



MAKE IN INDIA TO TAKE INDIA LEAP FORWARD

Make in India is an ambitious project of the present NDA government, along with skill India, Digital India, based on democracy, demography and demand. The intention is to make India leap forward as one of the world's economic and industrial powers, with the emphasis on the products manufactured in India not only for Indian consumption but also for export purpose. It is also aimed at for India's sustained growth and stimulation of its economic activity that will not only increase the gross domestic product but also provide impetus to employment and entrepreneurship, designed to facilitate investment, foster innovation; enhance skill development with a clear vision. It also augers well for aspiring engineers, researchers and entrepreneurs.

The biggest capital in India is its human capital i.e education and skilling. Hundreds of millions of young people constitute over 60% of the population whom if imparted the right training can hold their own against global challenge in terms of expertise or skills. India's manufacturing sector needs to generate 30 to 50 million new jobs in the coming decade. This is in order to lift millions out of poverty and in to formal employment. India is already the ninth largest manufacturing country in the world, yet

more to be done in view of ever increase in the population. According to a Mc Kinsey report, by 2025 the country's manufacturing sector could reach \$ 1 Trillion and create approxi 90 million jobs. India is also set to emerge as one of the fastest economy in the world according to IMF report.

With his earnest desire to attract capital to India, the Prime Minister, during his visit to Sen Jose, California, in US during September last, said "If there is a strong wind blowing some might want to shut the window. Others will want to put up a wind mill or launch their sail on the sea. Hence he wanted to implement the make India scheme in India and bring back entrepreneurs of Indian origin in US who had left the country because of policy hurdles. He also invited domestic and global investors to bring design capabilities and innovative ideas and invest in manufacturing and infrastructure. Prime Minister also appealed to the investors, institutions and political leaders to use the vast enormous opportunities India offered, rise the productivity and low the cost of production.

Many state governments had in the past attempted to implement 'Make in India' policy during the last decade by spending enormous

amount without any appreciable result. While advocating for promotion of 'Make in India' there need to be a public policy that could push for better design, infrastructure like training institute and centre where design / innovation from all classes of people can bring ideas that are relevant to common man, including artisans and tribals. The government policies of providing special incentives such as customer duty relaxation, introducing minimum local sourcing, skill development, government procurement, harnessing available R&D capabilities are all positive factors. However, one of the sensitive issue concerning the workers is the certain freedom provided to the entrepreneurs from the application of labour laws such as Industrial Disputes Act and Factory Act. The automation has already reduced the cost of production at the expenses of labour. Inequality, technology

and need for job are three potent forces that are combining to shape the economy and society. As such the government should follow a strategy to enable a smooth transition in which more jobs are produced, inequalities are reduced while adopting technology, thereby bring out a harmony between technology and people.

The entrepreneurs should also focus on labour intensive traded goods such as apparels and electronic goods with various components. Make in India would do well to accelerate industrial corridors and improve the cost of doing business with particular emphasis on these sectors. When the government try to promote Make in India policy it is worth noting the opportunities for India to play true to its strength with market and supplier proximity to industry. ■

SMT. ARUNDHATI BHATTACHARYA, CHAIRMAN GET EXTENSION OF SERVICE

Smt Arundhati Bhattacharya, Chairman of the Bank got extension of service by one year from 7th October 2016, granted by the Government of India, keeping in view of the changes and challenges ahead of the bank.

"Officers' Cause" congratulates the Chairman on this occasion and look forward for her leadership in resolving various issues that are pending before the bank and take the bank to a greater height in the world ranking. ■

Labour Issues

STRIKE OF 2ND SEPTEMBER 2016 DEFERRED NEXT DATE OF CONCILIATION PROCEEDING ON 17TH NOVEMBER 2016

From the text of AIBOC Circular dated 02nd September, 2016.

All India Bank Officers' Confederation (AIBOC) along with few other Trade Unions in Banking Sector took a decision to participate in the General Strike on 2nd September, 2016, call for which was given by Central Trade Unions except B.M.S. However, AIBOC decided to include Bank's specific issues in their strike notice to IBA. This resulted into RLC (C) Mumbai calling them and IBA for conciliation meeting on 1st September 2016 at Mumbai.

Conciliation meeting was attended by Com. Y. Sudarshan, Com. Dilip Saha, Com. Sanjay Manjrekar, Com. Ram Kumar Sabapathy and Com. M.B. Tripathi on behalf of AIBOC. The important demands related to DA Neutralisation for pre 2002 retirees, Revision in family pension & Pension updation and one more option of pension to

resignees who were excluded when it was extended to VRS optees, IBA took an obstinate stand stating that they do not have mandate from individual banks to discuss these issue. This was vehemently countered with facts and convinced Regional Labour Commissioner (Central) into directing IBA to take further steps to resolve the above demands immediately and resolve other issues raised in the Notice before the commencement of the next Bipartite settlement.

