Chief Justice of Andhra Pradesh

Vs

L.V.A.Dixitulu

High Court of Andhra Pradesh

Vs

V.V.S.Krishnamurthy

Civil Appeal Nos. 2826 of 1977 and 278 of 1978

(Sarkaria, J.)

12.09.1978

JUDGMENT

SARKARIA, J. –

1. This judgment will not only dispose of this Appeal (C.A. 2826 of 1977) but also furnish reasons in support of our short order dated August 4, 1978, by which we allowed Civil Appeal 278 of 1978.

2. Both these appeals raise a common question with regard to the interpretation, scope and impact of Article 371D on Articles 226, 229 and 235 of the Constitution.

3. In Civil Appeal 2826 of 1977, appellant 1 is the Chief Justice and appellant 2 is the High Court of Andhra Pradesh represented by the Registrar of that Court. Respondent 1, Shri L. V. A. Dikshitulu is a former employee of the High Court whose premature retirement is in question. Respondents 2 and 3 are the Government, and the Accountant-General, respectively, of Andhra Pradesh.

4. Respondent I was a permanent employee of the former Hyderabad High Court prior to November 1, 1956. He was confirmed in the post of Chief Superintendent on the establishment of that High Court on October 6, 1956. At the time of his confirmation, he was serving on deputation, with the concurrence of the Chief Justice of the Hyderabad High Court, as Junior Law Officer in the Ministry of Law, Government of India. In March 1965, with the concurrence of the Chief Justice of the High Court of Andhra Pradesh - which was the successor High Court to the Hyderabad High Court - he was appointed as a temporary Deputy Secretary in the Law Department of the Government of Andhra Pradesh.

5. By an order dated February 6, 1968, the State Government replaced his services at the disposal of the Chief Justice. On his reversion from deputation, he rejoined the establishment of the High Court as Sub-Assistant Registrar on February 8, 1968.

6. On that very day, the High Court received a complaint petition from one Smt. Promila Reddy, an Assistant Translator in the State Law Department, alleging misconduct on the part of respondent in relating to the period during which he was working as Deputy Secretary in the State Government.

7. A preliminary inquiry was conducted by the then Registrar, Shri M. Ramachandra Raju (later Judge of High Court of Andhra Pradesh), respondent 4 herein. The Registrar submitted his preliminary inquiry report to the then Chief Justice. After considering the report, the then Chief Justice suspended respondent 1 and ordered a departmental inquiry against him by Mr. Justice Chinnappa Reddy. After due inquiry, the enquiring judge found respondent 1 guilty of misconduct and recommended his suspension from service for three years. The Chief Justice, however, differed with the enquiring Judge regarding the punishment, and proposed to impose the punishment of compulsory retirement after issue of a showcause notice to that effect. After considering the representations made by respondent 1, the Chief Justice by an order dated January 3, 1969, compulsorily retired him from service.

8. The first respondent then moved the High Court under Article 226 of the Constitution by a writ petition 1425 of 1969 questioning the order of the State Government replacing his services with the High Court and assailing the penalty of compulsory retirement inflicted upon him by the Chief Justice. The High Court set aside the order of reversion of the first respondent from deputation to the High Court staff on the ground that there was a stigma attached thereto. It also set aside the order of compulsory retirement, not on merits, but on the ground that the recommendation of the enquiring Judge in regard to punishment, viz. stoppage of increments, was not communicated to him (respondent 1). The High Court while allowing the writ petition observed that it will be open to the State Government to take action against him in accordance with the Andhra Pradesh Civil Service (C.C.A.) Rules pertaining to lent officers.

9. After the first respondent's writ petition 1425 of 1969 was allowed, the State Government by an order dated November 10, 1970, reinstated respondent 1 as Deputy Secretary with effect from February 8, 19668, and once again replaced his services at the disposal of the Chief Justice with effect from April 25, 1968. The State Government did not take further departmental action on the complaint of Smt. Promila Reddy.

10. Respondent 1 then filed another writ petition 5442 of 1970 under Article 226 of the Constitution in the High Court, impugning the order, dated November 10, 1970, of the State Government. But the High Court dismissed the same by a Judgment dated December 30, 1970. The first respondent's appeals (C.A. 476 and C. A. 1536 of 1971) against the order of the High Court in the aforesaid writ petitions are pending in this Court.

11. After the dismissal of his writ petition 5442/70 the first respondent, on reinstatement, joined duty as Sub-Assistant Registrar in the High Court. Thereafter, he was promoted by the then Chief Justice as Assistant Registrar. Later, he was promoted as Deputy Registrar.

12. In 1975, A.P. Government Servants Premature Retirement Rules, 1975 came into force. Under the Rules, which amended Andhra Pradesh Liberalised Pension Rules, 1961 and the Hyderabad Civil Service Rules, employees of the State who have completed 25 years of service or completed 50 years of age can be prematurely retired after 3 months' notice or grant of 3 months' pay in lieu of notice. Rule 19 of the Andhra Pradesh High Court Service Rules contains a similar provision.

13. Thereafter on September 19, 1975, a Committee was constituted under an order of the Chief Justice. It consisted of the Acting Chief Justice and two Judges (Madhava Reddy and Ramachandra Raju, JJ.) of the High Court. The Committee reviewed the service records of the servants and officers of the High Court who had reached the age of 50 years. Respondent 1, Sri Dikshitulu had attained the age of 50 years on March 12, 1974. The Committee resolved to retire him prematurely,

among others, in public interest. By an order, dated September 26, 1975, of the Acting Chief Justice, purporting to have been passed under Article 229 of the Constitution read with Rule 19 of the Andhra Pradesh High Court Service Rules, Rule 3(2)(a) of Andhra Pradesh Liberalised Pension Rules, 1961, Rule 293 of the Hyderabad Civil Service Rules and Rule 2 (i) of A.P. Government Servants Premature Retirement Rules, 1975, respondent 1 was prematurely retired from service in public interest. On April 8, 1976, he filed a Review Petition. The then Chief Justice rejected his Review Petition. The rejection was communicated to him by a letter dated September 13, 1976.

