing wrong if the Legislature had removed the basis of the decision of this Court by repealing the circulars. It further observed that:-

> ".....the candidates have the right to the posts that are advertised and not the ones which arise later for which a separate advertisement is issued. A valid law, retrospective or prospective, enacted by the legislature cannot be declared ultra vires on the ground that it would nullify the benefit which otherwise would have been available as a result of applicability and interpretation placed by a superior Court.

The decision in the case of *Chairman, Railway Board* (cited supra) was specifically considered in para 70 of the judgment. The Court reiterated the observation made in that case that a Rule, which seeks to reverse from an anterior date a benefit which has been granted or availed of e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively. We have already pointed out that it is only to this extent that the retrospectivity can be challenged. However, for that there has to be a tangible benefit awarded like promotion or pay-scale or a rate of pension. Such is not the state of affairs in the present case. The Court also made reference to the decision in *State of J&K Vs. Triloki Nath Khosa* reported in 1974(1) SCC 19, wherein it was held that

A impugned Rules did not recall a promotion already made or reduce a pay-scale already granted.

23. In short, law regarding the retrospectivity or retroactive operation regarding the Rules of selection is that where such B amended Rules affect the benefit already given, then alone such Rules would not be permissible to the extent of retrospectivity.

24. We are unable to agree with the judgment of the High Court and would choose to set aside the same. It is accordingly C set aside. Accordingly, the Writ Petitions filed before the High Court are also dismissed. However, in the circumstances, there shall be no orders as to the costs.

N.J. Appeals allowed.