GUJARAT HIGH COURT

A.J. Patel

Vs.

State of Gujarat

Special Civil Appln. No. 989 of 1960

(K.T. Desai, C.J., Bhagwati and A.R. Bakshi, JJ.)

18.04.1963

JUDGMENT

Desai, C.J.

1. (with him Bakshi, J.) This Special civil application raises important' questions of law relating to the construction of some of the provisions of the States Reorganization Act, 1956. There has been a divergence of opinion between the State Government on the one hand and the Central Government on the other, and divergent views have been held at different times. The petitioners are persons employed in the subordinate Secretariat service of the Government of' the State of Gujarat. Prior to the reorganization Act of the State of Bombay on 1st November 1956, they were employed in the subordinate secretariat service of the existing State of Bombay. They have prayed for the issue of a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction to restrain the State of Gujarat, its agents and servants from implementing the resolution dated 1st April 1960, passed by the Government of the former State of Bombay where under an alteration had been made in the previous resolution dated 25th October 1957 passed by the Government of Bombay in connection with the equation of pests for the purpose of integrating the services of various personnel allotted to the State of Bombay on the reorganization of the State of Bombay on 1st November 1956. They have also prayed for a declaration that the revised seniority list prepared in pursuance of the aforesaid resolution of 1st April 1960 was inoperative or that the same be quashed. They have also prayed that an appropriate writ, order or direction may be issued so that the seniority as determined under the resolution of the Government of Bombay, dated 25th October 1957 may not be disturbed. The first respondent to the petition is the State of Gujarat. Respondents 2 to 141 are persons in the subordinate secretariat service of the State of Gujarat who were employed in the subordinate secretariat service of the State of Saurashtra prior to the reorganization of the State of Bombay on 1st November 1956. As the questions involved in the petition related to the construction of the provisions of the States Reorganization Act, 1956, and the powers of the Central Government

under same of its provisions, notice was given to the Attorney General who has intervened and addressed the Court and produced various documents relevant to the matter which have been tendered in evidence on behalf of respondents 4 to 141.

2. The States Reorganization Act, 1956, came into force on 31st August 1956. By reason of the provisions contained in the said Act, there were certain territories added to the State of Andhra and to the State of Madras. Under the provisions therein contained, several new Part A States were brought into existence, namely, the State of Kerala, the State of Mysore, the State of Bombay, the State of Madhya Pradesh, the State of Rajasthan and the State of Punjab. Under the provisions of the said Act, a new centrally administrative Part C State known as the Laccadive, Minicoy and Amindivi Islands was also brought into being. We are in the present petition concerned with the new Part A State of Bombay brought into being by virtue of the provisions of Section 8 of the said Act. The said section provides as under :

> '8. (1) As from the appointed day, there shall be formed a new Part A State to be known as the State of Bombay comprising the following territories, namely :
> (a) the territories of the existing State of Bombay, excluding :
> (i) Bijapur, Dharwar and Kanara districts and Belgaum district except Chandgad taluka, and
> (ii) Abu Road taluka of Banaskantha district;
> (b) Aurangabad, Parbhani, Bhir, and Osmanabad districts, Ahmadpur, Nilanga and Udgir talukas of Bidar district, Nanded district (except Bichokonda and Jukkal circles of Deglur taluk and "Mudhol Bhiansa and Kuber circles of Mudhol taluk) and Islapur circle of Boath taluk, Kinwat taluk and Rajura Taluk of Adilabad district, in the existing State of Hyderabad.;
> (c) Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara and Chanda districts in the existing State of Madhya Pradesh;.
> (d) the territories of the existing State of Saurashtra; and
> (e) the territories of the existing State of Hutch;

and thereupon the said territories shall cease to form part of the existing States of Bombay, Hyderabad, Madhya Pradesh, Saurashtra and Kutch respectively.

> x x x x"

3. By reason of the aforesaid provisions, all the territories of the existing Part B State of Saurashtra all the territories of the existing centrally administered Part C State of Kutch, most of the territories of the pre-existing State of Bombay, part of the territories of the State of Hyderabad and part of the territories of the State of Madhya Pradesh, were brought together, so as to constitute a new Part A State to be known as the State of Bombay. After dealing with various matters relating to representation in the legislatures, the High Courts, authorization of expenditure, apportionment of assets and liabilities of some of the States, apportionment of

certain assets and liabilities of the Union, provisions as to certain corporations and inter-State agreements and arrangements, by Part X provisions have been made as regards the services which were in existence prior to the reorganization of the States effected, by the said Act. Section 114 of the said Act relates to all India services. It is not necessary for the purpose of the present petition to make any reference thereto. Then comes Section 115 containing provisions relating to other services in respect whereof divergent views have been expressed and which has formed the bone of contention in the present petition. Section 115(1) runs as under :

> 115. (1) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of Lieutenant Governor or Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh, or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, as from that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to the existing State".

The successor State to the States of Kutch and Saurashtra, having regard to the definition of the expression "Successor State" given in Section 2(o) would mean the new Part A State known as the State of Bombay, Under the provisions contained in Section 115(1), all persons who were serving in connection with the affairs of the Union in the State of Kutch were allotted to serve in connection with the affairs of the newly formed State of Bombay. By virtue of these provisions all persons serving in connection with the affairs of the State of Saurashtra were allotted to serve in connection with the affairs of the newly formed State of Bombay. Section 115(2) provides as under :-

> "(2) Every person who immediately before the appointed day is serving in connection with the affairs of an existing State part of whose territories is transferred to another State by the provisions of Part II shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State, unless ,he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any other successor State."

Under the provisions contained, in Sub-Section (2) of Section 115, all persons, who were serving in connection with the affairs of the previously existing State of Bombay came to be provisionally allotted to serve in connection with the affairs of the newly constituted State of Bombay, except to the extent that the Central Government had, by general or special order, required some of them to serve provisionally in connection with the affairs of the successor State of Rajasthan or the successor State of Mysore. Under the aforesaid, provisions, some of the persons serving in connection with the previously existing State of Hyderabad came to be provisionally allotted to the successor State of Bombay by reason of orders passed by the Central Government. Under the aforesaid provisions, some of the persons who were serving in connection with the affairs of the previously existing State of Madhya Pradesh came to be

provisionally allotted, by the Central Government to serve in connection with the affairs of the newly formed State of Bombay. As a result of the provisions contained in Sub-Sections (1) and (2) of Section 115 persons who were serving in five different States came to serve in connection with the affairs of the newly formed State of Bombay. Some of those persons, namely those who were formerly serving, in connection with the affairs of the State of Kutch and the State of Saurashtra, came to be permanently allotted to serve in connection with the newly formed State of Bombay. Others were provisionally allotted to serve in connection with, the affairs of the newly formed State of Bombay.

4. Sub-Section (3) of Section 115 provides as under :-

> "(3) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Sub-Section (3) shall be finally allotted for service and the date with effect from which such allotment shall take affect or be deemed to have taken effect".

We are informed by the learned Attorney General that the Central Government has passed orders of final allotment in exercise of the powers conferred by this Sub-Section in the year 1961.

5. Then comes Sub-Section (4) of Section 115, which provides as under :-

> "(4) Every person who is finally allotted sunder the provisions of Sub-Section (3) to a successor State shall, if he is not already serving therein be made available for serving in that successor State from such date as may be agreed upon between the Government concerned, and in default of such agreement, as may be determined, by the Central Government".

So far, the provisions of Section 115 have presented no difficulty and there is no dispute between the parties in connection with the same. Then follows Sub-Section (5) of Section 115 in connection wherewith there is a wide divergence of opinion. That sub-section runs as follows :-

> "(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to -
> (a) the division and integration of the services among the new States and the States, of Andhra Pradesh and Madras; and,
> (b) the ensuring of fair and equitable, treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons".

We shall discuss these provisions later on when considering the various arguments advanced in connection therewith - Sub-Section (6) which follows, provides as under :-

> "(6) The foregoing provisions of this section shall not apply in relation to any person to

whom the provisions of Section 114 apply".

Sub-Section (7) runs as under :-

> "(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State.
> Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-Section (1) or Sub-Section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

There is a divergence of opinion as regards what constitute conditions of service within the meaning of this sub-section –

Section 116 contains provisions as regards the continuance of officers in the same posts and provides as under :-

> "116. (1) Every person who immediately before the appointed day is holding or discharging the duties of any post of office in connection with the affairs of the Union or of an existing State in any area which on that day falls within another existing State or a new Part A State or a Part C State shall, except where by virtue or in consequence of the provisions of this Act such post office ceases to exist on that day, continue to hold the same post or office in the other existing State or now Part A State or Part C State in which such area is included on that day, and shall be deemed as from that day to have been duly appointed to such post or office by the Government of, or other appropriate authority in such State, or by the Central Government or other appropriate authority in such Part C State, as the case may be.
> . Nothing in this section shall be deemed to prevent a competent authority, after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office".

Then follows Section 117 which runs as under :-

> "117. The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions".

6. We shall now advert to the facts which are material for the purpose of understanding the controversy among the parties who are before us. Prior to the coming into force of the States Reorganization Act, 1956, the Central Government, with a view to reorganize properly the States

which were contemplated to be brought into existence, convened a conference at New Delhi of the representatives of the Central Government and of the States in the Southern and Western Regions viz., the then existing States of Andhra, Bombay, Madhya Pradesh, Madras, Hyderabad, Mysore, Saurashtra Coorg and Kutch. At that conference held on the 18th and the 19th May 1956 an agreement was arrived at inter alia as under as shown by minutes of that conference :-

> "12. It was agreed that in considering the equation of posts, the following factors should be borne in mind :-
> (i) the nature and duties of a post;
> (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;
> (iii) the minimum qualifications, if any
> (iv) the salary of the post.

14. It was agreed that in determining relative seniority as between two persons holding posts declared equivalent to each other, and drawn from different States, the following points should be taken into account :-

> (i) Length of continuous service, whether temporary or permanent in a particular grade, this should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangements;
> (ii) age of the person, other factors being equal for instance, seniority may be determined on the basis of age.

Note :- It was also agreed that as far as possible the inter se seniority of officers drawn from the same State should not be disturbed. The conference was of the opinion that to the extent possible, provisional common gradation list should be prepared before the date of the change over.

14. It was agreed that the Inter-State Committee should go ahead with the work of division and integration of service personnel. In the interest of expedition; it was agreed that as far as allocation of service personnel was concerned, the Inter-State Ministers' Committee need not be troubled with the allocation of non-gazetted personnel. This work may be done by the Official Committee". On the 20th of May 1956, the Central Government in the Ministry of Home Affairs addressed a letter to various Governments stating that the aforesaid conference was held on an informal basis and that the decisions which were taken were not intended to be published or to be treated as indicating formal views of the Government of India and that subject to the aforesaid qualification, the conclusions reached at the conference should, in the opinion of the Central Government, facilitate the work of State Government as well as the Government of India in giving effect to the scheme of reorganization in accordance with the time schedule which had been prescribed. On the 31st of August 1956, the States Reorganization Act, 1956, came into force. Under the provision of the said Act, the appointed day, namely, the day on which the new

reorganized States were to come into existence, was the 1st of November 1956. On 23rd of October 1956, after the new Act came into force, the Central Government in the Ministry of Home Affairs, addressed letters to the Chief Secretaries of various Governments in which it was stated as under :-

> "A question has been raised as to what would be the legal and constitutional position about the integration rules being framed in various States for integration of services brought over from different units in common cadres of the new or reorganized States. Such integration will become effective as from the appointed day and will be deemed, subject to the powers of the Central Government under the States Reorganization Act, to have been effected under the authority of the Government of the new State when it is formed. We have been advised that general rules providing for the integration of services may be adopted in the case of all new States and also the reorganized States of Andhra Pradesh, Madras and West Bengal by means of Government orders under proviso to Article 309 as soon as practicable after 1st November 1956."

The attitude adopted by the Central Government as envisaged in this letter was that integration would be effected under the authority of the Government of the new States when they were formed subject to the powers of the Central Government under the States Reorganization Act. After the newly constituted States came into being on 1st November 1956 a conference was convened by the Central Government of the representatives of the Central Government and the representatives of the States of Andhra Pradesh, Bombay, Bihar, Kerala, Madhya Pradesh, Mysore, Madras, Punjab, Rajas than and West Bengal. The aforesaid conference was held on the 6th and 7th of December 1956. A record of the discussion at the said conference has been exhibited as Exhibit No. 1. Paragraph 13 of the record of the proceedings of this conference is as under :-

> "At this stage, a clarification was sought by the Bombay representative as to whether the principle of cadre-to-cadre integration suggested at the Conference of Chief Secretaries of the Northern and Central Regions last summer, was intended to be applied to other cases. The Madhya Pradesh representative asked whether different formulae in different cases on the same question was a desirable arrangement. It was explained on behalf of the Home Ministry that the intention was that equation of posts should be settled with reference to the general principles agreed to at the Conference of Chief Secretaries of the Southern and Western regions, but if in any case, (as for example in PEPSU and Punjab), the parties concerned were agreeable to the principle of cadre-to-cadre integration) there need be no objection to such a course being adopted. Also that it would not be in order to assume that there was necessarily a conflict between the two formulae. It was neither intended to recommend nor to impose the cadre-to-cadre principle".

