State of Gujarat and Another

Vs

Raman Lal Keshav Lal Soni and Others

Civil Appeal No. 359 of 1978

Mathuradas Mohan Lal Kedia and Others

Vs

Sh. S. D. Munshaw and Others

Writ Petitions Nos. 4266-4270 of 1978

(CJI Y.V. Chinnappa Reddy, Syed M. Fazal Ali, V.D. Tulzapurkar, D. Chinnappa Reddy, A. Varadarajan JJ)

27.01.1983

JUDGMENT

CHINNAPPA REDDY, J. –

1. The attitudes of the State of Gujarat in these cases has indeed left us puzzled and wondering. On the one hands, there are lakhs of employees working under various Panchayat Institutions, call them government servants or not, to whom the benefits of the recommendations of the two pay Commissions, the Sarela and the Desai Commissions, of the two pay Commissions, the Sarela and the Desai Commissions, have been extended, while on the other hand, there is a microscopic number (comparatively) of about 6000 employees of the lowest category, also working under Panchayat Institutions, who are denied the benefits of those recommendations, on the sole ground of a birth-mark, if we may so call it, since they are denied the benefits because before they came to work under the Panchayat Institutions, they were employed in municipalities while the others were government servants to start with. The unfairness and the injustice of the distinction is patent, whatever legal justification may be put forward. Surely, the State, dedicated as it is to socialism, equality and economic justice and enjoined by the directive principles to secure the right to work, a living wage, equal pay for equal work and so on cannot make such a distinction. But the distinction has been made; it is sought to be sustained by those making it and we are constrained to examine whether there is any constitutional or other legal sustenance for the distinction. We did request the counsel for the State of Gujarat to communicate with his clients to find out if the benefits cannot gracefully be extended to the erstwhile employees of municipalities presently working under Panchayat Institutions also. We are told that the answer of the State of Gujarat is in the negative.

2. The appeal and the writ petitions were heard once before by a Constitution Bench consisting of Chandrachud, C. J., Sarkaria, Untwalia, Kailasam and Venkataramiah, JJ. The opinion of the Constitution Bench was pronounced by Venkataramiah, J., on July 30, 1980((1981) 1 SCR 144 : (1980) 4 SCC 653 : 1981 SCC (L&S) 34 : AIR 1981 SC 53 : (1981) 1 SCJ 433). But on the application of the appellants, the opinion was set aside and the appeal and the writ petitions were

directed to be set down for hearing once more by the Constitution Bench. That is how the matters have again come before us.

3. Pursuant to the constitutional mandate in Article 40 that "the State shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government". The State of Gujarat enacted the Gujarat Panchayats Act, 1961 (6 or 1962) "to consolidate and amend the law relating to village Panchayats and district local boards with a view to reorganise the administration pertaining to local government in furtherance of the object of the democratic decentralisation of powers in favor of different classes of Panchayats".

4. The Gujarat Panchayats Act, 1961 was substantially amended in 1978 in an attempt, as we shall presently point out, to circumvent the judgment of the Gujarat High Court which is under appeal before us. The constitutional validity of the Amending Act is in question in the writ petitions which are before us.

5. We shall first refer to the provisions of the Gujarat panchayats Act, as they stood before they were amended in 1978. By Section 11 (1) of the Act, as it originally stood, a Panchayat organisation was constituted for the State of Gujarat, consisting of Gram Panchayats, Taluka Panchayats, District Panchayats, Gram Sabhas, Nyaya Panchayats and Conciliation panchas. It is provided by Section 11 (2) that the State Government shall exercise control over Panchayats either directly or through such officer or officers as it may appoint for that purpose. Local areas comprising of revenue villages or groups of revenues villages or hamlets forming parts of revenue villages or other administrative units or parts thereof are to be declared grams under the Act, if the population of the local areas does not exceed 10,000 and nagars if the population of the local areas exceeds 10,000 but does not exceed 20,000. There is to be a Gram Panchayat for each gram and a Nagar Panchayat fir each nagar. There is also to be a Taluka Panchayat for each Taluka and a District Panchayat fir each district, as constituted from time to time under the Land Revenue Code. The Gram Panchayat, the Nagar Panchayat, the Taluka Panchayat and the District Panchayat are to be bodies corporate with perpetual succession and common seal. Section 8 prescribes the hierarchy and provides that, subject to the control of the Government, a Gram Panchayat is to be subordinates to the Taluka Panchayat and the District Panchayat, while a Nagar Panchayat and Taluka Panchayat are to be subordinates to the District Panchayat. While the Gram Panchayats, Nagar Panchayats, Taluka Panchayats and District Panchayats are to be bodies corporate, Section 287 makes it explicit that, notwithstanding that they are separate bodies corporate having distinct territorial jurisdiction and territorial functions to perform, the Gram Panchayats, Nagar Panchayats, Taluka Panchayats and District Panchayats shall form part of the Panchayat Organisation, set up for the purpose of securing a greater measure of participation by the people of the State in local government functions and shall perform the functions and duties assigned to them by or under the Act so as to conform to the State plans, national plans and the State policy in general, and also so as to gives effect to general or special directions as may be issued by the State Government. Section 292-A and Section 305 authorise the State Government to cause inspection to be made and to call for and examine the record of the proceedings of any Panchayat.

6. At this juncture, we may mention that prior to the enactment of the Gujarat Panchayats Act, 1961, there were in force in the State of Gujarat the Bombay Village Panchayats Act, 1958, the Bombay Local Boards Act, 1923, the Bombay District Municipal Act, 1901 and the Bombay Municipal Boroughs Act, 1925. The Bombay Village Panchayats Act, 1958 and the Bombay Local Boards Act, 1923 are repealed by Sections 325 and 326 of the Gujarat Panchayats Act, 1961. A local area

declared to be a village under the Bombay Village Panchayats Act, 1958 and a Panchayat constituted under that Act, are deemed to be gram and Panchayat under the Gujarat Panchayats Act, 1961. The Secretaries and all officers and servants under the employment of the old village Panchayats are to be Secretaries, Officers and servants of the new gram Panchayats. A District Local Board constituted under the Bombay Local Boards Act for a local area is to stands dissolved. All property which stood vested in the district local board immediately before the appointment day is to be deemed transferred to the District Panchayat constituted servants in the employment of the District Local Board are similarly to be deemed transferred to the District Panchayat constituted for the local area, called the successor Panchayat. All Officers and servants in the employment of the District Local Board are similarly to be deemed transferred to the service of the successor Panchayat. Where local areas are declared to be grams or nagars under Section 9 of the Gujarat Panchayats Act, 1961 and such areas corresponds to the limits of a municipal district or municipal borough under the Bombay District Municipal Act or Bombay Municipal Borough Act, it is provided by Section 307 of the Gujarat Panchayats Act that the municipality previously functioning in such local area shall cease to exist and that the councillors of such municipality shall constitute an interim Gram Panchayat or interim Nagar Panchayat as the case may be for the gram or nagar. It is also provided that all Officers and servants in the employment of the municipality immediately before the date of declaration of the local areas as gram or nagar, shall be Officers and servants of the interim Panchayat.

