ALLAHABAD HIGH COURT

Dinesh Chandra

Vs.

State of U. P

Civil Misc. Writs Nos. 3574 and 1968 of 1975 and 161 of 1976

(Yashodanandan and K.N. Singh, JJ.)

26.10.1976

JUDGEMENT

K.N. Singh, J.

1. These are three petitions under Article 226 of the Constitution which raise common questions of law. We consider it proper to dispose of the three petitions by a common judgment.

2. The petitioners are members of the U. P. Civil Service (Judicial Branch) 'Nyayik Sewa'. They have invoked jurisdiction of this court for the issue of a writ of *certiorari* quashing the U. P. Government notification No. 41/13/1966-Appointment-4, dated March 12, 1975, and also the U. P. Higher Judicial Service Rules as notified by the U. P. Government Notification No. 41/13/1966-Appointment-4, dated March 21, 1975, and for the issue of a mandamus restraining the State of Uttar Pradesh from giving effect to the said Rules and making any appointment in pursuance thereof.

3. The Governor of Uttar Pradesh issued the notification dated March 12, 1975, under Article 237 of the Constitution directing that the provisions of Chap. VI of Part VI of the Constitution and any rules made there under shall with effect from the date of notification apply to Judicial Magistrates (including Chief Judicial Magistrates) in the State who are members of the U. P. Judicial Officers Service, as they apply in relation to persons appointed to the judicial service of the State subject to two exceptions namely, (1) the members of the U. P. Judicial Officers Service shall constitute a judicial service to fill in the post of Additional Sessions Judges only for purposes of ArtS.233 and 236 of the Constitution and (2) the U. P. Judicial Officers Service shall be a service

distinct and separate from the U. P. Civil Service (Judicial Branch). By means of this notification the Judicial Magistrates who are members of the Judicial Officers Service have become eligible for appointment to the post of Additional Sessions Judge included within the definition of 'District Judge' as defined by Article 236 of the Constitution. The notification further declares that the Judicial Officers Service shall be a judicial service.

4. By another notification dated March 21, 1975, the Governor of Uttar Pradesh in exercise of his powers under Article 309 read with Article 233 of the Constitution framed rules, namely, the U. P. Higher Judicial Service Rules, 1975, regulating recruitment and appointment to the U. P. Higher Judicial Service. Under R. 4 the Higher Judicial Service consists of a single cadre comprising the posts of District and Sessions Judges and Additional District and Sessions Judges. Rule 5 lays down the sources of recruitment to the service: according to it, recruitment to the service is to be made by two sources (a) by direct recruitment of pleaders and advocates of not less than seven years standing and (b) by promotion of confirmed members of the U. P. Nyayik Sewa (Members of the U. P. Civil Service, Judicial Branch), who may have put in not less than seven years service in that cadre, in addition to that Judicial Magistrates and Judicial Officers have also been made eligible for appointment to the post of Additional Sessions Judges. Rule 6 prescribes quota for recruitment to the service from the three sources prescribed by R. 5. The rule lays down that 70% of the vacancies are to be filled in by promotion from the members of the Nyayik Sewa, while 15% of the vacancies are to be filled by direct recruitment of Advocates and the remaining 15% of the vacancies are to be filled in by promotion from amongst the members of the U. P. Judicial Officers Service (Judicial Magistrates).

5. Prior to the enforcement of the 1975 Rules all the vacancies in the Higher Judicial Service were filled by direct recruitment and by promotion of the members of the Nyayik Sewa. Under the U. P. Higher Judicial Service Rules, 1953, the Judicial Magistrates were not eligible for promotion to any post included in the Higher Judicial Service but the Judicial Officers were eligible for selection as direct candidates along with Advocates. In the year 1965 certain Judicial Officers were selected for appointment to the Higher Judicial Service as direct recruits. Their appointment was challenged by the Members of the U. P.

Nyayik Sewa. The Supreme Court in *Chandra Mohan v. State of Uttar Pradesh,* [1] struck down the rules relating to direct recruitment on the ground that the Judicial Officers Service did not constitute judicial service and as such they could not be appointed to the Higher Judicial Service under Clause (2) of Article 233 of the Constitution. Thereafter Judicial Magistrates were not recruited to the U. P. Higher Judicial Service.

