

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5859 OF 2014  
(Arising out of S.L.P. (C) No. 798 of 2008)

H.C. Kulwant Singh and others ...  
Appellants

Versus

H.C. Daya Ram and others ...Respondents

**J U D G M E N T**

**Dipak Misra, J.**

Leave granted.

2. In this appeal, by special leave, apart from interpreting the precise connotative effect of Punjab Police Rules, 1934 (for short “the Rules”), specially Rule 13.7 of the Rules that governs the promotion of the constables in Chandigarh Police to the post of Head Constable, and the amendments that were incorporated on 4.3.1982, and another incarnation of the said amendments vide

amendment dated 6.2.1988, we have also called upon to decide whether the High Court by the impugned judgment and order dated 18.12.2007 passed in Civil Writ Petition No. 16550 of 1998 whereby the orders passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short "the tribunal") dated 8.1.1990 and 23.9.1998 were assailed has redeemed the cause of justice within the requisite parameters of law by lancinating both the orders of the tribunal and further issuing directions to recast the seniority list of Head Constables on the foundation of seniority rules and not to revert any Head Constable or the Assistant Sub-Inspector with the rider that they shall avail further promotion solely on the basis of their revised seniority warranting no interference by this Court or has acted beyond the ambit of jurisdiction in its appreciation and application of well settled principles that would make the order pregnable inviting its extinction.

3. The factual score needs to be depicted with necessitous chronology. The appellants and respondent Nos. 1 to 34 were recruited as Constables in Chandigarh

Police by the Union Territory, Chandigarh and they are governed by the Rules as applicable to the Union Territory of Chandigarh. Rule 13.7 of the Rules which dealt with the promotions to the posts of Head Constables from the Constables prior to amendment of the Rule on 4.3.1982, provided that the names of Police Constables for admission to Lower School Course were required to be entered in List 'B' in order of merit determined by the Departmental Promotion Committee on the basis of test scheme in (i) Parade (ii) written test in general law and (iii) examination of service record. After the amendment of the said Rule a batch of confirmed Constables were sent for Lower School Course at Police Training College, Phillaur. The said course was for six months and it was held twice a year - one commencing in April and the other in October. A batch of fifteen Constables duly selected on the basis of the amended Rules was sent for Lower School Course in April, 1988. Thereafter vide notification dated 17.6.1988 the Rule 13.7 was amended by Punjab Police (Chandigarh Amendment) Rules, 1988 which came into force on the date of publication in the Chandigarh

Administration Gazette. After the Rule was amended, the Senior Superintendent of Police, Chandigarh Administration issued a letter dated 27.6.1988 to the effect that a test would be held some time in September, 1988 as laid down in the amended Rules.

4. Being aggrieved by the said order Achhar Chand and 24 others filed O.A. No. 510-CH/88 before the tribunal challenging the validity of the said order. It was contended before the tribunal that as they were confirmed Constables, they had acquired a valuable right to be considered for admission to the Lower School Course in accordance with the pre-amended Rules, i.e., the rules that existed between 4.3.1982 and 17.6.1988. The said submission was resisted by the Union of India and its functionaries asserting, inter alia, the amended Rule 13.7 having come into force the Department was entitled to go ahead with the selection as envisaged under the Rules. The tribunal, while narrating the facts, observed that, as conceded, 71 posts of Head Constables were created and sanctioned from which date the amended Rule came into force, and as against 71 posts, 15 Constables were sent

for the course started in April, 1988 and the remaining 56 posts were yet to be filled up. It also took note of the fact that in the next course beginning October, 1988 the Chandigarh Administration had been allotted 50 seats for the Lower School Course.

5. Taking stock of the factual position, the tribunal opined that all the confirmed Constables, including the applicants before it, serving under Union Territory Chandigarh became eligible for consideration for promotion to the posts of Head Constables on the basis of unamended Rule 13.7 and the question of Head Constables being appointed in accordance with the amended Rule 13.7 could arise only thereafter. The tribunal placed reliance on the decision in **Y.V. Rangaiah and others v. J. Sreenivasa Rao & ors.**<sup>1</sup> and **P. Ganeshwar Rao and others v. State of Andhra Pradesh and others**<sup>2</sup> and the decision of the Principal Bench of the tribunal in **Om Parkash v. Delhi Administration and others**<sup>3</sup> and, accordingly quashed

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AIR 1983 SC 852

<sup>2</sup> 1988 (Supp) SCC 740

<sup>3</sup> 1988 (2) AISJ 133

the order dated 27.6.1988 and directed the authorities to drop the proposed examination and prepare a fresh list for sending Constables to the Lower School Course at Police Training College, Phillaur in accordance with the pre-amended Rule 13.7 i.e. the rule as it existed prior to 17.6.1988 so far as the vacancies of Head Constables which had come into existence prior to the date of amended notification. The tribunal further directed that the criterion to be adopted by them would be seniority-cum-merit as laid down therein, however, it would be open to the administration to act in accordance with the amended Rule in respect of the vacancies/posts of Head Constables which may have occurred subsequent to the coming into force of the amended Rule or which may fall vacant thereafter.

6. The competent authorities of Union Territory identified those vacancies of Head Constables which had occurred prior to the amendment dated 17.6.1988 and by that process 56 vacancies were found to have occurred before the amendment and accordingly 56 Constables were brought on List 'B' in order of seniority as per

provisions of unamended Rule 13.7 and other formalities were carried out.

7. Thereafter, as the facts would undrape, on 28.10.1988 a list of eligible Constables/ad hoc Head Constables who fulfilled the prescribed conditions to sit in the competitive examination to be held in January, 1989 was circulated. On 25.1.1989 a circular was issued to all the units regarding the competitive test to be held on 11.2.1989. In the meantime, three Original Applications, i.e., O.A. Nos. 697/CH/88, 872/CH/88 and 137/CH/89 were filed before the tribunal challenging the validity of the amended rules and with ancillary prayers which included quashing of orders dated 28.10.1988 whereby the list was drawn of the eligible Constables to participate in B-1 test, and dated 25.1.1989 regarding conduct of B-1 test. The tribunal on 31.3.1989 dealt with the interim prayer and directed as follows: -

“Regarding interim relief we are of the view that in case the selection of the Head Constable is stayed, the applicants are not likely to gain any thing thereby. On the other hand, the Administration may suffer due to the shortage of the Head Constables and the balance of convenience is that the Chandigarh

Administration should be allowed to complete the selection of the Head Constables, as already notified by them. But the validity of this selection shall be subject to the final decision of these cases. This will sufficiently safe guard the interests of the applicants and no absolute stay order is called for in these cases. While modifying our earlier interim orders in these cases, we order that the selection of the Head Constables may be made and given effect to, subject to the final decision of these cases.”