The reference therein to the general principles agreed at the conference of Chief Secretaries of

the Southern and Western regions is a reference to the general principles set out in paragraph 12 of the minutes of the earlier conference held on the 18th and the 19th May 1956 which have been, quoted in the earlier part of this judgment. In the record of the discussions held at the conference of December 1956, it is further stated as under :-

> "The second point raised was whether it would be necessary for the State Governments to obtain the prior approval of the Central Government before varying the conditions of service of an employee to his disadvantage, or whether they could take necessary action, and leave it to the employee to represent the matter to the Central Government who might only then look into it. It was explained on behalf of the Home Ministry that Section 115(7) of the States Reorganization Act clearly provided for prior approval of the Central Government and this statutory requirement had, therefore to be met in every case. In respect of the specific items discussed at this Conference, the Home Ministry would be addressing the State Governments shortly, communicating the decisions of the Central Government. Thereafter the State Governments would be in a position to assume the prior approval of the Central Government in all cases in which they act in conformity with the final instructions referred to in all other cases, such prior approval would he specifically required." It is further recorded that the general sense among the State representatives was that in so far as the integration of personnel brought over from the different units into common cadres of the new or reorganised States was concerned the matter should be left to be dealt with by the State Governments themselves. The Chairman of the conference summed up the view of the State representatives as follows :-
>
> "(a) that the work of integration should be left entirely to the State Government and they should be free to determine the specific machinery for handling it; it should however be presumed that they would in such case set up a body with the regard to the need for inspiring necessary confidence amongst personnel drawn from different units; and
>
> (b) that the Central Government should constitute committees only for attending to the representations that might be made by service personnel affected by reorganization.

It was agreed that where necessary machinery has not been set up already for attending to the integration work, action should be taken at an early date, and in all cases necessary information, as to the action taken forwarded to the Central Government for their information". We have set out above the extracts from the record of the discussions which took place at the conference, as the same will help in understanding the action subsequently taken. Copies of the record of discussions were forwarded by the Government of India in the Ministry of Home Affairs to various State Governments under letter dated 20th December 1956 which is part of Exhibit No. 1.

7. On 27th March 1957, the Under Secretary to the Government of India in the Ministry of Home Affairs, addressed a letter to the Chief Secretaries to the Governments of the States of Andhra Pradesh, Bombay, Kerala, Madras, Rajasthan, Madhya Pradesh, Mysore Punjab and West Bengal

in connection with the subject of protection of service conditions to be afforded to the State service personnel. After referring to the provisions of Sub-Section (7) of Section 115 of the States Reorganization Act, 1956, which lay down that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-Section (1) and Sub-Section (2) of that section would not be varied to his disadvantage except with the previous approval of the Central Government and after referring to the discussions that had taken place at the conferences held in the month of May, 1956 and in the month of December, 1956, it is stated that after a careful consideration of the views expressed at those conferences, the Government of India had decided that the conditions of service applicable to personnel affected by the reorganization immediately before the appointed day should be protected in the manner indicated therein. Then follows a reference to pay, special pay, leave rules, pension, provident fund and dearness pay and how the same should be protected. It is stated that the decisions follow the conclusions reached at the December conference. Paragraph 6 of the said letter on which some reliance has been placed by some of the parties before us, runs as under :-

> "In respect of such conditions of service as have been specifically dealt with in the preceding paragraphs, it will be open to the State Governments to take action in accordance with, the decisions conveyed therein, and so long as State Governments act in conformity with those decisions, they may assume the Central Government's approval in terms of the proviso to Sub-Section (7) of Section 115 in the States Reorganization Act. In all other cases involving conditions of service not specifically covered in the preceding paragraphs, it will be necessary for the State Governments concerned to obtain the prior approval of the Central Government in terms of the above provisions before any action is taken, to vary the previous conditions of service of an employee to his disadvantage. In the event of any doubt arising as to the intention of the Central Government about any of the points dealt with in this letter, State Governments would no doubt refer the matter to the Government of India for clarification."

Paragraph 7 of the said letter runs as under :-

> "7. I am to request that necessary action may be taken accordingly and copies of orders or rules, if any, issued by the State Governments on this subject from time to time, endorsed to this Ministry for information".

On 21st of May 1957, the Government of the reorganized State of Bombay issued a press-note, seating out therein the four factors which were required to be borne in mind in determining the equation of posts, the principles being the same as those laid down at the aforesaid conference of May 1956, namely :-

1. the nature of duties of a post;
2. the responsibilities and powers exercised by the officer holding a post and the extent of

territorial or other charge held or responsibilities discharged;
3. the minimum qualifications, if any, prescribed for recruitment to the post; and
4. the salary of the post.
On 18th October 1957, the Governor of Bombay made the rules known as "The Allocated Government Servants (Absorption, Seniority, Pay and Allowances) Rules, 1957".

It is stated in the resolution of the Government framing the rules that the same was done "in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and with due regard to the proviso to Sub-Section (7) of Section 115 of the States Reorganization Act, 1956 and with the approval of the Government of India obtained there under where necessary Section 1 of the said rules deals with the question of absorption. Rule 3 of the aforesaid rules provides as under :-

"3. An allocated Government servant belonging to a local cadre which is not reconstituted on account of reorganization of States, who is deemed to have been appointed to a post under Section 116 of the States Reorganization Act, 1956, shall as on the 1st November 1956 be deemed to have been absorbed in that post.

Note. - In this Rule 'local cadre' means a cadre other than an all State cadre. A cadre is state to be reconstituted if it includes posts in areas from more than one of the former States".

Rule 4 of the aforesaid rules as subsequently altered by another notification issued by the Government of Bombay on 27th November 1958 runs as under :-

"4. (i) The appointing authority concerned shall as soon as it may be after the equivalent posts are declared by Government in respect of a Department, issue an order absorbing an allocated Government servant, other than the one covered by Rule 3 above, as on the 1st November 1956, and such absorption shall be in an equivalent post :
Provided that an allocated Government servant may be absorbed in a lower post if an equivalent post is not available in the sanctioned establishment and if he -
(a) was the substantive holder of a corresponding permanent post in the former State but had been appointed substantively to that post by an order issued after the 1st October, 1955, and had not rendered continuous service (both officiating and substantive) in that post or a post on the same time-scale for a period of not less than three years immediately before the 1st November, 1956, or
(b) while holding lien on any other permanent post, had not officiated in the corresponding post or a post on the same time-scale in the former State continuously for a period of not less than three years immediately before the 1st November, 1956, or
(c) was a temporary Government servant.

X X X X

8. The expression "equivalent post" has been defined by rule 2 (b) as under :-

> "2. In these Rules unless there is anything repugnant in the subject or context -
> X X X X X X X X
> (b) 'Equivalent post' means (i) a post in the former State of Bombay, or (ii) any other post which may be declared as equivalent to a post, whether permanent or temporary, sanctioned by the Government of any of the former States of Madhya Pradesh, Hyderabad, Saurashtra and Kutch and had by an allocated Government servant immediately before the 1st November 1956 in permanent or officiating or temporary capacity and hereinafter referred to as 'the corresponding post in the former State'.".

The rules as originally framed were forwarded to the Central Government by the Bombay State Government on 18th November 1957 along with the usual progress reports submitted by the Bombay State Government to the Central Government.

9. On 25th October 1957, the Government of Bombay passed a resolution in terms following :-

> "The question of equation of posts in the Departments of the Secretariat has been considered by Government in accordance with the general principles which have been settled in this behalf. Government is now pleased to direct that for the purposes of the Allocated Government Servants' (Absorption, Seniority, Pay and Allowances) Rules, 1957 the posts in the Bombay State specified in column 4 of the attached statement of the pay scales shown in column 5 thereof should be deemed to be equivalent to the posts allocated from the former States of Madhya Pradesh, Hyderabad, Saurashtra and Kutch specified against them in column 2 of the said statement.

The pay scales specified in column 5 of the attached statement should be applicable to the posts specified in column 2 subject to the conditions if any, respectively mentioned against them in column 6 of the attached statement.

X X X

The statement, to the extent that it is relevant for the purpose of the present case, provides as under :-

STATEMENT

III. Former Saurashra State."

Sr. No.	Designation of the Correspon-	Pay scale of the corresponding post.	Designatio n of the	Bombay scale of the equivalent post.	Conditions sub-jected

	ding post.		equivalent post.		to which the scale in column 5 is prescribed.
1	2	3	4	5	6
30	(a) Sr/. and Jr. Supdt with continuous service of over 5 years as Supdt (both S.T. and Jr.) on the 31 srt Oct. 1956	Sr. Supdt 290-20-330 (old Scale) 250-1--30 (New scale) Jr. Supdt scale) Jr. Supdt 180.10.220-15-280.	Supdt.	320-20-400-EB-20-500-25-600	
	(B) Sr. and Jr. Supdts other than those at (a)	Sr. Supdt. 290-20-330 (old scale) 250-10.330 (New Scale) Jr. Supdt. 180-10-220-15-280	(b) Sr. Asst.	210-15-300	
31.	(a) Sr. Asst. with conti. service of over 5 years as Sr. Asst. on 31st Oct. 1956.	125-7-174	(a) Sr. asst.	210-15-300	
	(b) Sr. Asst. other than those at (a).	-do-	(b) Jr. Asst.	120-10-200-EB-10-250	
32.	(a) Jr. Asst. with conti. service of over 5 years as Jr. Asst. on 31-10-1956.	75-3-105-5-120	(a) Jr. Asst.	-do-	
	(b) Sr. Asst. other than those at (a).	-do-	(b) Clerk.	75-5-140-EB-8-220	

It appears that this resolution of the Government of Bombay was not brought to the notice of the Central Government by the Government of Bombay and the same, for the first time, was brought

to the notice of the Central Government when representations were made by some of the Government servants affected thereby and the matter came up for consideration with the recommendations of the State Advisory Committee. In pursuance of the aforesaid Allocated Government Servants' (Absorption, Seniority, Pay and Allowances) Rules, 1957 and the aforesaid resolution, "absorption/seniority" orders were issued by the Government of Bombay.

10. It appears that the Central Government subsequently sought clarification in respect of some of the rules contained in the Allocated Government Servants' (Absorption, Seniority, Pay and Allowances) Rules, 1957, as a result whereof, the Bombay Government made some changes therein.

11. On 11th December 1957, the Government of Bombay issued a circular for the information of the allocated Government servants setting out the general principles to be followed in determining the equation of posts which had been stated in the earlier press-note issued by the Government of Bombay on 21st May 1957. It appears that the Government of Bombay had invited appeals from the affected service personnel both against the general principles of integration as well as in connection with the orders passed whilst implementing the said principles. Several representations were received from the service personnel belonging to various services in connection with the orders passed by the State Government as aforesaid. A question had arisen as regards the time during which representations were to be made by the service personnel affected by the orders passed. On 11th of February 1959, the Deputy Secretary to the Government of Bombay addressed a letter to the Secretary to the Government of India, stating as under :-

> "It is accordingly being provided by general instructions that all appeals should be preferred within three months of the date of the orders appealed from, and where such orders have already issued, within three months of the date on which such general instructions are issued". It is further stated that the practice followed by the Bombay Government was to entertain appeals on all distinct matters as and when they arose, irrespective of the fact whether such distinct matters related to general principles or were specific in themselves.

12. In the month of July, 1958, a representation was made by V.B. Amin and 30 other persons who were Junior Assistants of the Saurashtra Secretariat against the equation of posts of the Junior Assistants of the Saurashtra Secretariat. On the 13th November 1958, the Bombay State Advisory Committee met to consider the matter. The Committee consisted of the Chairman of State Public Service Commission, as Chairman and a Deputy Secretary to the Government of India, Ministry of Home Affairs and a Deputy Secretary to the Government of Bombay, Political and Services Department, as members. The consideration of this representation was however deferred to the next meeting. The State Advisory Committee at its third meeting held on 2nd June 1959 considered the aforesaid representation and some other representations relating to the

integration of Saurashtra Secretariat personnel. In dealing with the aforesaid resolution of the Government of Bombay dated 25th October 1957, the Committee stated, as under :-

> "Keeping in view the four main factors laid down by the Government of India for determining the equation of posts, it would appear that there were no posts in the former Bombay State with which the Saurashtra posts could be suitably equated. This does not however solve the problem of integration of services. The State Government has already decided to absorb those with, over 5 years' service in the posts carrying corresponding designation with the consequential reduction of five years' service for the purposes of seniority. While the Committee would not recommend any modification of the State Government's decision in respect of such persons, the Committee feel that equating the others with the posts carrying lower designations would not be fair to these persons inasmuch as two comparatively higher and lower categories of Saurashtra would stand equated with the same category in the former Bombay State. Considering that there were no posts in the former Bombay State with which the Saurashtra posts-could be suitably equated, the Committee feel that a fair solution would be to continue such persons, namely, those with less than five years' service as separate categories on the payscales (Mofussil) applicable to them in the former Saurashtra State. The separate category of Superintendents with less than 5 years' service may be considered for promotion to the post of Superintendent side by side with the Senior Assistants of Bombay and other areas provided that the first three out of every four vacancies occurring on or after the 1st November 1956, should go to this category of Sauraghtra Superintendents and Junior Assistants of Saurashtra should be similarly considered for promotion in the vacancies in the cadre of Senior Assistants and Junior Assistants vis-a-vis the Junior Assistants and clerks respectively from the former Bombay and other areas".

On 14th August 1959, the Chief Secretary to the Government of Bombay, Political and Services Department, addressed a letter to the Chairman of the State Advisory Committee, intimating to him that the recommendations of the Committee in connection with the aforesaid representations were likely to have certain serious and embarrassing repercussions and that the State Government fell that the then existing equations of Saurashtra Secretariat posts were on the whole equitable and that their modifications would create difficulties. He therefore requested the Chairman to move the Committee to reconsider the recommendations made. On 5th September 1959, the Chairman of the State Advisory Committee intimated to the Chief Secretary to the Government of Bombay that a meeting of the members of the Advisory Committee was held on 29th August 1959 for the purpose of reviewing the recommendations made by them but the Committee was not unanimous regarding the revised recommendations to be made and that they had decided that the views of the Chairman and each of the two members in connection with the matter should be forwarded separately to the Government of India. Notes were sent along with that letter which showed the different views held by the members of the Committee. On 22nd September 1959, the Government of India addressed a letter to the Chief Secretary to the Government of Bombay in connection with the representations made by Mr. V.B. Amin and 30 other Junior Assistants of

Saurashtra Secretariat, stating as under :-

> "The 'Government of India have carefully considered the representations, the comments of the Government of Bombay thereon and the recommendations of the State Advisory Committee. In their view the principles of equation adopted by the Government of Bombay not only conflict with the general principles laid down on the basis of the unanimous decisions of the Chief Secretaries' Conferences but also with orders announced by the Government of Bombay from time to time. The Government of India find that due regard has not been paid to the following criteria :
> (1) Nature, of duties of a post;'
> (2) The responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;
> (3) The minimum qualifications, if any, prescribed for recruitment to the post;
> (4) Salary of the post.