7. Thus, broadly, District Local Boards under the Bombay Local Boards Act stands transformed as District Panchayats, Villages Panchayats under the Bombay Villages Panchayats Act as Gram Panchayats and municipalities under the Bombay District Municipal Act and Bombay Municipal Boroughs Act as Gram or Nagar Panchayats, depending on the population. Officers and servants in the employ of the District Local Boards are deemed to be transferred to the service of the District Panchayats; Secretaries, Officers and servants in the employ of the Old Village Panchayats become Secretaries, Officers and servants of new Gram Panchayats and Officers and servants in the employ of municipalities become Officers and servants of interim Panchayats.

8. To continue our tour inspection (if one may use such an expression) of the provisions of the Act, Section 88 of the Act empowers each Gram Panchayat to make, in the area within its jurisdiction, and so far as the fund at its disposal will allow, reasonable provision in regard to all or any of the matters specified in Schedule I. Schedule I enumerates a host of matters under the heads "Sanitation and Health"' "Public Works"' "Education and Culture"' "Self Defence and Village Defence"' "Planning and Administration", "Community Development, Agriculture Preservation of Forests and Pastures Lands", "Animal Husbandry"' "Villages Industries" and "Collection of Lands Revenue". Under each of these heads innumerable subjects are specified. In regard to the collection of land revenue express provision is further made by Section 149 that the Government shall, notwithstanding anything contained in Land Revenue Code or any other law, entrust to every Gram Panchayat and every Nagar Panchayat, any or all of the functions and duties of Village Accountant or Patel or other similar functions of any other persons by whatever name called, in relation to the collection of land revenue and dues recoverable as arrears of land revenue and all other functions and duties of Village Accountant under the Land Revenue Code. Section 150 provides that the Panchayat so entrusted under Section 149 shall be responsible for the collection of land revenue and other dues of the gram or nagar as the case may be.

9. In addition to the functions enumerated in Schedule I, Section 89 imposes certain other duties and functions on the Panchayat. A Panchayat may, for example, carry out in the area within the limits of jurisdiction, any other work or measure which is likely to promote health, safety, education,

comfort, convenience or social or economic or cultural well-being of the inhabitants of the area including secondary education. A Panchayat is also required to carry out the directions or orders given or issued from time to time by the State Government for the amelioration of the condition or scheduled castes and scheduled tribes, and other backward classes.

10. Taluqa and District Panchayats are required by Sections 117 and 137 respectively to make reasonable provision in respect of matters specified in Schedules II and III. In Schedule II, a number of subjects are enumerated under the heads "Sanitation and Health", "Communication", "Education and Culture", "Social Education", "Community Development", "Agriculture and Irrigation", "Animal Husbandry", " Village and Small Scale Industries", "Corporation", "Women's Welfare", "Social Welfare", "Relief", "Collection of Statistics", "Trusts", "Forests", "Rural Housing" and "Information". In Schedule III, similarly, a number of subjects are enumerated under the heads "Sanitation and Health", "Public Works", "Education and Other Cultural Activities", "Administration", "Community Development", "Agriculture", "Animal Husbandry", "Village and Small Scale Industries", "Social Welfare", "Relief" and "Minor Irrigation Projects".

11. Section 155 provides for the transfer of the functions previously performed by District School Boards under the Bombay and Saurashtra Primary Education Act to Taluka and District Panchayats.

12. Section 156 provides for the delegation to District and Taluka Panchayats such powers and functions and duties of the Registrar or any other authority under the Bombay Cooperative Societies Act, as may be specified.

13. Section 157 provides for the transfer to District Panchayats of such powers, functions land duties relating to any matter as are exercised or performed by the State Government or any officer of the Government under any enactment which the State legislature is competent to enact, or otherwise in the executive power or the State. On the transfer of such functions, the Government is also required to allot to the District Panchayats such funds and personnel as may be necessary to enable the District Panchayats to exercise the powers and discharge functions and duties so transferred. Section 157 (2) mentions the subjects which in particular may be transferred to the District Panchayats. Section 157 (3) further provides that on the transfer of powers, functions and duties under sub-sections (1) and (2), the District Panchayat shall, if the State Government so directs, and may with the previous approval of the Government, delegate to any Panchayat subordinate to it any of the functions, powers and duties so transferred and allot to such Panchayats such funds and staff as may be necessary to enable the Panchayat to discharge the functions and duties so delegated.

14. Section 158 provides that any functions and duties relating to any of the matters specified in the Panchayat Functions List, which were previously being performed by the State Government, shall be transferred to the District Panchayats together with the funds provided and the staff employed therefore. On such transfer, the District Panchayat may delegate, subject to the approval of the Government, to any Panchayat subordinate to it any of the functions and duties so transferred.

15. Section 96 of the Act authorises the State Government to vest in a Panchayat open sites, waste, vacant or grazing lands or public roads, streets, bridges, ditches, dikes and fences, wells, river banks, streams, lakes, nallahs, canals, water courses, trees or any other property to the gram or nagar.

16. Section 99 provides for the creation of gram and nagar funds. Each gram and nagar is to have a

fund called the Gram Fund or the Nagar Fund into which are to be paid, inter alia, the proceeds of any tax or fee imposed by or assigned to the Panchayat under the Act, sums contributed to the fund by the State Government or the Taluka Panchayat or the District Panchayat and all sums received by way of loans from the State Government or the Taluka Panchayat or the District Panchayat or out of the District Development fund or otherwise.

17. Section 119 vests in the Taluka Panchayat every road building and other work constructed by the Taluka Panchayat, any land or property transferred to the Taluka Panchayat by the State Government and any land or property transferred by any other Panchayat. Section 139 vests in the District Panchayat every road building or other work constructed by the Panchayat, any land or property transferred to a District Panchayat by any other Panchayat.