8. In pursuance of the aforesaid interim order, out of total 48 constables declared qualified in the B-1 test seven Constables earlier brought on List 'B' on 5.10.1988 and 2.2.1989 in pursuance of unamended PPR 13.7 and 41 Constables declared qualified in the B-1 Test in pursuance of amended Rule brought on List 'B' on 19.4.1989; 20 Constables (7 Constable in pursuance of unamended rule and first 13 Constables out of 41 Constables in pursuance of amended Rule) were deputed for Lower School Course vide order dated 21.4.1989 as only 20 seats were allotted to the PPA Phillaur for the session commencing April, 1989. Thereafter, the eligible and qualified Constables were granted List 'C' and regular promotion to the rank of Head Constables as per the provisions of Rule 13.8(2) of



the Rules. The rest 28 Constables were deputed for Lower School Course vide order 4.10.1989.

9. The tribunal took note of the earlier amendment dated 4.2.1982 and the amended Rule on 17.6.1988 which was under assail and came to hold that the administrator of Union Territory of Chandigarh was competent to issue the impugned notification dated 17.6.1988 incorporating the amendment in the Rule as applicable to Union Territory of Chandigarh and, accordingly, opined that the Rule did not suffer from any kind of infirmity. After so holding the tribunal proceeded to deal with the Rule position as engrafted in Rule 13 in entirety and came to hold that the process of election for promotion of a Constable to the rank of Head Constable started at the time of selection for the Course under Rule 13.7 of the Rules of 1934 and that every Constable had the right to be sent for the promotional course at the Police Training College, Phillaur in order of his seniority determined in accordance with that Rule.

10. Thereafter, the tribunal addressed itself to the question whether by the impugned amendment of Rule

13.7 of Rules of 1934, on 17.6.1988 the applicants therein would have been deprived of the right to be sent for the Lower School Course. It was contended by the applicants therein that the impugned amendment had altogether deprived them of their right to be sent for promotion course to enable them to be considered for promotion to the post of Head Constable in accordance with the criterion prescribed by the unamended Rule. The said submission was resisted by the Union of India contending, inter alia, the right of a Government servant was only to be considered for promotion and that is a condition of service but curtailment of chances of promotion by change of Rule are not conditions of service and the same could be changed to the disadvantage of a Government servant. The tribunal observed that there was no cavil over the proposition of law but proceeded to deal with the issue whether the applicants therein had any vested right under the pre-amended Rule as confirmed Constables and whether they had been deprived of the said vested right and came to hold that in case the selection of the applicants was allowed to be made for the promotional

course on the basis of the criterion provided in the Rule 13.7 as amended by notification dated 17.6.88, it would certainly divest the applicants of their right to be selected on the basis of confirmation and seniority which right had become an accrued right in them under the pre-amended Rule and as such the Rules would have retrospective operation contrary to the intention of the Rule making authority.

11. Be it noted, both sides placed reliance on **Acchhar Chand's** case and the tribunal understood that decision to the effect that in the said case it was held that all the confirmed constables had become eligible for promotion on the basis of the unamended Rule 13.7 and accordingly directed that the selection of the Constables for the promotional course who were already in service before the amendment of 1988 would be made in accordance with the criteria postulated in the pre-amended Rule as contained in the notification dated 4.3.1982 and, accordingly, it so directed. It was also clarified that those Constables who had already successfully undergone the Lower School Course training even on the basis of the

amended Rule 13.7, would not be required to undergo the same training again.

12. Pursuant to the aforesaid order, as is evincible, 28 constables were brought on List 'B' in accordance with the amended Rule and deputed for Lower School Course in October, 1989 having qualified were promoted as officiating Head Constables on 8.6.1990.

13. At this juncture, it is seemly to state that OA No. 1401/CH of 1990 was filed by the appellants herein before the tribunal for quashing of the order dated 28.12.1989 seeking direction to the respondents to place the private respondents in List 'C' in the context of their seniority.

14. In course of adjudication, the tribunal referred to the initial rule position, the amended rules, the decision rendered in OA No. 510/CH/ 88-89 on 28.9.1988, the interim order passed on 31.3.1989 in O.A. No. 137/CH/89 and other connected OAs, the order dated 19.4.1989 sending the candidates therein for training which was subject to the final judgment, the final decision rendered by the tribunal on 9.1.1990 wherein the tribunal had

opined that the Constables who were in service prior to 17.6.1988 would be governed by the unamended rules which prescribed seniority-cum-fitness, unlike the amended Rules which prescribed the selection by a test with the further concession that the Constables who had been sent for training under the interim order on the basis of the written test, irrespective of seniority, would not be required to undergo the same training again. After so narrating, the tribunal adverted to the orders of the Department whereby how the Constables were sent for training on the basis of written test, brought on list 'C' and, eventually, stood promoted as Head Constables. The tribunal took note of the fact that by virtue of the same the Constables were promoted as Head Constables before their seniors who were subsequently sent for training. That apart, the tribunal also apprised itself of the fact that the matter was carried to this Court and it was dismissed as infructuous as seniors had also been sent for training under the unamended Rule 13.7. After stating the facts, the tribunal held that the persons promoted to Head Constables who were sent for training on the basis of the

written examination, irrespective of seniority, under the interim order dated 31.3.1989 and keeping in view its order whereby it had been laid down that Constables in service prior to 17.6.1988 had a vested right to be sent for training for promotion to Head Constables on the basis of the unamended Rules i.e. seniority-cum-fitness and hence, the claim of the applicants was justified and the respondents who are their juniors cannot steal a march over them on promotion as Head Constables. Being of the said view, it set aside the order dated 28.12.1989 and directed the respondents to re-arrange the seniority list of the applicants and the respondents according to their basic seniority in the rank of Constables.

15. Being aggrieved by the said judgment and order dated 23.9.1998, the present respondents preferred CWP No. 1650 of 1998. While challenging the said order they also called in question the justifiability of the order dated 8.1.1990. The High Court referred to the order of the tribunal in OA No. 137/CH/89, the interim order dated 19.4.1989, the order passed by this Court on 29.1.1996 and the challenge to the order dated 18.12.1989 whereby

the Constables were sent for training on the basis of written test, irrespective of seniority and order dated 28.12.1989 by which they were promoted as Head Constables which was set aside by the tribunal in view of order dated 23.9.1998 placing reliance on the decision dated 8.1.1990 in OA No. 137/CH/89 (*Mewa Singh and others v. Chandigarh Administration*) wherein it was held that the pre-amended Rule would be applicable to all the Constables before the amendment of 1988, took note of the contention that only the vacancies which came into existence from 1.3.1982 to 17.6.1988 were required to be filled up on the basis of seniority rule irrespective of the date of appointment of the Constables and appreciated the stance that the tribunal had erred in appreciating the earlier order passed in **Acchhar Chand's** case inasmuch as vide order passed on 23.9.1988 a categorical finding had been recorded that the vacancies which arose after the amendment of the Rule on 4.3.1982 were required to be filled up on the basis of amendment carried out in the year 1982 and, therefore, the vacancies arising between the interregnum period, i.e. 4.3.1982 to 17.6.1988 alone,

the Constables were required to be sent for Lower School Course on the basis of seniority Rule and for all other posts the test, i.e., sitting in the written test, would apply. It also took note of the stand that neither the petitioners nor any Constable from their category was impleaded as a respondent in the subsequent original application. On behalf of the respondents the application was resisted on the ground that the writ petition was hit by doctrine of delay and laches; that the petitioners were aware of the pendency of the case before the tribunal as they were sent to Lower School Course subject to the final decision of the tribunal; that such application was allowed by the tribunal on 8.1.1990 which was being sought to be challenged after lapse of eight years.