6. The State Government in pursuance of the directive principle as laid down in Article 50 of the Constitution took steps for separation of the executive with the judiciary and for the purpose the Judicial Magistrates/Judicial Officers were separated from the executive and placed under the administrative control and superintendence of the High Court with effect from 2nd October, 1967, by notification dated September 30, 1967, issued under Article 237 of the Constitution. The Government however stopped further recruitment to the judicial officers service and they continued to be ineligible for appointment to the post in the Higher Judicial Service. The U. P. Judicial Officers Service thereupon became a dying cadre and members of that service were left with no channel or avenue of promotion even though most of them had sufficient experience of criminal judicial work. The State Government on the recommendation of the High Court considered it necessary to utilize the experience of the Judicial Magistrates to try criminal cases and to provide avenues of promotion to the Judicial Magistrates and with that end in view the Government on the recommendation of the High Court issued the aforesaid two notifications making the Judicial Officers eligible for appointment to the post of Additional Sessions Judge. The petitioners who are members of the U. P. Nyayik Sewa, are entitled to promotion to the cadre of Higher Judicial Service; they have by means of these petitions challenged the validity of the aforesaid two notifications and the 1975 Rules on a number of grounds. Their main grievance is that the members of the U. P. Judicial Officers service (Judicial Magistrates) are not included in Judicial service as defined under Article 236 (b) of the Constitution and as such the notification dated 12th March, 1975, and Rule 5 and 6 of the 1975 Rules are *ultra vires* of the Constitution.

7. Sri Jagdish Swarup, learned counsel for the petitioners, urged that under Article 233 read with the definition of "District Judge" and "Judicial Service" as contained in Article 236, only an Advocate or a pleader having seven years of practice or a member of the Civil Judicial Service is eligible for appointment to the post of the District Judge. Members of the U. P. Judicial Officers Service

are Magistrates, they do not fall within the expression 'Judicial Service' and as such Rule 5 and 6 of the U. P. Higher Judicial Service Rules permitting promotion and appointment of the Judicial Officers are unconstitutional. In order to appreciate the petitioners contention, it is necessary to refer to the relevant articles of the Constitution as contained in Chap. VI of Part VI which deals with subordinate courts. The relevant Articles are 233, 234, 236 and 237. These are in the following words:

> "233 (1) Appointments of persons to be, and the posting and promotion of District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.
> (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an Advocate or a pleader and is recommended by the High Court for appointment.
> 234. Appointments of persons other than District Judges to the Judicial Service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.
> 236. In this Chapter-
> (a) The expression "District Judge" includes 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.
> (b) the expression 'Judicial Service' means 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.
> 237. The Governor may by public notification direct that the forgoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of Magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification."

These Articles contemplate two classes of judicial service in the State, namely, Higher Judicial Service consisting of District Judge and Subordinate Judicial Service. Recruitment to the post of District Judge is required to be made from two sources only, (1) by appointment of Advocates and pleaders having not less than seven years' practice and (2) by promotion of persons belonging to the judicial service of the State. The expression "a person in the service of the State" occurring in Article 233 (2) was considered by the Supreme Court in *Chandra Mohan v. State of U. P.* (supra). The Supreme Court held that expression "Judicial Service" as defined by Clause (b) of Article 236 means a member of 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. On this interpretation, the Supreme Court struck down the provisions of the U. P. Higher Judicial Service Rules, 1951, making a Judicial Officer eligible for appointment to the post of District Judge. Article 234 deals with appointment of persons other than District Judges to the judicial service of the State in accordance with the rules made by the Governor after consultation with the State Public Service Commission and the High Court. These rules may regulate recruitment and other conditions of service. Article 236 defines 'District Judge' and 'judicial service'. Clause (a) of the Article defines 'District Judge' which includes 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 definition is inclusive and not exhaustive. It is significant to note that an Additional Sessions Judge, Assistant Sessions Judge as well as a Chief Presidency Magistrate and Additional Presidency Magistrate are included within the definition of "District Judge", Appointment to these posts must be made in accordance with the provisions of Article 233. Clause (b) of Article 236 defines "judicial service" which means service consisting exclusively of persons intended to fill the post of District Judges and other civil judicial posts inferior to the post of District Judge. Articles 233 and 236 read together make it clear that appointment to the post of District Judge as defined by Clause (a) of Article 236 can be made from amongst the persons who belong to the Judicial service as defined by Clause (b). No other person even if he is in the service of the Union or State is eligible for appointment as District Judge under Article

233 (2) unless he is included within the expression 'judicial service' and it was for this reason that the appointment of Judicial Officer-cum-Judicial Magistrate was held invalid in Chandra Mohan's case. The Judicial Magistrates were no doubt administering criminal justice but since they were under the control of the executive the Supreme Court held that they could not fall within the expression "Judicial Service" and the provisions of Chap. VI of Part VI of the Constitution was not applicable to them.