14. Thereupon first respondent again moved the High Court on the Judicial Side by writ petition (58908 of 1976) under Article 226 of the Constitution, praying for a writ of certiorari to quash the orders of his premature retirement. This writ petition came up for preliminary hearing before a Division Bench of the High Court, which by a lengthy speaking order (after hearing the Government Pleader), on October 29, 1976, dismissed it on the preliminary ground that it was not maintainable because "the jurisdiction of the High Court which was hitherto being exercised under Article 226 of the Constitution to correct orders of the Chief Justice on the administrative side with regard to conditions of service of officers of the High Court now stands vested in the Administrative Tribunal by reason of Clause 6(1) of the Administrative Tribunal Order (made by President) under Article 371D of the Constitution".

15. The first respondent then on November 16, 1976, moved the Andhra Pradesh Administrative Tribunal, impugning the order of his compulsory retirement. In that petition, the first respondent inter alia contended that Mr. Justice M. Ramachandra Raju, who sat on the Committee to consider the case of respondent 1 for premature retirement, was biassed against him and that the impugned order, dated September 26, 1975, of his premature retirement was arbitrary and capricious. The Tribunal, however, set aside the impugned order of respondent 1's premature retirement made by the Chief Justice on the sole ground that it is arbitrary and amounts to a penalty of dismissal or removal from service and is hit by Article 311(2) of the Constitution.

16. Against the aforesaid order, dated August 24, 1977, the appellants have now come in appeal before us by special leave under Article 136 of the Constitution.

17. Now, the relevant facts giving rise to Civil Appeal 278 of 1978, may be set out.

18. Respondent 1, Shri V. V. S. Krishnamurthy, in that appeal was, at the material time, a member of the Andhra Pradesh State Judicial Service. He attained the age of 50 years on November 24, 1974. He was prematurely retired, in public interest, by an order dated September 29, 1975 of the State Government on the recommendation of the High Court. Before the Government passed this order, a Committee of Judges appointed by the High Court, considered the entire Service record of respondent 1 and records of other Judicial officers and decided to prematurely retire the first respondent in public interest.

19. The first respondent filed a petition before the Andhra Pradesh Administrative Tribunal, challenging the order of his premature retirement made by the State Government. It was contended by him that his service record has throughout been good. Before the Tribunal, the High Court resisted the respondent's petition of the ground that the order of premature retirement was based upon the overall performance of the respondent and the order had been passed in public interest and was in accordance with the Rules.

20. On behalf of respondent 1, a memorandum was filed, in which it was contended that since,

according to the Andhra Pradesh State Judicial Service Rules, the High Court in the case of Subordinate Judges is the appointing authority, the Governor has no power or jurisdiction to pass an order of premature retirement of a member of the State Judicial Service. The Tribunal accepted this contention and allowed the Respondent's petition without considering the other contentions raised in the petition, and set aside the order of the respondent's premature retirement.

21. Against that Order of the Tribunal, the High Court of Andhra Pradesh came in appeal (C.A. 278 of 1978) by special leave to this Court under Article 136 of the Constitution.

22. The first contention of Shri Lal Narain Sinha, appearing for the appellants, is that in the context of basic and fundamental principles underlying the Constitution relating to the judiciary including the High Court officers and servants of the High Court and members of the judicial services are outside the scope of Article 371D of Constitution. It is urged that the general expressions indicating class or classes of posts in Article 371D(3) must be given a restricted interpretation which is in harmony with this basic scheme of the Constitution.

23. The thrust of the argument is that in the absence of clear, unequivocal words in Article 371D(3) showing a contrary intention, the Article cannot be construed as taking away the jurisdiction of the High Court under Article 226 to review administrative action against a member of the High Court staff or the Subordinate Judiciary. Any other construction, proceeds the argument, will militate against the exclusiveness of the control vested in the Chief Justice under Article 229, and in the High Court under Article 235, over the High Court staff or the Subordinate Judiciary, as the case may be, and will make such control subject and subservient to the wishes of the Executive Government which, in terms of the Presidential order constituting the Administrative Tribunal, is the ultimate authority to confirm, vary or annul the orders passed by the Tribunal. In support of his contention that the basic scheme of the Constitution seeks to ensure the independence of the High Court staff and the judiciary from executive control, learned counsel has referred to Pradyat Kumar v. The Hon'ble the Chief Justice of Calcutta High Court ((1955) 2 SCR 1331 : AIR 1956 SC 285), M. Gurumoorthy v. Accountant General Assam & Nagaland ((1971) 2 SCC 137 : 1971 Supp SCR 420 : AIR 1971 SC 1850 : (1971) 2 LLJ 109); State of West Bengal v. Nripendra Nath Bagchi ((1966) 1 SCR 771 : AIR 1966 SC 447 : (1968) 1 LLJ 270); Baldev Raj Guliani v. Punjab & Haryana High Court ((1977) 4 SCC 201 : 1976 SCC (L&S) 571 : (1977) 1 SCR 425 : AIR 1976 SC 2490) and State of U. P. v. Batuk Deo Tripathi ((1978) 2 SCC 102 : AIR 1978 SC 111 : 1978 SCC (L&S) 147).

24. As against the above, Shri Vepa Sarathi appearing for the respective first respondent in C.A. 2826 of 1977, and in C.A. 278 of 1978 submitted that when his client filed a writ petition (58908 of 1976) under Article 226 of the Constitution in the High Court for impugning the order of his compulsory retirement passed by the Chief Justice, he had served, in accordance with Rule 5 of the Andhra Pradesh High Court (Original Side) Rule, notice on the Chief Justice and the Government Pleader, and, in consequence, at the preliminary hearing of the writ petition before the Division Bench, the Government, Pleader appeared on behalf of all the respondents including the Chief Justice, and raised a preliminary objection that the writ petition was not maintainable in view of Section 6 of the Andhra Pradesh Administrative Tribunal Order made by the President under Article 371D which had taken away that jurisdiction of the High Court and vested the same in Administrative Tribunal. This objection was accepted by the High Court, and as a result, the writ petition was dismissed in limine. In these circumstances - proceeds the argument - the appellant is now precluded on principles of res judicata and estoppel from taking up the position, that the Tribunal's order is without jurisdiction. But, when Shri Sarathi's attention was invited to the fact that

no notice was actually served on the Chief Justice and that the Government Pleader who had raised this objection had not been instructed by the Chief Justice or the High Court to put in appearance on their behalf, the counsel did not pursue this contention further. Moreover, this is a pure question of law depending upon the interpretation of Article 371D. If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering form inherent lack of jurisdiction. Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in the case.