Due regard has also not been given to the decision taken at the Conference held in June, 1956 to the following effect :

> "It was also agreed after some discussion that the higher or lower pay attached to a cadre could not by itself be regarded as providing a sufficient justification for refusing to conform to other similar cadre."

It is further found that the equation of posts ordered by the Government of Bombay has resulted in unfair and inequitable treatment to the employees of former Saurashtra State. The Government of India are not able to approve of the basis of equation adopted by the Government of Bombay stipulating a qualifying service of 5 years to entitle a person to be equated with the corresponding post in Bombay and that in cases were 5 years is not available equating such a post with a lower post. The principle adopted by the Government of Bombay is discriminatory and results in unfair treatment to certain categories of Government servants even to the extent of making them lose periods of approved service for purposes of seniority. The Government of India, therefore, direct that these representations may once again be placed before the State Advisory Committee for reconsideration in the light of what has been stated above." On 17th October 1959, a meeting of the Advisory Committee was held. The letter of the Government of India dated 22nd September 1959 was considered at that meeting. The Committee at that meeting decided to inform the Government of India that due regard had already been paid by the Committee both in their recommendations made at the meeting held on 2nd June 1959 and in the revised recommendations subsequently made by them in respect of the posts in the Secretariat of the former State of Saurashtra, to the general criteria prescribed for integration of services. They also decided to inform the Government of India that the letter of the Government of India gave an impression that the arguments given in the notes of the Committee had not been taken into consideration by the Government of India. They decided to send explanatory notes regarding the

views of the Committee. Three separate notes by the three members of the Committee were prepared as it was not possible for the Committee to arrive at a unanimous decision regarding the recommendations to be made. The Chairman in his note stated that the observation of the Government of India that due regard had not been paid by the Committee to the criteria prescribed for determining equations was not correct. In the said note it has been stated as under :-

> "To take the criteria individually, the criterion regarding salary duly justified the equations ordered by the Government of Bombay. The pay scales of the grades in Saurashtra Secretariat are not superior to, and in fact they cannot be said to be as good as, those of the next lower grades in the Bombay Secretariat. It would not be correct to ignore this difference altogether. As regards the criterion of qualifications prescribed for recruitment to the posts, the criterion has no relevance in the present case, except for the posts of Junior Assistants there being direct recruitment only at the level of Junior Assistants, and the Committee did propose special treatment even of Junior Assistants from Saurashtra with less than five years' service having due' regard to this criterion. As regards responsibilities and powers exercised, these were distinctly superior in the case of personnel from the old Bombay State inasmuch as they were better trained, being required to adhere strictly to a procedure evolved over several decades, had to deal with problems of a greater complexity and had to shoulder greater responsibility, the size of the State and the highly developed stage of its administration making impossible concentration of responsibility at the level of gazetted officers. As regards the duties, although these would appear superficially to be identical, the developed stage of administration in Bombay and the size and complexity of the matters required to be dealt with made even these, more onerous for the Bombay Secretariat personnel than their counterparts in Saurashtra Secretariat. Moreover, this criterion is satisfied even with equations (other than those of Junior Assistants with less than five years' service) ordered by the State Government since there is no difference of substance between the duties of a Senior Assistant and a Junior Assistant and not a material difference between those of Superintendent and a Senior Assistant. There is indeed a difference between the duties of a Junior Assistant and a Clerk hut the Committee have taken cognizance of this fact."

The Chairman in his note has denied that equation of posts ordered by the Government of Bombay had resulted in unfair and inequitable treatment to the employees of the former Saurashtra State. The Secretary to the Government of Bombay, Industries and Co-operation Department, who was a member of the State Advisory Committee, has in his note concurred with the views expressed by the Chairman except in the case of Junior Assistants with less than 5 years' service. He did not think that designation to designation equation would be justified even in the case of Junior Assistants with less than 5 years' service. In the note prepared by the Deputy Secretary to the Government of India, Ministry of Home, who was a member of the State Advisory Committee, it is stated that it was felt at the meeting of the State Advisory Committee

held on and June 1959 that equating some of the posts of Saurashtra Secretariat with those of the Bombay Secretariat carrying lower designations would not be fair to Saurashtra personnel and it therefore recommended a via media namely, that persons of Saurashtra Secretariat having more than 5 years' service in a particular category may be equated as proposed by the. State Government but those who, on 31st October 1956, had put in 5 years' service or less in a particular category should be kept as a separate category without equation, provided the first three out of every four vacancies occurring in the Bombay Secretariat after 31st October 1956 carrying similar designations did go to those persons. He has observed that the structure of the Saurashtra Secretariat (ministerial side) was just the same as of the former Bombay Secretariat and that the method of recruitment, basic educational qualifications, nature of duties and the chances of promotion were similar. After referring to the substantial differences in the relative pay scales he has stated that this factor alone would not justify equating the Saurashtra posts to Bombay posts which were one category lower. He suggested the following compromise formula. As regards those persons of the Saurashtra Secretariat who had put in over five years in a particular category on 3ist October 1956, the State Government's orders may be maintained i.e., these people being equated with posts carrying the same designations in the former Bombay Secretariat, only their service in the category being reduced by five years for the purpose of seniority. As to other persons of the Saurashtra Secretariat, those who had on 31st October 1956 put in five years' or less service in their particular categories could, for the purpose, of seniority, be kept as separate categories immediately below all the persons of the Bombay Secretariat carrying similar designations.

13. On 5th January 1960, the Chief Secretary to the Government of Bombay forwarded to the Secretary to the Government of India the minutes of the meeting of the State Advisory Committee held on 17th October 1959 together with the aforesaid Notes and the relevant documents with a request that the Government of India be moved to a issue directions on the recommendations made by the State Advisory Committee. On 9th of February 1960, the Deputy Secretary to the Government of India addressed a letter to the Chief Secretary of the Government of Bombay stating as under :

> "With reference to your letter No. SR/ADV-1159-C-12833-VI, dated the 5th January 1960, I am directed to say that the Government of India have considered the recommendations of the State Advisory Committee regarding the equation of posts in the Saurashtra Secretariat with those in the Bombay Secretariat and have decided that there should be cadre to cadre integration as indicated below :

Bombay.	Saurashtra.
Assistant Secretary.	Assistant Secretary.
Senior Superintendent.	Senior Superintendent.
Superintendent.	Superintendent.

Senior Assistant.	Senior Assistant.
Junior Assistant.	Junior Assistant.

Further, the inter se seniority should be determined on the basis of the total length of continuous officiation in the equated cadre. Action may be taken accordingly to revise the equation of posts as determined by the State Government and to determine the seniority of the affected personnel

(2) The Government of India's decision on the individual representations are as indicated below :

Name.	Designation/Department	Decision of the Government of India.
1. Shri V.B. Amin and 30 others.	Junior Assistant.	The Government of India have decided that the post of Junior Assistant Saurashtra should be equated with the post of Junior Assistant Bombay and that inter se seniority should be determined on the basis of length of continuous service in the equated grade. The representation may therefore be accepted.
2. Shri C.N. Vasavada to 28. and others.	Superintendent.	The Government of India have decided that the posts of Superintendent in Saurashtra should be equated with the post of Superintendent in Bombay and that inter se seniority should be determined on the basis of length of continuous service. The representation may therefore be accepted.
29 Shri A.G. Buch and 31 others.	Senior Assistants.	The Government of India have decided that the posts of Superintendent in Saurashtra should be equated with the post of Superintendent in Bombay and that inter se seniority should be determined on the basis of length of continuous service. The representation may therefore be accepted.

On 1st April 1960, the Government of Bombay passed the following order :

"Government is pleased to direct that for the existing entries at serial numbers 19, 30, 31 and 32, in the statement accompanying Government Resolution, Political and Services Department No. SR/INT-1057-VI, dated the 25th October, 1957 the following entries should be substituted :

Sr. No.	Designation of the corresponding post.	Pay scale of the corresponding post.(Rs.)	Designation of the equivalent post.	Bombay scale of the equivalent post.	Condition subject to which the scale in col. 5 is prescribed.
1.	2.	3.	4.	5.	6.

19.	First Grade Clerk.	200-81/2-285-EB-13-350	Superintendent	320-20-440-EB-20-500-25-600
30.	(i)Senior Superintendent.	(i) 290-20-330 (Old Scale)		
	250-10-330 (New Scale)	"	"	
	(ii) Junior superintendent.	(ii) 180-10-220-15-280	"	"
31.	Sr. Assistant	125-7-174	Sr. assist.	210-15-300
32.	Jr. Assistant.	75-3-105-5-120	Jr. Asst.	120-10-200-EB-10-250.

he absorption/seniority orders were issued by the Government of Bombay, giving effect to the aforesaid order.

14. Before proceeding further with the matter, we may mention that on nth November 1959, the Deputy Secretary to the Government of India had addressed letters to various State Governments laying down the procedure in connection with the publication of the final common gradation lists. In that letter, it is stated as follows :

> "(i) As regards procedure for publishing Common Gradation Lists, the Government of India agree that the State Government will publish the final common gradation lists in its Official Gazette, after following the procedure indicated herein :
> (i) The State Government has to satisfy itself that the following steps have been taken before it decided to publish the Common Gradation Lists.
> (a) that the Government of (Name of the State) effected the integration of services of..... (name) Department/Establishment and prepared the provisional Common Gradation List in accordance with the principles laid down by the Central Government;
> (b) that the Government of..... (Name of the State) published in the Official Gazette of that State the said provisional Gradation Lists and afforded an opportunity to the service personnel affected to represent to the Government of India under Section 115(5) of the States Reorganization Act, 1956;
> (c) that the representations, if any, of officers affected had been decided in consultation with the Central Advisory Committee/State Advisory Committee as envisaged under Section 115(5) of the States Reorganization Act, 1956; and
> (d) that the abovementioned decisions have been correctly incorporated in the final Common Gradation Lists.
> (ii) The State Government will prefix to the notification [publishing final Common Gradation List a preamble (copy enclosed)." The preamble as enclosed runs as under :-

"PREAMBLE

In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in accordance with the decisions of the Government of India under the provisions of Section 115(5) of the States Reorganization Act, 1956 (Central Act 37 of 1956), the Government of (name of the State) is pleased to publish the final gradation list of the (name) Establishment/Department, which shall be in force retrospectively from the 1st November, 1956." On 14th January 1960, the Deputy Secretary to the Government of Bombay addressed a letter to the Secretary to the Government of India, Ministry of Home Affairs, in which it was stated in connection with the preamble to the gradation list as under :

> "In regard to the preamble to the gradation lists suggested by the Government of India, I am to state that the lists are prepared in pursuance on relevant provisions of the Allocated Government Servants' (Absorption, Seniority, Pay an Allowances) Rules, 1957, which have been framed by the State Government in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Therefore, the State Government is of the view that instead of referring to the said Article 309 in the preamble it would be more appropriate to make a reference to the relevant provisions of the rules framed by it.
> Incidentally, it appears that provision for issue of directions by the Government of India exists only in Section 117 of the States Reorganization Act, 1956, and not in Sub-Section (5) of Section 115 thereof mentioned by the Government of India in the suggested preamble. I am to request that the necessity for a reference to the said Sub-Section. (5) of Section 115 may kindly be clarified for the information of the State Government."

On 12th March 1960, the Government of India in reply stated that subject to the specific obligation past on the Central Government under Sub-Sections (2) to (5) and the proviso to Sub-Section (7) of Section 115 of the States Reorganization Act, persons in the State service continue to belong to the State service and the directions, if any, given under Section 117 of that Act have to be complied with only by the State Government. It is further stated in the letter as fallows :

> "In conforming the gradation list, as modified, if necessary, with reference to the decisions of the Central Government on representations made by any of the affected persons, the State Government may be said to regulate the conditions of service of their servants. Consequently there seems to be no objection in invoking the proviso to Article 30^ in the preamble, indicating at the same time that the final list is in accordance with the decisions of the Government of India under Section 115(5) of the States Reorganization Act, although no rule as such is framed for the purpose,"

15. On 13th March 1961, the Mysore High Court delivered its judgment in the case of *M.A. Jaleel v. State of Mysore, reported in*[1] holding that the Central Government was constituted the sole authority for the purpose of integration of services in the newly reorganised States. Thereafter on nth October 1961, the Deputy Secretary to the Government of India in the Ministry of Home Affairs addressed letters to the Chief Secretaries to various State Governments stating

as under :

> "A question has been raised whether, in respect of any provisional common gradation lists where no appeals were preferred by any of the employees against the said common gradation lists, the approval of the Central Government can be presumed and the final gradation lists published by the State Government with the preamble suggested by the Government of India in their letter No. 9/10/59-SR(S), dated the 11th November 1959, addressed to the Government of Madhya Pradesh and copies endorsed to the State Governments or whether the lists should be formally sent to the Government of India for approval before publication. The matter has been considered and it has been decided as Section 115(5) of the States Reorganization Act, 1956, confer powers in regard to integration of services exclusively on the Central Government, it will be necessary for the State Government to obtain the specific approval of the Central Government even in respect of provisional gradation lists in regard to which no representations have been received, before publishing them as final gradation lists. I am directed to request that action may kindly be taken accordingly."

