

Chikkabasavaiah Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-04-1986

Reported in : ILR1987KAR169

Judge : K.A. Swami, J.

Acts : Karnataka Secretariat Service Recruitment Rules, 1957; Karnataka Ministerial Service Recruitment (Special) Rules, 1961; Karnataka State Civil Services (General Recruitment) Rules, 1977; Karnataka Government Servants Seniority Rules, 1957; ;Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973

Appeal No. : W.P. Nos. 42149 to 42152 and 42622 of 1982, 317 to 320 and 11983 of 1983 and 14089 and 14090 of 198

Appellant : Chikkabasavaiah

Respondent : State of Karnataka

Advocate for Def. : Mr. Agarwala

Advocate for Pet/Ap. : K.R.D. Karanth, ;B.G. Sridharan, ;G.S. Visweswara, ;K.S. Desai, Advs., ;S.V. Narasimhan, HCGP and ;U.L. Narayana Rao, Adv.

Judgement :

ORDER

K. A. Swami, J.

1. In Writ Petitions 42622 of 1982, 42149 to 42152 of 1982; and 11983/83, Final Gradation List of Assistants in the Karnataka Government Secretariat published as on 1-1-1980, is challenged.

2. However, in W.P. 11983/83, the petitioners have sought for amendment of the petition, so as to have the Final Gradation List of the aforesaid Assistants prepared as on 1-1-1986 quashed. The amendment sought for by them has been allowed and necessary parties have also been impleaded. Sri G.S Visweswara, learned Counsel for petitioners in W.Ps. 14089 & 14090 of 1986 in which the final gradation list of the aforesaid Assistants published as on 1-1-1986 is challenged, appears for the additional respondents impleaded in W.P. 11983 of 1983, The petitioners in W. Ps, 14089 & 14090 of 1986 and 11983/83 belong to the category of Direct Recruits; whereas the petitioners in other Writ Petitions belong to the category of promotees.

3. As the questions involved in W. Ps. 14089 & 14090 of 1986 and the other Writ Petitions are common, all these Writ Petitions are heard together and decided by this common order.

4. Having regard to the contentions urged on both sides, the following points arise for consideration :

(1) Whether the Judgment in W.A. 414 of 1978 in the State of Karnataka v. H.M. Chikkabasavaiah and Ors., [1981 1) Kar. L.J. 535 operates as res-judicata regarding the preparation of the Final Gradation List of Assistants in the Karnataka Government Secretariat as on 1-7-1975?

(2) If so, whether the Final Gradation Lists of Assistants in the Karnataka Government Secretariat prepared as on 1-1-1980 and 1-1-1986 are in accordance with the aforesaid Judgment?

(3) Whether the Final Gradation List prepared as on 1-1-1980 is valid in Law ?

(4) Whether the Final Gradation List prepared as on 1-1-1986 is valid in law?

5. POINT NO (1) : The problem of seniority in the category of Assistants in the Karnataka Government Secretariat is coming up before this Court for the second-time. It is unfortunate that inspite of specific directions issued by this Court on the earlier occasion, the seniority of the Assistants in the Karnataka Government Secretariat has not been settled. The cadre was brought into existence immediately after reorganization of States in the year 1957 i.e.,18-11-1957. Even to this day, the seniority has not been settled.

6. In the first round of litigation, the Final Gradation List of the Assistants in the Karnataka Government Secretariat prepared as on 1-7-1975 under O. m. NO. GAD 173 ASA 75 dated 27-3-1976 published in Part-III-1 of the Karnataka Gazette, dated 15th April, 1976, was challenged by Direct Recruits. It is also relevant to notice that to that proceeding which culminated in the decision of a Division Bench in W.A 444 of 1978, all the Assistants in the cadre were parties.

7. The following questions were raised and decided in W.A. 444/78 :

(i) Whether the 26 absorbed Assistants should be regarded as direct recruits to the cadre of Assistants?

(ii) For applying the ratio between direct recruitment and promotion to a cadre, should the basis be the number of vacancies occurring in that cadre during a particular period or the number of appointments actually made to the cadre during that period?

(iii) For applying the ratio between direct recruitment and promotion to a cadre, should the number of promotees and the number of direct recruits who go out of the cadre whether shortly after the appointment to that cadre or after considerable time or who do not join duty after issue of orders of direct-recruitment or promotion, be included or excluded?

(iv) For working out the quota rule between direct recruitment and promotion, should a calendar year be the basis or is it permissible to adopt a block period which may exceed one year.

The above points were answered as follows :

Question No. 1 :

'19. Though the aforesaid Circular of the Government dated 23-10-61 stated that absorption was permissible only in the cadres for which direct recruitment was provided in the Recruitment Rules and against direct recruitment vacancies, there is nothing in the Absorption Rules to show that the intention of the Government that such absorption should be against direct recruitment vacancies, was carried into effect in those Rules. The provisions of the Absorption Rules cannot be interpreted in the light of the terms of the Circular of the Government dated 73-10-1961 when there is no ambiguity in the meaning of those provisions. We cannot speculate whether the Government changed its mind to treat those Absorbed Assistants as direct recruits and did not provide in the Absorption Rules for treating them as direct recruits or whether the omission to make such provision, was inadvertent.

20. We do not see any good ground to dissent from the view taken by the Learned Single Judge that those absorbed Assistants could not be regarded as direct recruits and that for applying the ratio between the direct recruitment and promotion, should be excluded from the strength of the cadre of Assistants.'

Question No. 2 :

'25. Hence, the Learned Advocate General is right in his submission that there is no obligation on the Government to fill all or any of the vacancies in a cadre existing at any particular point of time or occurring during any particular period and that the quota rule has to be applied with reference to the actual number of appointments made to a cadre during any particular period and not with reference to the number of vacancies in that cadre occurring during that period. However, this does not detract from the validity of the observation of the Learned Single Judge that there should be no undue delay in filling the vacancies in the cadre from the different sources in accordance with the quota rule. Unless there are good reasons like the volume of work not justifying the filling of vacancies or economy measure, promotions and direct recruitment should be made to that cadre in accordance with the quota rule as and when vacancies occur. The delay in filling the posts and making promotions or direct recruitment in excess of the

respective quotas even temporarily, should be minimised if not avoided.'Question No. 3:

'32. Thus, we are unable to agree with the finding of the Learned Single Judge that a vacancy arising on account of a direct recruit going out of the cadre of Assistants, should be filled by appointing a direct recruit only and a vacancy arising on account of a promotee going out of that cadre should be filled only by promotion. We accept the contention of the Learned Advocate General and hold that all vacancies in the cadre of Assistants, should be filled by making direct recruitment and promotion in the ratio prescribed by the Recruitment Rules and that it is immaterial whether such vacancies arose on account of direct recruits or promotees going out of the cadre.

33. We shall now deal with two incidental questions. If a direct recruit shortly after joining duty, leaves the post, how should that vacancy be filled The Learned Single Judge has taken the view that another direct recruit should be appointed in his place. This is consistent with his view that a vacancy caused by a direct recruit going out of the cadre, should be filled only by a direct recruit, From what we have held above, it follows that even a vacancy caused by a direct recruit leaving the post shortly after joining it, should be treated in the same way as a vacancy occurring in any other manner and should be filled by applying the quota-rule i.e., 50 per cent of the vacancies should be, filled by direct recruitment and 50 per cent by promotion. The same would be the legal position if a promoted leaves the cadre shortly after promotion.

34. The position is different if a person to whom is issued an order of appointment by direct recruitment to a post, does not join that post at all. In that case, the appointment to that post is not complete and another person has to be appointed by direct recruitment to that post if it is intended to fill that post. The position would be the same if an official to whom is issued an order of promotion to the higher post, does not join that post. In such a case the promotion is not complete and another person has to be promoted to that post if it is intended to fill that post.'

