A K. MADHAVA REDDY & ORS.

v.

GOVT. OF A.P. & ORS.

(Civil Appeal Nos. 4947-4951 of 2014)

APRIL 29, 2014

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[T.S. THAKUR AND C. NAGAPPAN, JJ.]

Service Law – Promotion – GOMs permitting promotion by transfer, struck down by State Administrative Tribunal in C *view of Supreme Court decision dated 7th November, 2001 in V. Jagannadha Rao's case – Further direction of Tribunal that striking down of the G.O.Ms. would only be prospective and any action taken in compliance with the Rules till 7th November, 2001 be not disturbed – High Court set aside order* D *of Tribunal to the extent the same held the judgment in V. Jagannadha Rao to be prospective in its application and as a result appellants-employees faced prospects of reversion – Doctrine of prospective overruling – Applicability of – Held: On facts, not applicable – The promotions were ordered by* E *the State and not snatched by the appellants – That apart on the date the promotions were made there was no element of risk nor were the promotions made subject to determination of any legal controversy as to entitlement of the incumbents to such promotion – The law was in a state of flux till the legal* F *position eventually came to be settled in V. Jagannadha Rao's case – In the circumstances of the case, even if the High Court was not competent to invoke the doctrine of prospective overruling, nothing prevents the Supreme Court from doing so having regard to the fact that those promoted under the impugned rules had held their respective positions* G *for a considerable length of time making reversion to their parent zone/cadre not only administratively difficult but unreasonably harsh and unfair and bound to have a cascading effect, prejudicing even those not parties before the*

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Court –Impugned GoMs were rightly declared ultra vires of the Presidential Order by the State Administrative Tribunal, but said declaration not to affect promotions and appointments made on basis of said GoMs prior to 7th November, 2001, the date when V. Jagannadha Rao's case was decided by Supreme Court – Constitution of India, 1950 – Art. 309 proviso.

Doctrines – Doctrine of prospective overruling – Origin and applicability of – Discussed.

Aggrieved by G.O.M. No.14, Labour Employment & Training (Ser. IV) Department, dated 26th November, 1994, as amended by G.O.M. No.22 dated 9th May, 1996, some employees had filed petitions before the Andhra Pradesh Administrative Tribunal. In view of the Supreme Court decision dated 7th November, 2001 in *V. Jagannadha Rao's* case (whereby the legal position eventually came to be settled), the Tribunal struck down the impugned G.O.Ms as unconstitutional to the extent the same provided a channel for Senior Assistant and Senior Stenographer in Andhra Pradesh Ministerial Service working in the Head Offices of Labour Department and those in Factories and Boiler Departments besides those in the Subordinate Offices in the said Departments for appointment by transfer to the post of Assistant Labour Officer.

The Tribunal however further directed that the striking down of the impugned G.O.Ms. would only be prospective and that any action taken in compliance with the Rules till 7th November, 2001 shall not be disturbed nor any employee promoted on the basis of the legal position that prevailed earlier to the decision of this Court in *V. Jagannadha Rao's* case reverted.

Writ Petitions were filed challenging the judgment of the Tribunal to the extent it saved the promotions already

A made on the basis of the impugned G.O.Ms. The High Court held that the doctrine of prospective overruling could be invoked only by the Supreme Court and not by other Court including High Courts exercising powers under Article 226 of the Constitution; and accordingly set B aside the order passed by the State Administrate Tribunal to the extent the same held the Supreme Court judgment in *V. Jagannadha Rao* to be prospective in its application.

The appellants-employees were not arrayed as C parties to the writ petition filed before the High Court. But they were affected by the striking down of the rules and facing the prospects of reversion. Feeling aggrieved, they filed Review petitions which were however dismissed. Hence the present appeals.