18. We may now refer, conveniently, at this stage to the provisions relating to services. Section 102 provides that there shall be a Secretary for every Gram Panchayat and Nagar Panchayat, who shall be appointed in accordance with the Rules. Rules, of course, have to be made by the Government under Section 323. Section 102 also provides that a Gram Panchayat and a Nagar Panchayat may have such other servants as may be determined under Section 203, who shall be appointed by such authority and with such conditions of service, as may be prescribed. 'Prescribed' again means 'Prescribed by Rules' and Rules have to be made by the Government. It is further provided that having regard to the population or a gram and its income, the State Government may direct that a group of Gram Panchayats shall have one Secretary only. The Secretary is required to keep in his custody all records and registers of the Panchayats, issue receipts on behalf of the Panchayat, prepare all statements and reports required under the Act and perform such other functions and duties, as may be prescribed under the Act. Other servants of the Panchayat are required to perform such functions and duties and exercise such powers as may be imposed or conferred on them by the Panchayat, subject to any Rules which may be made.

19. Section 122 provides that there shall be a Secretary for every Taluka Panchayat and that the Taluka Development Officer who shall be an officer belonging to the State service and posted under the Panchayat, shall be the ex officio Secretary of the Panchayat Section 122 further provides that the Taluka Panchayat shall have such other officers and servants as may be determined under Section 203, who may be appointed by such authority, with such conditions of service, as may be prescribed.

20. Similarly, Section 142 provides that the District Development Officer posted under the District Panchayat. In addition, the District Panchayat shall have such officers and servants, as may be determined under Section 203, performing such functions as may be prescribed and appointed by such authority with such conditions of service, as may be prescribed. We have earlier referred to Sections 157 and 158 which provide for the allotment and transfer of Staff to the District Panchayat when functions are transferred by the Government to the District Panchayats under those provisions. We have already referred to Sections 326 which provides that all Officers and servants in the employment of an existing District Local Board shall be deemed to be transferred to the service of the successor District Panchayat. We have also referred to Section 325 which stipulates that the Secretaries and all Officers and servants in the employ of old Village Panchayats under the Bombay Village Panchayats Act shall be Secretaries, Officers and servants of the new Gram Panchayats. We have further referred to Section 307 which provides that all Officers and servants in the employment of municipalities whose local areas have been declared as grams or nagars as the case may be, shall be Officers and servants of the interim Panchayats of such grams or nagars.

21. Section 203, as it stood before it was amended in 1978, provided for the constitution of a Panchayat service for the purposes of bringing about uniform scales of pay and uniform conditions of services for persons employed in the discharges of functions and duties of Panchayats. Such service, it was declared, shall be distinct from the State service. The Panchayat service was to consist of such classes, cadres and posts and the initial strength of officers and strengths of such classes, cadres and posts was to be such as the State Government might determine from time to time. District Panchayats were empowered to alter, with the previous approval of the State Government, any class, cadre or number of posts determined by the Government. The cadres were to consist of district cadres, Taluka cadres and local cadres. A servant belonging to a district cadre was liable to be posted, whether by promotion or transfer, to any post in any Taluka or of the district. A servant belonging to the Taluka cadre was liable to be posted whether by promotion or transfer to any post in any gram or nagar in the same taluqa. A servant belonging to a local cadre was liable to be posted whether by promotion of transfer to any post in the same gram or nagar. In addition to the posts in the district Taluka and local cadres, a Panchayat might have such other posts of such classes as the State Government may, by general or special order, determines, such posts being called 'deputation posts', They were to be filled in accordance with the provisions of Section 207. The State Government was empowered to make rules regulating the mode of recruitment either by holding examinations or otherwise and conditions of service of persons appointed to the Panchayat service and powers of appointment, transfer and promotion of officers and servants in the Panchayat service and disciplinary action against such officers and servants. The Rules were required to make provision entitling servants of such cadres in the Panchayat service to promotion to such cadres in the State service as may be prescribed. The Rules were also required to provide for inter-district transfer of servants belonging to the Panchayat service. State 22. Subject to the Rules made under Section 203, appointment to posts in the Panchayat service, Section 205 provides, shall be made by direct recruitment, by promotion or by transfer of a member of the State services to the Panchayat service. Section 206 obliges the State Government by general or special order to allocate to the Panchayat service- 22. Subject to the Rules made under section 203, appointment to posts in the panchayat service, Section 205 provides, shall be made by direct recruitment, by promotion or by transfer of a member of the State service to the panchayat service. Section 206 obliges the state Government by general or special order to allocate to the panchayat service -

> (i) such number of officers and servants out of the staff allotted or transferred to a Panchayat under Sections 157, 158 and 325 as it may deem fit,
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> (ia) all officers and servants of the municipalities dissolved under Section 307,
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> (ii) all officers and servants in the service of district local boards and district school boards immediately before their dissolution under this Act and transferred to the Panchayats under Sections 155 and 326.
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> It is further provided that officers and servants so allocated shall be taken over by such Panchayats in such cadre and on such tenure, remuneration and other conditions of services, as the State Government may determine. Section 204 provides that, subject to the Rules which the State Government may makes, the expenditure towards the pay, allowances of and other benefits allowed to an officer or servant of the Panchayat service serving for the times being under any panchayat shall be met by that panchayat from its own fund. Section 207 enables the State Government to direct the posting of officers of the Indian Administrative Service and of Class II services of the State under Panchayat Institutions. Section 208 enables a panchayat to

obtain the services of any officer of Government on loan. Section 210 provides for the constitution of a Panchayat Service Selection Board and Section 211 provides for the constitution of District Panchayat Service Selection Committees and District Primary Education Staff Selection Committees.

23. The broad and general picture that we haves on a perusal of the relevant provisions of the Act, as it stood before it was amended in 1978, is that the Gujarat legislature aimed at the democratic decentralisation of important governmental functions by vesting such functions in Gram, Nagar, Taluka and District Panchayats (see Section 88 read with Schedule I, Section 117 read with Schedule II and Section 137 read with Schedule III) and, besides, by enabling the State Government to transfer other powers, functions and duties to the Panchayat Institutions (see Sections 89, 149, 150,155, 157, 157 and 158). A perusal of the lists of subjects entrusted to the Panchayat Institutions shows that they are not merely the ordinary run of subjects entrusted to municipal bodies, such as, public health, sanitation etc., but they include a great variety of subjects intimately connected with all aspects of community life and vital to it, except functions, such as, law and order, administration of justice and the like. Even part of the revenue administration is entrusted to Panchayat Institutions, as evident from the fact that collection of lands revenue is ones of the duties of the Gram Panchayats under the Act. Since decentralisation was not to mean more chaotic fission and confusion, a three-tier organisation was set up, subject to the overall control of the Government and it was as if a parallel but subsidiary or subordinate government was set up by the Government itself to discharge some of its functions. Not merely were the Panchayat Institutions required to discharges governmental functions, the organisation and its three-tier units were to have very close links with the Government at every twist and turn, as it were. The property of the panchayats was that which previously belonged to the Government but came to be vested in them or transferred to them and the funds or the panchayats were those to be provided substantially by way of contribution or loan by the Government. The Government was not only empowered to make the Rules to carry out the objects of the Act, but also to issues directions from time to time to all or any of the panchayats. The Government was also empowered to causes inspection to be made and, further to call for the proceedings of the panchayat, to satisfy itself as to the legality or propriety of any order made by the panchayats. The Government was also empowered to cause inspection to be made and, further, to call for the proceedings of the Panchayat, to satisfy itself as to the legality or propriety of any order made by the panchayat. For the purpose of efficiently discharging the functions and duties of the various panchayat Institutions and having regards to the three-tier system which had been established, it was apparently thought necessary to constitute a panchayat service, the members of which would haves uniform scales of pay and uniform conditions of service. So a single centralised panchayat service was constituted which was to be 'distinct from the State service' The distinction lay in that it was a service parallel to the State service and not in that the members of the service were not government servants. The question whether the members of the panchayat service are government servants or not is the principal question in be answered in the appeal and we will come back to it again later.

