PETITIONER:
D. DASEGOWDA

Vs.

RESPONDENT:
STATE OF KARNATAKA AND ORS.T.R. DHANANJAYA AND ORS.

DATE OF JUDGMENT19/02/1993

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
SAHAI, R.M. (J)

CITATION:
1993 SCR (2) 54 1993 SCC Supl. (4) 53
JT 1993 Supl. 18 1993 SCALE (3)307

ACT:
Service Law:
Karnataka Municipal Corporation Rules, 1977-Validated by Karnataka Municipal Corporation Amendment Act 1981-Engineers-Appointment of-Deputation from PWD-Absorbed in Corporation-Promoted to higher posts-Repatriation to PWD just before retirement-Validity of.

HEADNOTE:
The appellant who was an Assistant Engineer in Public Works Department was transferred on deputation to the Bangalore City Corporation under the City Bangalore (Cadre and Recruitment) Regulation, 1971 which permitted 75% of vacancies in the cadre to be filed in by deputation from P.W.D.
In 1977, the Karnataka Municipal Corporation Rules were framed and the appellant was absorbed in the Corporation. On being challenged in a Writ Petition the High Court struck down the Rules and set aside the absorption of the appellant in the Corporation. The Government issued an ordinance removing the infirmity in the Rules. It was replaced by the Karnataka Municipal Corporation Amendment Act, 1981. In course of time the appellant was promoted as Executive Engineer, Superintending Engineer and Addl. Chief Engineer. Ile earlier Writ Petitioners approached the High Court by way of a Contempt Petition against the non-implementation of its order. Faced with this situation, the Government repatriated the appellant to his parent department,just a few months before his retirement.
The appellant approached the Administrative Tribunal, which dismissed his application as infructuous in view of the fact that the matter was pending before the High Court and in any case the appellant would get his pension either from the State Government or the Corporation. Hence these appeals.
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Allowing the appeals, this Court,
HELD: Under the Karnataka Municipal Corporation Amendment Act, 1981 the basis on which the Karnataka Municipal Rules, 1977 were declared void was removed and appointments made or continued before the commencement of the Amendment Act were declared to be valid and were always be deemed to have been validly made for all purposes as if the said appointments

had been made under the Principal Act as amended by the Act. It is not in dispute that the State Legislature is competent to make the Act. When the Act was made and it validated past acts done or proceedings taken, it was valid Act and removed the defects declared by the Court. It must be deemed and shall always be deemed that the appointment of the appellant as Addl. Chief Engineer is legal and valid. Unfortunately, the Act was not brought to the notice of the High Court when the direction to repatriate the appellant was made by the High Court. But the failure to bring to the notice of the court does not have the effect of nullifying the valid action legislatively taken. Consequently the appellant must be deemed to have been retired from service as Addl. Chief Engineer of the Corporation. The appellant is entitled to all the consequential benefits, all pensionary benefits etc. from the Corporation. [58H; 59-A-D] Shri Prithvi Cotton Mills Ltd. & Anr. v. Broach Borough Municipality & Ors., [1970] 1 SCR 388; Janapada Sabha, Chhindwara, etc. v. Central Provinces Syndicate Ltd. & Anr., etc., [1970] 3 SCR 745 and Yadlapati Venkateswarlu v. State of Anadhra Pradesh & Anr., [19901 Suppl. 1 SCR 381, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 797-803 of 1993.

From the Judgment and Order dated 16.7.91 of the Karnataka Administrative Tribunal in Application No. 1443/91 & dated 9.3.81, & 25.11.82 of the Karnataka High Court in W.P. Nos. 20147, 20148/79, 11343/78 & 1016-1018 of 1981.

S.S.Javali, Gopal Singh and E.C. Vidyasagar for the Appellant.

R.N.N. Narasimha Murthy, M.T. George, S.K. Kulkarni, M. Veerappa and P. Mahale for the Respondents.

The following Order of the Court was delivered:

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Delay condoned in S.L.P (C) 3464-3469/93 (CC-19593)/93.

Both disposed of by this common order.

Leave granted.

The appellant who was working as Assistant Engineer in Public Works Department was transferred on deputation to Bangalore City Corporation under City Bangalore (Cadre and Recruitment Regulation) 1971, which permitted 75% of vacancies in the cadre to be filled in by deputation from P.W.D. In 1977 Karnataka Municipal Corporation Rules were framed under which the appellant was absorbed as Assistant Executive Engineer in the Corporation. Validity of these rules and absorption of the appellant was assailed in the High Court by way of a Writ Petition which was allowed. The rules were struck down and the absorption of the appellant in the Corporation was set aside. In 1981 the Govt. issued an Ordinance removing the infirmity in the rules. It was replaced by the Karnataka Municipal Corporation Amendment Act, 1981 (Act 40 of 1981), for short 'the Act'.

Section 8 of the Act reads thus:

"8. Validation :- (1) The Karnataka Municipal Corporations Rules, 1977 made in notification No. HMA 270 MUN 77 dated 19th Dec., 1977 and published as GSR 390 in the Karnataka Gazette (Extraordinary) dated 22nd Dec., 1977 (hereinafter referred to as the said rules) shall, notwithstanding anything contained in any judgment, decree or offer of any court or

other authority or in the principal Act, be deemed to be as valid and effective for all purposes as if the said rules had been made under the Principal Act as amended by this Act and accordingly

(a) all actions or things taken or done (including appointments and promotions made) under the said rules shall, for all purposes be deemed to be and to have always been taken or done in accordance with law;

(b) (i) suit or other proceedings shall be maintained or continued in any court or tribunal or before any authority questioning the validity of any action or thing taken or done under the said rules; and

57

(ii)court shall recognise or enforce any decree or order declaring that the said rules or any action or thing taken or done thereunder as invalid, on the ground that the rules were made without giving reasonable opportunity to persons likely to be affected by it to file their objections and suggestions.

(2) Notwithstanding anything contained in any judgment, decree or order of any court or other authority or in the principal Act all appointments of Administrators made or continued before the commencement of this act shall be deemed to have been validly made for all purposes as if the said appointment had been made under the Principal Act as amended by this act and accordingly all actions and things taken or done by or under the authority of the Administrators shall be and shall be deemed to have always been validly taken or done and no suit or other proceedings shall lie or be continued in any court of law or any other authority on the ground that at the time when such action or thing was taken or done the appointment or continuance of the Administrator was not authorised by law."

Since the law had been amended and all actions taken including appointments and promotions were validated the appellant after coming into force of the Act, was promoted as Executive Engineer and Superintending Engineer in 1981 and 1990 and Addl. Chief Engineer respectively. In 1991 those persons who had challenged validity of appellant's appointment approached the High Court once again in contempt jurisdiction for non-implementation of the order passed in 1979. Faced with this situation the Govt. repatriated the appellant to his parent department, just few months before his retirement.

According to the appellant this affected him, prejudicially both in status and pensionary benefits. He, therefore, approached the Administrative Tribunal which being of opinion that since it could not examine the' validity of orders in favour of appellant challenging his continuance which was pending in the High Court and the appellant was not going to suffer as he is bound to be paid pension either by the Corporation or the State

58

Govt., the petition had spent out its utility and, therefore, dismissed it as infructuous.

In Shri Prithvi Cotton Mills Ltd & Anr. v. Broach Borough

Municipality & Ors., [1970] 1 SCR 388, this court held thus:

> "When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.....
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> If the legislature has the power over the subject matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating law for a valid imposition of the tax."

In the above case the Validation Act was upheld. The same view was reiterated in Janapada Sabha, Chihindwara, etc. v. Central Provinces Syndicate Ltd. & Anr., etc., [1970] 3 SCR 745 and Yadlapati Venkateswarlu v. State of Andhra Pradesh & Anr., 119901 Suppl. 1 SCR 381.

It is seen that under the Act the basis on which the 1977 Rules were declared void was removed and a appointments made or continued before

59

the commencement of the Amendment Act were declared to be valid and shall always to be deemed to have been validly made for all purpose as if the said appointments had been made in the Principal Act as amended by the Act. It is not in dispute that the State legislature is competent to make the Act. When the Act was made and validated past acts done or proceedings taken, it was a valid Act and removed the defects declared by the Court. It must be deemed and shall always been deemed that the appointment of the appellant as Addl. Chief Engineer is legal and valid. Unfortunately, the Act was not brought to the notice of the High Court when the direction to repatriate the appellant was made by the High Court. But the failure to bring to the notice of the court does not have the effect of nullifying the valid action legislatively taken.

In these circumstances, the order of the High Court and consequent order of the Govt. repatriating the appellant from the Corporation service to the State service are declared illegal. Consequently the appellant must be deemed to have been retired from service as Addl. Chief Engineer of the Corporation. The appeals are accordingly allowed. The appellant is entitled to all the consequential benefits,

all pensionary benefits etc. from the Corporation. No costs.
G.N.
Appeals allowed.
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JUDIS