8. Prior to the promulgation of the Constitution, Judicial Magistrates were quite separate from Civil Judiciary although on the higher level at the stage of Sessions Judge, the Civil Judges and District Judges were conferred power under the Code of Criminal Procedure to enable them to act as Sessions Judges. The Magistrates were appointed by the Provincial Government under the provisions of Code of Criminal Procedure without any consultation with the High Court. The High court had no hand in the posting, promotion transfer or conferment of special powers on the Magistrates. These Magistrates were entrusted with the revenue work also. The District Magistrate or Collector was principal District Officer and Chief Revenue Officer; he normally exercised the powers of first class Magistrate. Unlike the Civil Judicial Officers, namely, the Munsifs and Civil Judges the Magistrates were under the effective control and supervision of the executive. The High Court had little knowledge of their judicial work. Under the Government of India Act, 1935 the same position continued. This situation prevailed almost throughout the country. While framing the Constitution, the Constitution makers considered this matter and they were of the opinion that so long as the subordinate judiciary, namely, the Magistrates depend on the Provincial Executive for their appointment, posting and promotion and leave, they could not remain free from the influence of the executive and they could not administer justice in an independent and impartial manner. The framers of the Constitution accepted the recommendations made by the Judges of the Federal Court and the Chief Justices of the High Courts that the subordinate judiciary, both civil and criminal, should be free from the executive and the control over the district courts and courts subordinate thereto including posting, promotion, transfer and grant of leave to the subordinate judiciary should be invested in the High Court. The Drafting Committee was keen to include provisions in the Constitution with regard to appointment and control of the Magistrate by the High Court but it realized that due to

administrative practical difficulties it was not possible to do the same in all the provinces and that some time must be permitted to elapse for the effectuation of the proposals for the separation of the judiciary from the executive. The founding fathers of the Constitution impressed this aspect and for that purpose Article 50 was inserted as a directive principle directing the State Governments to take steps for the separation of the judiciary from the executive. In order to achieve that purpose they further conferred power on the Governor to issue notification applying the provisions of the Constitution relating to the appointment, control and other matters to the Magistrates as they apply to Civil Judiciary and also for vesting the control over them to the High Court. It was with this purpose that Article 237 was enacted. The Constitution framers were therefore keen that the existing class of Magistrates should be placed under the High Court and that they should constitute a wing of the Judicial Service of the State.

9. In the State of Uttar Pradesh during the second world war Revenue Officers and Judicial Officers were appointed by the Executive. Powers of Magistrate were conferred on them by the Executive under the Code of Criminal Procedure. Since 1956 Judicial Officers who are commonly known as Judicial Magistrate were recruited along with Munsifs, namely, members of the Nyayik Sewa by selection through Public Service Commission, but appointment, grant of leave, promotion and all other matters of control in the case of Judicial Magistrates vested in the Executive. In 1960, the Governor framed rules known as U. P. Judicial Officers Service Rules, 1960, regulating service conditions of judicial Officers. The High Court had nothing to do with the Judicial Magistrates. The Code of Criminal Procedure, 1973, conferred power on the High Court to appoint Sessions Judge, Magistrates, Chief Judicial Magistrate and Special Magistrates and to confer Magisterial powers on any person or authority. Under the new Code, the Executive has nothing to do with the appointment of Magistrates. In pursuance of the provisions of the Code of Criminal Procedure, 1973, the High Court of Allahabad appointed Chief Judicial Magistrates and the Magistrates with effect from 1st April, 1974. The persons so appointed are the same persons who were earlier functioning as Judicial Magistrates who had been appointed by the Governor and were functioning as Judicial Officers. After their appointment by the High Court, control over the Magistrates vested in the High Court. The Governor in order to

effectuate the policy underlying Article 50 of the Constitution issued the impugned notification dated 12th March, 1975, applying all the provisions of Chap. VI of Part VI of the Constitution to the existing class of Magistrates. The intention and purpose behind the issue of the notification is to make the Magistracy free from Executive influence and to make them part of the Judicial Service of the State along with Civil judiciary.