25. In the alternative, Shri Sarathi submitted that the subject-matter of this case will fall within the purview of sub-clause (c) of clause (3) of Article 371d, because (i) compulsory retirement is a condition of service, and (ii) respondent 1 was a person appointed to a post in a "civil service of the State" within the contemplation of the said clause. According to Shri Sarathi, even if an order issued by the President under clause (3) of Article 371D, abridges, curtails or takes away the powers vested in the Chief Justice under Article 229, or in the High Court under Articles 226 and 235, or is contrary to the constitutional scheme of securing independence of the judiciary, such a result was intended to be brought about by the amendment of the Constitution as is clear from the non-obstante provision in clause (10) of this Article. Shri Sarathi further invited our attention to the definition of the expression. "public post" given in the Order of the President issued under Article 371-D(3). This definition, according to the learned counsel, is wide enough to include all posts held by the staff of the High Court and the Subordinate Judiciary.

26. To appreciate the contentions canvassed before us, it is necessary at the outset, to have a look at the constitutional scheme delineated in Chapters V and VI (Part IV), in general, and the contents of Articles 229 and 235, in particular.

27. Chapter V is captioned : "The High Courts in the States". It provides for various matters relating to High Courts, such as constitution of High Courts (Article 216), appointment and conditions of the office of a judge (Article 217), salaries of judges (Article 221), transfer of judges (Article 222), jurisdiction of existing High Courts and powers of the judges thereof in relation to the administration justice in the court, including the power to make rules of curt and to regulate the sittings of the court (Article 225). Article 226 gives power to High Court to issue certain writs against any Government for the enforcement of fundamental rights and for the redress of any substantial injury arising by reason of any substantive or procedural illegality. Article 228 confers power on a High Court to Court to withdraw to its own file cases involving a substantial question of law as to the interpretation of the Constitution.

28. Then comes the crucial provisions in Article 229, which is the fulcrum of the scheme of the Chapter. Article 229 bears the marginal heading : "Officers and Servants and the expenses of High Courts". Clause (1) of the Article provides that "appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or Officer of the Court as he may direct". Then there is a proviso to this clause with which we are not concerned in the instant case. Clause (2) empowers the Chief Justice or some other Judge or Officer authorised by him to make rules prescribing the conditions of service of officers and servants of the High Court. This power, of course, is "subject to the provisions of any law made by the Legislature of the State". Then, there is a proviso to this Clause, also, which requires that the "Rules made by the Chief Justice or the Judge or Officer authorised by him under this Clause shall so far as they relate to salaries, allowance, leave or pensions, require the approval of the Governor of the State. Clause (3) makes the administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, a charge upon the Consolidated

Fund of the State.

29. Now, let us see what is the ambit and scope of the power of "appointment" in Article 229(1). In the context of Article 229, read as a whole, this power is of wide amplitude. The word "appointment" in Article 229(1) is to be construed according to axiom that the greater includes the less. This cardinal canon of interpretation underlies Section 16 of the General Clauses Act which has been made applicable by Article 317(1) of the Constitution. Construed in the light of this juristic principle, the power of "appointment" conferred by Article 229(1) includes the power to suspend, dismiss, remove or compulsorily retire from service. In short, in regard to the servants and officers of the High Court, Article 229 makes the power of appointment, dismissal, removal, suspension, reduction in rank, compulsory retirement etc., including the power to prescribe their conditions of service, the sole preserve of the Chief Justice, and no extraneous executive authority can interfere with the exercise of that power by the Chief Justice or his nominee, except to a very limited extent, indicated in the Provisos. In conferring such exclusive and supreme powers on the Chief Justice, the object which the founding fathers had in view, was to ensure independence of the High Court.

30. The nature and scope of the powers of the Chief Justice under Article 229 has been the subject of several decisions of this Court. In Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta (supra), two questions, among others, came up for consideration : (i) Whether the Chief Justice of a High Court has the power to dismiss from service an officer of the High Court. (ii) If so, whether the Chief Justice could pass an order of such dismissal without previous consultation with the Public Service Commission, as provided by Article 320 of the Constitution. The court answered both the question in the affirmative.

31. Dealing with the second question, the court pointed out that members of the High Court staff are not "persons serving under the Government of a Stage", and that this phrase used in Article 320(3)(c) - "seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Government functioning in the name of the President or of the Governor". It was held that the servants and officers of the High Court do not fall within the scope of this phrase "because in respect of them the administrative control is clearly vested in the Chief Justice who, under the Constitution, has the power of appointment and removal and of making rules for their conditions of service". It was further observed :

> The fact that different phrases have been used in the relevant sections of the Government of India Act (1935) and the Constitution, relating to the constitutional safeguards in this behalf appears to be meant to emphasise the differentiation of the services of the High Court from other services.
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> .... Therefore, both on the ground that Article 320(3(c) would be contrary to the implication of Article 229 and on the ground that the language thereof is not applicable to the High Court staff, we are of the opinion that for the dismissal of the appellant by the Chief Justice, prior consultation with the Public Service Commission was not necessary.

32. It was, however, conceded that for the purposes of Article 311, the phrase, "a person who is a member of a civil service of a State" used in that Article includes the officers and servants of the High Court.