On the issue of delay in appointment of Officer Nominee Directors in the Boards of Banks, RLC directed IBA to advise all concerned banks to take steps for ensuring immediate appointment of Officer Directors on their Boards which has been pending for a long time.

While informing the assurances of the Minister of State (Independent Charge), Labour & Employment

SUCCESS AWAITS AT THE DOOR WHERE DILIGENCE IS

(conveyed vide his letter dated 30th August 2016) during Conciliation Meeting of taking corrective steps on various labour related issues including starting tripartite discussion with all stake holders, the conciliation officer and RLC (C), Mumbai also assured that the concern and apprehension of the AIBOC on the move of privatization of Public Sector Banks, Mergers of Public Sector Banks, Labour Law reforms and FDI in Financial Institutions

shall be conveyed to the appropriate authority.

On the basis of specific direction to IBA to resolve issues within specific time frame and on the appeal by RLC (C), with direction that the conciliation proceeding will continue on the next date i.e., 17th November 2016, the proposed strike of 2nd September 2016 was deferred. ■

CO-ORDINATION BETWEEN THE FEDERATIONS

The Joint Forum of ALL INDIA STATE BANK OFFICERS FEDERATION and All India State Bank of India Staff Federation has been revived.

Text of the joint Communication by both the General Secretaries is appended below.

CO-ORDINATION BETWEEN THE FEDERATIONS

The President(s) and General Secretary(ies) of All India State Bank of India Staff Federation and All India State Bank Officers' Federation met recently and discussed various issues relating to State Bank, Associate Banks and other HR Issues common to both the Federations. It has been decided to revive the Joint Forum of both the Federation and work together on various issues concerning the Employees and Officers on a regular basis. We will meet again in the near future to discuss and decide about our future course of action.

2. We appeal to all members to work together and address issues of common interest collectively at all levels. ■

Comradely yours,

Sd/-
(Y. Sudarshan)
General Secretary
AISBOF

Sd/
(Sanjeev Badlish)
General Secretary
AISBISF

ServiceMatters

BENEFITS RELEASED ON ACCOUNT OF CNC AGENDA

Federation has been continuously raising various monetary as well as non-monetary issues for the benefits of the officers.

No.CDO/P&HRD-PM/65/2016-17 dated 6th September, 2016)

2. At the Central Negotiating Council meeting held on 26th of August, 2016 at the Corporate Centre, Mumbai the following issues have been resolved and the Bank has issued circulars as under:

1. Enhancement in Brief Case Allowance (e-Circular No.CO/P&HRD-PM/61/2016-17 dated 6th September, 2016)
2. Out of Pocket expenses for working late/ coming early in clearing CPC's, switch centers etc., (e-Circular No.CDO/P&HRD-PM/62/2016-17 dated 6th September, 2016)
3. Enhancement in Silver Jubilee Memento on Completion of 25 years of service (e-Circular

4. Enhancement in memento amount on retirement (e-Circular No. CDO/P&HRD-PM/64/2016-17 dated 6th September, 2016)
5. Retention of mobile on retirement phone purchased prior to one year of retirement (e-Circular No.CDO/P&HRD-PM/63/2016-17 dated 6th September, 2016)
6. Lodging expenses for Defence representatives. (Circular yet to be released)
7. Enhancement in Entertainment Allowance. (Circular yet to be released).

Many more issues are pending such as:

- 1 Shortfall in 10th Bipartite Settlement.

ARISE, AWAKE, STOP NOT TILL THE GOAL IS REACHED

- 2 Pending appointment of Officers Director on Board of the Bank.
- 3 Issues related to Merger of Associate Banks etc.,

3. Federation is pursuing all the pending issues and shall keep the members informed of the developments. ■

ACUTE MANPOWER SHORTAGE

Federation have been highlighting to the management the issue of acute manpower shortage in almost all the Circles. They have been promised that the issue would be redressed through adequate recruitment of probationary officers, clerical staff, promotions from clerical to JMG /Trainee Officers, and in all other scales. The issue was also raised at the HR conclave where again assurances were given that separate discussion would be held on the issue and that the Bank would not go by the “BCG” calculations, and that recommendations from circles will also be taken into account while deciding on the manpower requirement while arriving at the vacancy position.

2. Unfortunately, the vacancy position announced for promotion from clerical to JMG-1 is far from adequate. It will not even cover the huge retirements that are taking place. Staff shortage at all circles is a reality. This is not a HR issue. This is not just an Association issue. But this is one issue that all the circle managements are deeply concerned about. The staff shortage is pulling down the performance of the Bank as the officers are overburdened with multiple tasks, changing priorities etc such as:

- a. Existence of more than 4500 single officer branches ,many of them handling more than 200 cr. business (The threshold for posting a 2nd officer is only 10 corers). Such officers are unable to move out of the branch and bring business . Password secrecy is violated and the concept of maker- checker is given a go by for want of a second officer.
- b. RMRO’s and specialist officers being asked to takeover as accountants, Branch Managers and as cash officers of currency chest Branches, against the laid down norms/ instructions.
- c. Officers being sent on deputation continuously round the year.
- d. Relief of officers on inter circle transfers pertaining to 2014, 2015,2016 not yet implemented by the circles despite

instructions from corporate center. Circles are defying the corporate center’s instructions and not reliving people citing that they do not have hands/replacement. The situation is pathetic with many officers unable to shift their families or take admission for their children because of the uncertainty even after 2 years of their orders. Everybody are helpless.

- e. Continuously calling officers for work on all Sundays, holidays and 2nd and 4th Saturdays, which you were instrumental in getting after lot of efforts. Continuous late sitting at not only branches, but also at administrative offices. Attrition amongst youngsters is increasing as they are unable to have a ‘work life balance’, leading to early burn-out.
- f. Retired officers are being used for inspection, recovery, investigation, KYC verification and other related job, as there is a shortage of serving officers.
- g. Officers are not able to do quality of work in the area of advances because of overload and unrealistic targets, leading to deterioration in asset quality/NPAs. Recovery efforts get hindered.

Federation had now taken up the matter with the Chairman requesting her not to go by the BCG calculation which has a basic flaw. The number of minutes that they have taken per officer per day is 480, instead of 390. This will reduce the requirement of the total number of officers. Apart from that, the time spent by an officer on customer interaction, time spent explaining our products, cross selling, movement between counters etc., have been ignored. Federation also sought her timely intervention to save the health of the bank, and the officers, and independently talk to circles to verify the veracity of the facts mentioned by us. Beyond a point, officers will only breakdown and not be able work beyond their capacity/limit if adequate staff is not provided. ■

PROBATIONARY OFFICERS CONFIRMATION TEST – JMG-I

A large number of POs were unsuccessful in the previous Confirmation Test and were terminated from the service. The poor performance was largely on account of negative marking system. Federation had taken up the issue with the Management during CNC meetings.

2. The Management has accepted the view of the federation and have advised that there will be no negative marking in the Confirmation Test for JMG-I and have accordingly issued e-Circular No.CDO/P&HRD-CM/67/2016-17dated 14.09.2016. ■

INCENTIVE SCHEME FOR MERITORIOUS CHILDREN OF STAFF, PURSUING PROFESSIONAL COURSES AT ELITE INSTITUTIONS IN INDIA

There is an incentive scheme for meritorious children of staff, pursuing professional courses at elite institutes in India. Bank has released a list of elite institution which includes IIMs and IITs etc.

the above incentive. Even though bank has revised the instructions during 2013 vide circular no. CDO/P&HRD-IR/69/2012-13 dated 31/10/2013; no IIMs were included (14 more IIMs are established in India after 1996).

2. As per Circular No.CDO/P&HRD-IR/68/2010-11 dated 07/02/2011, wards of the staff members, who secure admission at IIMs established up to 1996, are eligible for

3. Federation had requested the corporate centre to make all the IIMs included in Bank's list of prime institutions. ■

2 DAYS LEADERSHIP DEVELOPMENT PROGRAMME OF NATURE HELD AT PATNA ON 10TH TO 11TH SEPTEMBER, 2016

Federation has taken up a series of training programmes for the benefit of our members across the country. The programme at PATNA was its 123rd. It is expected to conduct the of 124th programme in the near future and thereafter the 125th programme.

4. Earlier, the function commenced with the welcome address of Com. Ghanshyam Srivatsava, the General Secretary, Patna Circle Association,

2. The programme was formally inaugurated by Shri. Ajit Sood, the Chief General Manager and Shri B.S.Negi, the General Manager Net Work III who was also present on the occasion.

5. Com.Y.Sudarshan, the General Secretary of the Federation, took the opportunity to convey his thanks to the Circle Management for permitting the Circle Association to utilize the infrastructure available with the Bank for holding 2 days programme and also expressed his happiness over the cordial industrial relationship that is prevailing in the circle.