16. The High Court repelled the contention relating to delay and laches on the ground that the special leave petition was dismissed as infructuous only in the year 1996 and that it was dismissed as infructuous as both the categories of employees had undergone Lower School Course and this Court had left the question of law open for consideration in appropriate case; and that the ultimate



order dated 23.9.1998 affected the petitioners therein and, therefore, the principle of delay and laches would not frustrate the lis. Adverting to the merits, the High Court dealt with the additional affidavit filed by the Senior Superintendent of Police which had asserted that 22 vacancies in the rank of Head Constables had arisen on 4.3.1982 when the Rule for bringing the Constables on List 'B' as per seniority Rule was introduced; that on the date of amendment on 17.6.1988 there were 56 vacancies; that the tribunal had recorded on 28.9.1988 that 71 posts were created and out of 71, 15 Constables were sent in April, 1988 and another 50 were sent in December, 1988 and, therefore, only six Constables could be sent for Lower School Course on the basis of seniority Rule; and that all other vacancies were required to be filled on the basis of test Rule incorporated vide amendment in Rule 13.7 of the Rules on 17.6.1988. The Court thereafter referred to the decision in **Y.V. Rangaiah** (supra) and held thus: -

“The finding recorded by the Tribunal in its order dated 8.1.1990 that on being confirmed as Constable, they have acquired a valuable right to be considered for admission List 'B' and Lower School Course, cannot be sustained in law. No employee can claim right to promotion

as per Rule existed on the date of appointment or confirmation. As per principle laid down in Y.V. Rangaiah's case (supra), right has been recognized for consideration for promotion as per Rule applicable on the date of availability of vacancies/posts. Therefore, the finding recorded that all the Constables before the amendment on 17.06.1988 would be sent for course in accordance with the seniority criterion is wholly illegal, unjustified and untenable. The said finding, in fact, runs counter to the judgment in Y.V. Rangaiah's case (supra) as well as to the order passed by the Tribunal on 28.09.1988. The order of the Tribunal passed on 23.09.1998 take same view as in Mewa Singh's case (supra). The same suffers from same infirmity. It is only the vacancies which arose between 4.3.1982 to 16.06.1988 i.e. 71 vacancies which will govern the Seniority Rule. For all other posts/vacancies, it is the Test Rule alone on the basis of which the candidates can be sent for the course."

17. On the aforesaid basis the High Court quashed the orders dated 23.9.1998 and 8.1.1990 and after so stating the High Court, noticing the existing scenario, passed a protective order to the effect that the Administration shall finalise the seniority of Head Constables on the basis of Seniority Rule in respect of 71 Constables, but as a result of finalization of the seniority in accordance with the Rules, the respondents shall not revert any Head Constable or Assistant Sub Inspector. Such Head Constable or Assistant Sub Inspector shall continue to

discharge his/her duties but shall avail further promotion only on the basis of his/her turn as per revised seniority.

18. We have heard Mr. P.S. Patwalia, learned senior counsel for the appellants, Mr. Nidhesh Gupta, learned senior counsel for respondents 1 to 34 and Mr. Gaurav M. Librehan, along with Ms. Mukti Chowdhary, learned counsel for respondents 36 to 38.

19. Criticising the judgment and order passed by the High Court Mr. Patwalia has raised the following contentions: -

(A) There is manifest legal infirmity in the order inasmuch as the High Court has entertained the writ petition assailing the order dater 8.1.990 which could not have been challenged before the High Court as it was rendered prior to the decision in ***L. Chandra Kumar v. Union of India and others***<sup>4</sup>.

(B) The order of the tribunal dated 23.9.1998 being founded on directions given on 8.1.1990 could not have been found fault with by the High Court. That

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<sup>4</sup> (1997) 3 SCC 261

apart the respondents slept over the rights, if any, by not assailing the order dated 8.1.1990 for a period of eight years and, therefore, the principle of delay and laches gets squarely attracted and the acceptance of the explanation by the writ petitioners is totally faulty.

(C) The rule position prior to the first amendment, i.e., 4.3.1982 was initially explained on 17.6.1988 and was further explained on 8.1.1990 and, therefore, the decisions rendered by the tribunal being impeccable did not warrant any interference but the High Court on an erroneous understanding of the rule position and its impact has quashed the order dated 8.1.1990 making its own order sensitively susceptible.

(D) The plea of impleadment which has been assiduously sought to be built does not remotely commends acceptation inasmuch as the respondents were not only aware of the pending litigation but also, more importantly, their obtaining of training and availing of the consequent benefits following from

the said training were subject to the final decision of the original application.

20. Mr. Gupta, learned senior counsel appearing for the affected respondents, in oppugnation, has canvassed as follows: -

(a) It is the settled legal position that the vacancies occurring during the period 4.3.1982 till 17.6.1988 are to be governed by the amended rule that came into force on 4.3.1982 and the vacancies occurring after 17.6.1988 amendment, are to be governed by the Rule as amended by the notification dated 17.6.1988. The said proposition of law is well established as per the decisions in **Y.V. Rangaiah** (supra), **P. Ganeshwar Rao** (supra), **State of Rajasthan v. R. Dayal and others**<sup>5</sup>, **B.L. Gupta and Anr. v. MCD**<sup>6</sup> and **Arjun Singh Rathore and Ors. v. B.N. Chaturvedi and Ors.**<sup>7</sup>.

(b) The initial decision of the tribunal rendered on 17.6.1988 is in accord with the

<sup>5</sup> (1997) 10 SCC 419

<sup>6</sup> (1998) 9 SCC 223

<sup>7</sup> (2007) 11 SCC 605

principles laid down by this Court, for it has been held therein that insofar as vacancies of Head Constables which had come into existences prior to the notification dated 17.6.1988 were concerned, the same would be governed by the Rule as it existed prior to 17.6.1988 and it was open to the respondent-employer to act in accordance with the amended Rule in respect of the vacancies which occurred subsequent to the amendment of the Rule. Despite the said clear decision in the field, the tribunal vide order dated 8.1.1990 opined that the confirmed Constables prior to the amendment dated 17.6.1988 had a vested right for being selected for a promotional course in accordance with the pre-amended Rule which did not prescribe for a test and that makes the order expressly illegal, null and void and cannot be utilized against the present respondents who were not impleaded as parties to the lis before the tribunal. Once there is violation of principles of natural justice, the order was not binding on the respondents and is, in fact, a void

order. The said submission is supported by the authorities in ***A.M.S. Sushanth & Ors. v. M. Sujatha and Ors.***<sup>8</sup>, ***M.V. Ravindranath & Ors. v. Union of India & Ors.***<sup>9</sup>, ***State of Assam v. Union of India & Ors.***<sup>10</sup> and ***Public Service Commission, Uttaranchal v. Mamta Bisht & Ors.***<sup>11</sup>.