16. On 25th of April 1960, the Bombay Reorganization Act came into force. Under the provisions of that Act on 1st May 1960, the State of Gujarat was carved out of the territories of the State of Bombay and the residuary State of Bombay came to be known as the State of Maharashtra. Under the provisions of Section 81(1) of the said Act, the Central Government passed an order requiring the petitioners and other persons to serve provisionally in connection with the affairs of the State of Gujarat. On 14th of July 1960, a re-presentation was made to the Government of India by some of the persons affected by the order of 1st of April 1960 passed by the Government of Bombay as aforesaid. On

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14th of November 1960, the Deputy Secretary to the Government of India Intimated to the Government of Gujarat that the Government of India has considered the representations against cadre-to-cadre integration of posts in Bombay and Saurashtra secretariats and that after careful consideration of the contentions, put forth by the representations, the decision of the Government of India regarding cadre-to-cadre integration of posts in Bombay and Saurashtra Secretariat was communicated to the State Government and that further representations of various persons including the first petitioner had been rejected and that they may be informed accordingly. On 4th of December, 1960 the petitioners filed the present petition.

17. Diverse arguments have been advanced in connection with the right, power and authority of the State Government and of the Central Government in connection with the integration of the services having regard to the provisions of the Constitution and of the States Reorganization Act, 1956. On the one hand it has been urged that the sole and exclusive power to integrate the services in a newly formed State vests in the Government of such newly formed State whilst, on the other hand, it has been contended that the sole authority to integrate the services is the Central

Government and that it falls exclusively within the purview of the Central Government to integrate the services. In the alternative,, it is urged that even if the power to integrate the services vests in the State Government, the Central Government has also to perform certain functions in connection with the integration of services, that the Central Government has the authority to give directions to the State Governments in connection with the division and integration of the services and for ensuring of fair and equitable treatment to all persons who have been allocated to serve in connection with the affairs of any newly formed State and that the State Government is under an obligation to comply with such directions. Before considering the various contentions urged in connection with this matter, it would not be out of place to refer to some of the provisions of the Constitution of India. Under Article 362 of the Constitution of India, it is provided as follows :

> "Subject to the provisions of this Constitution the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :
> Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power by the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

We are not concerned with the proviso in the present case. As regards the matters in respect to which the Legislature of a State has the power to make laws, item 42 in List II of the Seventh Schedule to the Constitution of India specifies "State Public Services". Under the provisions of this Article the executive power of the State extends to State Public Services. This power however is subject to the other provisions contained in the Constitution. The power of integrating public services and service personnel of a State falls within the domain of the State concerned and the executive power of the State extends to it. Article 309 of the Constitution provides as under :

> "Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, .and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State :
> Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act."

Under this Article, the Governor of a State, is empowered in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and conditions

of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of an appropriate Legislature. The power conferred under Article 309 is also subject to the other provisions of the Constitution. Article 2 of the Constitution provides that Parliament may by law admit into the Union or establish new States on such terms and conditions as it thinks fit. Article 3 of the Constitution provides that Parliament may by law (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; (b) increase the area of any State; (c) diminish the area of any State; (d) alter the boundaries of any State; (e) alter the name of any State. Article 4 of the Constitution provides as under :

> "4. (1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.
> X X X X".

By virtue of the aforesaid provisions, Parliament is by law empowered to reorganize States. Parliament is further empowered, when making any law for such reorganization, to provide for "supplemental incidental and consequential provisions". When the territories of existing States are divided and where the territories of different States are integrated so as to form different new States, Parliament would have authority to make provisions relating to the division of services of the various States whose territories are in the melting pot. Parliament would equally have the authority to make provisions relating to the integration of the services of persons allotted to serve in connection with the affairs of the newly formed States. Parliament having that power, has enacted the States Reorganization Act, 1956. The provisions of that Act have not been challenged before us on the ground of any constitutional invalidity. The questions that arise for our consideration relate to the interpretation of the provisions of the aforesaid Act, having regard to the provisions contained in the Constitution. As we have noted earlier, the power of integration of the public services of a State falls within the executive power of the State and the only question that we would have to consider is the extent to which Parliament has framed laws in the exercise of its undoubted powers under Articles 2, 3 and 4 of the Constitution affecting the same.

18. That takes us to the provisions contained in Section 115 and Section 117 of the States Reorganization Act, 1956. Sub-Section (5) of Section 115 lays down that the Central Government may by order establish one or more advisory committees for the purpose of assisting it in regard to "(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons." This Sub-Section provides for the rendering of assistance

to the Central Government in respect of certain matters, the matters being those specified in items (a) and (b). The Central Government would require assistance in respect of any matter only if it has some function to perform in connection therewith. We will have to consider the nature of the function which the Central Government has to perform in connection with the matters specified in items (a) and (b).

19. We will first consider the question relating to the division of the services being one of the matters referred to in item (a). By Section 115(1), every person who is serving in connection with the affairs of the Union in the States therein mentioned, or is serving in connection with the affair's of the States therein mentioned has been allotted to serve in connection with the affairs of the successor State to the existing State. No question, of the division of such service personnel arises as they have been all allotted under the section itself. Under the provisions contained in Section 115(2) the Central Government is empowered by a general or special order, to direct certain persons to serve provisionally in connection with the affairs of certain States. In the absence of any action taken by the Central Government under the provisions of Sub-Section (2) the service personnel therein mentioned would get provisionally allotted to serve in connection with the affairs of the principal successor State. Under Section 115(3), the Central Government is to determine the successor State to which every person referred to in Sub-Section (2) shall be-finally allotted for service. Considering the provisions of Sub-Sections (1), (2) and (3), it is clear that division of services has been done partly by the legislature and is left partly to the Central Government.

20. We shall now deal with the matter pertaining to the integration of the services. It is strongly urged by the learned Attorney General that the Central Government has been constituted the sole and exclusive authority to integrate the services. He has urged that it is provided by the section that in connection with the integration of services, the Central Government can establish one or more advisory committees for the purpose of assisting it in regard thereto and that it can only receive assistance in connection with a matter in connection wherewith duties and obligations are imposed on it. He says that the power to integrate services must of necessity be held to vest solely and exclusively in the Central Government, having regard to the language used in this sub-section. According to him such result must by necessary implication flow from the language used. There are various difficulties in accepting the aforesaid submission. It has first to be noticed in this connection that once a new State is constituted, that State would, under the provisions contained in Article 162 of the Constitution have the power to integrate the services of persons belonging to State public services. That power, no doubt, is subject to the other provisions contained in the Constitution. We have to consider whether that power which otherwise vests in the State Government is wholly taken away. There are no express words in the States Reorganization Act, expressly conferring the power of integration of such services exclusively on the Central Government. The powers of the Central Government in connection therewith have to be inferred or implied from the language used in the section. The words used in Sub-Section (5) of Section 115 are that the Central Government is empowered to establish one or more advisory committees for the purpose of assisting it in regard to the integration of services. The words used

are not "for the purpose of the integration of services". The expression "in regard to" does not suggest the purpose for which assistance has to be given, but refers to the subject-matter in connection wherewith assistance has been rendered. There are numerous provisions contained in the Act which show that when Parliament intended that certain functions should be performed by a particular authority, it has in express terms so laid it down. Even where the power to allot service personnel either provisionally or finally has been conferred on the Central Government, it has been so done by express words in other parts of this very section. Having regard to the language used, as we shall presently show, it is not necessary to infer by implication that Parliament has completely taken away or abrogated the power of the State Government to integrate the public services of the State. If it was the intention of Parliament to so lay down and to confer the sole and exclusive power upon the Central Government to integrate the public services in the newly formed States, there would have been nothing easier than for Parliament to provide that the Central Government alone shall have the authority and power to integrate the services. The powers which have to be inferred by necessary implication from the language used must be powers which one cannot but so infer. Where a power has been conferred by the Constitution on the State Government to integrate the State Public Services, in order to take away that power, language most be used which must leave no alternative but to infer that such power has by necessary implication been taken away.

21. A reliance was placed upon the provisions contained in Section 117 which empowers the Central Government to give directions to any State Government for the purpose of giving effect to the provisions contained in Part X, i.e., Section 114 to Section 118 of the Act. A provision relating to the giving of directions cannot strictly speaking the invoked for the purpose of considering the authority in which the power of integration vests. The directions have to be given for the purpose of giving effect to the provisions inter alia of Section 115. Section 117 cannot render much assistance for the purpose of considering whether the Central Government is constituted the sole and exclusive authority for the purpose of the integration of the services. We must look elsewhere for the purpose of finding the power of the Central Government to exclusively function in connection with such integration. Having considered the provisions of Section 115 as a whole and having considered the provisions in the light of the other provisions contained in the States Reorganization Act, it appears to us that the Central Government has certain functions to perform in connection with the integration of services, but that it is not constituted the sole and exclusive authority for the purpose of the integration of services and that the power of the State Government is not wholly taken away in connection therewith. The provisions of Sub-Section (5) of Section 115 would be fully satisfied if the power of the State Government conferred under Article 162 of the Constitution is made subject to any directions which the Central Government may give to the State Government in connection with the integration of services. The Central Government has been assigned functions in connection with the ensuring of fair and equitable treatment to all persons affected by the provisions of Section ri5 and has been vested with the power to give directions to the State Government in connection therewith. The Central Government is assigned functions in connection with the proper

consideration of any representations made by persons affected by the provisions of the sub-section and has been empowered to give directions to the State Government in connection therewith. Having functions to perform in connection with all these matters and having got the power to give directions to any State Government in connection therewith, it would be proper to hold that the powers of the State Government to integrate the public services of the State conferred under the Constitution exist and survive to the extent that such have not been abrogated for the purpose of giving effect to the directions that may be issued by the Central Government to the State Government. This construction will preserve the power of the State Government to integrate its public services subject to any directions in connection therewith given by the Central Government. If any other interpretation was to be put upon the language used and if it was held that the Central Government alone was entitled to integrate the public services of the States, then the result would be that until the Central Government chose to act in the exercise of its powers, the State Government would be helpless in connection with its own public services and would have to look on and wait until the Central Government, in exercise of its powers chose to act. In our view, the construction which we are placing is a construction which gives full effect to the words used and gives to the Central Government the requisite power to give directions in the exercise of its functions in connection with the integration of services. To the extent that the Central Government chooses to exercise that power, the power of the State Government would be circumscribed or limited. It is not necessary for the purpose of giving effect to the language used in Sub-Section (5) of Section 115 to hold that by necessary implication the power of the State Government is thereby wholly taken away in connection with the integration of services or that the same is wholly and solely conferred on the Central Government.

22. We are supported in this conclusion of ours by the attitude adopted both by the State Government and the Central Government until the decision of the Mysore High Court in the case of AIR 1961 Mysore 210. In that case by orders passed by the State of Mysore on 3rd May 1960 the posts of a sales tax officer Class II of the former State of Hyderabad and of a sales tax officer Grade III of the former State of Bombay were equated with effect from November 1, 1956, with that of an Assistant Commercial Tax Officer in the new State of Mysore. It was contended that the State of Mysore had no competence to make any such equation orders and that the same transgressed the proviso to Section 115(7) of the States Reorganization Act, 1956. After dealing with the provisions of Article 162 of the Constitution, the Court held that under the Constitution "the power to integrate its services would normally have formed part of the executive power of the new State of Mysore". We are in respectful agreement with that view. At page 215 of the judgment, the Court has next proceeded to consider the question whether Section 115(5) of the States Reorganization Act "transmitted that power to the Central Government and whether the executive power of the new State of Mysore, when it was formed, stood abridged to that extent". The Court answered the question by observing as under :

> "We think that the language of Section 115(5), its subject-matter, and the purpose sought

to be accomplished in its enactment make it manifest that the legislative intent was to constitute the Central Government the exclusive authority for integration".

23. It was urged before the Mysore High Court that the expression "in regard to the division and integration of the services" occurring in Section 115(5) authorised the obtaining of assistance in regard to and not for the purpose of integration and demonstrated that the Central Government was not invested with competence to make the integration but only to exercise supervisory jurisdiction in regard to integration after it was made by the State. The Mysore High Court has declined to accept that argument. We are in respectful agreement with the Mysore High Court when it declined to hold that the power of the Central Government came into being after integration was made by the State. The functions to be performed1 by the Central Government in connection with the integration of the services could not be restricted to any action to be taken by the Central Government after the integration had been effected by the States. Even during the process of integration and even in connection with the principles on which integration is to take place, the Central Government would have the power to issue directions to the State Government which the State Government would be under an obligation to carry out. But, with respect, we cannot agree with the decision of the Mysore High Court that the Central Government is constituted the exclusive authority for integration.

24. Mr. Patel, the learned advocate appearing on behalf of the petitioners, has urged that the expression "integration" in the context in which it has been used merely refers to the allotment of the service personnel and nothing more. He submitted that wherever the legislature had sought to confer any power, it had in terms so provided and that the only power conferred by Sub-Sections (2), (3) and (4) which precede Sub-Section (5) of Section 115 upon the Central Government was the power to direct certain persons to serve provisionally in connection with the affairs of a successor State or to finally allot persons to serve in connection with the affairs of any successor State and to determine the date from which the services of persons finally allotted were to be made available for serving in the successor State where no agreement was arrived at in that connection between the Governments of the respective States. He urged that in this context, "integration" can only mean allotment and that the words "division and integration" convey only one concept, viz., the concept of dividing the various services and allotting the personnel of various services to different States, so that the personnel allotted to any Stats would constitute the personnel of the services of that State. He urged that the implications of the word "integration" were satisfied by bringing together the personnel of various services to serve in connection with the affairs of the new State and that it was not necessary to imply anything more. He also laid stress on the use by the legislature of the preposition "among" in the sentence containing the words "the division and integration of the services among the new States and the States of Andhra Pradesh and Madras". He urged that it would be correct to say that the division of the services is to be made "among the new States and the States of Andhra Pradesh and Madras" but if the word "integration" was to be given a wider meaning so as to cover anything more than allotment, then the language used could not possibly be regarded as apt language, because one

cannot have such integration of the services among the new States and the States of Andhra, Pradesh and Madras but only in the respective States. He urged that either the word "among" cannot be said to have been property used or the word "integration" must bear the limited meaning which he has sought to give and that as Parliament must be considered to have used proper grammatical language the word "integration" in the' context must mean allotment. The words "to integrate" mean "to make whole or complete by adding or bringing together parts". That is what Webster says in his New World Dictionary. The essence of integration is to make whole and not merely to put in juxtaposition. If various persons belonging to various services, bearing different designations and having different terms and conditions of services, are merely brought together in one hotchpot and the only connecting thread between them is the common service of a State, it cannot be said that there is any integration of the services. A truncated meaning cannot be given to the expression "integration" just because it could be urged that otherwise the grammar is a little faulty. The word "among" is rightly used in connection with division, but it does not properly fit in connection with integration. The word "integration" must be given the natural meaning which it ordinarily bears. If the word "integration" was capable of bearing the meaning which Mr. Patel wants us to give, there would be some force in the argument advanced by him. But in our view, the word "integration" does not in fact bear the meaning which Mr. Patel wants us to give and we cannot ignore the use of the word "integration" and come to a decision which would not give full effect to the word used. We are unable to accept the plea, that the word "integration" merely covers allotment.