Question No. 4 :

'45. From the aforesaid observations of the Supreme Court, it is clear that in (he absence of any rule, the Government had discretion to adopt a year or any other reasonable period for working out the quota rule i.e., the ratio between direct recruitments and promotions. We agree with the Learned Single Judge that after insertion of Clause (c) in Rule 17 of the General Recruitment Rules, 1957 and the insertion of Rule 10 in the Seniority Rules, a year should be taken as the reasonable period for working out the quota rule i.e., the ratio between direct recruitment and promotion. But, we are unable to agree with the view of the Learned Single Judge that prior to the insertion of Clause (c) in Rule 17 of the General Recruitment Rules, 1957 and Rule 10 in the Seniority Rules, the State Government was under an obligation to adopt a year as the period for working out the quota rule, i.e., the ratio between the direct recruitment and promotion.

46. In our opinion, the direction of the Learned Single Judge to the State Government to work out the quota rule on an annual basis, should be modified so as to limit its application to the period subsequent to 25-7-62. Upto that date; the adoption of the two block periods by the State Government, cannot be held to be bad.'

8. In the light of the aforesaid findings, the following directions were issued :

'47. As we have disagreed with the findings of the Learned Single Judge on question Nos. (ii) and (iii) above, and partly with his finding on question No. (iv) above, we allow this appeal partly. While we Uphold his quashing of the Gradation List of Assistants impugned in the Writ Petition, we modify the directions contained in sub para (3) of para-16 of his order. In substitution of those directions, we give the following directions for preparing a fresh Gradation List of Assistants.

(a) The number of appointments made to the cadre of Assistants during the block period 18-11-57 to 11-3-1962 excluding the number of Absorbed Assistants, shall be classified as direct recruitment posts and promotional posts in the ratio of 2:1 (i.e., 66 2/3 per cent and 33 1/3 per cent) ;

(b) Persons appointed either by way of direct recruitment or by promotion to the posts of Assistants, within their respective quotas, during the abovesaid period,

shall be given seniority from the respective dates of their appointments;

(c) Persons appointed either by way of direct recruitment or by promotion, in excess of the respective quotas therefor, during the aforesaid period, shall be adjusted against such quota during the next block period ;

(d) The number of appointments made to the cadre of Assistants during the period 12-3-1962 to 25-7-1962, shall be classified as direct recruitment posts and promotional posts in the ratio of 1:1 (50% and 50%). The excess number of persons appointed by way of direct-recruitment or by promotion during the block-period 18-11-1957 to 11-3-1962, shall be adjusted against the quota for direct recruitment or the quota for promotion, as the case may be during the period 12-3-1962 to 25-7-1962. After such adjustment, persons appointed either by way of direct recruitment or by promotion within their respective quotas during the period 12-3-1962 to 25-7-1962, shall be given seniority from the respective dates of their appointments ;

(e) The process in Clauses (b) to (d) above shall be repeated, mutatis mutandis, during the period 26-7-1962 to 31-12-1962 and thereafter in each succeeding calendar year ; and

(f) The final gradation list of Assistants shall be published within 6 months from this date.'

9. Subsequently, on an application (I, A. No. IV) filed by respondents 42 and 107 in the Writ Appeal 444 of 1978, the finding recorded on question No. (i) was reviewed by the order dated 3-7-1981 and question No. (i) was answered as follows :

'15. It is true that ordinarily persons who are already in service in other Departments and are absorbed by transfer, cannot be regarded as direct recruits. But, by a legal fiction, Rule 3 provides that Absorbed Assistants should be regarded as being appointed against direct recruitment vacancies. It is well settled that a statute may provide for deeming a thing to be what it is actually not. We reject the contention of Shri Karanth that Absorbed Assistants could not be treated

as having been appointed against direct recruitment vacancies.

16. In our judgment, we had overlooked this aspect of the matter. Hence our judgment on this point should be reviewed in the interest of justice.

17. In the result, we allow this petition partly, review our judgment and modify para-19 of our judgment by holding that Absorbed Assistants shall be treated as direct recruits to the posts of Assistants in the Secretariat for the purpose of application of the quota rule as between direct recruits and promotees in the cadre of Assistants. Correspondingly, we modify the order of the Learned Single Judge by deleting his direction that Absorbed Assistants shall not be treated as direct-recruits for the purpose of application of the quota rule as between direct recruits and promotees to that cadre.'

10. Thus, in accordance with the aforesaid directions, the State Government was required to prepare and publish the Final Gradation List of Assistants as on 1-7-1975 within a period of six months. However, there was a delay in publishing the Final Gradation List. There was a Contempt of Court proceeding. Ultimately, the Final Gradation List was published on 26-11-1982 under the Notification No. DPAR 160 ASA 82 purporting to reflect the seniority of the Assistants as on 1-1-1980. The validity of this list, as it is already pointed out, is challenged in some of these petitions. When the challenge to the Final Gradation List prepared as on 1-1-1980 was pending, the Final Gradation List of Assistants as on 1-1-1986 under the Notification No. DPAR 110 ASA 84 dated 2-6-1986 came to be published on the basis of the explanatory note appended to it. This is produced in W.Ps. 14089 & 14090 of 1986 as Annexure-F.

11. It is the case of the Direct Recruits that the Final Gradation List prepared as on 1-1-1986 is not in accordance with the directions issued in W.A. 444/78 (hereinafter referred to as 'Chikkabasavaiah's case'). In this regard, it is argued that the Final Gradation List as on 1-7-1975 is required to be prepared in accordance with the directions contained in Chikkabasavaiah's case and no other decision is required to be taken into account because the directions issued in Chikkabasavaiah's case have become final and binding on the parties and, at any rate, on these who were parties to it. Therefore, the decision in Chikkabasavaiah's

case and the directions issued therein operate as Res-judicata, irrespective of whether or not those directions are in conformity with the decisions of the Supreme Court, in A.S. Iyer and Ors. v. V. Balasubramanyam and Ors., : (1980)ILLJ441SC and M. G. Kadali v. State of Karnataka and Ors., 1982(2) KLJ 453

12. However, it is the case of the respondents (promotees and the State Government) that having regard to the decisions of the Supreme Court in A. S. Iyer's case and a Division Bench decision of this Court in M.G.Kadali's case which are binding on the State Government, the final gradation list could not have been prepared in accordance with the directions contained in Chikkabasavaiah's case, because the decisions in Iyer's case and Kadali's case are to the effect that the vacancies in the Direct Recruitment quota cannot be carried forward for over a period of three years. Therefore, the Final Gradation List as on 1-1-1986 is prepared keeping in view the aforesaid two decisions.