- (c) The submission of the appellants that the respondents were aware of the pendency of OAs before the tribunal inasmuch as in the letter of appointment itself it was mentioned that their appointments were subject to the decision in Original Application and they had accepted the appointment letters, is without any substance, for the effect of non-impleadment of necessary parties is not altered by their being aware of pending litigation. The said proposition defeats the basic rule that the onus of impleading the necessary parties is on the appellants and solely because the appointment order was subject to the decision of the tribunal would not

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<sup>8</sup> (2000) 10 SCC 197

<sup>9</sup> (2000) 10 SCC 474

<sup>10</sup> (2010) 10 SCC 408

<sup>11</sup> (2010) 12 SCC 204

reflect the mandate of requirement of law. Quite apart from that, when by virtue of the interim order passed by the tribunal they were promoted, they became necessary parties to be impleaded and nothing else could justify their non-impleadment. The said assertion of law is buttressed by the pronouncements in ***K.R.C.S. Balakrishna Chetty & Sons & Co. v. State of Madras***<sup>12</sup>, ***Union of India & Ors. v. Brigadier P.S. Gill***<sup>13</sup>, ***Khetrabasi Biswal v. Ajaya Kumar Baral & Ors.***<sup>14</sup> and ***Shiv Kumar Tiwari (Dead) by LRs. v. Jagat Narain Rai & Ors.***<sup>15</sup>.

- (d) By the time the judgment dated 8.1.1990 was pronounced, all the respondents were sent for Lower School Course and because of that position they ought to have been treated as affected parties and should have been arrayed as contesting respondents. The principle of “ultimately affected party” is squarely applicable to such a situation and

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<sup>12</sup> 1961 (2) SCR 736

<sup>13</sup> (2012) 4 SCC 463

<sup>14</sup> (2004) 1 SCC 317

<sup>15</sup> (2001) 10 SCC 11



the said principle gets support from ***State of Himachal Pradesh & Anr. v. Kailash Chand Mahajan & Ors.***<sup>16</sup>.

- (e) The tribunal was approached by the present appellants in OA No. 1401/CH/1990 as the answering respondents were brought on List 'C' after clearing the test contemplated under Rule 13.8(2) of the Rules for implementation of the judgment dated 8.1.1990 which suffered from series of legal infirmities and hence, the said decision could not have been applied to those who were not parties to it and, more so, when this Court, while dealing with the special leave petition, had left the question of law open; and as the same has arisen at present, this Court should exercise the power under Articles 136 and 142 of the Constitution to deal with the same. For the aforesaid purpose, inspiration is drawn from the authorities in ***State of Bihar and Ors. v. Kameshwar Prasad Singh & Ors.***<sup>17</sup> and ***Jamshed***

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<sup>16</sup> 1992 Supp (2) SCC 351

<sup>17</sup> (2000) 9 SCC 94

***Hormusji Wadia v. Board of Trustees, Port of Mumbai & Anr.*<sup>18</sup>.**

- (f) As far as promotion to the Head Constables is concerned, it is governed by Rule 13.8 and perusal of Rule 13.8(2) makes it clear that promotions to the post of Head Constables are made subject to the principle described in sub-rules (1) and (2) of Rule 13.1 which provide that promotions from one rank to another shall be made by selection. The respondents were more meritorious than the appellants as they were selected in the competitive test and were deputed to the Lower School Course and they had obtained the higher marks than the appellants. Quite apart from that they have been promoted to Assistant Sub-Inspectors, Sub-Inspectors and further as Inspectors and, therefore, serious prejudice would be caused to the respondents by unsettling the position. The order dated 8.1.1990, as contended by the appellants, could not have been challenged by virtue of the decision in ***L. Chandra***

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<sup>18</sup> (2004) 3 SCC 214

**Kumar** (supra), but as the judgment is a nullity, it could have been left unchallenged and perceived from that angle, the High Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution has rightly quashed the order dated 23.9.1998, which is based on the principle stated in **K. Ajit Babu and Ors. v. Union of India and Ors.**<sup>19</sup> and **Rama Rao & Ors. v. M.G. Maheshwara Rao & Ors.**<sup>20</sup>.

21. Mr. Gaurav M. Librehan, learned counsel on behalf of respondents 36 to 38, the official respondents, has filed a written note of submissions stating the chronology of events and, eventually indicated that while the matter was pending before the tribunal, regular promotion was granted on 28.12.1989 to the Constables deputed for Lower School Course in order of merit achieved in the course as per provisions of Rule 13.8 but thereafter, no Constable has been granted List 'C' nor regular promotion as Head Constable as the matter was sub-judice before the High Court. It is asserted that in compliance with the

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<sup>19</sup> (1997) 6 SCC 473

<sup>20</sup> (2007) 14 SCC 54

order dated 18.12.2007 the appellants as well as private respondents have been granted List 'C' and regular promotion as Head Constables by order dated 1.2.2008 in order of merit achieved by them in the course held as per the provisions of Rule 13.8 subject to outcome of the special leave petition.

22. Before we advert to the rivalized submissions raised at the Bar it is requisite to advert to the rule position. Indisputably the matters relating to promotion of Constables to the rank of Head Constables are governed under Punjab Police Rules, 1934, when the Union Territory of Chandigarh came into existence on 1.11.1966. Rule 13.7 which deals with the bringing of Constables on List 'B' and their further deputation to the Lower School Course initially read as follows: -

**“13.7. List 'B'. Selection for admission to promotion Course for Constables at the Police Training College. - (1) List 'B' in From 13.7 shall be maintained by each Superintendent of Police. It will include the names of all Constables selected for admission to the Promotion Course for Constables at the Police Training College. Selection will be made in the month of January, each year and will be limited to the number of seats allotted to districts for the year with a twenty per cent**

reserve. Names will be entered in the list in order of merit determined by the Departmental Promotion Committee constituted by the Inspector-General of Police on the basis of tests in parade, general law (Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and Local and Special Laws) interview and examination of records.

(2) All Constables --

- (a) who are middle pass and have put in more than four years of service;
- (b) who are at least matriculates and have put in more than three years of service; or
- (c) who obtain first class with credit in the Recruits Course specified in rule 19.2; will be eligible to have their names entered in the aforesaid list, if they are not above thirty years of age on the first day of July in the year in which the selection is made;

Provided that no Constable who has been awarded a major punishment within a period of three years preceding the first day of January of the year in which selection is made will be eligible for admission to this lists and if any Constable whose name has been brought on this list is not sent to the Police Training College in that year he will be required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules.

(3) Temporary Constables brought on List 'B' shall be absorbed in the regular establishment in preference to others.