24. After the coming into force of the 1961 Act, several tests of rules were promulgated and orders were made which concerned the Gujarat Panchayat Service. One such order was that made on January 2, 1967 under Section 203 (2) directing that the panchayat service shall consist of district cadre, Taluka cadre and local cadre and further specifying the posts which belonged to each of the cadres. Amongst the Rules made were the Gujarat Panchayat Service (Absorption, Seniority, Pay and Allowances) Rules, 1965, which provided for the equation of posts, fixation of seniority, scales of pay and allowances of "allocated employees". "Allocated employees" were defined in the rules to mean persons allocated to the panchayat service under the provisions of Section 206 (1). The Rules

provides that every allocated employee holding a corresponding post, immediately before the appointed day, shall be appointed to the equivalent post. Equivalent post is defined to mean a post in the panchayat service, which the State Government may, by order, determine to be generally corresponding to a post held by an allocated employee immediately before the appointed day (called corresponding post) having regards to the pay scales, the minimum educational and other qualifications prescribed for the equivalent post and the corresponding post and the nature and magnitude of responsibilities attached to such posts. Therefore, unless equivalence of posts is first determined, by order, by the Government the Gujarat Panchayat Service (Absorption, Seniority, pay and Allowances) Rules, 1965 cannot be effectively applied. Even so, the State Government did not make any order regarding equation of posts of the staff in the local cadre and the fixation of their scale of pay, although such orders were made in respect of posts of other cadres. The State Government did not also extend to the staff borne on the local cadre of the panchayat service the benefit of revision of scales of pay etc. which were made on the basis of the recommendations of the two Pay Commissions, though such benefit was extended to the district and Taluka cadres; nor did the Government make any order providing for promotional avenues to employees of the local cadre. Aggrieved by the deaf ear turned to their representations, certain ex-municipal employees now included in the local cadre of the panchayat service, for themselves and on behalf of other ex-municipal employees now in the local cadre of the panchayat service, fields a writ petition in the High Court of Gujarat seeking various reliefs. The writ petition was resisted by the State of Gujarat and the Development Commissioner on the principal ground that the members of the panchayat services were not government servants and, therefore, they were not entitled to claim the reliefs asked by them. The High Court of Gujarat allowed the writ petition holding that the members of the panchayat service belonging to the local cadre were government servants and directed the State Government :

> (1) To make suitable orders under the Gujarat Panchayat Service (Absorption, Seniority, Pay and Allowances) Rules, 1965 as regards the equivalence of posts, fixation of pay scales for such posts, fixation of the petitioners and the person to whom they represent at an appropriates stages in such pay scales and other incidental matters covered by the said rules and to give effect to such orders from the date of allocation of the petitioners and the persons whom they represent to the Panchayat Service, that is to say, from February 11, 1969.
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> (2) To initially fix the pay scales and allowances and other conditions of service, including the grant of houses rent allowance, compensatory local allowance, leave benefits, medical benefits, retirement benefits, etc. of the petitioners and the persons whom they represent in the equivalent posts in the Panchayat Service in accordance with the provisions of the Gujarat Panchayats Service (Absorption Seniority, Pay and Allowances) Rules, 1965 and simultaneously give to them the benefit of such of the accepted recommendations of the First Pay Commission (Sarela Commission) in the said matters as were extended to the other officers and servants of the Panchayat Service; alternatively, having initially fixed the pay scales, allowances and other conditions of service in the equivalent post in accordance with the said rules, to revises subsequently such pay scales and other conditions of service as per the accepted recommendations of the First Pay Commission (Sarela Commission) in the said matters with effect from February 11, 1969.
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> (3) To further revise the pay scales and allowances and other conditions of service, including the grant of house rent allowance, leave benefits, medical benefits,

retirement benefits, etc. of the Second Pay Commission (Desai Commission) in the said matters and to give effect to such revision on and with effect from January 1, 1975.

(4) To extend to the petitioners and the persons whom they represent the benefit of interim relief in the same manner in which such benefit was extended to the other officers and servants of the Panchayat Service.

(5) To pay to the petitioners and the persons whom they represent the amount payable to them as a consequence of the rationalisation or revision of pay scales and allowances and other conditions of service in pursuance of the directions contained in clauses (1) to (4) hereinabove.

(6) To consider the question of making suitable provisions in the Gujarat Panchayats Service (Promotion to Cadres in State Service) Rules, 1974 or by framing appropriate Rules for promotion of the ex- municipal staff of the Panchayat Service to consider the question of providing to such staff, by framing appropriates rules, promotional avenues to the other two cadres in the Panchayat Service, namely, the Taluka cadre and the district cadre.

25. The State Government and the Development Commissioner haves filed the appeal which is now before us. But during the pendency of the appeal, in an effort to unto the basis of the decision of the High Court, the Governor of Gujarat promulgated the Gujarat Panchayats Amendment Ordinance, 1978 later replaced by the Gujarat Panchayats (Third Amendment) Act, 1978. The constitutional validity of the Amending Act is questioned in the writ petitions by the ex-municipal employees now included in the local cadre.

26. The appeal was argued first as if the Amending Act had not been passed and the main question argued in the appeal was whether the members of the panchayat services were government servants. The writ petitions were argued next and the question argued in the writ petitions was about the constitutional validity of the Amending Act.