13. The further contention of promotees and the State Government is that the question as to whether the vacancies in direct recruitment quota can be carried forward for over a period of three years or not is a pure question of law, therefore, the decision rendered on this issue in Chikkabasavaiah's case cannot operate as res-judicata. It is also pointed out that in Chikkabasavaiah's case, this Court has directed that the Final Gradation List shall be prepared in accordance with law; therefore, there is no bar for applying the law laid down in A.S.Aiyer's cases. With regard to promotion and appointment by Direct Recruitment in excess of the respective quota the same shall be adjusted in the next succeeding block period and these who are appointed by Direct Recruitment or on promotion within their respective quota shall have their seniority from the date of their appointment by direct recruitment or on promotion as the case may be, and those who are appointed or promoted in excess of their respective quota will have to seek their seniority in the next succeeding period. In this way, the directions contained in the decision shall have to be repeated for the succeeding years on applying the rule laid down in A.S. Aiyer's case. : (1980)ILLJ441SC

14.1) The question as to the finality of the directions issued by the Court between the parties to the proceedings has been settled by the various decisions of the Supreme Court. To start with, the State of Punjab v. Joginder Singh., : AIR 1963 SC913 In this case, the decision of the High Court related to four officials regarding their promotion. A common Judgment was delivered, The State challenged the decision In so far it related to Joginder Singh only. In respect of other officials, it was not challenged by the State. The Supreme Court held that the Judgment of the High Court was not correct and required to be set aside. The decision was equally applicable to three other officials also; but in view of the fact that the State Government had not challenged the decision of the High Court in so far it related to other three officials, the Supreme Court took the view that the decision of the High Court relating to three other officials had become final and binding; therefore, its, decision did not affect the other three officials. The effect was that though the decision of the High Court was held to be incorrect, but it having assumed the finality, it was not disturbed. The relevant portion of the Judgment is as follows:

'9. Before however, doing so it is necessary to mention a preliminary objection that was taken to the hearing of appeal. Along with respondent Joginder Singh there were three others who had filed similar petitions and sought the same relief. Writ Petitions 161 and 162 of 1961 were by 'junior teachers' like the Respondent, while Amrik Singh petitioner in the remaining petition (Petition 163 of 1961) was a Head Master among the 'provisionalized' teachers. All the four petitions were dealt with together and were disposed of by a common judgment so that relief accorded to Joginder Singh the Respondent before us in Writ Application 1559 of 1(SIC)60 was also granted to the other three petitioners. The State however has preferred no appeal against the orders in the other three petitions, and Mr. Agarwala, Learned Counsel for the respondent raises the contention that as the orders in the other three petitions have become final, any order passed in this appeal at variance with the relief granted in the other three petitions would create inconsistent decrees in respect of the same matter and so we should dismiss the present appeal as incompetent. We, however, consider that this would not be the legal effect of any order passed by the Court in this appeal and that there is no merit in this objection as a bar to the hearing of the appeal. In our opinion, the true

position arising, if the present appeal by the State Government should succeed, would be that the 'finality of the orders passed in the other three Writ Petitions by the Punjab High Court would not be disturbed and that those three successful Petitioners would be entitled to retain the advantages which they had secured by the decision in their favour not being challenged by an appeal being filed. That however would not help the present Respondent who would be bound by our judgment in this appeal and besides, so far as the general law is concerned as applicable to everyone other than the three Writ Petitioners (who would be entitled to the benefit of decisions in having attained finality), the law will be as laid down by this Court. We therefore, overrule the preliminary objection.'

14.2) In P.S. Mahal and Ors., v. Union Of India Ors., : (1984)IILLJ282SC a similar question arose for consideration and it was held thus:

'11.....When this Court has in so many terms laid down that the inters seniority of Executive Engineers promoted from the grades of Assistant-Executive Engineers upto 11th December, 1974 must be held to be governed by rule of length of continuous officiation and the Government of India has been directed by a Writ of the Court to amend and revise the seniority list of 1st July 1971 on the basis of this rule of seniority, it is difficult to see how the effect of this decision can be set at naught and the binding character of the Writ issued against the Government of India can be abrogated by the mere promulgation of the Rules of 1976 with retrospective effect from 10th December 1974. It is significant to note that the Explanatory Memorandum which was in the nature of Statement of Objects and Reasons for the Rules of 1976 did not seek to override the effect of the decision in A.K. Subranan's case : 1976 CriLJ481Since the Rules of 1976 purport merely to carry out the direction given in the decision in A.K. Subranan's case (supra), they, cannot have the effect of overriding that decision and absolving the Government of India from the obligation to impliment this direction and the Government of India must therefore amend and revise the seniority list of 1st July, 1971 by applying the rule of seniority based on length of continuous officiation for determining inter se seniority of Executive Engineers promoted from the grades of Assistant Engineers and Assistant Executive Engineers upto 11th December, 1974.....'

This rule of finality is laid down in several other decisions of the Supreme Court, namely in A.V. Nachane and Anr. v. Union of India and Ors., : (1982)ILLJ110SC and M M. Pathak v. Union of India., : (1978)ILLJ406SC

14.3) Sri G. S. Visweswara, learned Counsel for the promotees, Sri S. V. Narasimhan, learned High Court Government Pleader for the State; and Sri U. L. Narayana Rao. learned Counsel for Direct Recruits, have laid great stress on the decision of the Supreme Court in Mathura Prasad Sarjoo Jaiswal and Ors. v. Dossibai N.B. Jeejeebhoy, : [1970]3SCR830 . On the basis of this decision, it is contended that a decision on a pure question of law does not operate as res judicata. In this regard, it is very pertinent to notice that in the very decision, it has been held as follows :

'10.....But, where the decision is on a question of law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression 'the matter in issue' in Section 11, Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision, of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata for a rule of procedure cannot supersede the law of the land.'

Thus, it has been held in the aforesaid decision itself that where the decision is on a question of law, i.e., the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same. The situation referred to in the latter portion of the aforesaid quotation, does not arise in the instant case to which the earlier portion of the aforesaid quotation applies.

14.4) In the instant case, when this Court has decided and directed in Chikkabasavaiah's case that in the case of persons appointed either by way of direct recruitment or by way of promotion to the posts of Assistants within their

respective quotas during a particular period shall be given seniority from the respective dates of their appointments ; and in the case of persons appointed either by way of direct recruitment or by way of promotion, to the posts of Assistants within their respective quotas during a particular period shall be given seniority from the respective dates of their appointments; and in the case of persons appointed either by way of direct recruitment or by way of promotion, in excess of their respective quotas during any block period, the seniority of such persons shall have to be adjusted against such quota during the next block period. The aforesaid decision and the directions have no bearing on the jurisdiction of this Court as the same relate to the interpretation of the Cadre and Recruitment Rules, and such a decision even if it is presumed that it is erroneous, it nevertheless operates as res judicata between the parties for determination of the seniority of the promotees and direct recruits in the cadre of Assistants as on 1-7-1975.

14.5) At this stage, it is relevant to refer to a decision of the Supreme Court in *Rajendra Jha v. Presiding Officer, Labour Court, Dhanbad*, : (1984)11LLJ459SC . In that case, the Labour Court and the High Court held that the employer was entitled to produce evidence to justify the order of dismissal. After the trial was completed and the final decision was tendered the matter was taken to the Supreme Court, as they failed in the High Court. The contention was raised that the High Court was not justified in permitting the employer to adduce evidence. In this connection, it was held that the decision rendered was within the jurisdiction and it became final, as such it could not be challenged at a later stage of the proceeding. The Supreme Court observed thus :

'16. We do not consider that either of these decisions can help the appellant. A question of law which does not require a fresh investigation into facts may be allowed to be raised at a later stage of a proceeding but, that is subject to the qualification that the question is not concluded by a decision between the game parties. In this case, the question as to whether the Labour Court was right in giving an opportunity to the employers to lead evidence, is not being raised by the appellant for the first time in this Court. It was raised by him in the Writ Petition which he had filed in the Patna High Court and that Writ Petition was dismissed. In

so far as the question of res judicata is concerned, if an erroneous decision on a, question of law is rendered by a Court by assuming jurisdiction which it does not possess, it may be possible to argue that the decision cannot operate as res judicata even between the same parties. But, in the case before us, the Labour-Court had the jurisdiction to decide whether to allow the employers to lead evidence or not. It may have acted irregularly in the exercise of that jurisdiction but that is to be distinguished from cases in which the Court inherently lacks the jurisdiction to entertain a proceeding or to pass a particular order. Besides, as we have stated earlier, though it would be true to say that the employers did not ask for an opportunity to lead evidence simultaneously with the, filing of the application under Section 33(2)(b) of the Act, it is not possible to hold on the basis of the data placed before us that they asked for such an opportunity after the proceedings had terminated.....'