33. The powers of Chief Justice under Article 229 again came up for consideration before this Court

in M. Gurumoorthy v. Accountant General Assam & Nagaland (supra). The Stenographers' Service in the High Court was reorganised. Under the reorganisation scheme, one of these posts created with the sanction of the State Government, was to be that of Selection Grade Stenographer. On May 7, 1959, the Chief Justice appointed the appellant as Secretary-cum-Selection Grade Stenographer after merger of the two posts. The State Government objected that the post of Secretary could not be merged with that of Selection Grade Stenographer. The Accountant-General, under the Government's instructions, withheld the appellant's pay slips. The appellant moved the High Court by a writ petition, which was dismissed. On appeal, this Court held that the Government had authority to sanction the post, but it could no interfere with the choice of the incumbent, which undoubtedly was to be of the Chief Justice under Article 229 of the Constitution. In that context, Grover, J., speaking for the Court, neatly summed up the position, which being apposite to the point under discussion, may be extracted : [(1971) 2 SCC 137, 143 para 11]

The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of a High Court, it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article. This was essentially to secure and maintain the independence of the High Courts. The anxiety of the constitution makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pensions payable to or in respect of officers and servants of the court at the same level as the salaries and allowances of the judges of the High Court nor can the amount of any expenditure so charged be varied even by the legislature. Clause (1) read with clause (2) of Article 229 confers exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service. In the matter of appointments even the legislature cannot abridge or modify the powers conferred on the Chief Justice under clause (1). The approval of the Governor, as noticed in the matter of Rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval. Even under the Government of India Act, the power to make rules relating to the conditions service of the staff of the High Court vested in the Chief Justice of the Court under Section 242(4) read with Section 241 of the Government of India Act, 1935.

34. In the result, this Court held that any restrictions imposed by the Government, while communicating the sanction of the post, could not bind the Chief Justice in view of Article 229 of the Constitution.

35. We now turn to Chapter IV. It is captioned : "Subordinate Courts". It consists of Articles which provide for matters relating inter alia to appointment and control of persons who man posts the subordinate judiciary. According to the scheme of this Chapter, subordinate judiciary has been classified into District Judges, and members of the 'Judicial Service'. Article 236 defines the expression "district judge" to include "judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional Chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge". The Article defines "judicial service" to mean "a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge".

36. Article 233 gives the High Court an effective voice in the appointment of District Judges. Clause

(1) of the Article peremptorily requires that "appointments of persons to be, and the posting and promotion of, district judges" shall be made by the Governor "in consultation with the High Court." Clause (2) of the Article provides for direct appointment of District Judges from Advocates or pleaders of not less than seven years standing, who are not already in the service of the State or of the Union. In the matter of such direct appointments also, the Governor can act only on the recommendation of the High Court. Consultation with the High Court under Article 233 is not an empty formality. An appointment made in direct or indirect disobedience of this constitutional mandate, would be invalid. (See Chandra Mohan v. State of U. P. ((1967) 1 SCR 77 : AIR 1966 SC 1987 : (1967) 1 LLJ 412) and Chandramouleshwar v. Patna High Court ((1969) 3 SCC 56 : (1970) 2 SCR 666 : AIR 1970 SC 370 : (1971) 1 SCI 7)). 'Service' which under clause (1) of Article 233 is the first source of recruitment of District Judges by promotion, means the 'judicial services' as defined in Article 236.

37. The word 'posting' as used in Article 233, in the context of 'appointment' and 'promotion' means the first assignment of an appointee or promotee to a position in the cadre of District Judges. It cannot be understood in the sense of 'transfer'. (See Ranga Mahammad case (State of Assam v. Ranga Mahammad, (1967) 1 SCR 454 : AIR 1976 SC 903 : (1968) 1 LLJ 282)).

38. Article 234 enjoins that the rules in accordance with which appointments of persons other than district judges to the judicial service of a State are to be made, shall be framed by the Governor in consultation with the High Court and the Public Service Commission. The expression "judicial service" in this Article, carries the same connotation as defined in Article 236.

39. Article 235 is the pivot around which the entire scheme of the Chapter revolves. Under it, "the control over district courts and courts subordinate thereto including the posting and promotions of, and the grant of leave to persons belonging to the judicial service of a State" is vested in the High Court.

40. The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystalised by these decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends a wide variety of matters. Among others, it includes :

> (a)(i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article 311(2).
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> (ii) In Article 235, the word 'control' is accompanied by the word "vest" which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court being exclusive, and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority. (State of West Bengal v. Nripendra Nath Bagchi (supra); Shamsher Singh v. State of Punjab ((1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814 : AIR 1974 SC 2192) and Punjab and Haryana High Court v. State of Haryana

(sub nom Narendra Singh Rao ((1975) 1 SCC 843 : 1976 SCC (L&S) 229 : (1975) 3 SCR 365 : AIR 1975 SC 613)).

(iii) Suspension from service of a member of the judiciary with a view to hold a disciplinary inquiry.

(b) Transfers promotions and confirmation of such promotions, of person holding posts in the judicial service, inferior to that of District Judge. (State of Assam v. S. N. Sen ((1971) 2 SCC 889 : (1972) 2 SCR 251 : AIR 1972 SC 1028) and State Assam v. Kuseswar Saikia).

(c) Transfers of District Judges. [State of Assam v. Ranga Mahammad (supra) and Chandramouleshwar v. Patna High Court (supra).]

(d) Recall of District Judges posted on ex-cadre posts or on deputation on administrative posts. (State of Orissa v. Sudhansu Sekhar Misra).

(e) Award of selection grade to the members of the judicial service, including District Judges, being their further promotion after their initial appointment to the cadre. [State of Assam v. Kuseswar Saikia (supra).]

(f) Confirmation of District Judges, who have been on probation or are officiating, after their initial appointment or promotion by the Governor to the cadre of District Judges under Article 233. [Punjab and Haryana High Court v. State of Haryana (supra).]

(g) Premature or compulsory retirement of Judges of the District Courts and of Subordinate Courts. [State of U. P. v. Batuk Deo pati Tripathi (supra).]

41. Since in both these appeals, orders of the premature retirement of the respondents, viz. of Shir Dikshitulu made by the Chief Justice, and of Shir Krishnamurthy by the Governor in consonance with the decision of the High Court are in question, it will be appropriate to amplify the point a little. It is well settled that compulsory retirement simpliciter, in accordance with the terms and conditions of service, does not amount to dismissal or removal or reduction in rank under Article 311 or under the Service Rules because, the Government servant does not lose the terminal benefits already earned by him. (See Tara Singh v. State of Rajasthan ((1975) 4 SCC 86 : 1975 SCC (L&S) 222 : AIR 1975 SC 1487) and State of Haryana v. Inder Prakash Anand ((1976) 2 SCC 977 : 1976 SCC (L&S) 372 : AIR 1976 SC 184).)