(4) No Constable who has failed to qualify in the promotion course for Constables shall be readmitted to List 'B', unless the Principal,

Police Training College, for the reasons to be recorded in writing considers him deserving of another chance and he is still eligible. The reasons are to be communicated to the Superintendent of Police concerned.”

23. From the aforesaid rule it is clear as day that the test was a criteria for bringing Constable to depute them for Lower School Course. Rule 13.8 of the Rules provided for promotion to Head Constables. The said Rule read as follows: -

**“13.8. List C. Promotion to Head Constables.** - (1) In each district a list shall be maintained in card index form (form 13.8(1) of all constables who have passed the Lower School Course at Phillaur and are considered eligible for promotion to Head Constable. A card shall be prepared for each constable admitted to the list and shall contain his marking under sub-rule 13.5(2) and notes by the Superintendent himself, or furnished by Gazetted Officer under whom the Constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector-General of Police at his annual inspection.

(2) Promotion to Head Constable shall be made in accordance with the principle described in sub-rules 13.1(1) and (2). The date of admission to List C shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comprising qualifications. In cases where other qualifications are equal, seniority in the police

force shall be the deciding factor. Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector-General, be promoted to Head Constable up to a maximum of ten per cent of vacancies.”

24. On 4.3.1982 Rule 13.7 was amended and the amended Rule provided that there shall be no test for constables and their admission to the promotional course, i.e., Lower School Course would be done on the basis of seniority-cum-merit. The notification amending the Rule reads as follows:-

“No. 16628-HII(I)-82/5105 dated 4<sup>th</sup> March, 1982; In exercise of the powers conferred by sub-section (2) of Section 46 of the Police Act, 1861, the Chief Commissioner, Chandigarh, is pleased to made the following amendments in the Punjab Police Rules, 1934, as applicable to the Union Territory of Chandigarh: -

In the Punjab Police Rules, 1934, Volume II, for Rule 13.7, the following shall be substituted, namely: -

**13.7.**

List B. Selection for Admission to promotion course for constables at the Police	(1) List B (in Form 13.7) shall be maintained by Superintendent of Police. It will include the names of constables considered suitable as
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Training College.		candidates for admission to the promotion course at the Police Training College.
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Selection shall be made as far as possible in the month of January each year. The number of constables to be deputed for the promotion course for constables will depend upon the availability of vacancies.

2. There shall be no test for Constables for admission to the promotion course and the constables shall be sent for Lower School Course strictly on the basis of Seniority-cum-Merit (record). The qualifications for sending a constable for the course shall be as under: -

(i) He must be a confirmed constable:

Provided that if no permanent constable fit for deputing for the course is available the "Senior Most" temporary constables fulfilling all other conditions can be considered for the said course.

(ii) He should have put in more than 3 years of service, if he is a matriculate, 4 years of service if he is a middle pass.

(iii) Seniority shall only be tampered if the record of a constable is really bad and is not found suitable on merit:

Provided that no constable who has been awarded a major punishment within a period of 3 year preceding the first day of January of the year in which selection is made will be eligible for admission to List "B".

A constable who has failed to qualify in the promotion course for constable shall not admitted to list 'B' unless the Principal, Police



Training College, for the reasons to be recorded in writing considers him suitable for another chance the reasons are to be communicated to the Superintendent of Police concerned.”

25. As the factual matrix would further unfurl, by notification dated 17.6.1988 Rule 13.7 was amended providing that Constables would be selected for admission to the promotional course, i.e., Lower School Course on the basis of the test, i.e., merit-cum-seniority and their names would be entered in the list prepared for admission to such course in order of merit determined by the Departmental Promotion Committee. The notification incorporating the amendment reads as follows: -

“No. 1/13/2/88-HII (1) 13676 dated 17.6.1988 (.) in exercise of the powers conferred by sub-section (1) and (2) of section 46 of the Police Act, 1861, the Administrator (UT) Chandigarh, is pleased to make the following rules further to amend the Punjab Police Rules 1934, as applicable to the Union Territory of Chandigarh namely: -

In the Punjab Police Rules 1934 Volume-II, for Rule 13.7, the following shall be substituted, namely: -

- 1.** These rules may be called the Punjab Police (Chandigarh Amendment) Rules, 1988.
- 2.** These shall come into the force on the date of their publication in the Chandigarh Administration Gazette.

**3.** In the Punjab Police Rules 1934 (hereinafter referred to as the said Rules) for rule 13.7 the following shall be substituted, namely: -

**13.7 (1)**

List B. Selection for Admission to promotion course for constables at the Police Training College.	(1) List-'B' (in Form 13.7) shall be maintained by Superintendent of Police. It will include the names of all constables selected for admission to the promotion course for candidates at the Police Training College.
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Selection shall be made in the month of January each year and will be limited to the number of seats available for the year with a 20 per cent reserve. Names will be entered in the list in order of merit determined by the Departmental Promotion Committee constituted by the Inspector General of Police on the basis of test in parade, general law, (Indian Penal Code, Criminal Procedure Code and Police Rules), interview and examination of records: -

- (2) All candidates who are directly recruited in the U.T. Police and
- (a) Who are middle pass and have put in more than four years of service; or
  - (b) Who are at least matriculates and have put in more than three years of service; or
  - (c) Who obtain first Class with credit in the Recruits Course specified in rule 19.2 will be eligible to have their names entered on the aforesaid list.

Provided that no Constable who has been awarded a major punishment within a period of

three years preceding the first day of January of the year in which selection is made will be eligible for admission to this list and if any Constable whose name has been brought on the list is not sent to the Police Training College in that year he will be required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules.

(3) Temporary Constables brought on list 'B' shall be absorbed in the regular establishment in preference to others.

(4) No Constable who has failed to qualify in the promotion course for Constables shall be re-admitted to list 'B' unless the Principal Police Training College for the reasons to be recorded in writing considers him deserving of another chance and he is still eligible. The reasons are to be communicated to the Senior Superintendent of Police."

26. Having reproduced the Rules it is necessary to understand what it meant at the pre-amendment stage prior to 4.3.1982 and the amendment thereafter and further the change by incorporation of the amendment on 17.6.1988. The original Rule 13.7 dealt with selection for admission to promotion course for Constables in the Police Training College and it was called List 'B'. It prescribed that the names should be entered in the list in order of merit determined by the Departmental Promotion Committee on the basis of certain tests. All the

Constables, subject to certain eligibility, were entitled to have their names entered in the List 'B'. This can be appropriately called "The test rule". Rule 13.8, as it seems to us, provides promotion to Head Constables. It is called List 'C'. To acquire the eligibility for consideration for promotion to Head Constable, a Constable is required to pass the Lower School Course at Phillaur. The procedure for promotion has to be made in accordance with the principle prescribed in sub-rules (1) and (2) of Rule 13.1 with the stipulation that date of admission to List 'C' would not be material but the order of merit in which examination had been passed would be taken into consideration in comprising qualifications. It further prescribes that in cases where other qualifications are equal, seniority in the police force would be the deciding factor.