Thus, it follows that the decision in Chikkabasavaiah's case regarding determination of seniority of the Assistants as on 1-7-1975 having become final, the seniority of the Assistants as on 1-7-1975 has got to be prepared in accordance with the directions contained therein. All the Assistants appointed on promotion and by direct recruitment were parties to the decision. Thus the decision is between the same parties. It also relates to the same cause of action, namely, the seniority of the Assistants. The determination of the seniority as on 1-7-1975 will determine the inter so position of the Assistants belonging to both the categories as on 1-7-1975 which shall have to be maintained in the subsequent years. Thus the decision in Chikkabasavaiah's case operates as res judicata. The parties to Chikkabasavaiah's case including the State Government, are estopped from acting and determining the final Gradation List of Assistants as on 1-7-1975, contrary to the directions contained in Chikkabasavaiah's case. As such, the Final Gradation List of the Assistants in the Karnataka Government Secretariat as on 1-1-1975 has got to be first prepared in terms of the directions issued in Chikkabasavaiah's case.

14.6) It is further contended that in Chikkabasavaiah's case, there was no issue raised and decided as to how many years the vacancies were to be carried forward. Therefore, it is contended that the decision in Chikkabasavaiah's case

cannot be held to operate as res judicata so as to come in the way of applying the rule laid down in A.S.Iyer's case. This contention is not well-founded and it cannot be accepted. The directions contained in Chikkabasavaiah's case are to the effect that the vacancies have to be carried forward year after year till the quota rule is satisfied. No limitation as such is fixed regarding the period for which vacancies are to be carried forward. On the contrary there is a direction to repeat the process for each succeeding year. Therefore, it is not possible to hold that three years carry-forward rule is consistent with the directions contained in Chikkabasavaiah's case. That being so, without contravening the directions contained in Chikkabasavaiah's case, three years' carry-forward rule cannot be applied. As per the directions contained in paragraph 47 of the order, the process has to be repeated every year and vacancies have to be carried forward every year. That being so, by implication, three years carry-forward rule must be deemed to have been considered and rejected. At any rate, three years carry-forward rule as pointed out above, is quite opposed to the directions contained in the decision.) Hence, it is not possible to accept the contention that three years carry-forward rule is not considered in Chikkabasavaiah's case. It is accordingly rejected.

14.7) This Court, in M.G. Kadali v. State of Karnataka and Ors., has held thus:

'45. In the light of the above ruling of the Supreme Court, it must be held that carry forward of direct recruitment vacancies or promotional vacancies, cannot extend beyond 3 years. However, this ruling of the Supreme Court (in A.S. Iyer's case - : (1980)ILLJ441SC) does not affect the finality and binding character of the earlier judgment of the Supreme Court in Badami's case : (1975)ILLJ466SC , which specifically dealt with the Gradation List of Junior Scale Officers as on 1-1-1972 and gave directions as to how a fresh gradation list should be prepared. Those directions are to be obeyed while preparing such Gradation List of officers who entered that cadre upto 1-1-1972 without any limitation as to the period up to which promotional or direct recruitment vacancies should be carried forward to the next recruitment period. But, such carry forward cannot exceed three years after 1-1-1972.'

14.8) The result of this conspectus is that the decision in Chikkabasavaiah's case for preparation of the final gradation list of Assistants in the Karnataka Government Secretariat as on 1-7-1975 operates as res judicata. Therefore, the Final Gradation List of Assistants in the Secretariat as on 1-7-1975 has to be first prepared in accordance with the directions contained in Chikkabasavaiah's case. Point No.1 is answered accordingly.

15. POINT NO 2 : Final Gradation List prepared as on 1-1-1980 is concerned, it is not necessary at this stage to consider whether the directions contained in Chikkabasavaiah's case, have been followed and the gradation list is prepared in accordance with the directions contained therein. Further now it does not matter much, because the Final Gradation List as on 1-1-1980 stands superseded by the Final Gradation List prepared and published as on 1-1-1986. The Final Gradation List prepared as on 1-1-1986 makes a deviation from the directions contained in Chikkabasavaiah's case, even in respect of the period prior to 1-7-1975 and an attempt has been made to apply the principles laid down in A.S.Iyer's case and Kadali's case, to the period prior to 1-7-1975. Thus, the final gradation list as on 1-1-1986 has been prepared by applying the principle laid down in A.S. Iyer's case and Kadali's case. Even in respect of the period prior to 1-1-1975, it is not disputed, three years carryforward rule has been applied while preparing such list. That it is so, is also apparent from the statement appended to the Final Gradation List. Therefore, there is no escape from the conclusion that the Final Gradation List prepared as on 1-1-1986 with reference to the position of the Assistants as on 1-1-1975 is not in accordance with the directions contained in Chikkabasavaiah's case. Point No. 2 is answered accordingly.

16.1) POINT NO. 3 : The validity of the Final Gradation List prepared as on 1-1-1980 is challenged by the Direct Recruits as well as promotees As it is pointed out in the beginning of this order, Writ Petition No. 11983 of 1983 is filed by the Direct Recruits who have challenged the Final Gradation List prepared as on 1-1-1980. The petitioners in the other Writ Petitions who are promotees, have also challenged the validity of the Gradation List prepared as on 1-1-1980 except the petitioners in W. Ps. 14089 and 14090 of 1986. The Direct Recruits have challenged this Gradation List on the following grounds :

(a) Even though 29 officials have been absorbed under the Mysore Secretariat Services (Absorption of Transferred Government Servants) Rules, 1962, whereas only 26 vacancies are taken into account.

(b) That in the First Block period, five vacancies have been counted against the direct recruitment quota whereas those vacancies and appoints to the same relate to the period prior to 18-11-1957.

(c) That the names of the officials found at Sl. Nos. 246 to 250 are those who have been appointed under the Karnataka Ministerial - Services Recruitment (Special) Rules, 1961 (hereinafter referred to as the 'Special-Recruitment Rules'). Therefore, they are not appointed under the Karnataka Secretariat Service Recruitment Rules, 1957. Hence, they ought to have been kept separately and ought to have been treated as having been recruited under Direct Recruitment Quota as per the Karnataka Secretariat Service Recruitment Rules, 1957 (hereinafter referred to as the 'K.S.S.R. Rules').

(d) That in Block period No. VI, there were 15 excess promotions in addition to 63 accumulated from the previous block periods. That being so, when 78 direct recruits were appointed in Block Period No. 7, all the Direct Recruits ought to have been accommodated in Block Period No. 7; as by that time there were 78 excess promotions made.

(c) That the officials found at Sl. Nos. 171 to 178 are not Direct Recruits as they were local candidates ; therefore, their services were regularised under O.M. No. GAD 164 ASA 70 dated 6th July, 1970. As such, they should not also have been accommodated in the Direct Recruitment Quota.

10.2) On the contrary, the promotees have challenged the validity of this list on the following grounds :

(a) That in the provisional Gradation List published on 27-4-1982, the promotees were shown above the Direct Recruits. Therefore, they were not aggrieved by the ranking assigned to them in the Provisional Gradation List. Therefore, they did not prefer objections to it. Whereas in the Final Gradation List as on 1-1-1980

published on 26-11-1982 they have been brought down and this has been done without notice to them.

(b) That the directions contained in Chikkabasavaiah's case, have not been complied with inasmuch as number of vacancies existing have not been taken into account for the purpose of determining the quota of each category.

(c) That the total strength of the cadre includes local, ad-hoc, and temporary appointments. As such, local, ad-hoc and temporary appointments ought to have been taken into consideration for the purpose of determining the quota for the promotees. In this regard, it is stated that though Direct Recruitment was made by the Public Service Commission to 139 posts, whereas 29 local and 102 Ad-hoc appointments were also made. It is also submitted that under the various Government Orders, there were 268 appointments of local candidates. Whereas only 139 had been taken into account.