27. We have to first consider the question whether the members of the Gujarat Panchayat Service are government servants. Earlier we haves already said enough to indicate our view that they are government servants. We do not proposes and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminates the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not. Amongst the cases cited before us were Gurugobinda Basu v. Sankari Prasad Ghosal((1964) 4 SCR 311 : AIR 1964 SC 254 : (1964) 1 SCJ 259); State of U. P. v. Audh Narain Singh((1964) 7 SCR 89 : AIR 1965 SC 360 : (1964) 2 SCJ 590); State of Assam v. Kanak Chandra Dutta((1967) 1 SCR 679 : AIR 1967 SC 884 : (1968) 1 LLJ 288); D. R. Gurushantappa v. Abdul Khuddus Anwar((1969) 3 SCR 425 : (1969) 1 SCC 466 :

AIR 1969 SC 744); S. L. Agarwal v. G. M., Hindustan Steel Ltd.((1970) 3 SCR 363 : (1970) 1 SCC 177 : AIR 1970 SC 1150 : (1970) 2 SCJ 605) and Jalgaon Zilla Parishads v. Duman Gobind(Civil Appeal Nos. 24 and 25 of 1968, decided on December 20, 1968) . We have considered all of them and do not consider it necessary to refer to each of the cases.

28. We may now revert to the question whether the members of the Gujarat Panchayat Service are government servants. First, we see that the duties which they are required to perform are in connection with those affairs of the State which are entrusted to the Panchayat Institutions, by the statute itself or by transfer by the Government under the Statute. Next, the expenditure towards the pay and allowance of officers and servants of the panchayat service, serving for the time being under any panchayat has, no doubt, to be met by the panchayat from its own fund, but, as we have seen, the fund consists substantially of sums contributed or lent by the State Government and of the proceeds of any tax or fee imposed by or assigned to the panchayat under the Act. The imposition of a tax or a fee in the nature of a tax, as we know, is essentially a function of the State. So the salary and allowances of the servants and officers of the panchayat service are paid out of funds contributed or lent by the Government or raised by the discharge of an essential governmental function. Secretaries of Gram and Nagar Panchayats are to be appointed in accordances with the Rules made by the Government, while the Taluka Development officer is to be the Secretary of the Taluka Panchayat and the District Development Officer is to be the Secretary of the District Panchayat. Taluka and District Development Officers are, of course, officers of the State service. Gram and Nagar Panchayats may have other servants, as may be determined under Section 203, but they have to be appointed by such authority as may be prescribed by the Government and their conditions of service shall be such as may be prescribed by the Government and their conditions of service shall be such as may be prescribed by the Government. Section 203, as already noticed by us, contemplates the constitution of a single centralised panchayat service, the classes, cadres and posts of which have to be determined by the Government from time to time. The mode of recruitment, whether by the Government from time to time. The mode of recruitment, whether by examination or otherwise, the conditions of service, the powers in respect of appointments, transfers and promotions of officers and servants and disciplinary action which may be taken against them are to be regulated by the Rules made by the Government. Rules so made are particularly required to contain a provision entitling servants of such cadres in the panchayat service to promotion to such cadres in the State service as may be prescribed : vide Section 203(4) (a). This is an important provision. There cannot be any question of a rules providing for promotion from the panchayat service to the State service unless the panchayat service is also a service under the State. Again Section 203(5) requires that rules may provide for inter-district transfers of servants belonging to the panchayat service and the circumstances in which and the conditions subject to which such transfers may be made. This provision along with the other provisions of Section 203 which provide for the promotion and transfer of servants belonging to the district, Taluka and local cadres within the district, Taluka and gram or nagar clearly show that the servants are not the servants of the individual panchayats but belong to a centralised service. Section 205 provides that appointments to post in the panchayat service by transfer of a member of the State service necessarily implies that the panchayat service is also a service under the State. Sections 157 and 158 provide fir the transfer of certain functions performed by the Government to Panchayat Institutions together with funds and staff. Section 325, as we have already seen, provides that Secretaries, all Officers and servants in the employ of old Village Panchayats shall be Secretaries, Officers and servants of the new Gram Panchayats. It is not disputed that Talatis and Kotwals, who were government servants, were the Secretaries and Officers of old Village Panchayats. Now, Section 206(1) (i) provides for the allocation to the panchayat service of such number of officers and servants out of the staff

transferred to the panchayat under Sections 157,158 and 325, as the Government may deem fit. Section 206(1) (iii) further provides for the allocation to the panchayat service of such other officers and servants employed in the State service as may be necessary to enable the panchayats to discharge efficiently their functions and duties under the Act. Obviously this transfer and allocation of members of State services to the panchayat service under Sections 157,158,325,206 (1) (i) and 206 (1) (iii) will be impermissible unless the panchayat service is also a service under the State. Otherwise, there would be a patent violation of the provisions of Article 311 of the Constitution. Section 206-A authorises a review of allocation within a period of four years and reallocation to the State service of these transfers under Sections 157 and 158. The very idea that there can be an allocation to the panchayat service from a State service is only consistent with the panchayat service also being a service under the State.

29. Considerable stress was laid by the counsel for the State of Gujarat on the statement in Section 203 that such service (panchayat service) shall be distinct from the State service. We do not think this is to be interpreted as a disclaimer by the legislature that the panchayat service is a service under the State. All that it can possibly mean is that the panchayat service is not a service which can be identified with other State services for the reason that while the panchayat service too discharges the duties connected with the affairs of the State, it does so not directly under the State but under the various Panchayat Institutions to whom are delegated or transferred certain functions of the State Government. Panchayat service is distinct from a State service because the Panchayat service is distinct from a State service because the Panchayat Institutions whom it serves together constitute an almost parallel but subsidiary government. It is only in that sense panchayat service is distinct from a State service and not in the same [sic sense] that members of the service are not servants of the State.

30. It is also argued that the several Panchayat Institutions are declared to be bodies corporate by the Act and, therefore, their servants cannot be government servants. We are unable to see any force in the submission. Government servants do not cease to be government servants merely because, for the time being, they are allotted to different Panchayat Institutions and are paid out of the funds of those institutions. We have already explained why the servants belonging to the various cadres of the panchayat service cannot be considered to be servants of individual panchayats. It is unnecessary to pursue the matter further.