27. After the amendment on 4.3.1982, the test was done away with and it was provided that List 'B' would be maintained by Superintendent of Police which would include the names of constables considered suitable as candidates for admission to the promotion course at the

Police Training College. It categorically postulated that there shall be no test for the Constables for admission to the promotion course and the Constables having sent for Lower School Course strictly on the basis of seniority-cum-merit (record). Certain eligibility criteria was provided for certain Constables for the course and they included that a Constable must be confirmed in service and in case of non-availability of confirmed constables consideration of certain senior most temporary Constables fulfilling all other conditions; that he should have put in more than three years service if he is a matriculate, four years service if he a middle pass and certain other conditions. This rule may, for the sake of convenience, be called "seniority rule". After the amendment on 17.6.1988 the earlier Rule was restored.

28. In the case at hand, we are really concerned with the interregnum period between 4.3.1982 and 17.6.1988. The tribunal, on the first occasion, while quashing the order dated 27.6.1988 which was a resultant order after the amendment dated 17.6.1988, had clearly laid down that the authorities were required to prepare a fresh list

for sending the Constables to the Lower School Course in accordance with the pre-amended Rule 13.7 as it existed prior to 17.6.1988 so far as the vacancies of Head Constables which had come into existence prior to the date of aforesaid notification and the criterion to be adopted by them could be seniority-cum-merit as prescribed therein. It was also unequivocally ruled that it would be open to the respondents to act in accordance with the amended Rule in respect of vacancies/posts of Head Constables which might have occurred subsequent to coming into force of the amended Rule or which may fall vacant thereafter. To arrive at the said conclusion, as stated earlier, reliance was placed on **Y.V. Rangaiah** (supra) wherein, in the factual matrix therein, it has been ruled by this Court that the vacancies had occurred prior to the amended rules would be governed by the old rules and not by the amended rules and the Court further reiterated that it did not have the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

29. Thus, the decision of the tribunal, on the first round, related to the vacancies of Head Constables that had come into existence prior to the date of notification, i.e., 17.6.1988. Learned counsel for the Union Territory of Chandigarh in his written note of submissions has stated that 50 vacancies were found to have occurred before amendment and, accordingly, a list was prepared in order of seniority as per the provisions of unamended rules. At this point of time, it is necessary to clear the maze that as far as this exercise is concerned there was no cavil. The dispute arose when the authorities on 28.10.1988 prepared a list of eligible Constables/ad hoc Head Constables who fulfilled the prescribed conditions to sit in the competitive examination to be held in January, 1989. The said action of the authorities compelled the present applicants to file three Original Applications challenging the validity of the Rule and quashment of the order dated 28.10.1988 whereby the list was drawn up of the eligible candidates. As has been stated hereinbefore, the tribunal on 31.3.1989 modified its original interim order and directed that selection of the Head Constables may be

made and given effect to subject to final decision of those Original Applications. The tribunal had also observed that the validity of the selection would be subject to final decision of the case. After the tribunal passed the aforesaid interim order, the authorities conducted the test as per the amended rule which had come into force with effect from 17.6.1988 and made selections and appointed successful candidates as Head Constables on the basis of merit. The tribunal noted the rival submissions which we have adverted to earlier, and opined that the applicants in the Original Applications had a vested right under the pre-amended Rule as confirmed Constables and they had been deprived of the said vested right. Elaborating further the tribunal opined that: -

“In case the selection of the applicants is allowed to be made for the promotional course on the basis of the criterion now provided in the Rule 13.7 as amended by notification dated 17.6.88, this will certainly divest the applicants of their right to be selected on the basis of confirmation and seniority which right had vested in them under the pre-amended Rule. In other words, it may amount to give retrospective effect to the impugned amendment of 17.6.88 which was never the intention of the authority introducing the amendment through the impugned notification.”



30. It is interesting to note that counsel for both the sides before the tribunal placed reliance on **Achhar Chand's** case and the tribunal understood the said decision in a different manner and opined that: -

“We, therefore, hold that the selection of the Constables for the promotional course who are already in service before the amendment of 1988 will be made in accordance with the criterion laid down in the pre-amended Rule as contained in the notification dated 4.3.82 and that the amendment made through notification dated 17.6.88 will not be applicable to their case.”

[Emphasis supplied]

31. As is manifest, the respondents had appeared in the competitive examination and were given seniority over the applicants. That occasioned in filing of OA No. 1401/CH/90. While dealing with the said application, the tribunal referred to its interim order and posed the question as to what would be the seniority of persons promoted to Head Constables who were sent for training on the basis of written examination irrespective of seniority under the interim order of the tribunal dated 31.3.1989. Thereafter, the tribunal opined that the Constables in service prior to 1988 had a vested right to

be sent for training for promotion to Head Constables on the basis of unamended Rules. Be it noted, to these original applications the respondents were not made parties though their seniority position was determined. At that time the earlier order dated 8.1.1990 was challenged. Be it ingeminated, in the earlier order the tribunal, while referring to the first order in **Achhar Chand's** case, had opined that the selection of the Constables for promotional posts who were already in service before the amendment of 1988, would be in accordance with the criterion laid down in the pre-amended Rule prior to 4.3.1982.

32. The principal assail of Mr. Patwalia is that the judgment and order passed in the year 1988 was the foundation of the decision dated 8.1.1990 and that decision could not have been the subject-matter of challenge before the High Court as per **L. Chandra Kumar** (supra). In **L. Chandra Kumar** (supra) the larger Bench, while opining that the question on which the tribunals have jurisdiction to decide its decision would be subject to scrutiny before the Division Bench of the

respective High Courts, observed that the directions issued in the said case would come into effect prospectively, i.e., it would apply to decisions rendered after March 18, 1997, i.e., the date the decision in **L. Chandra Kumar** was rendered. The doctrine of prospective overruling was invoked to maintain the sanctity of judicial precedents and not to disturb a procedure in relation to decisions already rendered.

33. Keeping the aforesaid proposition of law in mind we shall proceed to deal with various other facets which have been canvassed before us, for we feel it is not a case which can be shut down by holding that the order dated 8.1.1990 having gone unassailed, the doors of justice from all quarters get closed. The tribunal in **Achhar Chand's** case, which was decided on 27.6.1988, had strictly gone by the principles stated in **Y.V. Rangaiah** (supra) by directing to prepare a fresh list of Constables for sending to Lower School Course at Police Training College, Phillaur, in accordance with the pre-amended Rule as far as vacancies of Head Constables which had come into existence prior to notification dated 17.6.1988. It had

further clarified that it is open to the respondent to act in accordance with the amended Rule in respect of the vacancies/posts of Head Constables which may have occurred subsequent to coming into force of the amended Rule. Submission of Mr. Gupta is that the said order was not only in accord with **Y.V. Rangaiah** (supra) but also in consonance with the principles stated in **P. Ganeshwar Rao** (supra), **R. Dayal** (supra), **B.L. Gupta** (supra) and **Arjun Singh Rathore** (supra).