(d) That the decisions in A.S. Iyer's and Kadali's cases, have not been followed even though the whole list has got to be prepared in accordance with the rule laid down in these decisions.

(e) That in exercise of the power vested in the State Government under the K.S.C.S. (PPP) Act, 1973, eligibility dates had been given to the promotees and those eligibility dates had not been given effect to, in the final Gradation List.

17.(a) The contention of the Direct Recruits is that only 26 persons have been absorbed whereas the list shows 29. In fact, this contention has been considered in Chikkabasavaiah's case and it has been held that it is the actual appointment, that has to be taken into account. It is the number of persons who actually join the service pursuant to appointment that has to be taken into consideration. It has been further held therein that 26 absorbed assistants shall have to be counted as Direct Recruits. Therefore, it is not possible to accept this contention.

(b) The contention that five vacancies relating to the period prior to 18 11-1957 have been adjusted in the Direct Recruitment quota during the 1st Block period is not well founded. It proceeds on wrong assumption of facts. The Final Gradation

List prepared as on 1-1-1980 itself shows that these five persons are found at Sl. Nos. 3 to 7 and their placement in the Gradation List relates to the period prior to 18-11-1957, therefore, it is not possible to hold that the appointment of five persons at Sl. Nos. 3 to 7 in the list is taken into account while determining the quota available to the Direct Recruits in the 1st Block period. Accordingly, this contention is rejected.

(c) The contention is that the appointments made under the Special Recruitment Rules, cannot be counted as against the quota of Direct Recruits under the K.S.S.R. Rules, cannot also be accepted. The Special Recruitment Rules and K.S.S.R. Rules are framed under the proviso to Article 309 of the Constitution. Both the Rules enjoy the same status. Both the Rules relate to recruitment. Both the Rules have to be read and construed harmoniously as both enjoy equal status and deal with the same field i.e., Recruitment. Rule 3(1) of the Special Recruitment Rules specifically provides, that the provisions of the Rules shall be applicable in respect of the Direct Recruitment of trained candidates to the cadre of Assistants, First Division Clerks, Junior Assistants and Second Division Clerks. Sub-rule (2) of Rule 3 further provides that Special Recruitment Rules 'shall have effect notwithstanding anything contained-

(i) xxx xxx xxx

(ii) in the Cadre and Recruitment Rules for the time being in force applicable to the cadres in the State Civil Services referred to in Sub-rule (1).'

Sub-rule (1) of Rule 3 as pointed out above makes the provisions of the Special Recruitment Rules applicable to the Direct Recruitment of trained candidates to the cadre of Assistants, First Division Clerks, Junior Assistants and Second Division Clerks. The cadres of Assistants and Junior Assistant are among the cadres of State Civil Services and recruitment to these cadres is governed by the K. S. S. R. Rules. The Special Recruitment Rules have over-riding effect on K.S.S.R. Rules. The Special Recruitment Rules are confined only to trained candidates. Therefore, they become special in relation to the K.S.S.R. Rules. In addition to this, the non-obstinate clause contained in Sub-rule (2) of Rule 3 of the Special Recruitment Rules removes all the obstacles which come in the way of

giving full and intended effect to the recruitment made under the Special Recruitment Rules. The effect is that the recruitment of Assistants made under the Special Recruitment Rules do not form a separate cadre. They become part of the cadre of Assistants as though they are recruited under the K.S.S.R. Rules. Hence, the persons recruited under the Special Recruitment Rules to the Cadre of Assistants in the Secretariat have to be treated as having been recruited to the cadre of Assistants under the K.S.S.R. Rules as Direct Recruits.

However, Sri Karanth, Learned Counsel appearing for the Direct Recruits, has placed reliance on a decision of the Supreme Court in *Anand Prakash Saksena v. Union of India and Ors.*, : (1969)ILLJ373SC In that decision, the Supreme Court has considered the effect of Regulation 3(3) of the Special Recruits Seniority Regulations, and also Rule 9 of the Recruitment Rules relating to Indian Administrative Service (Seniority of Special Recruits) Regulations, 1960. It has been held in that decision as follows :

'22..... They are neither direct recruits nor promotees. Rule 9 of the Recruitment Rules does not treat them as direct recruits. Regulation 3(3) of the Special Recruits Seniority Regulations properly adopts the formula applicable to promotees for fixing the seniority of special recruits enlisted by promotion, so that in the matter of seniority all officers recruited from the State Civil Service are placed on the same footing. The regulation is not arbitrary nor violative of Articles 14 and 16 of the Constitution'.

In the instant case, as it is already pointed out, sub-rule(2) of Rule 3 of the Special Recruitment Rules contains non-obstinate clause which makes it clear that the Special Recruitment Rules shall have effect notwithstanding anything contained in the relevant Cadre Rules. Consequently, the effect is that the recruitments made under the Special Recruitment Rules must be deemed to have been made under the K.S.S.R. Rules, Therefore, the aforesaid decision is of no assistance to the Direct Recruits,

(d) This contention is opposed to the directions contained in *Chikkabasavaiah's* case, it has been specifically directed in *Chikkabasavaiah's* case that the excess number of persons appointed by way of direct recruitment or on promotion during

the block period 18-11-1957 to 11-3-1962, shall be adjusted against the quota for direct recruitment or for promotion, as the case may be, during the period 12-3-1962 to 25-7-1962. After such adjustment, persons appointed either by way of direct recruitment or on promotion within their respective quotas during the period from 12-3-1962 to 25-7-1962, shall be given seniority from the respective dates of their appointments. It is further directed that this process has to be repeated in the successive years. That being so, the contention that there were 15 excess promotions in Block period VI, and there were 63 excess accumulated promotions in Block period-V; therefore, in view of 78 excess promotions, all the vacancies ought to have been completely filled by direct recruits in the Block period VII, and no quota for the promoters should have been allowed, cannot be accepted because the excess promotions or appointments by way of direct recruitment have to be carried forward year after year, after adjusting the same from the available quota. In this view of the matter, this contention must fail. It is accordingly rejected.

(e) The last contention of the direct recruits is that the officials found at Sl. Nos. 171 to 178 are not direct recruits; they are local candidates regularised under the Official Memorandum bearing No. GAD 164 AS dated 6-7-1970; therefore, they have to be placed in Special category and not as direct recruits. There is no doubt that these eight officials have not been recruited under the K.S.S.R. Rules. They cannot be classified as promotees, because they are not promoted from the lower cadre of Junior Assistants to the cadre of Assistants. They cannot also be considered as direct recruits, recruited under the K.S.S.R. Rules. As such, they do form a class by themselves. But the question for consideration is whether this contention has to be permitted to be urged in the second round of litigation. The services of these eight officials were regularised as per the O.M. dated 6-7-1970. These eight officials out of twelve, were also included in the Final Gradation List prepared and published as on 1-7-1975, which was the subject-matter in Chikkabssavaiah's case. The names of these eight officials were found at Sl.No. 140 to 147 in the Gradation List. The direct recruits who were parties to Chikkabasavaiah's case, did not raise this contention. Consequently, they cannot now be permitted to urge this ground having regard to Explanation-4 to Section 11 of the Code of Civil Procedure, because the matter which ought to have been made ground of defence or attack in the previous proceeding, shall be deemed to

have been a matter directly and substantially in issue in the previous proceeding. Accordingly, this contention is negatived.