D Disposing of the appeal, the Court

HELD:1.1. The doctrine of prospective overruling has its origin in American jurisprudence. It was first invoked in this country in *Golak Nath case*, with this Court E proceeding rather cautiously in applying the doctrine, being conscious of the fact that the doctrine had its origin in another country and had been invoked in different circumstances. The Court sounded a note of caution in the application of the doctrine to Indian conditions. However, the doctrine has not remained confined to overruling of F earlier judicial decision on the same issue as was understood in *Golak Nath's* case. In several later decisions, this Court has invoked the doctrine in different situations including in cases where an issue has been examined and determined for the first time. This Court held G that it was open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interest of justice. [Paras 8, 9] [360-H; 361-A-B, F-G; 363-B]

H 1.2. The 'Doctrine of Prospective Overruling' is a rule

of judicial craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law. [Para 14] [364-F-G] A B

State of Andhra Pradesh and Anr. v. V. Sadanandam and Ors. **1989 Supp. (1) SCC 574;** *Govt. Of A.P. and Anr. v. B. Satyanarayana Rao* **(Dead) by Lrs. And Ors. (2000) 4 SCC 262 – held stood overruled.** C

C. Golak Nath & Ors. v. State of Punjab & Anr. **AIR 1967 SC 1643;** *India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors.* **(1990) 1 SCC 12;** *Orissa Cement Ltd. v. State of Orissa & Ors.* **1991 Suppl. (1) SCC 430;** *Union of India & Ors. v. Mohd. Ramzan Khan* **(1991) 1 SCC 588;** *Ashok Kumar Gupta & Anr. V. State of U.P. & Ors.* **(1997) 5 SCC 201;** *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala* **(1973) 4 SCC 225;** *M/s Somaiya Organics (India) Ltd. etc. etc. v. State of U.P. & Anr.* **2001 (5) SCC 519; and** *Managing Director, ECIL Hyderabad v. B. Karunakar* **(1993) 4 SCC 727 – referred to.** D E

2.1. In the instant case, it is unnecessary for this Court to go into the question whether the doctrine of prospective overruling was available even to the High Court. Even if the High Court was not competent to invoke the doctrine, nothing prevented this Court from doing so having regard to the fact that those promoted under the impugned rules had held their respective positions for a considerable length of time making reversion to their parent zone/cadre not only administratively difficult but unreasonably harsh and unfair. [Para 17] [367-C-E] F G

2.2. Promotions made before the pronouncement of the order in *Jagannadha Rao's* case i.e. before 7th H

A November, 2001 continued for nearly ten years till the review petition filed by the appellants was dismissed and the matter brought up before this Court. In that backdrop, counsel for the respondent-State was asked to take instructions whether the State Government was ready to B create supernumerary posts to accommodate the appellants and prevent their reversion. Since the respondent-State did not express its willingness to create supernumerary positions, there is no option but to examine the question of invoking the doctrine of C prospective overruling on the merits of the case having regard to the facts and circumstances in which the question arises. While doing so, it must be pointed out that the respondents are not correct in suggesting as though the appellants had taken any deliberate or D calculated risk by opting for promotion outside their cadres. The respondents have while making that assertion ignored the fact that promotions were ordered by the State and not snatched by the appellants. That apart on the date the promotions were made there was no element of risk nor were the promotions made subject E to the determination of any legal controversy as to the entitlement of the incumbents to such promotion. Not only that, the incumbents who had been sent out on promotion as Assistant Labour Officers had subsequently been promoted as Assistant Labour F Commissioners or Deputy Labour Commissioners. Such being the position reverting these officers at this distant point of time, to the posts of Senior Stenographers in their parent cadre does not appear to be either just, fair or equitable especially when upon reversion the State G does not propose to promote them to the higher positions within their zone/cadre because such higher posts are occupied by other officers, most if not all of whom are junior to the appellants and who may have to be reverted to make room for the appellants to hold those H higher posts. Reversion of the appellants to their parent

cadre is therefore bound to have a cascading effect, prejudicing even those who are not parties before this Court. [Para 18] [368-D-E; 369-B-G]

2.3. The fact that the appellants were not arrayed as parties before the Tribunal or before the High Court also brings the fact situation of the present case closer to that in *Kailash Chand's* case. The law in the present case was, as in *Kailash Chand's* case, in a state of flux. Such being the position, there is no reason why the doctrine of prospective overruling cannot be invoked in the instant case. Just because, this Court had not addressed that question in *Jagannadha Rao's* case is also no reason to refuse to do so in the present case. That apart, *Jagannadha Rao's* case was dealing with a different set of norms comprising GoMs No.14 and 22 referred to earlier. While the basic question whether such GoMs permitting promotion by transfer from one department to the cadre or zone to another may have been the same, it cannot be denied that the rules with which this Court was concerned in *Jagannadha Rao's* case were different from those being dealt with in the present case. On the question of application of doctrine of prospective overruling, the judgment in *Jagannadha Rao's* case will not stand as an impediment for this Court. [Para 18] [369-G-H; 370-A-C]