34. In **P. Ganeshwar Rao** (supra) the Court reproduced a passage from **Y.V. Rangaiah** (supra) and observed that it appositely applied to the facts of the said case. The question that emerged for consideration in the said case was whether the amendment made on April 28, 1980 to the Special Rules in the said case applied only to the vacancies that arose after the date on which the amendment came into force or whether it applied to the vacancies which had arisen before the said date also. Interpreting the Rule the Court observed that the amendment on April 28, 1980 did not apply to the vacancies that had arisen prior to the date of amendment.

The ratio of the said decision is that the vacancies that had arisen after the amendment would be governed by the amended Rule and the vacancies that had arisen prior to the amendment would be governed by the unamended Rule.

35. In **R. Dayal** (supra) the Court was considering the effect of Rule 24-A of the Rajasthan Service of Engineers (Building and Roads Branch) Rules, 1954 (as amended). It pertained to the vacancies those were filled up prior to the amended Rule. Question arose whether the vacancies were prepared to be filled up under the amended rule or unamended rule. On behalf of the respondents therein reliance was placed on **Y.V. Rangaiah** (supra). The Court, appreciating the factual scenario and the rule position, came to hold as follows: -

“But the question is whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore. This Court has considered the similar question in para 9 of the judgment above-cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules

would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose.”

36. In **B.L. Gupta** (supra) the Court reiterated the principle stated in **Y.V. Rangaiah** (supra), **P. Ganeshwar Rao** (supra) and **A.A. Calton v. Director of Education**<sup>21</sup> wherein it had been held that vacancies which had occurred prior to the amendment of rules were governed by the old rules and not by the amended rules. In **Arjun Singh Rathore** (supra) the views stated in **Y.V. Rangaiah** (supra) and **R. Dayal** (supra) were reiterated.

37. The reference to the aforesaid proposition of law makes it vivid that the decision rendered by the tribunal in **Achhar Chand's** case was in accord with the precedent of this Court and, in fact, the tribunal clearly meant that.

38. In **Mewa Singh's** case, the tribunal opined that the selection of the Constables for the promotional course who were already in service before the amendment of

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<sup>21</sup> (1983) 3 SC 33

1988 would be made in accordance with the criterion laid down in the pre-amended Rule as contained in the notification dated 4.3.1982. This is contrary to the decision in **Achhar Chand's** case. That apart, the tribunal also held that the confirmed employees had a vested right to be considered under the pre-amended rule. In the said case the respondents were not arrayed as parties. True it is, by virtue of the interim direction they appeared in the examination irrespective of seniority and were promoted as Head Constables on the basis of marks secured in the test and they were treated senior to the present appellants. On being approached by the present appellants in OA No. 1401/CH/90 the tribunal by its order dated 23.9.1998 quashed the order dated 18.12.1989 whereby the Constables were sent for training on the basis of written test and the consequent order dated 28.12.1989 by which they were promoted as Head Constables, and directed for rearrangement of seniority list of the applicants and the respondents according to their basic seniority in the rank of Constables.

39. It is apt to note here that the real cause of grievance arose for the respondents on 23.9.1998 and on that ground the High Court repelled the submission of delay and laches. Mr. Patwalia, learned senior counsel for the appellants, has harped on the ground that the writ petition was not maintainable against such an order in view of **L. Chandra Kumar** (supra). First, we will look at the facet of non-impleadment which has been highlighted by Mr. Gupta. The said submission has two limbs. First, the mere awareness of pendency of litigation because it is mentioned "subject to decision in Original Application" does not make the order binding upon them and the second, by the time the judgment dated 8.1.1990 was pronounced all the respondent were sent for Lower School Course and promoted and, therefore, they were clearly identified as the ultimately affected parties and hence, were necessary parties for the purpose of adjudication of the lis.

40. At this stage, we shall notice certain authorities which have been commended to us for adjudging the effect of such non-impleadment. In **Khetrabasi Biswal's**



case Orissa Public Service Commission had issued an advertisement inviting applications in the prescribed form for twenty five posts of Temporary Munsif (Emergency Recruitment) in Class II of the Orissa Judicial Service. The appellants and the respondents had applied before the Commission. A written examination was held by the Commission, a list of successful candidates was prepared and selectees were later on interviewed by the Commission and in the said proceeding a sitting Judge of the High Court acted as an expert. Thereafter the select list was prepared on the basis of merit which contained 39 names. The names of the appellants before this Court found place therein. The said list was sent to the State Government for approval. The State Government on receiving the said list, prepared another list in which the name of the appellant was found place therein but the names of Bijaya Kumar Patra and Govinda Chandra Parida and others were omitted. Number of writ petitions were filed before the High Court purporting to interpret the service rules prepared the list of candidates who should have been selected. Pursuant to and in furtherance of the

directions issued by the High Court offers of appointment were issued by the State Government in terms of the list prepared by the High Court. The appellants who had come to this Court were not parties to the writ petitions. The High Court, while preparing its own list did not think it fit to issue notices to other candidates like the appellants before this Court who had suffered prejudice by reason of the directions issued by the High Court. While dealing with the justifiability of the same this Court held that they were necessary parties and, in that context, expressed thus: -

“The procedural law as well as the substantive law both mandates that in the absence of a necessary party, the order passed is a nullity and does not have a binding effect.”

41. In the case of **Shiv Kumar Tiwari** (supra) a suit was filed without making the affected person a party. Dealing with the said facet this Court opined that such a judgment could not be pressed into service to the detriment of the rights of a party as he was not a party and any judgment/ decree/order of courts or any other authority binds only the parties to it or their privies when

it concerns the rights of parties and such proceedings purport to adjudicate also the rights of the contesting parties by means of an adversarial process. The Court, while rejecting the plea that the affected party could have filed an appeal by obtaining special leave of the court, held that though it would have been open for such party to file an appeal with the leave of the court, there is no duty or obligation cast on it so to do on pain of distress when in law he could also legitimately ignore the said judgment as it is a judgment of no value.

42. In ***Kailash Chand Mahajan's*** case the Court ruled that if a decision is rendered which affects a party, it would amount to clear violation of the principles of natural justice and an order passed in violation of the salutary provision of natural justice would be a nullity.

43. In ***Mamta Bisht's*** case, a two-Judge Bench, reiterating the principles stated in ***Udit Narain Singh Malpaharia v. Board of Revenue***<sup>22</sup>, opined that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to

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<sup>22</sup> AIR 1963 SC 786

ignore the said order as it has been passed in violation of the principles of natural justice. Reliance was placed on ***Prabodh Verma & Ors. v. State of U.P. & Ors.***<sup>23</sup> and ***Tridip Kumar Dingal & Ors. v. State of W.B. & Ors.***<sup>24</sup> to express the view that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.