18(a) The contention of the promoters that they ought to have been given notice before the Final Gradation List as on 1-1-1980 was prepared and the ranking assigned to them was altered and they were brought down in the list, cannot also be accepted. No doubt, in P.K. Roy's case, : (1970)ILLJ633SC it is held that if in the final list, the ranking assigned in the provisional list is altered to the disadvantage of the person concerned without notice to him, it would be bad in law as it would be violative of the principles of natural justice. But the decision in P.K. Roy's case, : (1980)ILLJ441SC has been considered by the Supreme Court in the later case reported in Union of India v. Dr. R. D. Nanjaiah and Ors., : (1977)ILLJ294SC After referring to Shankaratah's case, 1969 SLR 1 (SC) and also P.K, Roy's case, : (1970)ILLJ633SC it has been held by the Supreme Court as follows :-

'7. As the petitioner in the High Court, who is the Respondent before us, was unrepresented, Mrs. Shyamala Pappu, appearing on behalf of Union of India, very conscientiously, took us through Union of India v. P.K. Roy, : (1970)ILLJ633SC , from which, Learned Counsel thought, the following observations could perhaps be cited on behalf of the petitioner-respondent (at p. 202) (of SCR) --(at p. 858 of AIR) :

'It was argued by Mr. Ashok Sen that in regard (o both these matters the Respondents have a right of representation and the final gradation list should have been published after giving them further opportunity to make a representation. Normally speaking, we should have thought that one opportunity for making a representation against the preliminary list published would have been sufficient to satisfy the requirements of law. But the extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case (See the decision of the Court in Shri Bhagwaa v.

Ram Chand, : [1965]3SCR218 , In view of the special circumstances of the present case, we think that the Respondents were entitled to an opportunity to make a representation with regard to the two points urged by Mr. Ashok Sen before the final gradation list was published. As to such opportunity was furnished to the Respondents with regard to these two matters we hold that the combined final gradation list dated April 6, 1962, so far as category 6 is concerned, is ultra vires and illegal and that part of the notification alone must be quashed by grant of a writ in the nature of certiorari. We think that any claim to have a say against the final list prepared, on an analogy with the second opportunity which is afforded to a person to be punished after arriving at a decision on the facts of a departmental trial and proposal to inflict a particular punishment upon him, is quite inappropriate. No element of punishment at all is involved in preparing either a provisional or a final seniority list. All that is done is that certain principles are applied in the preparation of the list. These principles are generally found in the rules or executive directions which are known to or are capable of being found out by the persons affected. When a provisional seniority list is prepared, there is a possibility of some mistakes occurring about the facts of a case or in the application of those rules. It would, therefore, be quite fair to give a person affected an opportunity to be heard against the proposed list before it is finalised so that any possible mistakes, either on facts relating to his particular case or of law in applying the rules governing seniority to those facts, may be rectified. But, once he has had that opportunity, it cannot possibly be said that he should have a further opportunity against even a final seniority list. If he was to have that opportunity the list would not really be final but only provisional or preliminary. It will be obviously contradictory to hold it to be a final list and yet declare it subject to modifications on further objections. We are unable to find any rule of natural justice having such a paralysing scope.

8. In P.K. Roy's case : (1970)ILLJ633SC (supra), the opportunity afforded was to be given before the publication of the final list. It was an opportunity to be given before the final list was to be declared and published as a final list. A right to representation was recognised as existing at the time when the list was still to be considered as not finalised presumably because some mistakes had crept in due to want of hearing on two points. Evidently, what was meant was that the

publication gave the list finality. In that particular case, the list had been prepared without cue regard to the particular important points which had to be considered before finalisation.

9. What we have observed does not mean that if a final list is prepared contrary to the rules applicable or is vitiated on some ground showing that a condition precedent to the finalisation of the list is absent, it would still be inviolable or sacrosanct. Even a list purporting to be final can be vitiated by non-observance of conditions precedent. In order to establish the invalidity of the final list on some such grounds of invalidity, those grounds have to be shown to exist. We find no such grounds in the case before us.'

Thus, in such a situation, the aggrieved party has only to challenge the final list on other grounds; but it cannot be held that the final list is bad in law because the ranking is bought down without notice to the aggrieved person/s. The contention is accordingly negated.

(b) The contention of the promotees is that the directions contained in Chikkabasavaiah's case have not been scrupulously followed by the Government. In this regard, it is contended that only the utilised vacancies have been taken into account for the purpose of determining the quota of the promotee and direct recruits and not the number of vacancies existing. This contention was accepted by learned Single Judge. However, in the aforesaid Writ Appeal No. 444 of 1978, it was rejected by the Division Bench. On accepting the contention of learned Government Pleader that it was open to the State Government to make or not to make appointment, as it was not necessary that the State Government must fill up all the vacancies and on that basis it was held in Chikkabasavaiah's case that it was only the utilised vacancies that could be taken into account for the purpose of determining the quota and not the existing vacancies. Therefore, the contention that the existing vacancies ought to have been taken into account for the purpose of determining the quota, cannot be accepted.

(c) It is next contended that the local, ad-hoc, and temporary appointments shall also be taken into account for the purpose of determining the quota of the promotees and direct recruits. In this regard, it is pertinent to notice that, in a way,

this contention is also opposed to the finding recorded by the Division Bench in Chikkabasavaiah's case that only the utilised vacancies have to be taken into account for the purpose of determining the quota. However, the contention is that local, ad-hoc and temporary appointments also amount to utilising the vacancies because such appointments are made to the cadre posts. There is no material placed before me that these local, ad-hoc and temporary appointments were made to the vacancies existing in the cadre. In other words, such appointments should have been made against the vacancies existing in the cadre but not filled up either by promotion or by direct recruitment. In the exigencies of service, certain local, ad-hoc and temporary appointments made by the Government cannot be taken into account as appointments to the regular or permanent vacancies, if any, existing in the cadre. The Very nature of appointments as local, ad-hoc and temporary, goes to show that they are not the appointments made to the permanent vacancies in the cadre, under the Cadre Rules. However, in this regard, a reliance is placed on a decision of the Supreme Court in : (1984)IILLJ282SC . In para-21 of the Judgment, it is observed by the Supreme Court, thus :

'21..... Whenever, therefore, a vacancy arises in a post, whatever be the reason by which the vacancy is caused, it would have to be filled up by promotion of an Assistant Engineer or an Assistant Executive Engineer and the quota rule would apply so long as the vacancy is a permanent vacancy, that is to say, in the words of Paleker, J. in the 1st Bishan Sarup Gupta's case : AIR 1972 SC2627 , a vacancy which is not 'for a few days or months' or otherwise adventitious. We have in these words of Palekar.J. adopted wholly and completely in A.K. Subraman's case : (1975)ILLJ338SC a negative definition on of what may be regarded as a permanent vacancy for the purpose of application of the quota rule and it clearly shows that a vacancy which is of a short duration arising on account of fortuitous or adventitious circumstances would not fee regarded as permanent vacancy and in such a case, by reason of the very nature of the vacancy, there would be no question of making recruitment to the cadre as to attract the applicability of the quota rule. It is therefore obvious that if a vacancy arises on account of an incumbent going on leave or from training or on deputation for a short period, it would be a fortuitous or adventitious vacancy and the quota rule

would not be attracted in case of such a vacancy. But where a vacancy arises on account of the incumbent going on deputation for a reasonably long period and there is no reasonable likelihood of the person promoted to fill such vacancy having to revert, the vacancy would be subject to the quota rule, because it would be a regular vacancy in the post of Executive Engineer and the person promoted to fill the vacancy would be an officiating Executive Engineer who would continue as such without reversion until confirmed and his promotion would, therefore, be by way of recruitment to the cadre of Executive Engineer.....'

As it is already pointed out, no material is placed before me to hold that these local, ad-hoc and temporary appointments were made to the permanent vacancies in the cadre. Accordingly, this contention is rejected.