V. Jagannadha Rao and Ors. v. State of Andhra Pradesh and Ors. **(2001) 10 SCC 401 – explained.**

Kailash Chand Sharma v. State of Rajasthan & Ors. **(2002) 6 SCC 562 – held applicable.**

3. In the result, it is held that while GoMs No.14 and 22 have been rightly declared to be *ultra vires* of the Presidential Order by the State Administrative Tribunal, the said declaration shall not affect the promotions and appointments made on the basis of the said GoMs prior

A **to 7th November, 2001, the date when *Jagannadha Rao's* was decided by this Court. [Para 19] [370-D-E]**

Case Law Reference :

(2001) 10 SCC 401	**explained**	**Para 2**
B **1989 Supp. (1) SCC 574**	**held stood overruled**	**Para 4**
(2000) 4 SCC 262	**held stood overruled**	**Para 4**
C **AIR 1967 SC 1643**	**referred to**	**Para 8**
(1990) 1 SCC 12	**referred to**	**Para 9**
1991 Suppl. (1) SCC 430	**referred to**	**Para 9**
D **(1991) 1 SCC 588**	**referred to**	**Para 10**
(1997) 5 SCC 201	**referred to**	**Para 11**
(1973) 4 SCC 225	**referred to**	**Para 11**
E **2001 (5) SCC 519**	**referred to**	**Para 13**
(2002) 6 SCC 562	**held applicable**	**Para 15**
(1993) 4 SCC 727	**referred to**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. F 4947-4951 of 2014.

From the Judgment and Order dated 09.03.2007 of the High Court of A.P. at Hyderabad in WP No. 6068 of 2004, WP No. 6123 of 2004, WP No. 16890 of 2006 dated 03.11.2010 G in WP No. 6068 of 2004, WPMP No. 8971 of 2007, RWPMP No. 35762 of 2010.

Jayant Bhushan, R. Basant, G. Ramakrishna Prasad, Mohd. Wasay Khan, B. Suyodhan, Bharat J. Joshi, Filza Monnis for the Appellants. H

Jaideep Gupta, D. Mahesh Babu, Suchitra Hrangkhawal, Amjid Maqbool, Amit K. Nain, B. Ramakrishna Rao, Aditya Jain, Sunita Chaudhary, M. Srinivas Rao, J. Govardhan, Sudha Gupta, G.N. Reddy, V. V. J. Rao, Vijaya Bhaskar, Chandan Mishra, Tatini Basu for the Respondents.

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted.

2. These appeals are directed against an order dated 9th March, 2007 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad whereby the High Court has set aside the order passed by the State Administrate Tribunal in OA No.6334 of 1997 to the extent the same holds the judgment of this Court in *V. Jagannadha Rao and Ors. v. State of Andhra Pradesh and Ors.* (2001) 10 SCC 401, to be prospective in its application. An order dated 3rd November, 2010 passed by the High Court dismissing a review petition filed by the appellants against the said order has also been assailed. The facts in the backdrop are as under:

3. In *V. Jagannadha Rao and Ors. v. State of Andhra Pradesh and Ors.* (2001) 10 SCC 401, a three-Judge Bench was examining whether Special Rules framed by the Governor of Andhra Pradesh under proviso to Article 309 of the Constitution to the extent the same permitted "appointment by transfer" to a higher category on the basis of seniority-cum-efficiency were violative of para 5(2) of the Presidential Order issued under Article 371-D of the Constitution of India, 1950. Answering the question in the affirmative this Court held that the Presidential Order dated 18th October, 1975 issued under Article 371-D of the Constitution was aimed at providing equitable opportunities and facilities to the people belonging to different parts of the State in the matter of public employment, education etc. and that the Rules framed by the State Government under proviso to Article 309 whereby UDCs of the Labour Department, and Factories and Boilers Department

A were made eligible for recruitment by transfer to the posts of Assistant Inspector of Labour/Assistant Inspector of Factories were violative of the Presidential Order. The question had arisen on account of a challenge mounted by the Ministerial employees of the Labour Department against GOMs No.72 B dated 25th February, 1986 and GOMs No.117 dated 28th May, 1986 whereunder UDCs in the Labour Department and those working in Factories and Boilers Department were made eligible for recruitment by transfer to the posts of Assistant Inspectors of Labour and Assistant Inspectors of Factories. A C full Bench of Tribunal before whom the challenge came up for consideration declared that the impugned Rules to the extent they enabled the Ministerial employees of the Factories and Boilers Department or any other department to be considered for appointment to the posts in the Labour Department were violative of paras 3 and 5 of the Presidential Order and hence D void. The view taken by the Tribunal was questioned before this Court by the aggrieved employees. Dismissing the appeals, this Court held that according to the scheme of the Presidential Order, local cadre was the unit under para 5(1) thereof for recruitment, appointment, seniority, promotion and transfers. E This Court further held that while para 5(2) authorised the State Government to make provisions for 'transfer' in certain specified circumstances, yet the term 'transfer' could not be enlarged in its amplitude so as to include promotional aspects. This Court observed:

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> *"**18.** We find that para 5(2) of the Presidential Order speaks of transfer and not of promotion. It would be hazardous to accept the contention of the appellants that promotion is included in the expression "transfer" and no* G *assistance can be availed from the distinction made in para 5(1) of the Order. No provision or word in a statute has to be read in isolation. In fact, the statute has to be read as a whole. A statute is an edict of the legislature. It cannot be said that without any purpose the distinction* H *was made in para 5(1) between transfer and promotion*

and such distinction was not intended to be operative in para 5(2). The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid as to what has been said as also to what has not been said. (See Mohd. Ali Khan v. CWT (1997) 3 SCC 5111 and Institute of Chartered Accountants of India v. Price Waterhouse (1997) 6 SCC 312.)

19. We, therefore, find no reason to accept this stand of the appellant that the expression "transfer" takes within its scope a promotion".

4. Overruling the decisions rendered by this Court in *State of Andhra Pradesh and Anr. v. V. Sadanandam and Ors.* 1989 Supp. (1) SCC 574, and in *Govt. Of A.P. and Anr. v. B. Satyanarayana Rao (Dead) by Lrs. And Ors.* (2000) 4 SCC 262, this Court held that in terms of Article 371-D (10) of the Constitution any order made by the President shall have effect notwithstanding anything in any other provision of the Constitution or in any law for the time being in force. This implies that if the Presidential Order prohibits consideration of employees from the feeder category from other units then any rule made by the Governor in exercise of powers vested in him under the proviso to Article 309 of the Constitution will be bad in law, hence, liable to be struck down. So also if the State Government makes any provision which is outside the purview of the authority of the Government under para 5(2) of the Order, any such provision shall also be legally bad and liable to be struck down. This Court on that logic held:

"In the case in hand, the impugned provisions do not appear to have been framed in exercise of powers under para 5(2) of the Presidential Order and as such the same being a Rule made under proviso to Article 309 of the Constitution, the Presidential Order would prevail, as provided under Article 371-D(10) of the Constitution.

A *Even if it is construed to be an order made under para 5(2) of the Presidential Order, then also the same would be invalid being beyond the permissible limits provided under the said paragraph. In this view of the matter, the Tribunal rightly held the provision to the extent it provides*
B *for consideration of employees of the Factories and Boilers Units to be invalid, for the purpose of promotion to the higher post in the Labour Unit and as such we see no justification for our interference with the said conclusion of the Tribunal and the earlier judgment of*
C *this Court in Sadanandam case 1989 Supp (1) SCC 574 must be held to have not been correctly decided. As a consequence, so would be the case with Satyanarayana Rao case (2000) 4 SCC 262."*

5. The current controversy does not relate to GOMs No.72
D dated 25th February, 1986 and GOMs No.117 dated 28th May, 1986 which fell for consideration before this Court in *V. Jagannadha Rao's* case (supra). The case at hand arises out of slightly different though essentially similar circumstances. The present batch of cases relates to G.O.M. No.14, Labour
E Employment & Training (Ser. IV) Department, dated 26th November, 1994, as amended by G.O.M. No.22 dated 9th May, 1996. These two G.O.Ms. provide that while Senior Assistants and Senior Stenographers working in the Subordinate Offices of the Labour Department constitute the feeding channel under
F Rule 3 of Andhra Pradesh Labour Subordinate Service Rules, Senior Assistants and Senior Stenographers working in the Head Offices shall also be eligible for appointment by transfer to the post of Assistant Labour Officer. Aggrieved by the G.O.Ms. some of the employees approached the Andhra
G Pradesh Administrative Tribunal for redressal. Their grievance primarily was that since the post of Assistant Labour Officer is a zonal post, employees working in the respective zones alone were entitled to be included in the feeding channel. Inclusion of other categories from outside the zone in the feeding channel
H for purposes of promotion or appointment by transfer was

offensive to paras 3(3) and 5(1) of the Andhra Pradesh Public Employment (Organisation of Local Cards and Regulation of Direct Recruitment) Order, 1975 referred to hereinabove as the Presidential Order against the employees. These petitions were partly allowed by the Tribunal in terms of its order dated 7th March, 2003 and G.O.M. No.14, dated 26th November, 1994, as amended by G.O.M. No.22 dated 9th May, 1996 struck down as unconstitutional to the extent the same provided a channel for Senior Assistant and Senior Stenographer in Andhra Pradesh Ministerial Service working in the Head Offices of Labour Department and those in Factories and Boiler Departments besides those in the Subordinate Offices in the said Departments for appointment by transfer to the post of Assistant Labour Officer. The Tribunal also struck down related provisions in the impugned G.O.Ms. stipulating quota and rotation etc. for these categories as being in violation of the Presidential Order with a direction that the respondents shall not give effect to the said provisions. Having said that the Tribunal directed that the striking down of the impugned G.O.Ms. would only be prospective and that any action taken in compliance with the said Rules till 7th November, 2001 shall not be disturbed nor any employee promoted on the basis of the legal position that prevailed earlier to the decision of this Court in *V. Jagannadha Rao's* case (supra) reverted.

6. The aggrieved employees, who had approached the Tribunal having succeeded but only in part, filed Writ Petitions No.6163 and 6068 of 2004 whereby they challenged the judgment of the Tribunal to the extent it saved the promotions already made on the basis of the impugned G.O.Ms. Writ Petition No.16890 of 2006 was also filed against the very same judgment by some of the employees who felt aggrieved by the view taken by the Tribunal that the impugned G.O.Ms. were in violation of the Presidential Order hence unconstitutional. A Division Bench of the High Court of Andhra Pradesh has, in terms of the judgment and order under challenge before us, allowed Writ Petitions No.6123 and 6068 of 2004 but

A dismissed Writ Petition No.16890 of 2006 relying upon certain decisions rendered by this Court. The High Court has taken the view that the doctrine of prospective overruling could be invoked only by the Apex Court and not by other Court including High Courts exercising powers under Article 226 of the
B Constitution. The net effect of the view taken by the High Court, therefore, is that not only are the impugned G.O.M. held to be unconstitutional, but any action taken pursuant thereto is also declared to be unconstitutional.

7. The appellants in these appeals are employees who
C were not arrayed as parties to the writ petition filed before the High Court. Feeling aggrieved of the judgment and order passed by the High Court they filed Review WPMP No.3576 of 2010, *inter alia*, contending that the judgment under review had been passed without impleading employees like the
D appellants as parties to the case even though they were bound to be adversely affected by any modification that the High Court may have made. It was contended that the review petitioners-appellants before us in these appeals were necessary parties not only to the O.As filed before the State Administrative Tribunal
E but even to the writ petitions filed before the High Court and that in the absence of necessary parties to the proceedings the petitions challenging the Rules were liable to be dismissed. That contention was, however, rejected by the High Court on the ground that the order passed by the Tribunal ought to have
F been challenged in a separate and independent writ petition by anyone aggrieved by the same. The review petitions were, accordingly, dismissed and the prayer for grant of leave to appeal to this Court rejected. The present appeals have been filed by the appellants in the above backdrop to assail the
G correctness of the two judgments and orders passed by the High Court.

8. We have heard learned counsel for the parties at length. The doctrine of prospective overruling has its origin in American jurisprudence. It was first invoked in this country in *C. Golak*
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Nath & Ors. v. State of Punjab & Anr. AIR 1967 SC 1643, with this Court proceeding rather cautiously in applying the doctrine, was conscious of the fact that the doctrine had its origin in another country and had been invoked in different circumstances. The Court sounded a note of caution in the application of the doctrine to Indian conditions as is evident from the following passage appearing in *Golak Nath's* case (supra) where this Court laid down the parameters within which the power could be exercised. This Court said:

> *"As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."*

9. It is interesting to note that the doctrine has not remained confined to overruling of earlier judicial decision on the same issue as was understood in *Golak Nath's* case (supra). In several later decisions, this Court has invoked the doctrine in different situations including in cases where an issue has been examined and determined for the first time. For instance in *India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors.* (1990) 1 SCC 12, this Court not only held that the levy of the cess was *ultra vires* the power of State legislature brought about by an amendment to Madras Village Panchayat Amendment Act, 1964 but also directed that the State would not be liable for any refund of the amount of that cess which has been paid or already

A collected. In *Orissa Cement Ltd. v. State of Orissa & Ors.* 1991 Suppl. (1) SCC 430, this Court drew a distinction between a declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof. This Court held that it was open to the B Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interest of justice.

10. Reference may also be made to the decision of this Court in *Union of India & Ors. v. Mohd. Ramzan Khan* (1991) C 1 SCC 588 where non-furnishing of a copy of the enquiry report was taken as violative of the principles of natural justice and any disciplinary action based on any such report was held liable to be set aside. The declaration of law as to the effect of non supply of a copy of the report was, however, made prospective D so that no punishment already imposed upon a delinquent employee would be open to challenge on that account.

11. In *Ashok Kumar Gupta & Anr. V. State of U.P. & Ors.* (1997) 5 SCC 201, a three Judge Bench of this Court held that E although *Golak Nath's* case regarding unamendabiltiy of fundamental rights under Article 368 of the Constitution had been overruled in *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala* **(1973) 4 SCC 225** yet the doctrine of prospective overruling was upheld and followed in several later F decisions. This Court further held that the Constitution does not expressly or by necessary implication provide against the doctrine of prospective overruling. As a matter of fact Articles 32(4) and 142 are designed with words of width to enable the Supreme Court to declare the law and to give such directions G or pass such orders as are necessary to do complete justice. This Court observed:

> *"54.....So, there is no acceptable reason as to why the Court in dealing with the law in supersession of the law declared by it earlier could not restrict the operation of* H *law, as declared, to the future and save the transactions,*

whether statutory or otherwise, that were effected on the basis of the earlier law. This Court is, therefore, not impotent to adjust the competing rights of parties by prospective overruling of the previous decision in Rangachari ratio. The decision in Mandal case postponing the operation for five years from the date of the judgment is an instance of, and an extension to the principle of prospective overruling following the principle evolved in Golak Nath case".

12. Dealing with the nature of the power exercised by the Supreme Court under Article 142, this Court held that the expression '*complete justice*' are words meant to meet myriad situations created by human ingenuity or because of the operation of Statute or law declared under Articles 32, 136 or 141 of the Constitution. This Court observed:

"60..... The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase "complete justice" engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology. Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity of the order of this Court does not arise. As held

A *earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise."*

B 13. In *M/s Somaiya Organics (India) Ltd. etc. etc. v. State of U.P. & Anr.* 2001 (5) SCC 519, this Court held that the doctrine of prospective overruling was in essence a recognition of the principle that the Court moulds the relief claimed to meet the justice of the case and that the Apex Court in this country expressly enjoys that power under Article 142 of the Constitution C which allows this Court to pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before this Court. This Court observed:

"In the ultimate analysis, prospective overruling, despite D *the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case - justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred by Article 142 of the* E *Constitution which allows this Court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it". In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in* F *order to do "complete justice".*

14. The 'Doctrine of Prospective Overruling' was, observed by this Court as a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without G unduly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law.

15. In *Kailash Chand Sharma v. State of Rajasthan &* H *Ors.* (2002) 6 SCC 562, the constitutional validity of rules

providing for weightage based on domicile of the candidates was assailed before the High Court of Rajasthan. The High Court while reversing its earlier decisions, upholding the grant of such weightage declared the rule to be unconstitutional. In an appeal before this Court one of the questions that fell for consideration was whether the selection made on the basis of the impugned rule could be saved by invoking the doctrine of prospective overruling. Answering the question in the affirmative, this Court cited two distinct reasons for invoking the doctrine. *Firstly*, it was pointed out that the law on the subject was in a state of flux inasmuch as the previous decisions of the High Court had approved the award of such weightage. This Court observed that on the date, the selection process started and by the time it was completed, the law as declared in the earlier decisions of the High Court held the field. Reversal of that legal position on account of a subsequent decision overruling the earlier decisions was considered to be a sufficient reason for complying with the doctrine of prospective overruling to save the selection process and the appointments made on the basis thereof. Reliance in support was placed upon the decision of this Court in *Managing Director, ECIL Hyderabad v. B. Karunakar* (1993) 4 SCC 727. *Secondly*, this Court held that candidates who stood appointed on the basis of the selection process had not been impleaded as parties to the writ petitions that challenged the rules providing for marks based on the domicile of the candidates. That being so a judgment treading a new path should not as far as result in detriment to the candidates already appointed. The following observations made by this Court are apposite in this regard:

> *"By the time the selection process was initiated and completed, these decisions were holding the field. However, when the writ petitions filed by Kailash Chand and others came up for hearing before a learned Single Judge, the correctness of the view taken in those two decisions was doubted and he directed the matters to be placed before the learned Chief Justice for constituting*

A *a Full Bench. By the time this order was passed on 19-7-1999, we are informed that the select lists of candidates were published in many districts. On account of the stay granted for a period of three months and for other valid reasons, further lists were not published. It should be*
B *noted that in a case where the law on the subject was in a state of flux, the principle of prospective overruling was invoked by this Court. The decision in Managing Director, ECIL v. B. Karunakar*[15] *is illustrative of this viewpoint. In the present case, the legality of the selection*
C *process with the addition of bonus marks could not have been seriously doubted either by the appointing authorities or by the candidates in view of the judicial precedents. A cloud was cast on the said decisions only after the selection process was completed and the results*
D *were declared or about to be declared. It is, therefore, a fit case to apply the judgment of the Full Bench rendered subsequent to the selection prospectively. One more aspect which is to be taken into account is that in almost all the writ petitions the candidates appointed, not to speak of the candidates selected, were not made parties*
E *before the High Court. Maybe, the laborious and long-drawn exercise of serving notices on each and every party likely to be affected need not have been gone through. At least, a general notice by newspaper publication could have been sought for or in the*
F *alternative, at least a few of the last candidates selected/ appointed could have been put on notice; but, that was not done in almost all the cases. That is the added reason why the judgment treading a new path should not as far as possible result in detriment to the candidates already*
G *appointed."*

16. There was some debate at the Bar whether the High Court could have invoked the doctrine of prospective overruling even if the State Administrative Tribunal was incompetent to do
H so. It was contended by the counsel appearing for the

respondents that the predominant legal opinion emerging from the pronouncements of this Court limited the application of the doctrine of prospective overruling only by the Supreme Court. Neither the Tribunal nor the High Court could, according to the learned counsel, have invoked the doctrine assuming that there was any justification for such invocation in the facts and circumstances of the case.

17. Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the respondent, on the other hand, argued and, in our opinion, rightly so that it was unnecessary for this Court to go into the question whether the doctrine of prospective overruling was available even to the High Court. He urged that there could be no manner of doubt that even if the High Court was not competent to invoke the doctrine, nothing prevented this Court from doing so having regard to the fact that those promoted under the impugned rules had held their respective positions for a considerable length of time making reversion to their parent zone/cadre not only administratively difficult but unreasonably harsh and unfair. It was argued by Mr. Jayant Bhushan that the law as to the validity of the rules impugned in the present case was in a state of flux till the judgment of this Court in *Jagannadha Rao's* case (supra) finally declared that provisions like the one made by the rules in the instant case are constitutionally impermissible being in violation of the Presidential Order. That apart no promotion had been made after the 7th November, 2001, the date when the judgment of this Court in *Jagannadha Rao's* case (supra) was pronounced. Such of the promotions as were already made could therefore be saved to balance equity and prevent miscarriage of justice *vis-à-vis* those who had on the basis of a rule considered valid during the relevant period been promoted against posts outside their zone/cadre.