3. Shri Ajit Sood, the Chief General Manager in his inaugural address referred to the good industrial relations prevailing in the Circle and the excellent performance of the Circle at all India level in the recent past due to the collective efforts of all the employees and officers of the circle. He also complimented the efforts of the Federation in training people in various areas which will also help the Management in effective utilization of their services for the success of the bank. He also referred to the challenges that are before the Patna Circle and he emphasized the need for the entire workforce to collectively work for the success of the circle performance at all India level.

6. The training programme was attended by over 100 members from the Circle Association, consisting of the Office-bearers as well as the activists from different parts of the circle. It was a great satisfaction for the Federation and the members of faculty who were impressed by the large presence of the members in the training program and also their dedication in attending the programme.

7. Com.D.T.Franco Rajendra Dev the President of the Federation as well as Com.Y.Sudarshan, the General Secretary also took the classes along with the regular faculty members of NATURE and

LET CUSTOMER SERVICE BE OUR MOTTO

provided an inspirational motivation to the rank and file of the Circle Association in Patna circle.

8. On the 10th evening a grand farewell was arranged for the retiring Comrade S.K.Tiwary who was four

times zonal secretary of Patna and the Vice President of the Supervisory Staff Co-Operative Society.

9. Com. Y.Sudarshan, the General Secretary felicitated Com. Tiwary. ■

Notification

LONG DUE BANKS CAN NOW CONFISCATE SECURITY IN CASE OF A LOAN DEFAULT

To make debt recovery faster and more effective, the government on 17th August, 2016, notified the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016. The Act amends four laws—the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002; the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993; the Indian Stamp Act 1899; and the Depositories Act, 1996. It also simplifies the procedure to ensure quick disposal of pending cases of banks and financial institutions by DRTs.

AMENDMENTS TO SARFAESI ACT

The changes empower banks to confiscate security in case of a loan default. However, it is not applicable to loans for agricultural land as well as student loans. The development assumes significance against the backdrop of industrialist Vijay Mallya, who owes over ₹ 9000 crore to banks, but has left the country to take refuge in London.

Secured creditors can take possession of a loan collateral on default with the assistance of the district magistrate (DM). The law fixes a 30 day timelines for the DM to complete the process and he will also assist the lender in taking over the management, in case the company is unable to repay loans. This will be done only in case banks convert their outstanding debt into equity shares, and consequently hold a stake of 51% or more in the company. This process does not require the intervention of courts or tribunals.

The Act creates a central registry to maintain records of transactions related to secured assets. This includes integration of registrations made under Companies Act, 2013; Registration Act, 1908; and Motor Vehicles Act, 1988. Secured creditors will not be able to take possession over the collateral unless

it is registered with the central registry. Further, these creditors, after registration of security interest, will have priority over others in repayment of dues. It also establishes the supremacy of secured creditors' claim to assets of a defaulter over any other claims including other debts, revenues, taxes, cesses and rates payable to central government, state governments or local authorities.

The new law confers more powers to RBI to regulate asset reconstruction companies (ARCs). The banking regulator can carry out audit and inspection of these companies and can penalize a company if it fails to comply with any of its directions. It increase the penalty amount that can be levied by RBI to ₹ 1 crore from ₹ 5 lakh. The amendment to the Stamp Act waives off duty on transfer of assets to reconstruction companies.

AMENDMENTS TO RDDBFI ACT

As part of overhaul of DRTs, the Act proposes to speed up the process of recovery, besides moving towards online DRTs, which will be the backbone of the Bankruptcy Code and will deal with all insolvency proceedings involving individuals.

The Act provides that banks and financial institutions will be required to file cases in DRTs having jurisdiction over the area of the bank branch where the debt is pending. The amendment reduces the time for resolution process by providing for summons, notices, communications or intimation to be served in electronic forms. It also provides for filing of recovery applications, documents and written statements in electronic forms and display of interim and final orders of DRTs and debt recovery appellate tribunals on their websites.

The amendments increase the retirement age of presiding officers of DRTs to 65 years from 62. It

BE TRUTHFUL, BE FEARLESS

has also increased the retirement age of chairpersons of appellate tribunals to 67 years from 65. It makes presiding officers and chairpersons eligible for reappointments.

Although the RDDBFI Act gave 180 days for disposal of recovery applications cases have been pending for many years due to prolonged hearings. Almost 70000 cases involving more than Rs.5 lakh crore are pending in DRTs.

“One of the big challenges that we face is with regard to the enforcement of securities and the recovery of debt by financial institutions.. the Bill aims to improve ease of doing business and facilitate investment leading to higher economic growth and development,” finance minister Arun Jaitley had said in the Lok Sabha.