(d) It is next contended that there are double entries in the Gradation List and this has affected the rankings assigned to the promotees. It is not disputed by the State and also by the direct recruits that there are about 22 double entries. In this regard, it is admitted by learned Government Header that this has been noticed when the final gradation list as on 1-1-1986 is prepared and it has been rectified. However, the fact remains that the final gradation list prepared as on 1-1-1980 suffers from this infirmity, which has to be rectified.

(e) The contention of the promotees is that in the final gradation list, the date of eligibility assigned to them by the Government Order No. GAD 101 ASA 73, dated 14th August 1975 has not been adhered to; therefore this has affected their ranking. It can only be said with reference to this contention that the seniority of the direct recruits and the promotees depends upon the number of vacancies and the quota available to them. It does not depend upon the date of eligibility assigned by the Government in exercise of its power under Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973. Therefore, the contention cannot be accepted.

(f) It is also contended that in the final Gradation List prepared as on 1-1-1980, only 139 vacancies in respect of direct recruits have been shown in Block Period No. I; whereas in respect of the very Block period in the final Gradation List prepared as on 1-1-1986, 147 vacancies are allotted to direct recruits. This,

according to the promotees, has affected the quota made available to them. In relation to promotion quota in the first block period in the final gradation list published as on 1-1-1980, 98 vacancies have been shown ; whereas in the final gradation list published as on 1-1-1986, 91 vacancies have been shown in respect of promotees. According to learned Counsel for the promotees, this has also affected the promotees because 7 vacancies have not been made available to the promotees in the list prepared as on 1-1-1986, In this regard, the State Government has filed the following clarification :

'Changes made in the 1986 Gradation List of Assistants vide O.M. dated 26-11-1986 in respect of the figures in the I Block period (18-11-1957 to 11-3-1962) compared to that of the list as on 1-1-1980 issued on 26-11-1982.

By Direct Recruitment :-1982 List -- 139 Difference1986 List -- 147 - +8.Reasons :- (i) The following four persons who had actually joined service and left service after some time had not been taken for purpose of classification of quota while preparing the 1982 list by oversight. They have now been taken in the 1986 list.

Sl. No. 64 Sri K. Virupaksha Gowda116 ' S. G. Gangannaver150 Sri D.R. Krishnamurthy182 ' S.L. Deshpande.(ii) In Official Memorandum No. GAD 164 ASA 70 dated 6th July 1970 twelve persons who were working as local candidates were regularised with effect from 20-8-60. However in the 1982 list, only eight persons have been taken, for classification. This has now been set right by including four more. They are :(i) Sri K. Mahadevaswamy Sl. No. 168 | in(ii) ' S. Siddalingappa ' 171 | 1986(iii) ' T. H. Govirdaiah ' 172 list(iv) ' B. Doddabylappa ' 182By promotion :1982 List -- 98 Difference1986 List -- 91 = - 7

Reasons:

NAMES of 8 persons appearing in the I Block which have been repeated in the subsequent blocks in the list of 1982, have now been deleted in the 1986 list. They are :

1) B. Navarathna Kumari Sl. No. 21 in 1982 list2) R. Shamanna Reddy 22 '3) N.T. Ramakrishna 23 '4) V.M. Xirasagar 24 ' 5) Ansuya Savanth 38 '6) B. Susheela

Devi 39 '7) G.K. Sangoram 117 '8) R.A. Kalghatgi 141 '

(ii) One official viz, Sri P. Lakshman Rao who was promoted to the cadre of Assistant on 12-3-1976 was assigned date of eligibility as 5-6-58. The person was not accounted for in the 1982 list at all. This has now been taken into account and he has been assigned Sl. No. 97 in the 1986 list.

Thus the figure works out to 98 - 8 + 1-91

NOTE :

(1) Appointments of local candidates have not been taken for purpose of classification of quota between Direct recruits and promotees. Reference item 5 of the Explanatory Note in OM dated 27-4-1982 bearing No. DPAR 56 ASA 82 publishing the provisional gradation list of Assistants as on 1-1-1980. However when the local candidates have been subsequently regularised in service they have been taken for classification.

(2) The number of persons actually joined after issue of appointment orders have been taken as the figures for purpose of classification of quota in respect of Direct Recruitment.

(3) In addition to the 29 officials absorbed vide Notification dated 9-3-62, three more Assistants were Absorbed vide Notification No. GAD 158 ASP 62 dated 30-8-62, taking the total to 32. However, as per the observation of the Court, 3 numbers have been deleted and only 29 has been taken.'

From the aforesaid clarification, it is clear that 4 officials who had actually joined service and left it after some time were not taken into account for the purpose of determining the quota. This mistake was noticed when the final Gradation List as on 1-1-1986 was prepared and the same was rectified. In respect of other four vacancies, it is stated that in the final Gradation List prepared as on 1-1-1980 four officials out of 12, whose services were regularised as per G. O. dated 6-7-1970 were not taken into account and were not shown in the list. This mistake has been noticed subsequently, and accordingly, they have been added to the vacancies utilised by the direct recruits. In this way, the State Government, has explained the

difference between the vacancies utilized by the direct recruits in the lists prepared as on 1-1-1980 and as on 1-1-1986. The clarification is reasonable and is not inconsistent with the directions issued in Chikkabasavaiah's case. Hence, it is accepted and the contention is rejected.

19. With regard to the inclusion of four names viz.. Sriyuths : K. Mahadevaswamy, Siddalingappa, T.H. Govind and Dodda Byrappa, in the Gradation List and accounting them in the quota of direct recruits, it is contended on behalf of the direct recruits that it is' impermissible inasmuch as they cannot be described as direct recruits because they have not been recruited under the K.S.S.R. Rules. While dealing with similar contention, in relation to 8 officials, whose services were also regularised under the very same order, it has been held during the course of this order that such a contention is not available to the direct recruits because the names of these 8 officials were included in the Gradation List prepared and published as on 1-7-1975 and as such, this ought to have been challenged when the Gradation List prepared and published as on 1-7-1975 was challenged in Chikkabasavaiah's case. It is submitted on behalf of the promotees and learned Government Pleader that what applies to those 8 officials must also apply to these 4 officials because they were also local candidates and their services were regularised under the very same Government Order. There is no doubt that the case of these 4 officials cannot be distinguished from the eight officials who were included in the Gradation List prepared as on 1-7-1975. However, the only distinguishing feature is that these 4 officials were not included in the Gradation List prepared and published as on 1-7-1975; therefore, the ranking assigned to them was not the subject-matter of the decision in Chikkabasavaiah's case either directly or indirectly. It is this distinction which Sri Karanth learned Counsel for the Direct Recruits, has tried to make out. In order to attract Explanation 4 to Section 11 of the Code of Civil Procedure, the contention might or ought to have been made ground of defence or attack in the former proceeding in order to hold that it shall be deemed to have been in issue directly and substantially in the former proceeding. As these four officials were not at all included in the final gradation list prepared as on 1-7-1975, there was no scope or ground to raise any contention in the former proceeding in relation to these four officials. Therefore, it is neither appropriate nor legal to hold that the direct recruits ought to have raised the

contention regarding inclusion of these four officials in the Gradation List when in fact they were not included. The contention becomes available to them for the first time when the final Gradation List as on 1-1-1986 is prepared including the names of these officials; therefore, it is not possible to hold that direct recruits are estopped from contending that the appointment of these four officials to the cadre in question ought not to have been counted as against the quota available to the direct recruits by reason of the decision in Chikkabasavaiah's case. The contention of Sri G.S. Visweswara, learned Counsel for the Promotees, is that it is only a clerical mistake which is tried to be rectified; therefore, the contention urged by the direct recruits should not be acceded to. The regularisation of local candidates in question is not under the K.S.S.R. Rules, as such, Regularization is neither permissible under the K.S.S.R. Rules, nor the services of these four officials have been regularised under the Rules framed under the proviso to Article 309 of the Constitution. Their induction into the cadre therefore stands on a special footing by way of regularisation. Therefore, the position occupied by these four officials in the Gradation List cannot at all be counted either against the quota available to the direct recruits or the promotees. They have to be kept in a separate category for the purpose of determining the quota of Direct Recruits and promotees. In that event, the total vacancies utilised by the direct recruits in the first block period would be 143 only and not 147.