42. In the last-mentioned case the Government servant was officiating in the cadre of District Judges. The High Court recommended that he should be reverted to his substantive post of senior Subordinate Judge/Chief Judicial Magistrate and, as such, allowed to continue in service till the age of 58 years. Contrary to the recommendation of the High Court, the State Government passed an order under Rule 5.32(c) of the Punjab Civil Service Rules, compulsorily retiring him from service at the age of 55 years. Holding that the order of compulsory retirement was invalid, this Court stressed that the power of deciding whether a judicial officer should be retained in service after attaining the age of 55 years upto the age of 58 years, vests in the High Court, and to hold otherwise "will seriously affect the independence of the judiciary and take away the control vested in the High Court". The formal order of retirement, however, is passed by the Governor acting on the recommendation of the High Court, that being "the broad basis of Article 235". It was explained that

"in such cases it is the contemplation in the Constitution, that the Governor as the head of the State will act in harmony with the recommendation of the High Court". It was concluded that "the vesting of complete control over the Subordinate Judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State". In other words, while in form, the High Court's decision to compulsorily retire a subordinate judicial officer in the exercise of its administrative or disciplinary jurisdiction under Article 235 is advisory, in substance and effect, it is well-night peremptory.

43. Recently, in State of Uttar Pradesh v. Batuk Deo Pati Tripathi (supra), this Court succinctly summed up the whole position as follows : [(1978) 2 SCC 102, 112 (para 14)]

The ideal which inspired the provision that the control over District Court and courts subordinate thereto shall vest in the High Courts is that those wings of the judiciary should be independent of the executive .... It is in order to effectuate that high purpose that Article 235 as construed by the Court in various decisions requires that all matters relating to the subordinate judiciary including compulsory retirement and disciplinary proceedings but excluding the imposition of punishments falling within the scope of Article 311 and the first appointments and promotions should be dealt with and decided upon by the High Courts in the exercise of the control vested in them.

44. In sum, the entire scheme of Chapters V and VI in Part VI, epitomised in Article 229 and 235, has been assiduously designed by the Founding Fathers to ensure independence of the High Court and the subordinate judiciary.

45. The stage is now set for noticing the provision of Article 371D and the Andhra Pradesh Administrative Tribunal Order, 1975, made by the President in exercise of the powers conferred by clauses (3) and (4) of this Article. Article 371D was inserted in the Constitution with effect from July 1, 1974 by the Constitution (Thirty-second Amendment) Act, 1973. This article as its heading shows, makes "Special provisions with respect to the State of Andhra Pradesh". Clause (1) of the article authorises the President to provide by order "for equitable opportunities and facilities for the people belonging to different parts of the State" in matters of public employment and education. Clause (2) particularises what an order made by the President under clause (1) may require to be done. Clause (3) is crucial for the purpose of the instant case; and may be extracted in full. It reads as under :

> (3) The President may, by order, provide for the constitution of an Administrative Tribunal for the State of Andhra Pradesh to exercise such jurisdiction powers and authority (including any jurisdiction, power and authority which immediately before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, was exercisable by any Court (other than the Supreme Court) or by any tribunal or other authority as may be specified in the order with respect to the following matters, namely :-
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> (a) appointment, allotment or promotion to such class or classes of posts in any civil service of the State or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order :
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> (b) Seniority of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under

> the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order.
>
> (c) such other conditions of service of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State, or to such class or classes of posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order.

46. Clause (4) of the article further provides that an order made under clause (3) may : (a) authorise the Administrative Tribunal to receive representation for redress of grievances relating to any matter within its jurisdiction, as the President may specify, and to make such orders thereon as the Tribunal may deem fit; (b) contain provisions with respect to the powers and authorities and procedure of the Administrative Tribunal; (c) provide for the transfer to the Administrative Tribunal proceedings relating to classes of posts within its jurisdiction, pending before any court (other than the Supreme Court) or tribunal or other authority; (d) contain supplemental, incidental and consequential provisions including those relating to fees, limitation, evidence, etc.

47. Under clause (5), "the order of the Administrative Tribunal finally disposing of any case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made, whichever is earlier".

48. Then there is a Proviso to this clause, a most extraordinary provision, which says :

> Provided that the State Government may, by special order made the
>
> in writing and for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it becomes effective and in such a case, the order of the Administrative Tribunal shall have effect only in such modified form or be of no effect, as the case may be.

49. This Clause shows that unlike a civil Court, or a High Court exercising jurisdiction under Article 226 (prior to the enactment of Article 371D, the Administrative Tribunal set up by an order under clause (3) of the article, is not competent to pass definitive or final orders, in the sense that all its decisions or orders are subject to confirmation, modification or annulment by the State Government. The Tribunal's order has no force proprio vigore unless confirmed by the State Government, either expressly within three months of the date on which it was made, or impliedly by not interfering with that order for the said period of three months. Then there is no provision in the Article, requiring the State Government to give an opportunity of hearing to the parties before modifying or annulling the order of the Tribunal.

50. Clause (6) requires every special order of the Government made under clause (5) to be laid before the State Legislature. Clause (7) clarifies that the High Court or any other Court (other than the Supreme Court) or tribunal shall have no jurisdiction, power or authority in respect of any matter subject to the jurisdiction, power or authority of, or in relation to, the Administrative Tribunal. Clause (8) gives power to the President to abolish the Administrative Tribunal, if he is satisfied that its continued existence is not necessary.

51. Clause (9) is a validating provision. As will be presently seen, it was enacted to get over the difficulties created by the judicial decisions on Mulki Rules.

52. Clause (10) gives an overriding effect to the provisions of Article 371D and to the Presidential orders made thereunder, by enacting :

> (10) The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force.