10. Sri Jagdish Swarup contended that the Governor by issue of the notification could include Magistrates within the definition of 'Judicial Service' of the State as he has no jurisdiction to enlarge the definition of 'Judicial Service'. He further urged that even after the issue of the notification the Magistrates did not form part of the judicial service. We do not find any merit in the contention. Article 237 confers wide powers on the Governor to declare by means of notification that the provisions of Chap. VI of Part VI of the Constitution, namely, Articles 233, 234, 235 and 236 shall apply to any class or classes of Magistrates in the same manner as they apply to persons appointed to the judicial service of the State subject to such exceptions and modifications as the Governor may specify in the notification. The plain language used in the Article does not admit of any restriction on the power of the Governor to apply all or any of the provisions of Chap. VI of Part VI of the Constitution. The Article presupposes the existence of a class or classes of Magistrates who may not have been appointed in accordance with the Rules framed under Article 234 and who may not be under the control of the High Court for the purpose of Article 235. In this context Article 237 was inserted in the Constitution conferring power on the Governor to bring change by placing class of Magistrates under the High Court and to apply provisions of Articles 233, 234, 235 and 236 to them as they apply to the judicial service of the State. Once a notification is issued by the Governor applying the provisions of Chap. VI of Part VI of the Constitution to the existing class of Magistrates, then Articles 233, 234, 235 and 236 would operate in relation to the Magistrates also in the same manner as they operate in the case of members of civil judicial service of the State. The expression "the foregoing provisions of this Chapter and any rules made there under shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of Magistrates as they apply in relation to persons appointed to the judicial service of the State" indicates the intention that on the issue of a notification applying the provisions of Chap. VI of Part VI of the

Constitution and the rules framed there under, the provisions of Chap. VI would apply to Magistrates in the same manner as they are applicable to members of the Judicial Service.

11. The word 'apply' is defined in Murray's New English Dictionary as-

> "to put a thing into practical contact with another, to bring to bear practically, to put into practical operation."

In Words and Phrases, Permanent Edition, Vol. 3-A, the expression 'apply' is explained:

> 'to place in contact, and implies a change in special relationship, a movement of something from some other place into contact with something else."

The scope of Article 237, if considered in the light of the aforesaid meanings given to the words 'apply' would show that the Governor is empowered by the Constitution to bring changes in the status of the existing class of Magistrates by bringing them into contact with the Judicial Service of the State. He is empowered to declare that the provisions of Articles 233 to 236 and any rules made thereunder shall apply to Magistrates also and if that is done, there is no reason as to why Article 236 (b) which defines judicial service shall not apply to the Magistrates. Once a notification is issued applying all the provisions of Chap. VI of Part VI of the Constitution to the Magistrates, then they as well as those holding civil judicial posts inferior to the post of District Judge would form the category of Judicial Service. If the intention was to exclude the existing class of Magistrates for all times from the Judicial Service of the State Article 237 would have certainly contained provisions to that effect. On the other hand, we find that the Article is in wide terms conferring powers on the Governor including the power to declare existing class of Magistrates to constitute judicial service. In our opinion, the language as contained in Article 237 does not leave any room for doubt that in the event of issue of notification by the Governor applying Articles 233, 234 and 236 and the Rules framed there under to the existing class of Magistrates, the provisions of these Articles would be applicable to Magistrates with full force as they operate in respect of judicial service of the State and Magistrates would become members of judicial service

within the meaning of Article 236 (b) of the Constitution.