20. With regard to the difference in the quota available to the promotees in the first block period between the final Gradation List prepared as on 1-1-1980 and 1-1-1986, it is explained by the State Government in the clarification which is reproduced in para 18(f) above. Therefore, it is not necessary to reproduce the same here. We are concerned here with regard to P. Laxman Rao's case, because he has been promoted with effect from 5-6-1958, on 12-3-1976 and his name ought to have been included in the Gradation List; but it was left out by mistake, which is now rectified. With the inclusion of Laxman Rao, and deletion of eight names which have been repeated, the difference remains seven. This difference of seven is explained by the State Government that it is on account of repetition of names at Sl.Nos. 21, 22, 23, 24, 38, 39, 117 and 141. In this regard, it is contended by Sri Visweswara, learned Counsel for the promotees that these seven officials were promoted under Rule 17 (c) of the General Recruitment

Rules, in excess of the quota during the first block period; therefore, they ought not to have been counted as against the quota available to the promotees during the first block period as per the directions contained in Chikkabasavaiah's case. However, this, contention is resisted by Sri Karanth, learned Counsel for the direct recruits and also by Sri S.V. Narasimhan, learned Government Pleader, on the ground that whether the promotions are regulator irregular results in utilisation of vacancies ; therefore as per the directions contained in Chikkabasavaiah's case, they have been rightly counted against the available quotas during the first block period. It is not possible to accept the contention advanced on behalf of the direct recruits and the State Government. According to the direction contained in Chikkabasavaiah's case, promotions and appointments by direct recruitment in excess of the quota available for each category in a particular block period have to be adjusted in the succeeding block period. Further the eight persons who were promoted under Rule 17 (c) of the General Recruitment Rules, in excess of the quota available to the promotees and in the quota of the direct recruits as on 13-1-1958, 11-1-1958 and 11-1-1958, 19-2-1958, 14-2-1958. 5-6-1958 and 15-5-1959, have been reverted subsequently within a period of two months on the ground that they were promoted in excess of the quota available to the promotees and in the quota of the direct recruits. Under these circumstances, the irregular promotions could not have been counted as the vacancies utilised in the quota available for the promotees. As such, their names ought not to have been included in Sl.No. 21, 22, 23, 24, 38, 39, 117 and 141. However, this mistake has been rectified in the Gradation List prepared as on 1-1-1986.

21. For the reasons stated above, Point No. 3 is answered in terms of the findings recorded above.

22. POINT NO. 4 : As far as the Gradation List published as on 14-1-1976 is concerned during the period falling within 1-7-1975 the State Government has applied three years carryforward rule. Consequently, there is a contravention of the directions issued by this Court in Chikkabasavaiah's case. However, in this regard, Sri Narasimhan, learned Government Pleader, submits that as held by the Supreme Court in Union of India v. Dr. R. D. Nanjaiah and Ors. if the final list is prepared contrary to the Rules applicable then only it will be liable to be quashed

and not otherwise. In other words, it is submitted that as per the decision of the Supreme Court in Iyer's case three years carry-forward rule has to be applied and the Gradation List has been prepared according to this rule; therefore, the Gradation List published as on 1-1-1986 is not liable to be quashed on that ground. It is not possible to accept this contention. In Dr. Nanjaiah's case, the Supreme Court was not called upon to consider the effect of the previous decision between the parties on the preparation of the Gradation List. It was called upon to consider only the effect of the alteration brought about in the final Gradation List. Therefore, the observations made in para-9 of the Judgment of the Supreme Court in Dr. Nanjaiah's case, cannot be made applicable to the present case. In the instant case, having regard to the finding recorded on Point No. 1, it is not possible to hold that application of three years' carry-forward rule to the period falling within 1-7-1975 is valid. Thus, there is no escape from the conclusion that the Gradation List as on 1-1-1986 is not prepared in accordance, with law and is prepared in contravention of the directions issued in Chikkabasavaiah's case. Therefore, it is illegal and invalid. Point No. 4 is answered accordingly. 23. Thus, all the contentions raised by both the sides are considered and answered in the manner stated above.

24.1) Lastly, I will also refer to the following decisions cited at the Bar. The rule laid down in G.T. Ramaswamy's case cannot be made applicable to either to the Gradation List prepared as on 1-1-1986 or as on 1-1-1980, because no list has become final in the instant case. The list prepared as on 1-1-1980 has also been challenged. Thus, none of the Gradation Lists has become final. When the Gradation Lists prepared as on 1-1-1980 and 1-1-1986 have not become final, the very basis for applying the decision in G.T. Ramaswamy's case disappears.

24.2) The decision in Siddaiah's case has no application and in fact it is considered in Chikkabasavaiah's case. Scope and effect of the decision in Chikkabasavaiah's case has already been discussed. Therefore, the decision in Siddaiah's case has no assistance to either of the parties.

24.3) The decision of the Supreme Court in Shenoy v. Commercial Tax Officer, ILR 1985 KAR 2077 cannot be made applicable to the present case. In that case,

this Court held the Entry Tax Act as unconstitutional and issued mandamus to the State Government not to enforce it. There were several hundreds of Writ Petitions filed and allowed. However, the State Government took up the matter to the Supreme Court in only one of them. The Supreme Court in M/s. Hansa Corporation Case, ILR (Karnataka) 1980 (1) 165 held that the Act was valid. Thereafter, the question arose whether the mandamus issued by this Court on the basis that the Act was invalid having not been challenged before the Supreme Court could still be held to subsist. It was in this connection the Supreme Court held that when once the very basis of the mandamus was knocked down, the mandamus did not continue to operate. The basis of the mandamus was knocked down as, it was held by the Supreme Court that the Act was valid. That being so, no mandamus could lie against the State Government directing it not to enforce a valid enactment.

The situation that is obtaining in the present case cannot in any way be compared with the one that existed in Shenoy's case., ILR 1985 KAR 2077 Hence, the decision of the Supreme Court in Shenoy's case is not applicable to the present case, ILR 1985 KAR 2077.

25. No other contention is urged.

26. For the reasons stated above, these Writ Petitions are disposed of in the following terms :

(a) Though the final gradation list has been prepared and published as on 1-1-1980 in accordance with the directions contained in Chikkabasavaiah's case, but it suffers from certain infirmities as pointed out during the course of this order ; therefore it is necessary to quash the same. Accordingly, it is quashed.

(b) The final gradation list prepared and published as on 1-1-1986 is invalid. It is accordingly quashed.

(c) The State Government is directed to prepare a fresh final gradation list of Assistants of the Karnataka Government Secretariat as on 1-7-1975 strictly in accordance with the directions contained in Chikkabasavaiah's case and in

accordance with the observations made and conclusions reached in this order.

(d) The Gradation List of Assistants of the Karnataka Government Secretariat for the period subsequent to 1-7-1975 is concerned, the State Government is directed to prepare such gradation list in accordance with law and applying the law laid down in Iyer's case and Kadali's case, as the directions issued in Chikkabasavaiah's case will be binding on the parties only up to the period 1-7-1975 ; but the inter se ranking assigned to the Assistants in the Gradation List as on 1-7-1975 pursuant to the directions contained in Chikkabasavaiah's case cannot be altered to their detriment,

(e) Compliance in Four months from the date of receipt of this order.

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