31. We are, therefore, of the view that the panchayat service constituted under Section 203 of the Gujarat Panchayats Act is a civil service of the State and that the members of the service are government servants. This very question had been decided by the High Court of Gujarat more than 15 years back in G. L. Shukla v. State if Gujarat(8 GLR 833 : ILR 1967 Guj 560), and there appears no good reason to depart from the view then taken by the High Court. Bhagwati, J., who spoke for the Court had said : The panchayat service contemplated under the Act is as much a civil service of the State as the State service. The legislature by enacting the Act provided for the establishment of the Panchayat Organisation of the State and for the efficient administration of the Panchayat Organisation, particularly in view of the fact that a large part of the service personnel would be drawn from different sources and would, therefore, be heterogeneous in composition with widely differing scales of pay and conditions of service, the Legislature felt that it would be desirable to have a separates civil service of persons employed in the discharges of functions and duties of panchayats with uniform scales of pay and uniform conditions of service and, therefore, with that ends in view the Legislature provided for constitution of the panchayat service. All the provisions of the Act relating to the panchayat service point unmistakably and inevitably to one and only one conclusion, namely, that the panchayat service is one single service with the State as the master. The

panchayat service is to be constituted by the State Government and its strength is also to be determined by the State Government. Section 203, sub-section (2) says that the panchayat service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre shall be such as the State Government may by order from time to times determine....

> The provision of different cadres in the panchayat service and the transferability of persons employed in the panchayat service from a post in the district cadre to a post in any Taluka in the district and from a post in the Taluka cadre to a post in any Taluka in the district and from a post in the Taluka cadre to a post in any gram or nagar in the same Taluka emphasise that the panchayat service is one single service with one master, namely, the State and each panchayat is not the master of the servant employed in the discharge of its functions and duties. It is difficult to imagine that the Legislature should have provided for transfer of servants from one master to another...
>
> The mode of recruitment, the conditions of service and matters relating to appointments, transfers and promotions of persons employed in the panchayat service as also disciplinary action against them are all determined by the State being Government and that is consistent only with the State being the master in the entire panchayat service. The mandatory provision for promotion from panchayat service to State service which is required to be made in the rules also shows that both the services are services of the State. There could be no question of promotion from one service to another if the masters in the two services were different. Then it would be a case of termination of one service to another if the masters in the two services were different. Then it would be a case of termination of one service and appointment to another...
>
> Then comes Section 206 which provides for making of an order of allocation to the panchayat service....
>
> This provision relating to allocation of officers and servants under clauses (i) and (iii) does not contemplate any termination of service of such officers and servants or any fresh appointment to a new service. There is no concept of termination of the existing service and reappointment to a new service involved in the process of allocation : the concept is only of transfer from one service of the State to another without any break in the continuity of service and that clearly postulates that both services are under the same master, namely, the State. Section 206-a also reinforces this conclusion. It makes the initial allocation provisional and permits the State to review the allocation within a period of four years from April 1, 1963. ..

It is not possible to believe that the officer or servant could have been intended by the Legislature to be treated like a chattel which can be tossed about from one master to another. The only reasonable way of looking at the matter seems to be and that conclusion is inevitable on the language of these provisions, that the panchayat service is a civil service of State like the State with the State as the master, an officer or servant can be allocated from the State service to the panchayat service and reallocated from the panchayat service to the State service...

The conclusion which emerges from this discussion is that the panchayat service is a distinct and

separate service set up for serving the Panchayat Organisation of the State and it is as much a civil service of the State as the State service. The State can have many services such as State service, police service, engineering service etc. and panchayat service is one of them. In the panchayat service, as in the State service,the State is the master and every officer or servant employed in the panchayat service is the servant of the State and not of the panchayat under which he may be serving for the time being. The panchayat service is one single service with the State as the master.

We entirely agree with the above observations of the learned Judge.

32. It was argued that the High Court was wring in issuing directions for equation of posts, revision of pay scales and payment of salaries. We do not find that the High Court committed any error in issuing the directions which were consequential to its findings. The High Court had directed the State Government to discharge its statutory duty to make orders for the equation of posts and to extend the benefits arising out of the reports of the two Pay Commissions, which benefits had been denied to the local cadre only. The obligation to make provision for the payment of salaries, allowances and other benefits to government servants did not cease by their being allocated to Panchayat Institutions, notwithstanding that Section 204 places an obligation on the Panchayat under whom an officer or servant of the panchayat service may serve for the time being to meet the expenditure towards the pay, allowances and benefits available to such officer or servant. We do not have any doubt that the case was correctly decided by the High Court and that the appeal deserves to be dismissed with costs which we quantify at Rs 15,000.

33. We then come to the writ petitions. As mentioned by us earlier, the Gujarat Panchayats Act was amended during the pendency of the appeal in an effort to nullify the effect of the judgment of the Gujarat High Court. First the Government promulgated an ordinance and next the legislature enacted the Amending Act.

34. Section 1 of the Amending Act stipulates the dates from which the various amending provisions must be deemed to have come into force. We shall refers to the dates from which some of the provisions are deemed to have come into force when we refer to those provisions.

35. By Section 2 of the Amending Act, original Section 11(1) which declared that the Gram Panchayats, Taluka Panchayats, District Panchayats, Gram Sabhas, Nagar Panchayats and Conciliation panchas shall constitutes the Panchayat Organisation of the State of Gujarat was omitted and original Section 11(2) which provided for the control of the State Government over panchayats directly or through their officers was made Section 11. It is extremely difficult to understand the omission of old Section 11 (1). The whole object of the Gujarat Panchayats Act is "democratic decentralisation of power and the consequent reorganisation of the administration of Local Government." The object is to decentralises and reorganise. So it was thought that Gram Panchayats, Nagar Panchayats, Taluka Panchayats, District Panchayats, etc. should constitute the panchayat Organisation of the State of Gujarat. The object of the Act is still the same, yet Section 11(1) has been omitted. Does it mean that there is a disbandment of organisation? According to the Statement of objects and Reasons, the amendments were necessitated to get over the judgment of the Gujarat High Court that the panchayat service is a State service. But surely that can't be a reason to go against the object of the principal Act and to abandon the constitution of a State Panchayat Organisation. No wonder it was described as an act of cutting the nose to spite the face. We may mention here that Section 2 is deemed to have come into force on February 24, 1962, the date on which the original Section 11 came into force.

36. Section 3 of the Amending Act introduced substantial changes in Section 102. While the provision that there shall be a Secretary for every Gram Panchayat and Nagar Panchayat, who shall be appointed in accordance with the Rules, was retained, a proviso was added in the following terms :

> Provided that where on account of conversion of municipality into a Gram Panchayat or a Nagar Panchayat under Section 307, an officer of a municipality becomes a Secretary of such panchayat or where any person not being a Talati-cum-Panchayat Secretary is appointed as a Secretary to such panchayat, such Secretary shall not be governed by the rules so made, and the rules for regulating recruitment and conditions of Service of such Secretary shall be such as the Panchayat may, subject to general or special order of the State Government, by its resolution determine.

The provision in the original Section 102(1) (b) which enabled the Gram Panchayat or Nagar Panchayat to have such other servants as may be determined under Section 203 and which provided that such servant shall be appointed by such authority and their conditions of service shall be such as may be prescribed was omitted and in its place a new Section 102(1) (b) was substituted enabling the Gram Panchayat itself to appoint such servants as may be necessary for the proper exercise of its powers, discharges of duties and performance of functions and further providing that the rules for regulating recruitment and conditions of service of such servants shall be made by the Panchayat itself. An explanation was added to say that the expression 'servant' included a Secretary referred to in the proviso to clause (a). A further clause (c) was introduced after clauses (a) and (b) of Section 102(1) and it is as follows :

> Notwithstanding anything contained in any judgment, decree or order of any court,-
>
> (i) the officers and servants of a Gram Panchayat or, as the case may be, of a Nagar Panchayat shall be and shall be deemed to have always been the officers and servants of such Gram Panchayat or Nagar Panchayat;
>
> (ii) the expenditure towards the pay and allowances of, and other benefits available to, a servant of the Gram Panchayat or, as the case may be, Nagar Panchayat, shall be met by that Panchayat from its own fund.

37. The mischief of the new proviso to Section 102(1) (a) is manifest. Amongst persons to be appointed as Secretaries of Gram and Nagar Panchayats, persons who were previously Talati-cum-Panchayat Secretaries were to be appointed as Secretaries in accordance with the rules, but the Rules were not to apply to officers of municipalities, who became Secretaries of Panchayats consequent on conversion of municipalities into Gram and Nagar Panchayats under Section 307. The conditions of service of the latter category were to be regulated by the panchayat itself, by resolution, and not by any Rules made by the Government as in the cases of the others. Other servants of Gram and Nagar Panchayats were also to be appointed by the panchayats and their conditions of service were also to be regulated by the Gram and Nagar Panchayats. Notwithstanding any judgment of the court, the officers and servants of Gram and Nagar Panchayats were to be deemed to have always been officers and servants of such Nagar and Gram Panchayats. The amended Section 102(1) was to be given retrospective effect from February 24, 1962. In other words, the non-Talati Secretaries and other officers and servants of the Gram and Nagar panchayats were to be deemed to be servants of the Gram and Nagar Panchayats, notwithstanding the judgments of the courts which had declared them to be government servants.

38. By Section 4 of the Amending Act a proviso was added to Section 157(3) of the principal Act barring the District Panchayat from transferring its staff to a Gram or Nagar Panchayat consequent on the delegation of functions, powers and duties to a Gram or a Nagar Panchayat.

39. By Section 6 of the Amending Act, Section 203 of the principal Act was substantially amended. While Section 203(1) of the principal Act, as it stood originally, provided for the constitution of a panchayat service for the purpose of bringing about uniform scales of pay and uniform conditions of service for persons employed in the discharge of functions land duties of panchayats and declared that such service shall be distinct from the State service, the new sub-section (1) introduced by clause(1) of Section 6 of the Amending Act, is as follows :

> (1) In order to enable Taluka Panchayats and District Panchayats to exercise their powers, discharge their duties and perform their functions effectively and efficiently, there shall be constituted a Panchayat Service consisting of persons employed in connection with the affairs of Taluka panchayats and district panchayats and of specified servants, and notwithstanding anything contained in any judgment, decree or order of any court such persons and servants shall be and shall be deemed to have always been the officers and servants of the Taluka panchayats or, as the case may be, the district panchayats.

Explanation.-In this sub-section, the expression "specified servants" means -

> (a) talatis-cum-Panchayat Secretaries discharging the functions of gram panchayats or of nagar panchayats, and
>
> (b) kotwals.

40. Section 203(2-A) was amended by omitting reference to local cadres.

41. Old Section 203(4) (a) which obliged the making of a rule containing a provision entitling servants of such cadres in the panchayat service to promotion to such cadres in the State service as may be prescribed was omitted and in its place a new clause (a) was substituted by clause(4) of Section 6 of the Amending Act and it is as follows :

> (a) A provision entitling persons holding such class of posts in the district cadre to be recruited to such cadre in the State service as may be prescribed.

42. The opening clause of the new Section 203 is extremely curious. It gives the reason for constituting the new panchayat service of the Amending Act. The reason, it appears, is to enable Taluka Panchayats and District Panchayats to exercise their powers, discharge their duties and perform their functions effectively and efficiently. But then what about the Gram and Nagar Panchayats which are at the very foundation of the whole idea of democratic decentralisation of powers in favour of Panchayat Institutions ? The entire panchayat superstructure has to stand on the base of Gram and Nagar Panchayats and obviously there can be no vigorous and strong local self-government institutions without efficient and effective Gram and Nagar Panchayats. It is, therefore, difficult to discover the logic behind excluding Gram and Nagar Panchayats from the benefits of a centralised, effective and efficient service.

43. The vice of the new provision is again obvious. Local cadre is made to appear to be excluded from the panchayat service, but not truly so. In the guise of 'specified servants' are brought in, as if

by the back door, Talatis-cum-Panchayat Secretaries functioning in Gram or Nagar Panchayats and Kotwals. What is done in truth is that employees of Gram or Nagar Panchayats, other than Talatis-cum- Panchayat Secretaries and Kotwals alone, and this primarily means, the ex-municipal employees are excluded from the panchayat service and the judgment of the court that they form part of a centaralised State service, is sought to be nullified, by giving effect to clause(1) and (4) of Section 6 of the Amending Act from February 24, 1962.

44. By Section 8 of the Amending Act, Section 206(1) (i) was amended by substituting the figures and word'157 and 158' for the figures and work '157,158 and 325'. In Section 206(1) (ia), the clause "all officers and servants of municipalities dissolved under Section 307" was substituted by the clause "all persons who have under clause(x) of Section 325 become the secretaries of new gram panchayats and Kotwals". In the rest of Section 206 wherever the words 'the panchayats' were used, the words 'the district and Taluka panchayats' were substituted. The real effect of Section 8 of the Amending Act is to take out " all officers and servants of the municipalities dissolved under Section 307" from the applicability of Section 206, though Section 206 is made otherwise applicable to all other categories of officers and servants allotted to a panchayat.

45. By Section 10 of the Amending Act, two new Sections Section 206 AB and Section 206 AC are introduced, the object of which is really to give options to those officers and servants who are allotted or transferred to panchayats, under the various provisions of the Act. These provisions are obviously introduced to defeat an argument that allotment and transfer of government servants to a non-government service is violative of Article 311.

46. By Section 14 of the Amending Act, a new Section 211 A is introduced, the effect of which is that the allocation of officers and servants of erstwhile municipalities and officers and servants of old Village Panchayats was to cease and those officers and servants were to be deemed to have always been officers and servants of the Gram and Nagar Panchayats. It was as if these officers and servants never had to be allocated by any order of the Government, but they had automatically become officers and servants of the new Gram Panchayats. There was no question of any option. They could take it or leave it. They were not to be treated as having been government servants at any time.