Replying to another debate in the Rajya Sabha, Jaitley had emphasized on the need for “firmness coupled with fairness” in recovering bad loans. “The overall objective of these amendments is to empower the banking system legally and expeditiously to be in a position to get the monies back,” he had said.,

Experts have welcomed the changes. “Flaws in the existing recovery process have contributed to the problem of bad loans. The government is now hoping that these amendments will provide faster and a time bound framework to deal with stressed assets and loan recovery,” they said.

This legislation comes at a time when there are mounting concerns over loan recovery in view of stressed assets to the tune of over ` 8 lakh crore in the banking system. As of March 31,2016, gross NPAs of PSBs stood at ` 4.76 lakh crore. As many as 27 PSBs –which constitute 70% of India’s banking sector –have written off ` 59,547 crore in fiscal year ended March 2016. In the last three financial years, banks have together written off ` 1.14 lakh crore.

“The law would facilitate expeditious disposal of pending cases of lenders due to simplified procedures,”: said a Supreme Court lawyer. However, he feels that we will have to watch how the changes are rolled out finally. “Implementation is key to such reforms,” he added. ■

Source : Financial Express, Dt.19.8.16

Article

RETROSPECTIVITY PARADIGM

We are passing through a Government and governance concept transition phase and there is an imperceptible under current of such thinking creating an apparent impression that present regime has started turning away from corporate sector and in effect reverting to socialist pattern of economy as no Government can afford to be pro-corporate and anti-labour. It is here that the duo, the growth acceleration and employment generation can only travel side by side. When we amend and rationalize old and obsolete labour laws and when we take to this exercise we come across the “retrospectivity spectre” and this has stoked us to write on this. In this process of amending of some laws and scrapping some that we shall have to take to this job making some laws effective retrospectively. It is a felt necessity in this type of situation. As has been said that the nation lives, expands and grows. Its circumstances change and its problems present themselves with new faces. So to answer the exigencies, the laws are required to be amended because amendment achieves the purpose of direct and sweeping changes. However it is here that the Court move in gradually often indirectly by contours

and well considered steps that enable the past to join the future without undue collision and strife in the present. This is what an amendment must do.

The Payment of Bonus (Amendment) Bill, 2015 was passed by Lok Sabha on 22.12.2015 and after it has been asserted to it because an Act which had become effective retrospectively from 1.4.2014. It created a stir in industries because retrospective effect would have disastrous effect on industries who had already paid bonus ex-gratia or performance bonus or under any nomenclature would now be required to pay statutory bonus also. Similarly recently in Rajasthan minimum wages have been revised and increased retrospectively from 1st January, 2015. Ordinarily financial liability would not be fastened retrospectively and doing this may not stand the judicial scrutiny.

However, Hon’ble High Court of Kerala, Karnataka, Allahabad and Rajasthan have stayed the retrospective operation of the Payment of Bonus (Amendment) Act, ‘2015 so far its operation related to financial year 2014-15 holding that

retrospectivity is the sworn enemy of painless. The Hon'ble Supreme Court of India way back in the early 70's in **Golak Nath's** case propounded that the enactment should not be applicable with retrospective effect. The Apex Court has also in the case of **Remington Rand of India v. Workmen**, held that Payment of Bonus Act did not have retrospective effect. The question of applicability of a proposition retrospectively caught the attention of our Supreme Court and it laid down a novel principle of law in the case of **Employees State Insurance Corporation v. Hyderabad Race Club**. However, to be best at the game and to walk the talk on the issue of retrospectivity and to comprehend it in its conceptual clarity we should only rely on as 'to how our Supreme Court treats it as we all know our Supreme Court is probably the strongest in the world in giving verdicts that display a rare jurisprudential vision. This is what it has done and dissected the entire anatomy and chemistry of this proposition in the cases of **CIT (New Delhi) Vatika Township Pvt. Ltd. and Director General of Foreign Trade and another v. Kanak Exports and another.**'

Chronologically speaking there is a technique required to draft legislation either in the form of a statutory Act, statutory rule or statutory notification and similarly a technique is required to understand it. One is legislative drafting and the other is interpretation of statutes. In this regards the ordinary rule is that unless a specific contrary intention appears a legislation is presumed not to be intended to have a retrospective operation. The idea is based on a simple and a common rule is that a current law should govern the current activities. The law passed today cannot and should not apply to the events of the past, it is again a very small common sense that we usually plan out our affairs in accordance with the existing laws and cannot take in to account the laws that would be hence forth passed and would govern ours affairs of today. To put it all simply law looks forward not backward and the conduct of mankind should be regulated by the law as is in existence. Then again the obvious basis of the principle against retrospectivity is the principle of fairness. The law, which modified accrued rights or which imposed obligations, duties or new disabilities have to be prospective unless there are specified compelling reasons or that the law is for the purpose of supplying an obvious omission in a formal legislation or to explain an earlier legislation. Here

a distinctions is to be drawn that where a benefit is conferred by a legislation the rule against a retrospective interpretation is slightly different but the conferring of such a benefit on some person should be without inflicting a corresponding detriment on some other person or the public, it is so circumscribed.

Similarly in some circumstances a procedural provision can be given a retrospective effect but in this process also the rule and principle of fairness shall not be ignored. To make this discussion all complete and exhaustive, it is submitted that sometimes and in certain circumstances a particular amendment could be conceived as classificatory or declaratory in nature. Such amendment could be termed as declaratory statutes. For the sake of brevity a declaratory Act may be defined as an Act to remove doubts existing in the present law.

It now seems to be well settled rule of interpretation followed by time and sanctified by judicial verdict that retrospective operations should not be given to a statute so to take away or impair an existing right or create a new obligation or impose new liability and that all statutes other than those which are merely declaratory or which relate to matter or procedure or evidence or prima facie prospective. This position and legal dicta has been reiterated in the supracited two recent cases with all possible legal brilliance routed literally.

In one of the above case it so happened that the rate of surcharge applicable on the block assessment on disclosed income was a difficult proposition. The charge in respect of surcharge was created for the first time by insertion of the proviso to section 113 which became effective from 1.6.2002. In the circumstance a retrospective amendment to section 113 was suggested but the legislature did not do it. This was precisely the core question before the Hon'ble Supreme Court whether the amendment was to be given a retrospective effect. Incidentally in this case the Apex Court handed over to us a clear-cut guide line for interpreting the fiscal statutes and held that if the interpretation is onerous to the assessee then it should never be given retrospective operation because there cannot be imposition of any tax without the authority of law. Such a law has to be unambiguous and must prescribe the liability to pay taxes in clear terms and such a provision of taxing statute which is vague and susceptible to two interpretation the interpretation which favours citizen

as against the Revenue has to be preferred. This is well established principle. The Supreme Court in the case of **Trilok Chand Prasan Kumar v. State of U.P.** observed that where the legislature could make a valid law, it provides not only for the prospective operation of the material provisions of the said law but it could also provide for the retrospective operation of the said provisions. This was recently referred by the High Court of Madhya Pradesh in the case of **Association of Industries Dewas v. State of Madhya Pradesh and others**, when it held that Minimum Wages could be made effective retrospectively. We respectfully submit that this **ratio-decidenti** is not a final word. If case goes to the Apex Court, we could be handed over a more structured position.

Here we are inclined to submit that certainty is an ideal that law must never cease to aim at but it is also one that it can never be realized all completely for the main cause of uncertainty in any kind of law is the uncertainty of the facts to which it has to be applied.

Our Supreme Court has also observed in some cases that even a social legislation cannot be given retrospective operation. We can therefore conclude that as the rules of interpretation of statutes are useful servants but difficult masters and that way

all the statutes are prospective in operations except those which are declaratory, and explanatorily or those of statutes which seek to explain any pre existing ambiguity or supply obvious omissions or clear up doubts. In so interpreting even public interest would not be a supervening equity. The position is now after the Supreme Court verdict is perfectly and conceptually clear.

It seems that concept of retrospectivity belonged to the old jurisprudence which took a tunnel vision that the legislature was competent enough to make a provision effective retrospective but now the untidy creases that flowed from such a approach have been thrown out by this recent verdict although earlier also it was so. It is very often said that courage, conviction, commitment and craftsmanship are four qualities but very many verdicts of our Supreme Court display all these qualities at one time. ■

By
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Advocate & Consultant
and
P.C. Chaturvedi, Sr. Manager (IR)
Rajasthan Textile Mills, Bhawanimandi (Raj.)

Source: FLR 2016(150)

Judicial Verdict

[2016 (150) FLR 828]
(MADRAS HIGH COURT– MADURAI BENCH)
V. RAMASUBRAMANIAN and N. KIRUBAKARAN, JJ.
W.A. (MD) No. 1210 of 2015,
M.P. (M.D) No. 2 of 2015,
And
W.A. (MD) No. 1211 of 2015
M.P. (M.D) Nos. 1 and 2 of 2015,
December 16, 2015
Between
STATE OF TAMIL NADU
and
Dr. A.S. RADHAKRISHNAN

Disciplinary Proceedings– Enquiry Officer has concluded the enquiry and held that charges were not proved– Disciplinary Authority would have three options– Can accept and drop further action, differ with and come to different conclusion, set aside findings of Enquiry Officer and order de novo enquiry– Proceedings that commenced for 2nd time were completely without jurisdiction.