53. In the context, we may also have a look at the provisions of the Andhra Pradesh Administrative Tribunal Order, 1975 dated May 19, 1975 [published as per G.O. Ms. No. 323, General Administration (SPF-B), May 22, 1975], made by the President in exercise of his powers under clauses (3) and (4) of Article 371D. Paragraph 2 of this order contains definitions of various expressions used therein. Clause (d) of this paragraph defines "person employed" to mean "an individual, in relation to whom the Tribunal has jurisdiction in respect of the matters specified in paragraph 6 of this Order". Paragraphs 3 to 5 are not material to the points under consideration. Paragraph 6 is important. It provides in regard to "Jurisdiction, powers and authority of the Tribunal". It confers on the Tribunal "all the jurisdiction, powers and authority which, immediately before the commencement of this Order were exercisable by all Courts (except the Supreme Court) with respect to appointment, allotment or promotion to any public post, seniority of persons appointed, allotted or promoted to such post and all other conditions of service of such persons". Sub-para (2) provides that nothing in sub-paragraph (1) of this paragraph shall apply to, or in relation to, -

> (a) persons appointed on contract for a specified term or purpose;
>
> (b) member of the All-India Services;
>
> (c) persons on deputation with the State Government or any local authority within the State being persons in the services of the Central or any other State Government or other authority;
>
> (d) persons employed, on part-time basis; and
>
> (e) village officers.

54. Sub-para (3) is not relevant. Sub-para (4) makes "the law in force immediately before the commencement of this Order with respect to the practice, procedure and disposal of petitions for the issue of directions, orders or writs under Article 226 of the Constitution by the High Court of Andhra Pradesh" applicable (with modifications, if any, made by the Tribunal) to the disposal of petitions by the Tribunal.

55. There is a proviso to this sub-paragraph which is not relevant for our purpose. The Explanation appended to this sub-paragraph defines for the purpose of paragraph 6, "public post" to mean :-

> (a) all classes of posts in all civil services of the State;
>
> (b) all classes of civil posts under the State; and
>
> (c) all classes of posts under the control of any local authority within the State.

56. Paragraph 7 empowers the Tribunal to receive representations from persons aggrieved, relating

to matters within the jurisdiction of the Tribunal. Then there is a proviso directing the Tribunal not to admit any such representation (a) unless the person concerned has availed of the remedies under the relevant rules for making such representation to the State Government or the local-authority, as the case may be, "or to any other officer or other authority under the State Government or local authority and has failed;" or (b) if a period of more than six months has elapsed after a final order rejecting the representation. The next material provision is in subparagraph (3) which provides that where a representation has been admitted by the Tribunal "all proceedings for redress of such grievance pending before the State Government or local authority" shall abate.

57. Paragraph 8 is not relevant. Paragraph 9 mandates the Tribunal that when it passes a final order disposing of any case, it shall forward the proceedings thereof to the State Government.

58. Paragraph 14 provides for transfer of proceedings from the High Court and other Courts to the Tribunal, in matters in relation to which jurisdiction has been conferred on the Tribunal by this Order.

59. The rest of the provisions of this Order are not relevant to the problem before us.

60. The ground is now clear for considering the question whether the officers and servants of the Andhra Pradesh High Court and persons holding posts in 'the judicial service of the State, including District Judges', are subject to the jurisdiction of the Administrative Tribunal Order, 1975 made by the President in exercise of his powers under clauses (3) and (4) of Article 371D ?

61. We have seen that the substantive provision is in clause (3). This clause defines the extent and delimits the area of the "jurisdiction, power and authority" with respect to certain matters mentioned therein, which may be conferred, wholly or in part, on the Administrative Tribunal by an order made by the President, thereunder.

62. Clause (4) only subserves and elucidates the substantive clause (3).

63. It is undisputed that compulsory retirement is a condition of service. The question, therefore, narrows down into the issue : Do the posts held by officers and servants of the High Court, and members of the subordinate judiciary fall under any of the "class or classes of posts" mentioned in subclause (c) of clause (3) of Article 371D ? For reaching a correct finding on this issue, it is not necessary to dilate on the Administrative Tribunal Order made by the President, or to explore the scope of the expression "public post" defined in paragraph 6 thereof for, the order has, merely for the sake of convenience, adopted this brief expression to cover compendiously all the three phrases commonly employed in sub-clauses (a), (b), and (c) of clause (3) of the Article. Though the content of the first limb of each of the sub-clauses (a), (b) and (c) varies, the rest of the language employed therein is identical. Each of these three sub-clauses, in terms, relates to class or classes of -

(i) "posts in any civil service of the State", or

(ii) "civil posts under the State", or

(iii) "posts under the control of any local authority within the State".

It is manifest that posts on the establishment of the High Court or held by the members of the judiciary are not "posts under the control of any local authority". Neither the Chief Justice, not the High Court can be called a "local authority" within the meaning of class (iii). As regard (ii), it is

conceded even by Shri Vepa Sarathi, that persons holding posts on the staff of the High Court or in the subordinate judiciary do not hold their posts under the control of the State Government, and, as such, those class or classes of posts do not fall within the purview of phrase (ii), either.

64. The compass of the problem thus further gets reduced into whether the phrase "posts in the civil services of the State" commonly occurring in sub-clauses (a), (b) and (c) of Article 371D(3) covers posts held by the High Court staff and persons belonging to the subordinate judiciary ? This phrase is couched in general terms which are susceptible to more than one interpretation.

65. The phrase "civil service of the State" remains more or less an amorphous expression as it has not been defined anywhere in the Constitution. Contrasted with it, the expressions "judicial service of the State" and "District Judge" have been specifically defined in Article 236, and thus given a distinctive, definite meaning by the Constitution-makers. Construed loosely, in its widest general sense, this elastic phrase can be stretched to include the 'officers and servants of the High Court' as well as members of the Subordinate Judiciary. Understood in its strict narrow sense, in harmony with the basic constitutional scheme embodied in Chapters V and VI Part VI, and centralised in Articles 229 and 235, thereof, the phrase will not take in High Court staff and the Subordinate Judiciary. Shri Vepa Sarathi canvasses for adoption of the expansible interpretation which will cover the High Court staff and the Subordinate Judiciary, while Shri Lal Narain Sinha urges for acceptance of the restricted but harmonious constructions of the phrase "civil services of the State" is to be made in the light of well settled principles of interpretation of constitutional and other statutory documents.