25. Arguments were advanced before us in connection with the question as to when it could be said that the process of integration has commenced and when it could be said that it has ended. It was argued by the learned Attorney General that the process of integration would start with the allotment of the personnel of various services to a newly formed State and would covet the determination of equivalence of posts, the absorption of the personnel in equivalent posts and the determination of inter se seniority. He further urged that it would also include the fixation of pay scales. It is sufficient for the purpose of the present case to hold that the determination of equivalence of posts, the absorption in equivalent posts and the appointment of persons to such posts would form part of integration" and would be covered by the expression "integration". The directions which have been given by the Central Government and which have been challenged before us are directions regarding the equivalence of posts and the absorption of the allotment personnel in equivalent, posts. It was urged on behalf of the State of Gujarat that when the Government of the State of Bombay passed the resolution dated 25th October 1957 in connection with equation of posts and issued absorption seniority lists in pursuance thereof, the process of integration was complete and that thereafter there was no power left in the Central Government to give any directions in connection with, integration. From the evidence that has been produced before us it is clear that the Government of the newly formed Part A State of Bombay itself had invited representations in connection with the principles relating to absorption as well as the absorption and seniority lists prepared by the Government, and integration could not possibly be said to be complete on 25th October 1957. Representations had in fact been thereafter made both

against the principles relating to the equation of posts and against the actual absorption of personnel in accordance therewith and the State Government itself had invited the Central Government to give the requisite directions in connection therewith, having regard to the recommendations made by the various members of the State Advisory Committee. The State Government had even gone to the length at one stage of requesting the Advisory Committee to reconsider its recommendations to the Central Government. By no stretch of reasoning could the process of integration be considered to have been complete on 25th October 1957 so far as the State Government was concerned. So long as the Central Government had the power to give directions to the State Government for the ensuring of fair and equitable treatment to persons affected by the provisions of Section 115 and for carrying out its decisions in respect of representations made to it by such persons it could not be said that the process of integration was complete. The contention of the State Government that the Central Government had no power to give any directions to the Government of the State of Bombay on 5th February 1960 as integration by that time was completes is without merit.

26. In the present case, we are concerned with the validity of the action taken by the Government of the State of Bombay on 1st April 1960. It was urged on behalf of the petitioners that the Government of the State of Bombay, in passing the resolution dated 1st April 1960, had not acted in the exercise of its own independent powers and judgment but had merely carried out the directions issued by the Central Government and that the action of the State was void and of no effect. It was urged that under the rules framed by the State Government on 18th October 1957, the State Government was empowered to declare equivalent posts, that the State Government, in the exercise of its power, did declare equivalent posts on 25th October 1957 and that in making changes, therein on the 1st of April 1960 it had not exercised any power or discretion vested in it but had acted at the dictation of the Central Government and that it was not a valid exercise of its power of discretion. He invited our attention in this connection to a decision of the Supreme Court reported in *in the case of Commissioner of Police, Bombay v. Gordhandas Bhanji*[2], and passages from Judicial Review of Administrative Action by S. A. de Smith at pages 181 182 and 206 and a passage from Markose's Book on Judicial Control of Administrative Action in India appearing at page 395. He urged that the State Government in passing the resolution of the 1st of April 1960 was not exercising its powers under Article 309 of the Constitution but had abdicated its powers and functions under Article 309 and under the rules framed there under and was acting on command or at the dictation of the Central Government. It is no doubt true that an authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body. It is however not necessary for us to consider the question of the validity of the resolution passed by the Government of the State of Bombay on 1st April 1960 on the footing of the said resolution having been passed by the State Government in the exercise of its own independent discretion or power. As we have held earlier, by reason of the provisions of the States Reorganization Act, 1956, the State Government was under an obligation to carry out the directions issued by the Central Government in regard to the integration of services. The directions given by the Central Government on 5th February 1960 were directions given in

connection with the integration of services and the State Government was under an obligation to carry out the same and the order issued by the State Government on 1st April 1960 in pursuance of such directions cannot be regarded as being either invalid or void. We are not concerned in this petition with the question whether the Central Government is entitled to give any directions to the State Government in correction with the integration of services governed by other provisions of the Constitution. We have not applied our minds to the question whether different considerations would apply when the question of the exercise of powers by the Governor of a State may arise under the provisions contained in Article 233 or 234 of the Constitution which are worded differently and do not contain the words "subject to

[2]1952 SCR 135 : (AIR 1952 SC 16)

the provisions of this Constitution", which appear in Articles 162 and 309. No arguments have been advanced in that connection and we should not be deemed to have expressed any opinion in connection therewith.

27. Arguments were also advanced before us in connection with what would constitute conditions of service. It was urged that the right to occupy posts, the right to be appointed to equal posts in newly formed States and the right to be absorbed in such posts and to be appointed to such posts formed part of the conditions of service of the allotted service personnel, and that such conditions of service were not liable to be varied to the disadvantage of the persons who had been allotted to the State of Bombay without the previous approval of the Central Government under the proviso to Sub-Section (7) of Section 115 of the Act. Section 115(7) runs as follows :-

> "Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :
> Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-Section (1) or Sub-Section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

The expression "conditions of service" is an expression which finds a place in Article 309 of the Constitution. That Article appears in Chapter I, Part XIV of the Constitution. The words "conditions of service" appearing in Section 115 (7) can only have the meaning which is attributable to those words in Article 309 of the Constitution. Article 309 provides as under :-

> "309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of the "Union or of any State :
> Provided that it shall be competent for the President or such persons as he may direct in the case of services and posts in connection with, the affairs of the Union, and for the

> Governor of a State or such persons as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed to such, services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act".

From this Article it is evident that rules relating to the recruitment of persons to public services and posts are distinct from rules relating to the conditions of service. The conditions of service are conditions applicable to persons who have been, appointed to public services and posts. The terms and conditions relating to recruitment and relating to appointment to public services and posts must, therefore, be regarded as distinct and different from the conditions of service governing persons on their appointment to public services and posts. By virtue of the provisions contained in Sub-Section (7) of section in, the powers of State Government in relation to the determination of the conditions or service of persons serving in connection with the affairs of the State have been preserved after the appointed day subject to what is stated in the proviso to that Sub-Section. By virtue of the proviso, the conditions of service of the allotted personnel applicable immediately before the appointed day are not liable to be varied to the disadvantage of such persons without the previous approval of the Central Government. In the present case we axe concerned with the question of equation of posts and of the absorption of persons in certain posts and the appointment of persons in certain posts and not the conditions of service of persons appointed to certain posts, and the provisions of Section 115(7) cannot be invoked in that connection. It was urged before us that the rules framed by the Government of the State of Bombay on 18th October 1957 have been approved by the Central Government. This statement has been disputed by the Central Government. The correctness of the recital contained in the resolution of the Government of the State of Bombay dated 18th October 1957 that the rules had been framed "with due regard to the proviso to Sub-Section (7) of Section 115 of the States Reorganization Act, 1956, and with the approval of the Government of India obtained thereunder where necessary", has been disputed. It is not necessary for the purpose of the present case to consider whether the rules framed by the Government of the State of Bombay on 18th October 1957 had or had not received the approval of the Central Government or whether at least some of the rules could be regarded as having been duly approved by the Central Government within the meaning of Section 115(7) of the States Reorganization Act, 1956. It was also urged by the learned Attorney General that no question of the approval of the resolution dated 25th October 1957 ever arose before the Central Government as that resolution had not in fact been forwarded to the Central Government for its approval. We are really not concerned with the question whether that resolution had or had not expressly or by implication been approved by the Central Government. As stated by us earlier, the question relating to equation of posts and the absorption of persons in certain posts and the appointment of persons to such posts cannot be regarded as falling within the words "conditions of service" as appearing in Section 115(7) of the aforesaid Act.

28. This covers most of the arguments advanced before us on the merits of the matter. There are other points which have been argued before us and we shall briefly deal with the same.

29. Mr. K.M. Chhaya, the learned Advocate who appears on behalf of the third respondent, has contended before us that no relief should be granted to the petitioners on the present petition. He strongly relied upon the provisions of Section 81(1) of the Bombay Reorganization Act, 1960, where-under a provision has been made for the provisional allocation of certain persons to serve in connection with the affairs of the State of Gujarat. On 1st of May 1960 being the appointed day, under the provisions of the Bombay Reorganization Act, 1960, the State of Gujarat was formed. By an order passed by the Central Government on 28th of April 1960, in exercise of the powers conferred by Sub-Section (1) of Section 81 of the Bombay Reorganization Act, 1960, the Central Government required all persons who, immediately before the appointed day, were serving in connection with the affairs of the State of Bombay in the territories specified in clauses (a) and (b) of Sub-Section (1) of Section 3 of the said Act, to serve provisionally as from the appointed day in connection with the affairs of the State of Gujarat. The territories specified in clauses (a) and (b) of Sub-Section (1) of Section 3 of the said Act are Banaskantha, Mehsana, Sabarkantha, Ahmedabad, Kaira, Panchmahals, Baroda, Broach, Surat, Bangs, Amreli, Surendranagar, Rajkot, Jamnagar, Junagadh, Bhavnagar and Kutch districts and certain villages in Umbergaon taluka of Thana district, certain villages in Nawapur and Nandurbar taluka of West Khandesh district and certain villages in Akkalkuwa and Taloda taluka of West Khandesh district. On the same day, there was another order passed by the Central Government in exercise of the powers conferred by Sub-Section (1) of Section 81 of the said Act, requiring the persons mentioned in the schedule to that order and serving immediately before the appointed day in connection with the affairs of the State of Bombay, to serve provisionally as from the appointed day in connection with the affairs of the States of Maharashtra and Gujarat as indicated in the said schedule. He stated that the petitioners were persons appointed, by the Central Government to serve provisionally in connection with the affairs of the State of Gujarat. He urged that the per-eons who were appointed to serve in connection with the affairs of the State of Gujarat held immediately before the appointed day certain posts by reason of the orders passed by the Government of the State of Bombay on 1st April 1960 and that their continuance in such posts after their allotment to the State of Gujarat cannot be affected and no relief should be granted to the petitioners in connection therewith. Reliance has been placed in this connection on Sub-Section (6) of Section 81 of the Bombay Reorganization Act, 1960, which runs as under :-

> "Nothing in this section shall be deemed to affect, after the appointed day, the operation of the provision's of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the State of Maharashtra or Gujarat :
> Provided that the conditions of service applicable immediately before the appointed day to the case of any person provisionally or finally allotted to the State of Maharashtra or Gujarat under this section shall not be varied to his disadvantage except with the previous

approval of the Central Government".

What we have stated above in connection with the words "conditions of service" as used in Sub-Section (7) of Section 115 of the States Reorganization Act, 1956, equally applies to the words "conditions of service" used in Sub-Section (6) of Section 81 of the Bombay Reorganization Act, 1960. Continuance of persons allotted as aforesaid in the same posts which they occupied prior to their allotment is not guaranteed by the Bombay Reorganization Act, 1960 and the point urged by Mr. Chhaya must fail.

30. Mr. Nanavaty, the learned advocate appearing on behalf of respondents 4 to 141, has urged that the petitioners have no right to maintain the petition as they have no legal right to enforce any of the provisions contained in the Allocated Government Servants' (Absorption Seniority, Pay and Allowances) Rules, 1957 or any equation orders issued on 25th October 1957. He urged that the power to frame rules fell within Article 309 of the Constitution, that under the provisions of Article 310, it had been expressly laid down that every person who was a member of a civil service of a State or held any civil post under a State, held office during the pleasure of the Governor and that no rights could be said to have-been conferred upon any member of such service by reason of any rules framed under Article 309 which; could be enforced in a Court of law, and that any action taken under the rules is not justiciable. In support of his contention he strongly relied upon a decision of the Privy Council reported in *in the case of R. Venkata Rao v. Secy. of State for India*[3]in Council, and a decision of the Bombay High Court reported in *in the case of S. Framji v. Union of India*[4]. Placing reliance upon these cases, he urged that any rules framed under Article 309 would not confer any legal right upon a person employed in the civil service of a State which could be enforced in a court of law. Article 309 of the Constitution inter alia provides that the appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. If, in the exercise of the powers conferred under Article 309. Parliament or the legislature of a State had by an enactment regulated the recruitment and conditions of service of persons referred to therein, it could not possibly be said that what was provided by the Act of the legislature could be contravened with impunity without giving any legal remedy to the person affected. In the case of 64 Ind App 55 : (AIR 1937 PC 31) the Privy Council had to consider the provisions of Section 96 B of the Government of India Act, 1915 and had held that the Civil Service Classification Rules conferred no right which was enforceable by action. The Privy Council in that case, had cited the observations of Lord Hobhouse made in the earlier case of *Shenton v. Smith reported in*[5] where it had been stated that the regulations of service were merely directions given by the Crown to the Governments Crown Colonies for general guidance and that they did not constitute a contract between the Crown and its servants. It would however not be possible to say that if an Act of the legislature had laid down the conditions of service of persons appointed to public services and posts in the exercise of the powers conferred under Article 309 of the Constitution they would be liable to be regarded as merely administrative directions because of the existence of Article 310 of the Constitution. The power of the Governor of a State

under Article 309 to make rules regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of a State cannot be treated differently from the power of the legislature to do so by an Act under Article 309. The rules framed under the proviso to Article 309 would be statutory rules and would have force and effect as such, and would confer rights which could be enforced in a court of law so long as they did not impinge the provisions contained in Article 310 and did not deal with the tenure of office of such persons which, as provided by Article 310, was liable to be held during the pleasure of the Governor. A reference in this connection may be made to a decision of the Supreme Court reported in AIR 1961 Supreme Court 751 in the case of *State of Uttar Pradesh v. Babu Ram Upadhya. At page 761* of the report, Mr. Justice Subba Rao, who delivered the majority judgment of the court, observes as under :-

> "The discussion yields the following results :
> (1) In India every person who is a member of a public service described in Article 310 of the Constitution holds office during pleasure of the President or the Governor, as the case may be, subject to the express provisions therein. (2) The power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to as subordinate officer, and can be exercised by him, only in the manner prescribed by the Constitution. (3) This tenure is subject to the limitations or qualifications mentioned in Article 311 of the Constitution. (4) The Parliament or the Legislatures of States cannot make a law abrogating or modifying this tenure so as to impinge upon the Overriding

[3]64 Ind APP 55 : (AIR 1937 PC 31) [5](1895) AC 229
[4] AIR 1960 Bom 14

> power conferred upon the President or the Governor under Article 310, as qualified by Article 311. (5) The Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without; affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311 thereof. (6) The Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of 'reasonable opportunity embodied in Article 311 of the Constitution; but the said law would be subject to judicial review. (7) If a statute could be made by Legislatures within the foregoing permissible limits, the rules made by an authority in exercise of the power conferred there under would likewise be efficacioxis within the said limits".