12. The submission that the notification issued under Article 237 has enlarged the definition of 'Judicial Service' is based on the petitioners' interpretation of Article 236 (b) of the Constitution. Learned counsel urged that the definition of Judicial service as contained in Article 236 (b) contemplates that before a person or class of persons is included in the judicial service, two things must be complied with; firstly, that such person or class of persons must be intended to fill the post of District Judge and, secondly, such person or class of persons must be entitled to fill the posts of other civil judicial officers inferior to the post of District Judge. He laid emphasis on the word 'and' occurring in Clause (b) of Article 236 and contended that unless both the conditions are satisfied no class of persons can be included within the expression 'Judicial Service'. We find no valid reason to accept the contention. In the first place, even if the existing class of Magistrates are not included within the expression
"Judicial Service" as defined in Clause (2) of Article 236, they should be deemed to be included after the issue of the notification by the Gavernor applying the provisions of Chap. VI of Part Vl of the Constitution including Article 236. Judicial Service of the State may have two wings, civil wing and criminal wing and if the members of these two wings or service are appointed in accordance with the rules framed under Article 234 and if they are under the control of the High Court there is no reason as to why the criminal wing consisting of Magistrates shall not be a part of the judicial service. In our opinion the definition of judicial service contemplates two class of persons, those who are intended to fill the post of District Judge while the other class consists of those persons who hold civil judicial posts inferior to the District Judge. The expression 'and' occurring in Article 236 has not been used in cumulative sense rather it has been used in a disjunctive sense. It is well settled principle that sometimes having regard to the scheme of the provisions contained in the statute and the context in which the word 'and' used it is read as 'or'. See *Ishwar Singh v. State of U. P.,* [2] where the definition of 'drug' as contained in Section 3 (b) of the Drugs Act, 1940, was considered. The Supreme Court having regard to the legislative intent and the context in which the word 'and' was used held that 'and' could be read as 'or'. In our opinion having regard to the context the word 'and' occurring in Clause (b) of Article 236 should be read as 'or' as this would fully carry out the purpose of Articles

236 and 237 of the Constitution.

13. The State may create a judicial service of Magistrates for the purpose of administering cases arising out of criminal jurisdiction. If their appointment is made in accordance with the provisions of the Rules framed under Article 234 and if they are under the control of the High Court under Article 235 in that event their service would fulfill the requirements of the provisions contained in the Constitution. There is no provision in the Constitution prohibiting creation of two class of services, one for the purpose of administering civil cases and the other for the purpose of administering criminal cases. If their appointment is made in accordance with Chap. VI of Part VI of the Constitution both the class of persons would constitute judicial service. In that event the Magistrates would be eligible for promotion to the post of Sessions Judge or Additional Sessions Judge or Assistant Sessions Judge, namely, the posts which are included within the definition of 'District Judge'. In ***N.*** *Devasahayam v. State of Madras,* [3] the contention that Article 237 did not contemplate creation of two parallel services, one for administration of criminal justice and the other for civil causes was repelled and it was held that judicial service as defined by Article 236 itself contemplated two classes of persons. Rajagopala Ayyangar, J. observed:

> "I am unable to agree that the Constitution intended to preserve and perpetuate for ever the dichotomy between civil judicial service and the magisterial service or that the Constitution laid or lay an embargo on Magistrates being appointed to civil judicial posts like Subordinate Judges or District Munsifs. In the first place, the definition of district judge includes, Chief Presidency Magistrates, Additional Chief Presidency Magistrates, Sessions Judges, Additional Sessions Judge and Assistant Sessions Judge so that at the level of the District Judge there is no distinction made between those discharging purely civil judicial functions and those administering the criminal law.
>
> This would indicate that the provisions in this chapter conceived the two services as not having between them any irremoveable barrier. The definition of 'judicial service' would also appear to support this last conclusion for it proceeds on the basis of the post of a 'District Judge' being a 'civil judicial post' notwithstanding he as Sessions Judge administers criminal law, for it refers to the inferior posts as 'other civil

judicial posts'. The District Judge in Article 236 (b) has to be understood in the sense as it appears in the definition in Clause (a) of Article 236 and as therefore including, say the Presidency Magistrates. Article 236 therefore far from maintaining an inseparable division between the categories of officers who administer civil law and whose service was termed 'civil judicial' and those who administer criminal law and were called 'Magistrates' would appear to view the functions of the two categories of officers as if they could be comprised in one service.

Any other construction would make Article 237 really unnecessary or meaningless."

14. The petitioners placed strong reliance on a Division Bench judgment of Kerala High Court in *M. K. Krishnan Nair v. State of Kerala,* [4] in support of their contention that two classes of parallel service cannot be created under Article 236 of the Constitution. In the State of Kerala, Magistrates were integrated into civil judicial service by means of a notification issued under Article 237 but later on two separate services were created, namely, Kerala Judicial Service Civil Wing and Kerala Criminal Judicial Service. The Government issued directive giving option to the erstwhile magistrates to opt for the criminal wing or to remain in the civil wing; no such option was however given to the erstwhile officers of the civil wing of the service. The validity of the creation of these two wings was challenged on the ground of discrimination. The Division Bench held that once there was integration of the Magistrates with those of Sub-Judges and Munsifs, both the classes constituted one service, namely, the Judicial Service and thereafter there appeared no justification for singling out certain posts from the integrated service for avenue of promotion and giving option to one class of officers. The question which we are dealing was neither raised nor considered in Krishna Nair's case. In paragraph 15 of the report the Kerala High Court repelled the contention that if the power of the Governor to create criminal judicial service is accepted it would then enlarge the definition of the term 'judicial service' as defined by Article 236 (b) of the Constitution. The Bench observed thus:

"Article 237 gives the Governor the power to apply the provisions of Chap. VI of the Constitution and the Rules made thereunder to any class or classes of Magistrates in the State in the same way in which they apply

> to persons appointed to the judicial service of the State. There is no enlargement of the definition of 'judicial service' in Article 236 (b) of the Constitution nor any clash with the said provision."

These observations are consistent with our views. In making the judicial officers and Magistrates eligible for appointment to the post of Additional Sessions Judge, the impugned notification does not enlarge the definition of 'judicial service' nor it is in clash with any of the provisions of Chap. VI of Part VI of the Constitution.

15. Learned counsel then placed reliance on a decision of a Division Bench of this Court in *Vishnu Chandra v. State of U. P.* [5] connected with Special Appeal No. 876 of 1968, decided on 20th February, 1969) (All). The Bench considered the claim of Judicial Officers to be included in the expression 'Judicial Service' and observed thus:

> "The disputed service was recruited to fill the post of Magistrates and District Magistrates (Judicial). At no stage this service was constituted to fill the post of District Judges or other civil judicial posts under the District Judge. Instead of framing rules under which it was intended to recruit members of the U. P. Judicial Officers service for filling the post of District Judges or of other civil judicial posts under the District Judge it has been expressly provided in the notification that they would remain a separate wing under the High Court and would not be eligible to the post of District Judge."

The force of the above observations must be appreciated in the background of the facts of that case. As noticed earlier, the Governor issued a notification on 30th September 1967, under Article 237 of the Constitution directing that the provisions of Chap. VI of Part VI of the Constitution shall with effect from October 2, 1967, apply to such Magistrates including A.D.M. (J.) in the State as belong to the U. P. Judicial Officers Service as they apply in relation to persons appointed to the judicial service of the State subject to the exceptions and modifications specified in the notification. The exceptions specified in the notification contemplated that Magistrates shall be promoted to the post of Additional District Magistrate (Judicial) by the Governor in consultation with

the High Court and that the U. P. Judicial Officers Service shall not be a part of the Judicial Service as defined in Clause (b) of Article 236 and the said Magistrate shall not be eligible for appointment to the post of District Judge. The validity of the notification was challenged by Vishnu Chandra, a member of the U. P. Judicial Officers Service on the ground that once the notification Under Article 237 was issued and the provisions of Chap. VI of Part VI were made applicable to them, they became eligible for appointment as District Judges. The Bench rejected the contention and held that the exceptions specified in the notification were not inconsistent with Article 237 and the Judicial Officers were not eligible for appointment to the post of District Judge. The judgment of the Division Bench is founded on the terms and contents of the notification dated 30th September, 1967. In the instant case, the impugned notification is quite different. In the circumstances the observations in Vishnu Chandra's case are not relevant for the purpose of interpreting the impugned notification.

16. In Chandra Mohan's case (supra) the Supreme Court considered the scope of Article 237 and observed thus:-

> "Article 237 enables the Governor to implement the separation of the judiciary from the executive. Under this article the Governor may notify that Articles 233, 234, 235 and 236 of the Constitution will apply to Magistrates subject to certain modifications or exceptions; for instance, if the Governor so notifies the said Magistrates will become members of the judicial service, they will have to be appointed in the manner prescribed in Article 234, they will be under the control of the High Court under Article 235 and they can be appointed as District Judges by the Governor under Article 233 (1)."

These observations of the Supreme Court leave no room for any doubt that if the Governor issues a notification under Article 237 applying the provisions of Articles 233, 234, 235 and 236 the Magistrates would become members of the Judicial service as defined by Clause (b) of Article 236. That is exactly what has been done in the instant case. By the notification dated March 12, 1975, the Governor has applied all the provisions of Chap. VI of Part VI of the Constitution to the Judicial Officers and the rules framed there under, which means that the Judicial Officers shall be appointed in accordance with the rules

framed under Article 234 of the Constitution and that they are under the control of the High Court within the meaning of Article 235 of the Constitution and they are included within the expression 'judicial service' for the purpose of their appointment to the post of District Judge under Article 233 of the Constitution.

Sri Jagdish Swarup then referred to the following observations in Chandra Mohan's case:-

> "To state it differently they will then be integrated in the judicial service which is one of the sources of recruitment to the post of District Judge. Indeed Article 237 emphasizes the fact that till such an integration is brought the Magistrates are outside the scope of the same provision."

He urged that unless Judicial Magistrates were appointed afresh in accordance to Rules framed under Article 234 and unless their service was integrated with the civil judicial service, they cannot form part of Judicial service within the meaning of Article 236 (b). In our opinion the observations of the Supreme Court intended to lay down that if a notification is issued applying the provisions of Chap. VI of Part VI of the Constitution, the Magistrates shall become members of the Judicial Service and in that event future appointment must be made in accordance with rules framed under Article 234 of the Constitution. The contention that unless the existing class of Magistrates are appointed afresh they cannot form part of the Judicial Service is untenable as this would render Article 237 nugatory. If Magistrates are recruited in accordance with the Rules framed under Article 234 and they are appointed by the Governor in consultation with the High Court and the Public Service Commission, no purpose would be served by issuing any notification under Article 237 applying the provisions of Chap. VI of Part VI of the Constitution to the Magistrate because in that event their appointment itself would be in accordance with those provisions.

17-18. As already noticed, the Constitution framers were anxious that the Magistrates who were under the control of the executive should also be brought under the control of the High Court and they should also be appointed in accordance with the rules framed under Article 234 and in that event they should be treated as members of Judicial Service. The plain language of Article

237 does not admit of any restriction on the power of the Governor to apply the provisions of Chap. VI of Part VI to the existing class of Magistrate. If the petitioners' contention is correct that unless the Magistrates are appointed afresh in accordance with the rules framed under Article 234 of the Constitution, they cannot form part of the Judicial Service, in that event, no purpose could be served by Article 237. The submission that Article 237 empowers the Governor only to place the existing class of Magistrates under the High Court for the purpose of Article 235 and it does not empower the Governor to make the existing class of Magistrates part of judicial service, if accepted, would again curtail the scope of Article 237, although the Article itself confers power on the Governor to apply to the existing class of Magistrates not only Article 235, but also Articles 233, 234 and 236. It is necessary to bear in mind that the words used in a constitutional provision are designedly used and any interpretation of the constitutional provision which would render the provision nugatory or otiose must be avoided. We are, therefore, of the opinion that the interpretation of Article 237 as suggested by the learned counsel for the petitioners cannot be accepted.

19. Sri S. S. Bhatnagar, appearing for some of the petitioners urged that while fixing the quota for promotion of the Judicial Officers under Rule 6 the State Government did not consult the High Court, instead it fixed the quota on its own initiative and as such the rule is constitutionally invalid. In the counter-affidavit filed on behalf of the respondents this assertion is challenged. Moreover, we have perused the original record of the High Court which indicates that the quota for promotion under Rule 6 was fixed in consultation with the High Court.

20. In view of the above discussion, we are of the opinion that the impugned notification has been validly issued by the Governor under Article 237 of the Constitution. After the issue of the notification the erstwhile Magistrates who are members of the U. P. Judicial Officers Service have become members of Judicial service as defined by Article 236 (b) of the Constitution with the limitation that they are intended to fill the posts of Additional Sessions Judge only. Even though the U. P. Judicial Officers Service constitutes Judicial Service within the meaning of Article 236 (b) of the Constitution, it is separate from the U. P. Civil Service (Judicial Branch). Since the members of the Judicial Officers Service form part of the Judicial Service of the State, the U. P.

Higher Judicial Service Rules as notified by the notification dated March 21, 1975, are valid and they do not violate Article 233 or 236 of the Constitution.

21. In the result the petitions fail and are accordingly dismissed with costs.

Petition dismissed.

Cases Referred.

1. AIR 1966 SC 1987
2. AIR 1968 SC 1450
3. AIR 1958 Mad 53
4. 1974 Ker LT 313: (1974 Lab IC 1170)
5. Special Appeal No. 872 of 1968