66. The primary principle of interpretation is that a Constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light, on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

67. Where two alternative constructions are possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of its basic framework can be felt all over its body, even in the extremities of its limbs. Constitutional exposition is not mere literary garniture, nor a more exercise in grammar. As one of us (Chandrachud, J. as he then was) put it in Kesavananda Bharati case : [(1973) 4 SCC 225, 969 (para 2017)]

While interpreting words in a solemn document like the Constitution, one must look at them not in a

school-masterly fashion, not with the cold eye of a lexicographer,, but with the realization that they occur in 'a single complex instrument in which one part may throw light on the other' so that the construction must hold a balance between all its parts.

68. Keeping in mind the principles enunciated above, we will first have a peep into the historical background of the provisions in Article 371D.

69. The former State of Hyderabad comprised of three linguistic areas : Telengana, Marathwada and Karnatak. In 1919, the Nizam issued a Firman promulgating what came to be known as Mulki Rules. The Nizam confirmed these Rules by another Firman issued in 1949. Those Rules provided inter alia 15 years' residence in the State as an essential qualification for public employment.

70. In 1955, the Rajpramukh in exercise of his powers under Article 309 (Proviso) of the Constitution, framed the Hyderabad General Recruitment Rules, 1955 in supersession of all the previous rules on the subject. One of these rules laid down that domicile certificate would be necessary for appointment to a state or subordinate service, and the issue of such certificate depended upon residence in the State for a period of not less than 15 years.

71. On November 1, 1956, as a result of the coming into force of the States Reorganisation Act, the State of Hyderabad was trifurcated. Telengana region became a part of the newly formed State of Andhra Pradesh, while Marathawada and Karnatak regions ultimately became parts of Maharashtra and Mysore States.

72. With these prefatory remarks, we may now notice the Statement of Objects and Reasons for the Bill which became the Constitution (32nd Amendment) Act, 1972. This Statement may be quoted in extenso :

When the State of Andhra Pradesh was formed in 1956, certain safeguards were envisaged for the Telengana area in the matter of development and also in the matter of employment opportunities and educational facilities for the residents of that area. The provisions of clause (1) of Article 371 of the Constitution were intended to give effect to certain features of these safeguards. The Public Employment (Requirement as to Residence) Act, 1957, was enacted inter alia to provide for employment opportunities for residents of Telengana area. But in 1969 [in the case of A. V. S. N. Rao v. Andhra Pradesh, (1969) 1 SCC 839; (1970) 1 SCR 115], the Supreme Court held the relevant provision of the Act to be unconstitutional in so far as it related to the safeguards envisaged for the Telengana area. Owing to a variety of causes, the working of the safeguards gave rise to a certain amount of dissatisfaction sometimes in the Telengana area and sometimes in the other areas of the State. Measures were devised from time to time to resolve the problems. Recently several leaders of Andhra Pradesh made a concerted effort to analyse the factors which have been giving rise to the dissatisfaction and find enduring answers to the problems with a view to achieving fuller emotional integration of the people of Andhra Pradesh. On September 21, 1973, they suggested certain measures (generally known as the Six-Point Formula) indicating a uniform approach for promoting accelerated development of the backward areas of the State so as to secure the balanced development of the State as a whole and for providing equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public services. This formula has received wide support in Andhra Pradesh and has been endorsed by the State Government.

2. This Bill has been brought forward to provide the necessary constitutional authority for giving

effect to the Six-Point Formula insofar as it relates to the provision of equitable opportunities for people of different areas of the State in the matter of admission to educational institutions and public employment and constitution of an Administrative Tribunal with jurisdiction to deal with certain disputes and grievances relating to public services. The Bill also seeks to empower Parliament to legislate for establishing a Central University in the State and contains provisions of an incidental and consequential nature including the provision for the validation of certain appointments made in the past. As the Six-Point Formula provides for the discontinuance of the Regional Committee constituted under clause (1) of Article 371 of the Constitution, the Bill also provides for the repeal of that clause. (Parenthesis and emphasis in para 1 added)

73. It will be seen from the above extract, that the primary purpose of enacting Article 371D was twofold : (i) To promote "accelerated development of the backward areas of the State of Andhra so as to secure the balanced development of the State as a whole", and (ii) to provide "equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service."

74. To achieve this primary object, clause (1) of Article 371D empowers the President to provide by order, "for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education". Clause (2) of the Article is complementary to clause (1). It particularises the matters which an order made under clause (1) may provide. For instance, its sub-clause (c)(i) enables the President to specify in his Order, "the extent to which, the manner in which and the conditions subject to which", preference or reservation shall be given or made in the matter of direct recruitment to any such local cadre. Thus, clause (4) also is directly designed to achieve the primary object of the legislation.

75. From the foregoing conspectus it is evident that the evil which was, sought to be remedied, (viz., inequitable opportunities and facilities for the people belonging to different parts of the State of Andhra Pradesh in matters of public employment and education) had no causal nexus, whatever, with the independence of the High Court and subordinate judiciary which the Founding Fathers have with solemn concern vouchsafed in Articles 229 and 235. Nor did the public agitation which led to the enactment of Article 371D make any grievance against the basic scheme of Chapters V and VI in Part VI of the Constitution.

76. The statement of Objects and Reasons does not indicate that there was any intention, whatever, on the part of the legislature to impair or derogate from the scheme of securing independence of the judiciary as enshrined in Articles 229 and 235. Indeed, the amendment to abridgment of this basic scheme was never an issue of debate in Parliament when the Constitution (32nd Amendment) Bill was considered.