We have in the present case to consider the question whether the resolution of the Government of Bombay passed on 25th October 1957 in the exercise of the powers conferred upon the Government, could confer any rights upon the Government servants concerned which, could be enforced in a Court of law. In our view, there is no reason why the resolution should be deprived of the characteristic of such enforcement. The resolution cannot merely be regarded as only a guide. With respect, we are unable to agree with the conclusion arrived at by the Bombay High

Court in the judgment reported in AIR 1960 Bombay 14, on which, reliance has been placed and in which it has been held that though the Indian Railway Establishment Coda contains rules which are statutory rules, they are rules of guidance. What is questioned by the petitioners in the present case is the action of the Central Government in giving directions to the State Government and the action of the State Government in carrying out those directions. We do not see why the petitioners cannot obtain any relief in connection therewith if they could make good their submissions on the merits. The plea that the petition is not maintainable must therefore fail.

31. It was urged that even if the petitioners' contentions as set out in the petition were correct, no purposeful writ could issue against the Government of the State of Gujarat. It was urged that conditions of service had been brought into existence by the resolution of 1st of April 1960, that the same existed prior to 1st May 1960, the day on which the State of Gujarat was constituted, and that the State of Gujarat was not competent to change the aforesaid conditions of service. We are unable to accept this argument urged by Mr. Nanavaty. The argument proceeds on a wrong premise. The resolution of 1st of April 1960 deals with the question of equation of posts and not with the question of conditions of service within the meaning of Section 115(7) of the States Reorganization Act, 1956 and the contention Urged in connection, therewith must fail.

32. We may mention that the petitioners had in the petition contended that the action complained of was violative of the provisions of Articles 14 and 16 of the Constitution of India. That contention, however has not been pressed before us and we are not dealing with the same.

33. It has also been contended in the affidavit filed on behalf of some of the respondents that the petition is not maintainable in the absence of the Central Government. That point however has not been pressed before us. It was also contended in such, affidavit that the petition is not maintainable in the absence of Maharashtra Government. The said contention has also not been pressed before us.

34. In the result, the petition fails and is dismissed. Taking into account all the circumstances of the case, we consider that the fair order to make as regards costs would be that each, party should bear its own costs and we order accordingly.

Bhagwati, J.

35. This petition raises a question of great importance affecting the position and status of certain categories of employees in the Subordinate Secretariat staff of the State of Gujarat. The employees affected by this question are divided into two sections, one section representing the employees coming from the erstwhile State of Saurashtra and the other section representing the employees coming from, the pre-reorganized State of Bombay. There has been unfortunately for the State of Gujarat a controversy raging between these two sections of employees since some time past. The controversy relates to the question of equation of posts and it arose as a result of

the amalgamation of service personnel belonging to the State of Saurashtra and the pre-reorganized State of Bombay brought about by the States Reorganization Act, 1956, (hereinafter referred to as the Act). The controversy which thus started has continued unabated with varying fortunes on either side. It will he seen from the facts which I shall presently state that the State Government first fixed an equation of posts for the absorption of the employees coming inter alia from the State of Saurashtra and the pre-reorganized State of Bombay which dissatisfied the employees coming from the State of Saurashtra. After two and a half years, on a representation made by some of those employees, the Central Government gave a direction to the State Government to alter the equation, of posts which caused dissatisfaction to the employees coming from the pre-reorganized State of Bombay. The controversy has now been brought before the Court and a legal solution is sought to the problem, raised by the controversy. The alteration of the equation of posts made by the State Government under the direction of the Central Government is challenged by the petitioners who are some of the employees coming from the pre-reorganized State of Bombay. The only question which arises on the petition is whether the alteration is valid. The Court is not concerned with the question whether the alteration is wise or unwise, just or unjust, politic or impolitic. That is a matter for the appropriate Government to decide. The concern of the Court is merely to see whether the alteration in within authority. If it is within authority, the Court must uphold it and equally if it is without authority, the Court must strike it down. Having given my anxious consideration to the various arguments which have been advanced on behalf of the parties, I find myself in entire agreement with the conclusion reached by My Lord the Chief Justice in the judgment just delivered by him. But having regard to the importance of the questions involved, I think it right to separately record my reasons for reaching this conclusion.

36. The petitioners are employees belonging to the subordinate Secretariat staff of the State of Gujarat and prior to the reorganization of States brought about by the Act, they were employed in the Subordinate Secretariat staff of the pre-reorganized State of Bombay. Prior to the reorganization of States respondents Nos. 3 to 141 belonged to the Subordinate Secretariat staff of the State of Saurashtra which was then a Part B State and are at present employed in the Subordinate Secretariat staff of the State of Gujarat. It is now a matter of history that reorganization of States as they existed prior to 1st November 1956 was brought about by the Parliament by enacting the Act. The Act was enacted on 31st August 1956 but sometime prior to the actual enactment of the Act the decision to effect reorganization of States was taken and even the lines on which the States were to be reorganized were broadly settled, though there was some change made in the scheme of reorganization as regards the State of Bombay at the time when the Act was passed by the Parliament. It was evident that the proposed reorganization of States would bring in its wake various problems and a conference was, therefore, convened by the Central Government in Delhi in May, 1956 at which; representatives of various States which were going to be affected by the reorganization were invited to be present. At the conference broad principles were discussed and settled in regard to various matters arising out of the reorganization of States. One of such matters was integration of services and there were two

problems in regard to this matter. One was determination of equation of posts and the other was determination of seniority. As regards determination of equation of posts, it was agreed that the following four factors should be borne in mind in equating posts :

(i) the nature and duties of a post;
(ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;
(iii) the minimum qualifications, if any, prescribed for recruitment to the post; and
(iv) the salary of the post.

An agreement was also reached as regards determination of relative seniority as between persona holding posts declared equivalent to each other and drawn from, different States but for the purpose of the present petition I am not concerned with the same. Subsequent to this conference an Integration Committee of Ministers was set up for the purpose of dealing with persons belonging to the gazetted services while an Integration Committee consisting of Chief Secretaries was set up for the purpose of dealing with persons belonging to the non-gazetted services. It appears that the aforesaid four principles for determining equation of posts which were agreed upon at this conference were also approved by the Integration Committee consisting of the Ministers. Thereafter the Act was brought into force on 31st August 1956 and the Act specified 1st November 1956 as the appointed day when the reorganization of States would take place. Before the appointed day a letter was addressed by the Chief Secretary to the then Rajasthan Government to the Joint Secretary to the Government of India, Ministry of Home Affairs, New Delhi, on nth August 1956, seeking the opinion of the Central Government as to whether the State Government should draw up and publish the principles far integration of services after the appointed day. A reply was sent to this letter by the Government of India Ministry of Home Affairs, New Delhi, on 23rd October 1956, stating that general rules providing for integration of services may be framed by the States and Integration under those rules would be deemed to have been effected under the authority of the Government of each, respective State, subject of course to the powers of the Central Government under the Act. This reply was circulated amongst all the States affected by the reorganization of States. On the appointed day the reorganization of States took place as provided in the Act and as a result thereof the new States of Kerala, Mysore, Bombay, Madhya Pradesh, Rajasthan and Laccadive, Minicoy and Amindivi Islands came to be formed and the territories of the existing States of Andhra Pradesh and Madras came to be altered. In the beginning of December, 1956, a conference of Chief Secretaries and other representatives of various States was convened by the Central Government at New Delhi and this conference was held in New Delhi on 6th and 7th December 1956. At this conference various matters arising out of the reorganization of States were discussed between the representatives of the Central Government and the representatives of the State Governments. The learned Attorney General produced before the Court a record of the discussions held at this conference. This record shows that the main topic which formed the subject matter of discussions at this conference was the topic relating to the protection to be accorded to service personnel effected by

the reorganization of States in respect of the conditions of service applicable to them immediately prior to the appointed day. Various views were expressed on this topic by representatives of the State Governments and on certain matters a measure of agreement was reached between the representatives of the Central Government and the States. Apart from this topic some discussion also took place on the question of equation of posts. The representatives of the Central Government in the Ministry for Home Affairs clarified the position of the Central Government on this question by pointing out that the intention of the Central Government was that equation of posts should be settled with reference to the aforesaid four principles agreed upon at the conference of May, 1956 but that if in any case the States wanted to effect a cadre to cadre integration it was open to them to do so. The representatives of the Central Government, however, hastened to make it clear that there was not necessarily a conflict between the two formulae. This conference was followed by a letter dated 27th March 1957 addressed by the Central Government to various State Governments including the Government of Bombay. The letter dealt with the conditions of service applicable to service personnel affected by the reorganization of States and it was pointed out in the letter that after a careful consideration of the views expressed at this conference the Central Government had decided that in regard to certain matters specifically set out in the letter the conditions of service applicable to such service personnel immediately before the appointed day should be protected in the manner indicated in the letter. The Central Government made it clear that as regards conditions of service in relation to other matters not specifically dealt with in the letter, it would be necessary for the State Governments to obtain the prior approval of the Central Government under Section 115(7) of the Act, if the conditions of service in relation to those matters applicable immediately before the appointed day to such service personnel were sought to be prejudicially affected. No direction was given in the letter as regards equation of posts nor was anything stated in the letter as to what basis should be adopted by the State Governments in the matter of equation of posts. The position which thus obtained in regard to the question of equation of posts was that the representatives of the Ministry for Home Affairs, Government of, India had intimated to the State Governments at the conference held on 6th and 7th December 1956 that the State Governments might equate posts either on the basis of the aforesaid four principles discussed at the conference of May, 1956 or on the basis of cadre to cadre integration. A press-note was accordingly issued by the Government of Bombay on 21st May 1957 declaring that equation of posts for the purpose of integrating the service personnel drawn from various States would be affected by the Government of Bombay on the basis of the aforesaid four principles. It may be pointed out at this stage that under the Act a new State of Bombay was formed comprising territories drawn from five existing States, namely, Bombay, Saurashtra Kutch, Hyderabad and Madhya Pradesh. The service personnel belonging to these various States were consequently brought together in the new State of Bombay under the provisions of Section 115 of the Act to which I shall refer a little later. It was necessary for the purpose of integrating the service personnel coming from these different States that equation of posts should be effected, for in their respective States where they were serving prior to the reorganization they held different posts in different cadres which might or might not be equivalent to one another. They had all to be fitted in to form a compact and

homogeneous service and it was, therefore, necessary to decide where and at what place they should be fitted in. This process necessarily involved equation of posts and it was in reference to this question that the Government of Bombay issued the press-note dated 21st May 1957 setting out the aforesaid four principles on which equation of posts would be effected. The Governor of Bombay, thereafter made the Allocated 'Government Servants' (Absorption, Seniority, Pay and! Allowances) Rules, 1957. I shall briefly for the sake of convenience refer to them as the Rules of 1957. The preamble to the Rules of 1957 stated that they were made by the Governor of Bombay in exercise of the powers conferred by the proviso to Article 309 of the Constitution and with due regard to the proviso to Sub-Section (7) of Section 115 of the Act and with the approval of the Government of India obtained there under where necessary. The Rules of 1957 provided inter alia for absorption of all persons who were allotted for service in the State of Bombay under Section 115 of the Act in posts under the State of Bombay. They declared that the appointing authority shall issue an order of absorption in respect of each one of these persons as laid down in the Rules after the equivalent posts were declared by the Government. The Government of Bombay thereafter by a resolution dated 25th October 1957 declared equivalent posts and pursuant to the equation of posts thus made by the Government of Bombay absorption orders and seniority orders were issued by the appropriate authorities. The effect of the equation of posts thus made by the Government of Bombay was that in each of the following categories, namely, Senior and Junior Superintendents and Senior and Junior Assistants, persons coming from the erstwhile State of Saurashtra who had put in more than five years' service in that category on 3ist October 1956 were equated with persons from the pre-reorganized State of Bombay carrying the same designations while persons from the erstwhile State of Saurashtra who held their posts in each of these categories for a period of five years or less were equated with persons from the pre-reorganized State of Bombay carrying the next lower designations. A circular was issued by the Government of Bombay on nth December 1957 pointing out that the equation of posts had been made on the basis of the aforesaid four principles agreed upon at the conference of May, 1956 and approved by the Integration Committee consisting of the Ministers. The Rules of 1957 were forwarded by the Government of Bombay to the Central Government on 18th November 1957 along with the progress report for the month of October, 1957. I think it is necessary to mention hero that every month progress reports were being sent by the Government of Bombay to the Central Government showing the progress made in regard to the integration of service within the State and along with the progress report for the month of October 1957, the Rules of 1957 were forwarded to the Central Government. The Central Government admitted receipt of the Rules of 1957 but so far as the resolution dated 25th October 1957 determining the equation of posts was concerned, according to the Central Government, this resolution was not sent by the Government of Bombay to the Central Government and the Central Government did not come to know about it until much later. It appears that on receiving the Rules of 1957 the Central Government felt that one of the rules, namely, Rule 18, was not in accordance with the decision of the Central Government as regards conditions of service contained in the letter dated 27th March 1957 addressed by the Central Government to the Government of Bombay and the Central Government accordingly asked the Government of Bombay to clarify the position. The