18. In Jagannadha Rao's case (supra), the petitions were filed in the year 1987. The State Administrative Tribunal had declared the rule providing for inter-department transfer by

A promotion to be bad by its order dated 17th April, 1995. The legal position eventually came to be settled by the decision of this Court in the case on 7th November, 2001. The petitions in the present case were filed before the State Administrative Tribunal in the year 1997. The Tribunal had on the authority of
B the judgment aforementioned struck down the rules providing for ex-cadre/zone promotions by its order dated 27th March, 2003, but saved the promotions already made. The judgment of the High Court of Andhra Pradesh challenging the order passed by the Tribunal to the extent it saved the promotions
C earlier made was pronounced on 9th March, 2007. The review petition filed by those affected by the striking down to the rules and facing the prospects of reversion were dismissed by the High Court on 3rd November, 2010. Promotions made before the pronouncement of the order in *Jagannadha Rao's* case
D (supra) i.e. before 7th November, 2001 have, thus, continued for nearly ten years till the review petition filed by the petitioners was dismissed and the matter brought up before this Court. We had in that backdrop asked learned counsel for the respondent-State to take instructions whether the State Government was
E ready to create supernumerary posts to accommodate the petitioners and prevent their reversion. An additional affidavit filed by the Commissioner of Labour, Government of Andhra Pradesh, however, does not appear to be supportive of what could be a solution to the stalemate arising out of the impugned judgment. The affidavit states that there is no need to create
F supernumerary posts to accommodate the petitioners in their original posts i.e. Senior Assistants and senior stenographers. It also declines creation of supernumerary posts in the Directorate for the petitioners who were working as Assistant Labour Officers, Assistant Commissioners of Labour and
G Deputy Commissioners of Labour. The affidavit states that the petitioners while working as Senior Assistants and senior stenographers had opted to go as Assistant Labour Officers outside the regular line on executive posts where the incumbents enforce the labour laws. The affidavit suggests as
H though the petitioners had taken a calculated risk in going out

of their cadres by accepting higher positions as Assistant Labour Officers in another zone. Suffice it to say that the respondent-State has not expressed its willingness to create supernumerary positions. We have, therefore, no option but to examine the question of invoking the doctrine of prospective overruling on the merits of the case having regard to the facts and circumstances in which the question arises. While doing so we must at the threshold point out that the respondents are not correct in suggesting as though the petitioners had taken any deliberate or calculated risk by opting for promotion outside their cadres. The respondents have while making that assertion ignored the fact that promotions were ordered by the State and not snatched by the petitioners. That apart on the date the promotions were made there was no element of risk nor were the promotions made subject to the determination of any legal controversy as to the entitlement of the incumbents to such promotion. Not only that, the incumbents who had been sent out on promotion as Assistant Labour Officers had subsequently been promoted as Assistant Labour Commissioners or Deputy Labour Commissioners. Such being the position reverting these officers at this distant point of time, to the posts of Senior Stenographers in their parent cadre does not appear to us to be either just, fair or equitable especially when upon reversion the State does not propose to promote them to the higher positions within their zone/cadre because such higher posts are occupied by other officers, most if not all of whom are junior to the petitioners and who may have to be reverted to make room for the petitioners to hold those higher posts. Reversion of the petitioners to their parent cadre is therefore bound to have a cascading effect, prejudicing even those who are not parties before us. The fact that the petitioners were not arrayed as parties before the Tribunal or before the High Court also brings the fact situation of the present case closer to that in *Kailash Chand's* case (supra). The law in the present case was, as in *Kailash Chand's* case (supra), in a state of flux. Such being the position, we see no reason why the doctrine of prospective overruling cannot be invoked in the instant case. Just because,

this Court had not addressed that question in *Jagannadha Rao's* case (supra) is also no reason for us to refuse to do so in the present case. That apart, *Jagannadha Rao's* case (supra) was dealing with a different set of norms comprising GoMs No.14 and 22 referred to earlier. While the basic question whether such GoMs permitting promotion by transfer from one department to the cadre or zone to another may have been the same, it cannot be denied that the rules with which this Court was concerned in *Jagannadha Rao's* case (supra) were different from those with which we are dealing in the present case. We feel that on the question of application of doctrine of prospective overruling, the judgment in *Jagannadha Rao's* case (supra) will not stand as an impediment for this Court.

19. In the result, we allow these appeals, set aside the orders passed by the High Court and hold that while GoMs No.14 and 22 have been rightly declared to be *ultra vires* of the Presidential Order by the State Administrative Tribunal, the said declaration shall not affect the promotions and appointments made on the basis of the said GoMs prior to 7th November, 2001, the date when ***Jagannadha Rao's*** was decided by this Court. Parties are left to bear their own costs.

Contempt Petitions (C) No.445-449 of 2013

In the light of the above order passed by us, we see no reason to continue with these proceedings which are hereby closed and the contempt petitions dismissed.

Bibhuti Bhushan Bose Appeals & Contempt Petitions disposed of.