77. One test which may profitably be applied to ascertain whether the High Court staff and the subordinate judiciary were intended to be included in clause (3) of Article 371D is : Will the exclusion of the judiciary from the sweep of this clause substantially affect the scope and utility of the article as an instrument for achieving the object which the Legislature had in view ? The answer cannot but be in the negative. The High Court staff and members of the Subordinate Judiciary constitute only a fraction of the number of persons in public employment in the State. Incidentally, it may be mentioned that one of the primary purposes of this article, viz., to secure equitable share in public employment to people of certain local areas in the State on the basis of the Mulki Rules requiring 15 years residence in those areas, could be achieved under those rules which, as subsequently clarified by this Court in State of Andhra Pradesh v. V. V. Reddy (Director of

Industries and Commerce, Govt. of A. P. v. V. Venkata Reddy, ((1973) 1 SCC 99 : 1973 SCC (L&S) 75 : AIR 1973 SC 823) continued to be in force as valid law in the territories of the former State of Hyderabad even after the constitution of the State of Andhra Pradesh.

78. Let us now apply another test which in the circumstances of the case will be decisive. In that connection, we have to see what consequences will flow if we give this general, undefined and flexible phrase, "civil services of the State" in Article 371D(3), the wider construction so as to include in it the High Court staff and the members of the subordinate judiciary. The inevitable result of such an extensive construction will be that the control vested in the Chief Justice over the staff of the High Court, and in the High Court over the Subordinate Judiciary will become shorn of its substance, efficacy and exclusiveness, and after being processed through the conduit of the Administrative Tribunal, will pass on into the hands of the Executive Government, which, under Article 371D(5), is the supreme authority, having full power to confirm, not to confirm, modify or annul the orders of the Tribunal. Such a construction will lead to internecine conflict and contradiction, rob Articles 229 and 235 of their content, make a mockery of the Directive Principle in Article 50 and the fundamental concept of the independence of the judiciary, which the Founding Fathers have with such anxious concern built into the basic scheme of the Constitution. Parliament, we are sure, could never have intended such a strange result. In our quest for the true intention of Parliament, therefore, we must eschew this wide liberal interpretation which will defeat or render otiose the scheme of Chapters IV and V, Part VI particularised in Articles 229 and 235, and instead, choose the alternative interpretation according to which members of the High Court staff and the subordinate judiciary will not fall within the purview of the phrase "civil services of the State". Such a restricted construction will ensure smooth working of the Constitution and harmony amongst its various provisions.

79. It is true that this very phrase in the context of the provision in Article 311 includes the employees of the High Court and members of the judicial services. But is must be remembered that the provisions of Article 311 are of a general nature. They give constitutional recognition to a fundamental principle of natural justice, by making its protection available uniformly to all Government servants. That is why in the context of that Article this phrase has been spaciously construed. As against this, Article 371D is a special provision which marks a departure from the general scheme of the Constitution. The area of the departure cannot be extended beyond what is unmistakably and specifically delineated by the words employed therein. A phrase used in the context of a general provision may not carry the same meaning when employed in the context of a special provision, particularly when that phrase has nowhere been defined in the enactment. "Words used with reference to one set of circumstances". said Lord Blackburn in Edinburgh Street Tramways Co. v. Torbain ((1877) 3 AC 58, 68), "may convey an intention quite different from what the self-same set of words used in reference to another set of circumstances would or might have produced". This holds true even when the same words are used in different contexts in the same enactment. Therefore, in a special provision like Article 371D as its heading itself proclaims - which derogates from the general scheme of the Constitution for a specific purpose, general undefined phrases are not to be interpreted in their widest amplitude but strictly attuned to the context and purpose of the provisions. Conversely, had it been the intention of Parliament to include 'Officers and servants of the High Court' and members of the 'Judicial service of the State' and of the cadre of 'District Judges', in the phrase 'civil services of the State' occurring in clause (3) of Article 371D, and thereby depart from the basic scheme of Chapters IV/and V, Part VI, the language commonly employed in subclauses should have read like this :-

Class or classes of posts in the civil services of the State including posts in the "judicial service of

the State", and of "District Judges" in the State; class or classes of posts of "officers and servants of the High Court" ....

80. In our opinion, non-use of the phrases "judicial service of the State" and "District Judges" (which have been specifically defined in Article 236), and "officers and servants of the High Court" which has been designedly adopted in Articles 235 and 229, respectively, to differentiate them in the scheme of the Constitution from the other civil services of the State, gives a clear indication that posts held by the High Court staff of by the Subordinate Judiciary were advisedly excluded from the purview of clause (3) of Article 371D. The scope of the non obstante provision in clause (10) which gives an overriding effect to this article is coterminous with the ambit of the preceding clauses.

81. The 'officers and servants of the High Court' and the members of the Judicial Service, including District Judges, being outside the purview of clause (3), the non obstante provision in clause (10) cannot operate to take away the administrative or judicial jurisdiction of the Chief Justice or of the High Court, as the case may be, under Articles 229, 235 and 226 of the Constitution in regard to these public servants in matters or disputes falling within the scope of the said Articles. Clause (10) will prevail over any provisions of the Constitution, other than those which are outside the ambit of Article 371D, such as Articles 229 and 235. Provisions not otherwise covered by Article 371D, cannot be brought within its sweep because of the non obstante clause (10). It follows as a necessary corollary that nothing in the order of the President constituting the Administrative Tribunal, confers jurisdiction on the Tribunal to entertain, deal with or decide the representation by a member of the staff of the High Court or of the Subordinate Judiciary.

82. For the foregoing reasons, we hold that the impugned order dated August 24, 1977 of the Administrative Tribunal, having been passed without jurisdiction, is a nullity. Accordingly, we-allow Civil Appeal 2826 of 1977 leaving the parties to pay and bear their own costs.

83. The reasons given above apply mutatis mutandis to the case of Krishnamurthy in Civil Appeal 1278 of 1978 and furnish the basis of our short Order dated August 4, 1978, by which we had accepted that appeal. In this Appeal (C.A. 278 of 1978) however, the respondent's costs in this court will be borne by the appellant in terms of this Court's order dated February 10, 1978 in SLP (Civil) 626 of 1978.

84. In view of the orders dated November 28, 1977 and March 22, 1978, passed in stay applications 4804 of 1977 and 1744 of 1978 respectively, and in terms of those orders we direct that since the appeals have been allowed, the excess payment, if any, made pursuant to the stay orders shall be adjusted towards pension that may be due to the respondents. The adjustment shall be made in easy, convenient and reasonable instalments.

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