Government of Bombay thereupon amended Rule 18 on 6th August 1958. In the meantime against the equation of posts effected by the Government of Bombay by the resolution dated 25th October 1957 and the absorption and seniority orders issued pursuant to such equation of posts, certain representations were made to the Central Government. One of such representations was by Shri V.B. Amin and thirty other employees coming from the erstwhile State of Saurashtra. Their grievance was that under the equation of posts effected by the Government of Bombay they had been put in a category lower than that occupied by them whilst they were in the service of the erstwhile State of Saurashtra. This representation along with several others with which I am not concerned for the purpose of the present petition was placed before the State Advisory Committee constituted by the Central Government under Section 115(5) of the Act. The State Advisory Committee was composed of a member of the State Public Service Commission, an Officer of the State Government and an Officer nominated by the Central Government. The representation of Shri V.B. Amin and others was considered by the State Advisory Committee and a recommendation was made by the State Advisory Committee which is to be found in the minutes of the meeting of the State Advisory Committee held on 2nd June 1959 which forms part of Exhibit 2. The State Advisory Committee recommended that a fair solution of the problem would be to continue persons with less than five years' service in separate categories on the pay scales applicable to them in the erstwhile State of Saurashtra and that they should be considered for promotion to the post carrying the same designation side by side with persons from the pre-reorganized State of Bombay in the next lower category, with this protection that first three out of every four vacancies occurring on or after 1st November 1956 should go to them. The Central Government did not agree with this recommendation of the State Advisory Committee and requested them to reconsider the matter in the light of the observations contained in the letter dated 22nd September 1959 addressed by the Government of India to the Chief Secretary to the Government of Bombay. The matter was, therefore, again brought before the State Advisory Committee and on a reconsideration of the matter divergent views came to be expressed by the members of the State Advisory Committee. The Chairman of the State Advisory Committee stuck to the previous recommendation made by the State Advisory Committee with a little modification in the case of junior Assistants with less than five years' service coming from the erstwhile State of Saurashtra. Another member who was an Officer of the Government of Bombay did not approve even of this modification and insisted that the previous recommendation was correct. The third member who was a nominee of the Central Government evolved a compromise formula which was to the effect that those persons from the Saurashtra Secretariat who had put in over five years' service in a particular category on 31st October 1956 should be equated with persons carrying the same designation in the Secretariat of the pre-reorganized State of Bombay but that their services in that category should be reduced by five years for the purpose of seniority and that so far as the other persons were concerned, who had put in five years or less service in their respective categories on 3ist October 1956, they should, for the .purpose of seniority, be kept in a separate category immediately below all persons from the Secretariat of the pro-reorganized State of Bombay carrying similar designations so that this block of persons from the Saurashtra Secretariat having five years'

service or less would become juniors to the junior most persons from the former Bombay Secretariat carrying similar designations. These views of the members of the State Advisory Committee were communicated to the Central Government. The Central Government, however, did not agree with the views expressed by any of these members and refused even to accept the compromise formula suggested by its own nominee on the State Advisory Committee which perhaps might have put an end to this unfortunate controversy in a manner least dissatisfactory to all concerned and by a letter dated 5th February 1960 directed the Government of Bombay to alter the equation of posts by giving cadre to cadre integration so far as Assistant Secretaries, Senior Superintendents, Superintendents, Senior Assistants and Junior Assistants were concerned and to determine inter se seniority amongst them on the basis of the total length of continuous officiation in the equated cadre. A representation was made against this direction of the Central Government by the first petitioner but to no result and the State Government, in pursuance of this direction of the Central Government, passed a resolution dated 1st April 1960 altering the equation of posts and giving cadre to cadre integration in respect of the aforesaid posts. The result of this alteration of equation of posts was that the maximum limit of the scale enjoyed by persons occupying the aforesaid posts in the Secretariat of the former Saurashtra State almost became the starting salary of those persons in the Secretariat of the State of Gujarat. This of course did not hurt the employees from the pre-reorganized State of Bombay but what hurt them was that as a result of this alteration of equation of posts, their seniority and chances of promotion were affected and they, therefore, after making representations which were rejected, filed the present petition in this Court challenging the validity of the resolution dated 1st April 1960.

37. The petition had a checkered career and ultimately a rule was issued on the petition. The main ground on which the petition challenged the validity of the resolution dated 1st April 1960 was that the said resolution was passed by the State Government in obedience to the direction issued by the Central Government, but the Central Government had no authority to issue such direction and the said resolution was, therefore, bad and invalid. The petition was opposed on behalf of the State Government as also on behalf of respondents Nos. 3 to 141. In answer to the petition an affidavit was filed on behalf of the State Government and in the affidavit the State Government admitted that the resolution dated 1st April 1960 was undoubtedly passed by the State Government in obedience to the direction issued by the Central Government but contended that the Central Government was entitled to issue such direction to the State Government and the State Government was bound to carry out such direction issued by the Central Government and that the said resolution passed by the State Government in pursuance of such direction issued by the Central Government was, therefore, valid and binding, A similar affidavit was also filed on behalf of respondents Nos. 3 to 141. Respondents Nos. 3 to 141 raised various contentions in their affidavit to which I shall presently refer, but the main contention advanced on their behalf was that the Central Government was the sole and exclusive authority in connection with integration of services and that the Central Government was, therefore, within its authority in giving direction to the State Government for altering the equation of posts and that the resolution

dated 1st April 1960 passed by the State Government pursuant to such direction of the Central Government was, therefore, valid and binding. Since the question raised in the petition involved the validity of the resolution of the State Government passed in pursuance of the direction of the Central Government, a notice was issued to the Attorney General and the Attorney General appeared pursuant to such notice and filed an affidavit on behalf of the Central Government setting out various facts which otherwise would not have come before the Court. In the affidavit the Central Government took up substantially the same stand as respondents Nos. 3 to 141 and supported the validity of the direction issued by it to the State Government in connection with the alteration of equation of posts.

38. Before I proceed to examine the arguments urged on behalf of the parties, it would be convenient at this stage to examine the scheme of the Act and to refer to the relevant provisions, having a bearing on the determination of the questions arising before the Court. The preamble of the Act is in the following terms :

> "An Act to provide for the reorganization of the States of India and for matters connected therewith."

By Part II of the Act various new states were brought into being and the territories of the existing States of Madras and Andhra Pradesh were altered. Several territories were transferred from the State of Hyderabad to the State of Andhra Pradesh and from the State of Travencore-Cochin to the State of Madras. A new State of Kerala was formed out of some of the territories of the State of Travencore-Cochin and the State of Madras. A new Part C State to be known as the Laccadive, Minicoy and Amindivi Islands was constituted of a part of the territories carved out of the State of Madras. A new State of Mysore was formed out of the territories of the existing States of Mysore and Coorg and some of the territories of the existing States of Bombay, Madras and Hyderabad. A new State of Bombay was constituted having territories drawn from the then existing States of Bombay, Hyderabad, Madhya Pradesh, Saurashtra and Kutch. A new 'State of Madhya Pradesh was constituted comprising some of the territories of the then existing States of Madhya Pradesh, Madhya Bharat, Rajasthan, Bhopal and Vindhya Pradesh. A new State of Rajasthan was constituted out of the territories of the then existing State of Ajmer and some of the territories of the then existing States of Rajasthan, Bombay and Madhya Bharat. A new State of Punjab was created comprising the territories of the then existing States of Punjab and the Patiala and East Punjab States Union. It will thus be seen that under this Part of the Act transfer of territories took place from one State to another and new States were formed and territories of the existing States of Madras and Andhra Pradesh were altered. As a result of the aforesaid reorganization of States various problems arose which were dealt with by the Act. Part III provided for the constitution of Zones and Zonal Councils; Part IV provided for Representation in the Legislatures; Part V dealt with High. Courts; Part VI concerned itself with authorization of expenditure; Parts VII and VIII referred to the apportionment of assets and liabilities. Part IX made-provisions as to certain Corporations and Inter-State Agreements and Arrangements. Part

X contained provisions as to services and Part XI included various legal and miscellaneous provisions. I am concerned for the purpose of the present petition with the provisions contained in Part X which relate to services. This part consists of five Sections of which four sections are material for the decision of the present controversy. The fasciculus of sections contained in this Part starts with Section 114 and ends with Section 118. Sections 114, 115, 116 and 117 which have a bearing on the determination of the present controversy are in the following terms :

> "114. (i) in this section, the expression 'State cadre' -
> (a) in relation to the Indian Administrative Service, has the meaning assigned to it in the Indian Administrative Service (Cardre) Rules3 1954, and
> (b) in relation to the Indian Police Service has the meaning assigned to it in the Indian Police Service (Cadre) Rules, 1954.
> (2) As from the appointed day, there shall be constituted for each of the new States a State cadre of the Indian Administrative Service and a State cadre of the Indian Police Service.
> (3) The initial strength and composition of each of the said cadres shall be such as the Central Government may by order determine before the appointed day.
> (4) The cadres of each, of the said services for the existing States of Bombay Madhya Pradesh, Punjab and Vindhya Pradesh and for the existing Part B States shall, as from the appointed day, cease to exist, and the members of each of the said services borne on those cadres shall be allocated to the State cadres of the same service for the new States or for the other existing States in such manner and with effect from such date or dates as the Central Government may by order specify.
> (5) Nothing in this section shall be deemed to affect the operation after the appointed day of the All-India Services Act, 1951, or the rules made thereunder in relation to the State cadres of the said services constituted under Sub-Section (2) and in relation to the members of those services borne on the said cadres.
> 115. (1) Every person who immediately before the "appointed day is serving in connection with the affairs of the Union under the administrative control of Lieutenant-Governor or Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, as from that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State.
> (2) Every person who immediately before the appointed day is serving in connection with the affairs of an existing State part of whose territories is transferred to another State by the provisions of Part II shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State, unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any other successor State.
> (3) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Sub-

Section (2) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(4) Every person who is finally allotted under the provisions of Sub-Section (3) to a successor State shall, if he is not already serving therein be made available for serving in that successor State from such date as may be agreed upon between the Governments concerned, and in default of such agreement as may be determined by the Central Government.

(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to -

(a) the division and integration of the services-among the new States and the States of Andhra Pradesh and Madras; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.

(6) The foregoing provisions of this section shall not apply in relation to any person to whom, the provisions of Section 114 apply.

(7) Nothing in this section shall be deemed to affect after the appointed by the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-Section (1) or Sub-Section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

116. (1) Every person who immediately before1-the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the Union or of an existing State in any area which on that day falls within another existing State or a new Part A State or a Part C State shall, except where by virtue or in consequence of the provisions of this Act such post or office ceases to exist on that day, continue to hold the same post or office in the other existing State or new Part A State or Part C State in which such area is included on that day, and shall be deemed as from that day to have been duly appointed to such post or office by the Government of or other appropriate authority in such State or by the Central Government or other appropriate authority in such Part C State, as the case may be.

(2) Nothing in this section shall be deemed to prevent a competent authority, after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office.

117. The Central Government may at any time-before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions."

The main question arising in the petition, namely, whether the Central Government had authority

to give any direction to the State Government in regard to the equation of posts depends on the true interpretation to be put upon the provisions of the aforesaid Sections and particularly Sections 115 to 117.