44. It is submitted by Mr. Patwalia that the respondents were sent for Lower School Course subject to final result of the Original Application and the Original Application was allowed in favour of the appellants, the respondents were bound by the said verdict. It is urged by him that once the respondents were aware of the litigation and their training was subject to the result of the Original Application, they cannot be permitted to advance a contention that their non-impleadment makes it a nullity. In certain cases where mass copying in an examination or an examination is conducted in a mala fide manner by the authorities in the absence of vacancies or such ancillary situations, the position may be different. In

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<sup>23</sup> (1984) 4 SCC 251

<sup>24</sup> (2009) 1 SCC 768

the case at hand, the authorities did not accept the order but challenged the same before this Court in Special Leave Petition (C) No. 12535 of 1992 and this Court disposed of the same in 1996 by observing that as the respondents therein had already completed their training, the special leave petition has been rendered infructuous. However, this Court chose not to decide the lis. The factual matrix would reveal that the authorities acted in accordance with the earlier order of the tribunal and fixed the seniority. That was the grievance which was agitated by the appellants before the tribunal wherein the order was passed on 23.9.1998. Had the respondents been made parties to the original application in the second round, i.e., OA Nos. 697 and 872 of 1988 which gave rise to the order dated 8.1.1990, they could have been in a position to assert about the legal position and faced their fate, making themselves liable to challenge the order. After they appeared in the competitive examination and selected being more meritorious, indubitably they were an identified category. It was not a vague or unidentified body. When by the determination of the tribunal their

rights had squarely been affected, the situation commanded, we are inclined to think, that they should have been impleaded being necessary parties and their non-impleadment now permits them to take the plea that the said order does not bind them. The High Court has appreciated the chronology of events and quashed the order dated 8.1.1990 though it could not have entertained the prayer in that regard as per **L. Chandra Kumar's** case, but while dealing with the lis that travelled to the High Court from the order dated 23.9.1998 it was within its domain to declare that the order dated 8.1.1990 is not binding on the writ petitioners therein. There was no bar and, therefore, the High Court's order does not suffer from any legal infirmity on that score.

45. The next question that emerges for consideration is whether the order dated 8.1.1990 is legally justified. There is no shadow of doubt that it is based entirely on the earlier order dated 28.9.1988 which was rendered by the tribunal being approached by the real aggrieved parties and the tribunal relying on binding precedents, had held that the applicants therein were entitled to be

considered under the amended Rule that came into force on 4.3.1982 in respect of the vacancies accrued during the period, i.e., 4.3.1982 to 17.6.1988. The latter decision dated 8.1.1990 has completely misread the said decision and erroneously observed that every confirmed employee had a vested right. It did not properly appreciate that the right was restricted to the accrued vacancies and assumedly remained oblivious to the categorical findings of the earlier decision that it was open to the respondents therein to take steps in accordance with the amended Rule in respect of vacancies to the post of Head Constables which might have accrued subsequent to the coming into force of the amended Rules which may fall vacant thereafter.

46. In this view of the matter, the order is absolutely unsustainable. The cornerstone of the impugned order dated 28.9.1998 is the order dated 8.1.1990. If this is allowed to stand, it would tantamount to palpable injustice. In this context, we may profitably refer to a passage from **Jamshed Hormusji Wadia** (supra),

wherein the Court referring to the power under Article 136

has opined thus: -

“... in spite of the repeated pronouncements made by this Court declaring the law on Article 136 and repeatedly stating that this Court was a court meant for dealing only with substantial questions of law, and in spite of the clear constitutional overtones that the jurisdiction is intended to settle the law so as to enable the High Courts and the courts subordinate to follow the principles of law propounded and settled by this Court and that this Court was not meant for redeeming injustice in individual cases, experience shows that such self-imposed restrictions placed as fetters on its own discretionary power under Article 136 have not hindered the Court from leaping into resolution of individual controversies once it has been brought to its notice that the case has failed to deliver substantial justice or has perpetuated grave injustice to parties or is one which shocks the conscience of the Court or suffers on account of disregard to the form of legal process or with violation of the principles of natural justice. Often such are the cases where the judgment or decision or cause or matter brought to its notice has failed to receive the needed care, attention and approach at the hands of the tribunal or court below, or even the High Court at times, and the conscience of this Court pricks it or its heart bleeds for imparting justice or undoing injustice. The practice and experience apart, the framers of the Constitution did design the jurisdiction of this Court to remain an extraordinary jurisdiction whether at the stage of granting leave or at the stage of deciding the appeal itself after the grant of leave. This Court has never done and would never do injustice nor allow injustice



being perpetuated just for the sake of upholding technicalities.”

47. We respectfully concur with the above observation and conclude that our interference with the decision of the High Court would perpetuate grave injustice and the redemption shall remain forever a mirage.

48. That apart, the obtaining fact situation commands that this Court should invoke the jurisdiction under Article 142 of the Constitution for doing complete justice. There is no scintilla of doubt that Article 142 of the Constitution confers immense powers on this Court to do complete justice in a case, for the powers vested in the Court are meant for doing complete justice in an appropriate manner. It is of wide amplitude, and it has its own restrictions. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to the powers which are specifically conferred on the Court. This inherent power is required to be exercised to prevent injustice and to do complete justice between the parties. It cannot allow any injustice to be carried on if the injustice is founded on

certain technical principles. The Court is not to build a new structure to do the complete justice by ignoring the substantive provisions, for that would amount to supplanting. But, certainly it can supplement. It has to be borne in mind that principle pertaining to do complete justice as engrafted in Article 142(1) is of immense potentiality. When the occasion arises, it is the obligation of this Court to prevent injustice arising from the exigencies of the case that is unfurled before it. In the case at hand, the earlier order of the tribunal was legally sound. In the second case the tribunal, though seems to have relied upon **Achhar Chand's** case, has totally misunderstood the ratio laid down therein. That apart, the tribunal had not kept itself alive to the essential facts, namely, publication of results, selection of candidates and the impact it would have on their rights if they are not made parties. Considering all the aspects in a cumulative manner it can be stated with certitude that if that order is allowed to reign it would have disastrous impact on justice and would irrefragably tantamount to miscarriage of justice. We have already opined that the High Court, while

dealing with the matter under Articles 226 and 227 of the Constitution, could have ignored the order dated 8.1.1990. Despite the said conclusion, we are also expressing our view by invoking jurisdiction under Article 142(1) of the Constitution that non-affirmance of the order of the High Court by accepting the order dated 8.1.1990 would be constructing the pillar of injustice. The decision which is a sanctuary of errors could not have been allowed to gain the benefit of sanctuary of protection and acceptance. That would be travesty of justice. Hence, the said order deserved quashment and the High Court has rightly done so.

49. In the result, the appeal wherein complex issues have been assiduously raised really lack any substance and we unhesitatingly concur with the view of the High Court and, accordingly, the appeal has to pave the path of dismissal and we so direct. There shall be no order as to costs.

.....J.  
[Anil R. Dave]

.....J.  
[Dipak Misra]

New Delhi;  
June 30, 2014.

SUPREME COURT OF INDIA



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT