

AFR
RESERVED

Case:- SPECIAL APPEAL DEFECTIVE No.- 473 of 2016

Appellants:- State of U.P. & 4 others

Respondent:- Washer Man 0818600092, Ashok Kumar Chaudhary

Counsel for Appellants:- Piyush Shukla, C.B. Yadav, Addl. Advocate General, Shashank Shekhar Singh, Addl. CSC

Counsel for Respondent:- Udai Chandani

Hon'ble Dilip B Bhosale, Chief Justice

Hon'ble Yashwant Varma, J

Hon'ble Pratyush Kumar, J

(Per Dilip B Bhosale, CJ)

The order of reference dated 28 July 2016, which has occasioned the constitution of this Full Bench, has been passed by a Division Bench in the instant special appeal having found itself unable to accept the correctness of the view taken by another Division Bench of this Court in **State of U.P. & Anr. Vs. Anil Kumar Bharti, Special Appeal Defective No. 302 of 2015** (decided on 28 May 2015). The questions as formulated by the Division Bench for our consideration, read thus:

“(a) Which of the law laid down in the case of **Krishna Murari** (supra) or law laid down in the case of **State of U.P. and others Vs. Anil Kumar Bharti** is the correct law.

(b) Whether in respect of departmental proceeding to be initiated against the inferior staff (Group-D staff) working in U.P. Police, the procedure as laid down under the Rules 1999 will apply or the provisions of the Rule, 1991 would be applicable.”

2. The Division Bench which decided **Anil Kumar Bharti** rested its judgment on the dictum laid down by a Full Bench of this Court in **State**

of U.P. through Principal Secretary, Home & Ors. Vs. Rajendra Singh

Anr., AIR 2016 Alld 100. While formulating the questions for our consideration, the Division Bench made the following observations:

“We find that the subsequent division Bench has drawn analogy from the law as declared by the Full Bench in the case of **Rajendra Singh** (supra) which was not directly on the issue regarding applicability of the statutory provisions in the matter of holding of departmental inquiry against the inferior police officers namely (Group-D) employees of the police force. The division bench in the case of **Krishna Murari** (supra) after referring to the provisions of Rules, 1991 has specifically held that the inferior Police Officer had not been included within the framework of the said Rules, 1991 and, therefore, the Rules, 1999 would apply to them. This aspect of the matter was not under consideration before the Full bench in the case of **Rajendra Singh** (Supra).”

3. Before proceeding to the merits of the reference made, it would be relevant to note the background facts in which the special appeal travelled to the Division Bench. The respondent sought quashing of an order dated 18 April 2013 in terms of which a penalty of non-payment of salary for twelve days and a fine equivalent to five days of salary came to be imposed upon him. The main submission which appears to have been advanced before the learned Single Judge was that although the departmental proceedings were initiated under the provisions of the **Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991** (for short, 'Rules, 1991'), the petitioner-respondent could have been proceeded against only in accordance with the provisions of the **Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999** (for short, 'Rules, 1999'). The learned Single Judge, relying upon the judgment

rendered by a Division Bench of this Court in **Krishna Murari Vs. State of U.P. & Ors.**, (2012) 93 ALR 647, accepted the above submission and consequently quashed the orders impugned in the writ petition. The learned Single Judge, however, granted liberty to the appellants to proceed against the petitioner-respondent in terms of the Rules, 1999.

3.1 Before the Division Bench which has made the present reference, it was pointed out that the judgment in **Krishna Murari** had been duly noticed in **Anil Kumar Bharti**, wherein the Division Bench clearly held that the said judgment would fall foul of the position of law as enunciated by the Full Bench of the Court in **Rajendra Singh**. The State sought to draw sustenance from the fact that since **Krishna Murari** had been duly taken note of and had been held as no longer good law, the learned Single Judge had clearly erred in allowing the writ petition of the petitioner-respondent. In appeal, the Division Bench has doubted the correctness of **Anil Kumar Bharti** and the two learned Judges were of the view that the judgment of the Full Bench in **Rajendra Singh** had no application. It is in the aforesaid backdrop that the instant reference came to be made to the present Full Bench.

4. The police force in the State of Uttar Pradesh is organised and governed by the provision of the Police Act, 1861 (for short, 'Police Act'). In terms of Section 7, disciplinary jurisdiction, subject to the provisions of Article 311 and to such rules as the State Government may make, to dismiss, suspend or reduce any officer of the subordinate ranks, is vested in the Director General-cum-Inspector General, the Deputy Inspector General,

Assistant Inspector General and District Superintendent of Police. The State Government, by virtue of the provisions of Section 46(2)(c) is empowered to frame rules generally for giving effect to the provisions of the Act. It may be noted at this stage itself that while the Rules, 1991 have been framed by the State Government in purported exercise of powers conferred by Section 46 of the Police Act, the Rules, 1999 are of general application having been framed with reference to the proviso to Article 309 of the Constitution. Proceeding further, we note that the State in appeal primarily raised two contentions. Firstly, it was contended that **Krishna Murari** was no longer good law. Secondly, they referred to the fact (and which is not disputed before us) that the Rules, 1991 had been adopted by and in terms of the Government Order dated 13 March 2010 and consequently applied to all Class IV employees of the police force.

5. In this backdrop, it would be advantageous to have a close look at the Full Bench judgment in **Rajendra Singh**. The question that fell for consideration of the Full Bench was, whether a temporary police constable appointed under Section 2 of the Police Act, who has not been placed on probation, can be terminated from service in accordance with the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975 or whether the procedure provided under Para 541 of the Uttar Pradesh Police Regulations (for short, 'Regulations') dealing with constables on probation shall be applicable. The Full Bench, after making detailed reference to the relevant provisions of the Police Act and to the Regulations and so also to Article 309 of the Constitution and various

judgments of the Supreme Court, considered the issue as to whether the Police Act, read with the Regulations alone would be applicable to the members of the police force or whether the rules framed under Article 309 of the Constitution would apply. The submission advanced for consideration of the Full Bench was that the Police Act and the Regulations as well as the rules framed thereunder embodied a complete code which alone would govern members of the police force, and that the general rules framed under Article 309 of the Constitution would not apply. While answering the said issue, the Full Bench referred to two decisions rendered by earlier Full Benches of this Court in **Nanak Chand Vs. State of U.P. & Ors., 1971 ALJ 724** and **Vijay Singh & Ors. Vs. State of U.P. & Ors., 2005 (23) LCD 1696**. In addition thereto, the Full Bench also drew sustenance from the decision of the Supreme Court in **Chandra Prakash Shahi Vs. State of U.P. & Ors., [2000 (3) AWC 1848 (SC)]**. The Full Bench, then, ultimately enumerated the basic principles which, according to it, emerged from the decisions referred to above. These basic principles as formulated by it read as under:

(i) The Police Act 1861 and the Rules framed under it constitute a self-contained Code and by virtue of the provisions of Article 313 of the Constitution, the Act and the Rules continue to remain in force, under Article 313 of the Constitution;

(ii) Rules and Government Orders referable to a specific source of power under the Police Act 1861 such as Section 2 or, as the case may be, Section 46 (2) (c) would continue to hold the field and would not be abrogated merely by the exercise of the general rule-making power conferred by the proviso to Article 309 of the Constitution;

- (iii) Under the proviso to Article 309, rules regulating the recruitment and conditions of service of persons appointed to services and posts in connection with the affairs of the Union and of the States can be made until a provision in that behalf is made by or under legislative enactment of the appropriate legislature. Any rule so made will have effect subject to the provisions of the Act;
- (iv) When there is a specific provision, unless there is a specific repeal of the existing law, the question of an implied repeal would not arise;
- (v) The rules framed under the proviso to Article 309 of the Constitution would apply, generally speaking to Government servants appointed in connection with the affairs of the Union or, as the case may be, the States but the police force would be governed by the provisions of the Police Act 1861 and by the rules and administrative determinations referable to a specific source of power under the Police Act 1861;
- (vi) Under Section 2 of the Police Act 1861, the State Government has been vested with power to determine the pay and all other conditions of service of members of the subordinate ranks of the police force. The determination within the meaning of Section 2 may be both by means of the exercise of the rule-making power as well as by an administrative direction. The Police Act 1861, being a complete Code as enunciated by the Constitution Bench of the Supreme Court, it occupies the entire field of the determination of service conditions. The power to determine all the conditions of service of members of the subordinate ranks of the police force is vested with the state government. The state government has the rule making power under Section 46 (2) (c) to carry out the purposes of the Act by framing rules;
- (vii) Once a self-contained Code in the form of the Police Act has been enacted by the legislature and its continuance after the adoption of the Constitution is ensured by Article 313 and Article 372 of the Constitution, the field relating to recruitment and conditions of service of members of the police force in the State stands occupied by the legislation. Any rule or order relating to the determination of the conditions of service of the police force can be made only under the

provisions of the Police Act or by the legislation enacted by the State legislature governing the service conditions of the police force. Section 2, Section 7 and Section 46 of the Police Act clearly evince an intent of the legislature to occupy the whole of the field relating to conditions of service of the police force;

(viii) The ratio of the decision of the Supreme Court in A B Krishna's case is that if the legislature has already made a law and the field is occupied, in such a situation, rules can be made under the law enacted by the legislature and not under Article 309;

(ix) The rules framed under a legislative enactment constitute delegated or subordinate legislation. The rules made under Article 309 are not of that nature. The rules which have been framed under Article 309 and the rules under an enactment of the state legislature are referable to two distinct sources of power. The rules made under the proviso to Article 309 are intended to deal with a situation where the President or the Governor, as the case may be, may regulate the recruitment and conditions of service of persons appointed to services and posts in connection with the affairs of the Union or, as the case may be, of the States until a provision in that behalf is made under an Act of the appropriate legislature under the Article. Though, the authority to frame rules in Article 309 vests with the Governor while the authority to frame subordinate legislation under the state enactment is vested with the State Government, the two jurisdictions are entirely different. One is referable to a transitional power which is vested in the President or the Governor, as the case may be, under the proviso to Article 309 while the other is traceable to the substantive power to frame subordinate legislation which is delegated to the State Government under a legislative enactment. Once a law has been enacted by the competent legislature and particularly in a situation where legislation, such as the Police Act is construed as a complete Code, it constitutes special statute governing the police force incorporating within its field, matters relating to appointment, dismissal, placement and all other steps required to reorganise the police and make it a more effective instrument for the prevention and detection of crime, as was held in Chandra Prakash Tiwari's case by the Supreme Court;

(x) In Chandra Prakash Tiwari¹, the Supreme Court after considering the consistent position of the State Department of Home, held that 'by reasons of the provisions of a special statute, namely, the Police Act read with the authorization contained therein by way of executive order, the Governor of Uttar Pradesh obviously did not in fact intend to apply the general law to all and sundry'. In this background, it has been held that unless the general rules which are framed under Article 309 of the Constitution specifically repeal the special rules and unless there is a specific repeal of the existing law, the question of an implied repeal would not arise. The rules framed under Article 309 are for Government servants in general while the police force would be guided by the provisions of the Police Act. This interpretation which has been placed by the Supreme Court has been held to be consistent with the position adopted in inter-ministerial correspondence of the State Government; and

(xi) The decision in Chandra Prakash Tiwari's case specifically deals with the Police Act and the applicability of the Rules framed under the proviso to Article 309 to members of the police force in the State of Uttar Pradesh. This decision of the Supreme Court has been duly followed by the Full Bench of this Court in Vijai Singh (supra) while holding that since the field of regulation of service conditions of members of the police force is occupied by the provisions of the Police Act and it continues to be in operation under Article 313, the Rules framed under Article 309 would not be attracted."

5.1 The Full Bench ultimately recorded its conclusions in the following terms:

"Hence, the issue which has been framed for decision of the Full Bench would have to be answered by holding that a person who is appointed as a temporary police constable and who has not been placed on probation, can be terminated from service. Such a person is not governed by the provisions of Regulation 541 which applies to probationers. The rules which have been framed under the proviso to Article 309 of the Constitution, to wit, the Rules of 1975 would not be

applicable to members of the police force. However, the power to terminate the services of a person who has been appointed on a temporary basis inheres in the power to appoint. The mere mention of the Rules of 1975 will not invalidate an order of termination.”

6. As noted in **Anil Kumar Bharti**, the Rules, 1991 have been specifically applied to all Group D employees by a Circular dated 13 march 2010. With effect from 28 August 2009, the date of coming into force of the **Uttar Pradesh Police Group D Employees Service Rules, 2009** (for short, 'Rules, 2009'), Group D employees in the police force were formally enrolled as members of the police force. The Circular dated 13 march 2010 has been issued with reference to the provisions of Rule 29 of the Rules, 2009. It is in this manner that the Rules, 1991 have been made applicable to Group D employees of the police force. Now, it is not in dispute that the Rules, 1991 have been framed by the State Government in purported exercise of powers conferred by Section 46 of the Police Act whereas the Rules, 1999 are of general application having been framed with reference to the proviso to Article 309 of the Constitution. As observed by the Full Bench in **Rajendra Singh**, the rules referable to a specific source of power under the Police Act would continue to hold the field and would not be abrogated merely by the exercise of the general rule-making power conferred by the proviso to Article 309 of the Constitution. The Supreme Court in Chandra Prakash Tiwari observed that by reasons of the provisions of a special statute, namely, the Police Act read with the authorisation contained therein by way of executive order, the Governor of Uttar Pradesh obviously did not in fact intend to apply the general law to all and sundry,

unless the general rules which are framed under Article 309 of the Constitution specifically repeal the special rules or unless there is a specific repeal of the existing law. The rules framed under a legislative enactment constitute delegated or subordinate legislation. The rules made under Article 309 are not of that nature. Thus, the rules which have been framed under Article 309 of the Constitution and the rules under an enactment of the State legislature are referable to two distinct sources of power. The rules made under the proviso to Article 309 may regulate the recruitment and conditions of service of persons appointed to services and posts in connection with the affairs of the Union or, as the case may be, of the States, until a provision in that behalf is made under an Act of the appropriate legislature. In other words, once a law has been enacted by a competent legislature and particularly in a situation where legislation, such as the Police Act, is construed as a complete code, it constitutes a special statute governing the police force incorporating within its field, matters relating to appointment, dismissal, placement etc.

7. In **Anil Kumar Bharti**, the issue which arose for consideration again turned upon the question as to whether the Rules, 1991 would apply or the Rules 1999. After noticing the principles which had been enunciated by the Full Bench in **Rajendra Singh**, the Division Bench observed as under:

“In taking this view, it must be noted that the Full Bench has adverted at length to the decisions of the Supreme Court particularly those in (i) **State of U.P. vs. Babu Ram Upadhyay (supra)**; (ii) **A.B. Krishna vs. State of Karnataka**; and (iii) **Chandra Prakash Tiwari (supra)**. The basic principle of law which has been formulated in the judgments of the Supreme Court and in the two decisions of the Full Benches of this

Court is that the Police Act, 1861 and the rules framed under it constitute a self-contained code. Consequently, where rules have been framed or government orders have been issued in relation to the members of the police force specifically under the enabling provisions of Sections 2, 7 and 46 (2) (c), members of the police force would be governed by the specific rules or, as the case may be, government orders which would not be abrogated by the general rule making power which is conferred by Article 309 of the Constitution. Rules framed under the proviso to Article 309 apply generally speaking to government servants appointed in connection with the affairs of the Union or, as the case may be, of the States. However, members of the police force are governed by the specific provisions contained in the Police Act, 1861 and by the rules framed in pursuance of the power of subordinate legislation and by an administrative determination made under Section 2. Under Section 2, the State Government has the power to determine all the conditions of service of the members of the subordinate ranks of the police force.”

7.1 The Division Bench, then, with reference to the judgment in **Krishna Murari**, noted as follows:

“For these reasons, we hold that the learned Single Judge was in error in allowing the writ petition and setting aside the disciplinary action which was adopted against the respondent on the basis that the respondent would be governed not by the Rules of 1991 but by the general rules framed under the proviso to Article 309 of the Constitution, namely the Rules of 1999. The learned Single Judge sought to draw support from the judgment of a Division Bench in **Krishna Murari (supra)**. The judgment in **Krishna Murari's case** has with respect not noticed the position in law which was governed by several judgments of the Supreme Court as well as the judgment of a Full Bench of this Court in **Vijay Singh's case (supra)** which had been delivered prior to the decision of the Division Bench. Moreover, after the decision of the Division Bench in **Krishna Murari's case (supra)**, the position of law has been now set at rest in the judgment recently delivered by the Full Bench in **Rajendra Singh's case** on 11 May 2015. Since the issue is squarely covered by two decisions of the Full Benches of this Court which have followed the law laid down by the Hon'ble Supreme Court, we are of

the view that it would not be necessary to refer the correctness of the view of the Division Bench in **Krishna Murari (supra)** to a larger Bench for consideration. The learned Single Judge has not considered the challenge to the disciplinary proceedings on merits. Since we set aside the judgment of the learned Single Judge which had allowed the writ petition only on the basis that the Rules of 1991 had no application, we deem it appropriate to remit the proceedings back to the learned Single Judge for considering the challenge to the disciplinary action on merits.”

8. It is not in dispute that the Rules, 1999 have been framed in terms of the provisions of Article 309 of the Constitution. As would be evident from a reading of the aforesaid Article, its substantive part empowers the appropriate legislature to regulate the recruitment, constitution and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The proviso to Article 309 enables the President in respect of services under or in connection with the affairs of the Union and the Governor in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and conditions of service of persons appointed to such services and posts. The rules framed by the President or the Governor, as the case may be, under Article 309 and in terms of its proviso, however, continue to operate until provision is made in that behalf by or under an Act of the appropriate legislature under the said Article. The impact and consequences of the proviso to Article 309 has fallen for consideration on more than one occasion. One may, however, only refer to **Chandra Prakash Tiwari** since the said decision emanates from the Police Act

itself. In the said decision the Supreme Court observed as follows:

“On a conspectus of the whole issue, it is thus difficult to comprehend that the General Rule framed under Article 309 should or would also govern the existing special rules concerning the police rules. Admittedly, the guidelines as contained in the Government Order dated 5.11.1965 have been under and in terms of the provisions of the Police Act. There is special conferment of power for framing of Rules dealt with more fully herein before, which would prevail over any other Rule. Since no other rule stands formulated and the Government Order of 1965 being taken as the existing rule pertaining to the subject matter presently under consideration with recent guidelines as noted above, its applicability cannot be doubted. Unless the General Rule specifically repeal the effectiveness of the special rules, question of the latter rule becoming ineffective or inoperative would not arise. In order to be effective, an express mention is required rather an imaginary repeal. It is now a well settled principle of law for which no relation is further required that law Courts rather loath repeal by implication. The General Rule framed under Article 309 has been for all State Government officials on and since 1994. List II (State List) of the 7th Schedule specially refers to the powers of the State Legislature to frame Rules specially for the Police. In this context Item 2 thereof would be significant which reads as follows:

"List II-State List"

"2 Police (including railway and village police) subject to the provisions of entry 2A of List I."

Police force admittedly has a special significance in the administration of the State and the intent of the framers of our Constitution to empower the State Government to make rules there-for has its due significance rather than being governed under a general omnibus rule framed under the provisions under Article 309. When there is a specific provision unless there is a specific repeal of the existing law, question of an implied repeal would not arise...”

9. It was in the aforesaid backdrop and after consideration of numerous other precedents on the subject that the Full Bench in **Rajendra Singh**

ultimately formulated the basic principles which must govern the controversy in issue. For our purposes, it would be pertinent to note the principles as formulated in clauses (i), (ii), (v), (vi) and (x). The Full Bench has in unequivocal terms held that the Police Act and the rules framed thereunder constitute a self-contained code. It further held that the Rules and Government Orders referable to the Police Act would continue to hold the field and would not stand repealed by the exercise of the general rule making power conferred by the proviso to Article 309. It further categorically held that the Rules framed under the proviso to Article 309, would be of general application to government servants appointed whether in connection with the affairs of the Union or of the States but insofar as the police force is concerned, it would stand governed by the provisions of the Police Act and by Rules and administrative instructions referable to a specific source of power under the said Act. The Full Bench is, therefore, a complete and authoritative precedent and pronouncement on the applicability of the provisions of the Police Act and the Rules and instructions framed thereunder being applicable exclusively to members of the police force. The Full Bench is also an authority for the proposition that once Rules have come to be framed by the State in exercise of its powers conferred by the Police Act or where instructions have come to be issued with reference to a specific source of power under the said Act, they would prevail over all other general rules that may be framed by the Governor by virtue of the proviso to Article 309 insofar as members of the police force are concerned.

10. It was on the bedrock of these fundamental and basic principles enunciated by the Full Bench in **Rajendra Singh** that **Anil Kumar Bharti** rested. The Division Bench which rendered judgment in **Anil Kumar Bharti**, therefore, correctly came to conclude that the Rules, 1991 would prevail over and above the Rules, 1999 insofar as the members of the police force were concerned. The judgment in **Anil Kumar Bharti** itself being based upon the legal principles elucidated by the Full Bench could not, therefore, be said to have been incorrectly decided. The judgment in **Krishna Murari** was rightly noticed to be in conflict with the principles enunciated by the Full Bench in **Rajendra Singh**. It was in that backdrop that the two learned Judges who decided **Anil Kumar Bharti**, decided not to refer it to a larger Bench for consideration. There was, therefore, in our opinion, no justification for the Division Bench to hold that the judgment in **Anil Kumar Bharti** was erroneous or based upon an incorrect application of the principles laid down in **Rajendra Singh**. The view expressed in **Krishna Murari** had been duly noticed in **Anil Kumar Bharti**. The Division Bench therein had clearly found the decision in **Krishna Murari** to be at variance with the law as declared by the Full Bench in **Rajendra Singh**.

11. Thus, we answer both the questions referred to, for our consideration as follows: the law laid down in **Anil Kumar Bharti** is the correct position of law. Insofar as departmental proceedings to be initiated against the inferior staff (Group-D staff) working in Uttar Pradesh police are concerned, the procedure as laid down under the Rules, 1991 will apply.

12. The Registry is directed to place the Special Appeal before the appropriate Bench for its consideration on merits in light of the position of law as has been stated in this judgment in answer to the questions referred to this Full Bench.

December 02, 2016
AHA

(Dilip B Bhosale, CJ)

(Yashwant Varma, J)

(Pratyush Kumar, J)