47. Other provisions of the Amending Act were merely consequential to the confining of the panchayat services to district or taluqa cadres.

48. From the summary of the provisions of the Amending Act that has been set out above it requires no perception to recognise the principal target of the amending legislation as the category of 'ex-municipal employees', who are, so to say, pushed out of the panchayat service and are to be denied the status of government servants and the consequential benefits. The ex-municipal employees are virtually the "poor relations", the castle, the panchayat service, is not for them nor the attendant advantages, privileges and prerequisites, which are all for the "pedigree descendants" only. For them, only the outhouses. As a result of the amendments they cease to be government servants with retrospective effect. Their earlier allocation to the panchayat service is cancelled with retrospective effect. They become servants of Gram and Nagar Panchayats with retrospective effect. They are treated differently from those working in Taluka and District Panchayats as well as from the Talatis and Kotwals working in Gram and Nagar Panchayats. Their conditions of service are to be prescribed by panchayats, by resolution, whereas the conditions of service of others are to be prescribed by the Government. Their promotional prospects are completely wiped out and all advantages which they would derive as a result of the judgments of the courts are taken away.

49. Several grounds were urged before us to attack the constitutional validity of the Amending Act. It was said that the provisions of the Act were violative of Article 311. It was sails that the Act was discriminatory. It was urged that the retrospectivity given to the provisions of the Amending Act could not cure the discrimination introduced by the Act and sought to be perpetuated by it. In any case it was said that the benefits acquired could not be taken away with retrospective effect. On the other hands hand, it was argued that there was good reason for the classification and that in the circumstances of the cases, the classification was legitimately made with retrospective effect.

50. It is here necessary to recapitulate a few facts. When the panchayat service was initially constituted soon after the passing of the Gujarat Panchayats Act, there were three cadres, the district cadre, the Taluka cadre and the local cadre. Secretaries, Officers and servants of the old villages panchayats under the Bombay villages panchayats Act, 1961. Talatis and Kotwals, who were government servants were Secretaries and Officers of the old village panchayats under the Bombay Village Panchayats Act and so they became Secretaries and Officers of the new Gram Panchayats under the Gujarat Panchayats Act, 1961. Some municipalities constituted for municipal Act and the Bombay Municipal Boroughs Act as applied to areas in the State of Gujarat, were converted into Gram and Nagar Panchayats under Section 307 of the Gujarat Panchayats Act and all Officers and servants in the employ of such municipalities became officers and servants of interim panchayats and allocated to the panchayat service. Thus, Secretaries and Officers of dissolved municipalities also became Secretaries and Officers of Gram and Nagar Panchayats. District Local Boards constituted under the Bombay Local Boards Act stood dissolved on the passing of the Gujarat Panchayats Act and all Officers and servants in the employment of the Board were deemed to be transferred to the service of the successor District Panchayat under Section 326 of the Gujarat Panchayats Act. Also allocated to the panchayat service were those government servants who were transferred to the panchayats under Section 157 and such other officers and servants employed in the State service as were necessary [Section 206(iii)]. All these Secretaries, officers and servants became members of a service under the State as soon as they were allocated the Panchayat service. Now, by the Amending Act, Secretaries, officers and servants of Gram and Nagar Panchayats who were allocated to the panchayat service from the ranks of the ex-municipal employees are sought to be meted out differential treatment from the other members of the panchayat service, more particularly the Secretaries, Officers and the servants of the Gram and Nagar Panchayats who were drawn from the ranks of Secretaries, Officers and servants of old Village Panchayats, that is the Talatis and Kotwals. Their status as members of a service under the State is to go with no option to them. Retrospectivity is sought to be given to the Amending Act so that they could not be made to cease to be government servants and so that they could not claim that they were singled out for differential treatment, for, if they were never in the panchayat service, they could not complain of being taken out of the panchayat service.

51. Now, in 1978 before the Amending Act was passed, thanks to the provisions of the principal Act of 1961, the ex-municipal employees who had been allocated to the panchayat service as Secretaries, Officers and servants of Gram and Nagar Panchayats, had achieved the status of government servants. Their status as government servants could not be extinguished, so long as the posts were not abolished and their services were not terminated in accordance with the provisions of the Article 311 of the Constitution. An attempt was made to justify the purported differentiation on the basis of history and ancestry, as it were. It was said that Talatis and Kotwals who became Secretaries, Officers and servants of Gram and Nagar Panchayats were government servants, even to start with, while municipal employees who became such Secretaries, Officers and servants of Gram and Nagar Panchayats were not. Each carried the mark or the 'brand' of his origin and a classification on the basis of the source from which they came into the service, it was claimed, was

permissible. We are clear that it is not. Once they had joined the common stream of service to perform the same duties, it is clearly not permissible to make any classification on the basis of their origin. Such a classification would be unreasonable and entirely irrelevant to the object sought to be achieved. It is to navigate around these two obstacles of Article 31 and Article 14 that the Amending Act is sought to be made retrospective, to bring about an artificial situation as if the erstwhile municipal employees never became members of a service under the State. Can a law be made to destroy today's accrued constitutional rights by artificially reverting to situation which existed 17 years ago ? No.

52. The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to the legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench of this Court in B. S. Yadav v. State of Haryana((1981) 1 SCR 1024 : 1980 Supp SCC 524 : 1981 SCC (L&S) 343 : AIR 1981 SC 561 : (1981) 2 SCJ 137 : 1981 Lab IC 104). Chandrachud, C. J. speaking for the Court held : (SCC head-note)

> Since the Governor exercises the legislative power under the provision to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case.

Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional, as it offends Articles 311 and 14 and is arbitrary and unreasonable. We have considered the question whether any provision of the Gujarat Panchayats (Third Amendment) Act, 1978 might be salvaged. We are afraid that the provisions are so intertwined with one another that it is well high impossible to consider any life-saving surgery. The whole of the Third Amendment Act must go. In the result Writ Petitions Nos. 4266-4270 of 1978 are allowed with costs quantified at Rs. 15,000. The directions given by the High Court, which we have confirmed, should be complied with before June 30, 1983. In the meanwhile, the employees of the panchayats covered by the appeal and writ petitions will receive a sum of Rs. 200 per month over and above the emoluments they were receiving before February 1, 1978. This order will be effective from February 1, 1983. The interim order made on February 20, 1978 will be effective up to January 31,

1983. The amounts paid are to be adjusted later.

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