[Paras 16 and 25]

JUDGMENT

V. RAMASUBRAMANIAN, J.—Challenging : (1) an order of penalty pursuant to the Disciplinary proceedings, (2) an order of transfer, and (3) the non grant of promotion to the post of Joint Director, the respondent filed three writ petitions in W.P. (MD) Nos. 8714, 8928 and 8948 of 2015. The writ petition challenging the order of transfer was dismissed. But the writ petitions seeking promotion and challenging the order of penalty were allowed by the learned Judge by common order dated 31.7.2015.

Aggrieved by the order of the learned Judge, setting aside the penalty and directing the grant of promotion, the State is on appeal in these two writ appeals.

2. Heard Mr. K. Chellapandian, learned Additional Advocate General appearing for the appellants and Mr. Isaac Mohanlal, learned Counsel appearing for the respondent.

3. When the respondent was serving as Chief Educational Officer in Namakkal, a charge memo dated 9.5.2006, was issued, containing eight imputations of misconduct under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The respondent gave an explanation. The then Joint Director of School Education was appointed as Enquiry Officer. She submitted a report on 2.3.2007, holding all the charges not proved.

4. Unfortunately, the Government did not take any action on the enquiry report holding the respondent not guilty of charges. But, in December 2011, the respondent was transferred by an order dated 8.12.2011 and it was followed by another order dated 24.1.2012, directing the continuation of the Enquiry for the purpose of examining additional witnesses and marking additional documents. Interestingly, the original Enquiry Officer recused herself on the ground that she had done her duty by conducting the enquiry on the basis of the documents made available and on the basis of what was indicated in the questionnaire form. Therefore, another Officer was appointed.

5. The new Enquiry Officer proceeded with enquiry in January 2013 and held two out of eight charges, to have been proved. She submitted her enquiry

report on 28.1.2013.

6. A copy of the said report was furnished to the respondent and the respondent submitted his explanation insofar as two charges held proved against him.

7. Thereafter, the Government issued G.O. Ms. (ID) No. 170 School Education, dated 16.7.2014, imposing the penalty of stoppage of increment for two years with cumulative effect. The respondent filed a petition for review, but the same was dismissed by G.O. Ms. 1(2) No. 131 School Education, dated 29.4.2015.

8. During the pendency of the review petition, a panel of Chief Educational Officers fit for promotion to the post of Joint Director was drawn. But the name of the respondent was omitted on account of the penalty imposed.

9. Therefore, the respondent filed in W.P. (MD) No. 8714 of 2015 challenging G.O. Ms. 1(2) No. 131 School Education, dated 29.4.2015, whereby his review against the order of penalty was rejected.

10. After notice was ordered in the writ petition challenging the penalty, the respondent was sought to be transferred and posted as Secretary of the Parent- Teacher Association at Chennai. This transfer was from the post of Chief Educational Officer. Therefore, the respondent filed the second writ petition in W.P. (MD) No. 8948 of 2015, challenging the order of the transfer.

11. The respondent also filed a third writ petition in W.P. (MD) No. 8928 of 2015 seeking promotion to the post of Joint Director.

12. On 4.6.2015, the learned Judge granted an order of status-quo in the writ petition challenging the transfer order. But it appears that an attempt was made to take possession of the Office of the Chief Educational Officer. As the Office was found locked, it was broken open and the officials of the Directorate of School Education took possession. Therefore, the respondent filed a contempt petition in Cont. P (MD) No. 731 of 2015.

13. The learned Judge took up for hearing all the three writ petitions and the contempt petition

together. He dismissed the writ petition challenging the order of transfer and closed the contempt petition. But, the learned Judge found that the order directing the continuation of enquiry for the purpose of examination of additional witnesses and documents, was not permitted by law. Hence, the learned Judge set aside the order of penalty and directed to grant promotion.

14. Hence, the State has come up with the above two writ appeals challenging the order passed in the two writ petitions, one arising out of penalty and another arising out of refusal to grant promotion.

15. As we have pointed out earlier, eight charges were framed against the respondent, in relation to his service in Namakkal as Chief Educational Officer. The then Joint Director of School Education conducted the enquiry on the basis of the documents listed in the annexure to the charge memo. By a report dated 2.3.2007, the Enquiry Officer held that none of the charges was proved.

16. Once, the enquiry report is submitted holding the charges not proved, there are two courses of action open to the disciplinary authority. First is to accept the report and pass a final order dropping further action. The second course of action is to come to an independent conclusion different from the findings recorded by the Enquiry Officer and issue notice to the delinquent to show-cause as to why a different view should not be taken. Both these courses of action were not followed by the Government.

17. If both the above courses of action are not acceptable to the disciplinary authority, the disciplinary authority should set aside the findings and order for a *de novo* enquiry. Even this third course of action was not resorted to by the Government. On the contrary, the Government waited for four years from 2.3.2007 to 20.6.2011, without taking any decision. On 20.6.2011 the Government issued a Letter No. 11132/A2/2006-12. By the said letter, the Government directed the Director of School Education to request the Enquiry Officer to examine the witnesses produced by the Directorate of Vigilance and Anti-Corruption and also examine the documents produced by them in respect of charges 2 and 7

18. There was a fundamental flaw in the letter of

Government dated 20.6.2011. The first flaw is that the enquiry report dated 2.3.2007, was not set at naught. But, the Government stated that the charges 2 and 7 were already confirmed and proved by the Directorate of Vigilance and Anti-Corruption and that therefore the documents produced by them should be examined. This is not a procedure that is accepted by law.

19. Moreover, out of eight charges framed against the appellant, charges 2 and 7 did not really concern the allegations of corrupt practice. In particular, charge No. 7 was the alleged construction of a temple within the office of the Chief Educational Officer, Namakkal, thereby causing religious disharmony. We do not know how the Vigilance and Anti Corruption deals such charges.

20. Moreover, the format of the charge memo issued under Rule 17(b) is supposed by the Rules, to contain Annexure- I to IV. Every charge memo issued under Rule 17(b) should contain in Annexure-I, the articles of charges. Annexure-II should contain imputation of misconduct leading to the framing of articles of charges; Annexure-III to the charge memo should contain the documents on the basis of which the charges are sought to be proved. Annexure- IV should contain the list of witnesses.

21. A charge memo under Rule 17(b) is always served along with a questionnaire form. In this case the witnesses that the Government wanted the enquire officer to examine by their letter dated 20.6.2011 and the documents that they called for from the Directorate of Vigilance and Anti Corruption did not form part of the Annexure to the charge memo. Therefore, it is clear that for unknown reasons, the order dated 20.6.2011 was passed.

22. It is only on account of the manner in which the Government issued the proceedings dated 20.6.2011, directing the enquiry to take place that the original Enquiry Officer felt embarrassed to continue with the enquiry. By a letter dated 2.8.2011, the Director of School Education requested Smt. V. Raja Rajeshwari, Joint Director of School Education(T) to proceed further with the enquiry. But by a reply dated 3.8.2011, she informed the Director that she had already completed the enquiry as per the Rules and on the basis of the evidence indicated in the annexure to the charge memo. Therefore, she

recused herself from further proceeding.

23. From all these factual aspects, the learned Judge came to the conclusion that the proceedings that commenced for the second time were completely without jurisdiction.

24. The learned Judge also took note of the decision of the Hon'ble Supreme Court in **K.R. Deb v. The Collector of Central Excise, Shillong**, on the question of second enquiry and the later decision in **Punjab National Bank and others v. Kunj Behar Misra**.

25. Therefore, the learned Judge rightly came to the conclusion that the direction issued by the Government on 20.6.2011 after a lapse of four years of the conclusion of the disciplinary proceedings, to proceed further with additional documents and additional evidence was completely contrary to the law. As a corollary to such conclusion, the learned Judge held the promotion that was wrongfully denied to the respondent also to be given to him.

26. But the learned Judge, in his anxiety to do justice, passed a remark in paragraph '27' of his order. The

remark was made by the learned Judge against the Secretary to School Education. This appears to have infuriated the Government to come up with these appeals. Therefore, in order to avoid further harassment, to the respondent, we expunge the remark in paragraph '27' of the judgment of the learned Judge so that the State is not compelled to continue to harass the respondent by taking the matter to any higher forum.

27. Therefore, these writ appeals are disposed of expunging the remarks made against the Secretary to School Education, in paragraph '27' but confirming the remaining part of the order of the learned Judge and directing the appellant to promote the respondent within a period of four weeks from the date of receipt of a copy of this order and file a report before this Court. It is stated that the transfer order which became subject-matter of one writ petition led to another charge memo issued on 10.6.2015. We are not concerned with such charge memo.

No costs. Consequently, connected Miscellaneous petitions are closed. ■

Appeals Disposed of.

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