39. Though several contentions have been raised in the petition and in diverse forms emphasizing one aspect or the other of those contentions, they can be compressed into two or three main contentions and the case of the petitioners as formulated in the course of the arguments by Mr. V.B. Patel learned advocate appearing on behalf of the petitioners, can be properly and adequately dealt with by addressing myself to these two or three main contentions. The first contention of Mr. V.B. Patel was that on a true construction of the provisions of Sections 115 to 117 of the Act the State Government alone had the power to integrate its services and the Central Government was not entitled to give any direction to the State Government in the matter of integration of the services. The equation of posts was a matter relating to the integration of the services and the Central Government was, therefore, not justified in giving direction to the State Government which culminated in the alteration of equation of posts. Once the equation of posts was fixed by the State Government and absorption and seniority orders were issued by the State Government, the integration was complete and the State Government had thereafter no power to alter the equation of posts so as to affect the integration already effected. It was also contended in the alternative that even if the State Government had power to alter the equation of posts, the State Government could do so only in the exercise of its own power after applying its mind. Since in the present case the State Government had not applied its mind but acted merely at the behest of the Central Government, the alteration of equation of posts was invalid and the resolution dated 1st April 1960 was, therefore, liable to be set aside. Mr. V.B. Patel also contended in the further alternative that even if the Central Government had power to give directions in the matter of integration of services, such power could be exercised only so long as integration was not complete but once integration was complete, no such power survived in the Central Government. The contention was that the State Government having made an order equating posts and issued absorption and seniority orders, the integration was complete and the Central Government had, therefore, no power to give any direction at the time it did. It was also contended that in any event integration having been completed in accordance with the directions of the Central Government in conformity with the four principles laid down by the Central Government, the Central Government's power was exhausted because the power was given for the purpose of giving effect to the provisions of Section 115 and effect was already given to the provisions of Section 115 as a result of the integration effected by the State. If the power of the Central Government was no more, the Central Government was not entitled to give any direction and the State Government was not bound to carry cut such direction and since the State Government altered the equation of posts at the dictation of the Central Government which dictation was not binding, but which the State Government 'thought was binding upon it, the alteration was bad. An answer to these contentions urged on behalf of the petitioners was sought to be given both by the learned Attorney General and the learned advocates appearing on behalf of respondents Nos. 3 to 141. The learned Attorney General contended that under the provisions

of the Act the Central Government had the sole and exclusive authority to integrate the services and the Central Government was, therefore, entitled to give directions to the State Government for the purpose of integration of the services. The learned Attorney General denied that the State Government had any power to integrate the services. According to the learned Attorney General the power of the State Government to integrate the services was taken away by the conferment of such power on the Central Government and the Central Government was, therefore, the only authority entrusted with the task of integrating the services and if in the course of discharging such function the Central Government gave any direction to the State Government, the State Government was bound to comply with it. The learned Attorney-General contended that the Central Government gave the direction contained in the letter dated 5th February 1960 in connection with the integration of services and that the State Government had, therefore, rightly passed the resolution dated 1st April 1960 in compliance with such direction. It was also contended by the learned Attorney General in the alternative that even if the Central Government was not the sole and exclusive authority for the purpose of integration of the services, it would not make the slightest difference in the ultimate conclusion to be reached by the Court. According to him even if the State Government continued to have the power to integrate the services; the Central Government also had power in the matter of integration of the services and the Central Government was entitled to give directions to the State Government for the purpose of giving effect to the decision reached by it in the matter of integration of the services and the State Government was bound to comply with such directions. The learned Attorney General urged that the integration made by the State Government could not be said to be complete so long as the power of the Central Government to act in the matter of integration of the services remained outstanding and that until the Central Government set the seal of its approval on the integration made by the State Government, the integration could not be said to have been finally effected and so long as the integration was not finally effected, the Central Government could always intervene in the exercise of its power and give directions for the purpose of giving effect to such exercise of power. On the Question whether equation of posts and appointment to posts formed part of the process of integration or were covered by the expression "conditions of service" occurring in Section 115(7), the learned Attorney General stated that in his submission equation of posts and appointments to posts did not form part of conditions of service within the meaning of that expression as used in Section 115(7) and that he did not place reliance on the provisions of Section 115(7) in justification of the direction issued by the Central Government to the State. The learned Attorney General contended that equation of posts and appointment to posts was part of the process of integration and that the Central Government had, therefore, power to deal with the question of equation of posts and appointment to posts and to give directions, to the State Government for the purpose of giving effect to such exercise of power made by it. These were broadly the grounds on which the learned Attorney General sought to sustain the validity of the direction given by the Central Government. Mr. K.M. Chhaya, learned advocate appearing on behalf of respondent No. 3 and Mr. J.R. Nanavaty, learned advocate appearing on behalf of respondents Nos. 4 to 141, supported the arguments advanced by the learned Attorney General and contended that the petition was liable to be dismissed. So far as the

State Government was concerned, various contentions were urged on behalf of the State Government by the learned Advocate General, but those contentions exhibited a negative approach and in my opinion no useful purpose would be served by reproducing them here, for in any event they would be covered by the following discussion.

40. These contentions raise an issue of great importance as to the powers of the Central Government in relation to the services of the States formed as a result of the reorganization of States under the Act. The question is a question of great complexity and has been argued at length and I shall presently embark on a consideration of the question. But before I do so, I might as well dispose of some preliminary objections raised to the petition on behalf of respondents Nos. 3 to 141.

41. The first preliminary objection against the maintainability of the petition was that the petitioners in filing the petition sought to assert a right conferred on them by the Rules of 1957 and the equation of posts made by the State Government under the resolution dated 25th October 1957 but the Rules of 1957 and the equation of posts made by the State Government under the resolution dated 25th October 1957 did not confer any legal right on the petitioners which the petitioners were entitled to vindicate in a Court of law. The contention was that the existence of a legal right was the foundation of the jurisdiction of the Court to grant relief under Article 226 of the Constitution and since the Rules of 1957 and the equation of posts made by the State Government on 25th October 1957 did not confer any legal right on the petitioners, the petitioners we are not entitled to maintain the petition, for what they complained of in the petition was a violation of what they claimed to be their right under the Rules of 1957 and the equation of posts made by the State Government under the resolution dated 25th October 1957. The contention was based on the premise that the Rules of 1957 and the equation of posts made by the State Government under the resolution dated 25th October 1957 were merely administrative directions which did not confer any legal rights justiciable in a Court of law and for this purpose reliance was placed on two decisions, one a decision of the Privy Council in 64 Ind App 55 : (AIR 1937 PC 31) and the other a decision of a Division Bench of the High Court of Bombay in AIR 1960 Bombay 14. The decision of the Privy Council in R. Venkata Rao's Case, 64 Ind App 55 : (AIR 1937 PC 31) related to Rules made under Section 96-B, Sub-Section (2) of the Government of India Act, 1915, and it was held in that case by the Judicial Committee of the Privy Council that those Rules were merely administrative directions and did not confer any rights on the appellant which he could enforce by action in a Court of law. Relying on this decision of the Privy Council it was contended on behalf of respondents Nos. 3 to 141 that just as Rules made under Section 96-B Sub-Section (2) of the Government of India Act, 1915, were held by the Judicial Committee of the Privy Council to be merely administrative directions not conferring any legal rights on the civil servant justiciable in a Court of law, so also the Rules of 1957 made under the proviso to Article 309 of the Constitution read with the equation of posts made by the State Government under the resolution dated 25th October 1957 should be held to be merely administrative directions which did not confer any legal rights on the petitioners

enforceable in a Court of law. Now this decision of the Privy Council undoubtedly at first blush seems to support the contention urged on behalf of respondents Nos. 3 to 141 but it has been explained by the Supreme Court in AIR 1961 Supreme Court 751 and in view of the decision of the Supreme Court, this decision of the Privy Council cannot be regarded as an authority supporting the contention of respondents Nos. 3 to 141. Subba Rao, J., delivering the majority judgment in Babu Ram's Case, AIR 1961 Supreme Court 751 observed in relation to the decision of the Privy Council in R. Venkata Rao's Case, 64 Ind App 55 : (AIR 1937 PC 31) that the scope of the rule in that case was correctly stated by S.R. Das, C.J., in his judgment in *Khem Chand v. Union of India*[6], when he stated at p. 1091 (of SCR) : (at p. 305 of AIR) :

> "The position of the Government servant was, therefore, rather insecure, for his office being held during the pleasure of the Crown under the Government of India Act, 1915, the rules could not override or derogate from the statute and the protection of the rules could not be enforced by action so as to nullify the statute itself."

Subba Rao, J., thereafter proceeded to explain the reason on which the decision of the Privy Council in R. Venkata Rao's Case, 64 Ind App 55 : (AIR 1937 PC 31) was founded, in the following terms :

> "To state it differently, the Government of India Act, 1915, as amended in 1919, and that of 1935 expressly and clearly laid down that the tenure was at pleasure and therefore the rules framed under that Act must be consistent with the Act and not in derogation of it. These decisions and the observations made therein could not be understood to mark a radical departure from the fundamental principle of

[6]1958 SCR 1080 : (AIR SC 300)

> construction that rules made under a statute mast be treated as exactly as if they were in the Act and are of the same effect as if contained in the Act. There is another principle equally fundamental to the rules of construction, namely, that the rules shall be consistent with the provisions of the Act. The decisions of the Judicial Committee on the provisions of the earlier Constitution Acts can be sustained on the ground that the rules made in exercise of power conferred under the Acts cannot override or modify the tenure at pleasure provided by Section 96-B or Section 240 of the said Acts, as the case may be. Therefore, when the paramountcy of the doctrine was conceded or declared by the statute, there might have been justification for sustaining the rules made under that statute in derogation thereof on the ground that they were only administrative directions for otherwise the rules would have to be struck down as inconsistent with the Act....."

It is clear from what is stated above that the observations of the Judicial Committee of the Privy Council in R. Venkata Rao' s Case, 64 Ind App 55 : (AIR 1937 PC 31) to the effect that the Rules framed under Section 96-B, Sub-Section (2) of the Government of India Act, 1915, were mere, administrative directions and did not confer any legal rights justiciable in a Court of law were,

again to use the words of Subba Rao, J., in Babu" Ram's Case, AIR 1961 Supreme Court 751 "coloured by the doctrine of 'tenure at pleasure' obtaining in England namely, that it could only be modified by statute, influenced by the principle that the rules made under a statute shall be consistent with its provisions and, what is more, based upon a construction of the express provisions of the Act." Since the Rules in question in R. Venkata Rao's Case, 64 Ind App 55 : (AIR 1937 PC 31) relating to dismissal from service conflicted with the 'tenure at pleasure' of the Crown under Section 96-B, Sub-Section (1) of the Government of India Act, 1915, and the Rules having been made under Section 96-B, Sub-Section (2) of the Government of India Act, 1915, had to be consistent with Section 96-B, Sub-Section (1) of the Government of India Act, 1915, and were liable to be presumed to be based upon a construction of, Section 96-B, Sub-Section (1), the Judicial Committee of the Privy Council observed that the Rules were mere administrative directions which did not have the effect of conferring any legal rights enforceable in a Court of law. These observations of the Judicial Committee of the Privy Council, however, cannot, as observed by Subba Rao, J., in Babu Ram's Case, AIR 1961 S C 751 be taken out of their context and applied to the provisions of the Constitution and the Acts of our legislatures in derogation of the well-settled principle of statutory construction that rules made under a statute must be treated for all purposes of construction as if they were in the Act and must be given the same effect as if contained in the Act, and must be judicially noticed for all purposes of construction or obligation and cannot be described as, or equated with administrative directions. It must, therefore, be concluded that having regard to the decision of the Supreme Court in Babu Ram's Case, AIR 1961 Supreme Court 751 the reliance placed on the decision of the Privy Council in R. Venkata Rao's case, 64 Ind App 55 : (AIR 1937 PC 31) cannot avail respondents Nos. 3 to 141.

42. The decision of the Bombay High Court in S. Framji's Case, AIR 1960 Bombay 14 (supra) also cannot help respondents Nos. 3 to 141. In the first place the decision being a decision of a Division Bench of the High Court of Bombay is not binding upon this Full Bench though it would be entitled to the highest consideration. Secondly, as pointed out by My Lord the Chief Justice, the decision appears to be contrary to the express provisions of Article 309. Under Article 309 the Legislature of a State can make a law regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State. If such law were made, can it be contended for a moment that it does not confer any legal rights on the persons with whom it deals. If the law made by the Legislature under Article 309 can and must confer legal rights, equally must the rules framed by the Governor under the proviso to Article 309 confer legal rights, unless of course the rules or for the matter of that even the law made by the Legislature is contrary to an express provision of the Constitution such as Article 310. If the law made by the Legislature under Article 309 or the rules made by the Governor under the proviso to Article 309 conflict with the "tenure a to pleasure" provided by Article 310, they would certainly be invalid and would not afford a foundation for assertion of any legal rights and this is exactly what the Supreme Court said in Babu Ram's Case, AIR 1961 Supreme Court 751. The majority judgment of Subba Rao J., in Babu Ram's Case AIR 1961

Supreme Court 751 clearly lays down that the Legislature of a State can make a law regulating the recruitment and conditions of service of persons appointed to public services or posts in connection with the affairs of the State under Article 309 and the Governor can equally make such rules under the proviso to Article 309 so long as such law or rules do not abrogate or modify the tenure at pleasure so as to impinge upon the overriding power conferred upon the Governor under Article 310, subject of course to the qualification contained in Article 311. So long as such law or rules do not seek to curtail or abrogate the "tenure at pleasure" provided by Article 310, such law or rules would be legally enforceable and would have the effect of conferring legal rights justiciable in a Court of law.

43. Applying these principles to the facts of the present case I find that there is no substance in the contention urged on behalf of respondents Nos. 3 to 141. The Rules of 1957 read with the equation order passed by the State Government under the resolution dated 25th October 1957 had, on the authority of the decision of the Supreme Court in Babu Ram's Case, AIR 1961 Supreme Court 751 clearly the force of law since there was nothing in the Rules of 1957 or in the equation order made by the State Government which in any way affected the overriding power of the Governor under Article 310. The Rules of 1957 read with the equation order made by the State Government under the resolution dated 25th October 1957 had therefore the effect of conferring legal rights on the petitioners which could be enforced in a Court of law. In this view of the matter, the present contention of respondents Nos. 3 to 141 must be rejected.

44. The second preliminary objection urged on behalf of respondents Nos. 3 to 141 was that the resolution of the State dated 1st April 1960 could not be assailed by the petitioners on the ground that it was passed by the State at the behest of the Central Government. This contention was principally developed by Mr. J.R. Nanavaty and his argument was that the resolution dated 1st April 1960 having been made by the State Government in exercise of the power conferred upon it by the Rules of 1957 made by the Governor under the proviso to Article 309, the resolution was in effect and substance a rule made under the proviso to Article 309 and was, therefore, in the nature of legislation. Founding himself on this premise, Mr. J.R. Nanavaty contended that if the resolution dated 1st April 1960 was in the nature of legislation it could not be assailed on the ground that it was passed by the State1 at the dictation of the Central Government. Mr. J.R. Nanavaty tried to invoke the principle that the motives of a legislative body when it acts within its powers do not affect the validity of the legislation and that the *bona fides* of the law cannot be impugned in the Courts of the country. Whatever may be the circumstances under which the legislation is passed, whether it be from improper motives or at the behest of someone else, the legislation cannot be challenged in a Court of law on any such ground. Without deciding upon the validity of this proposition of law I may at once state that the contention of Mr. J.R. Nanavaty founded upon it cannot be accepted for the very foundation of his contention was that the resolution dated 1st April 1960 was in the nature of legislation but in my opinion this foundation is lacking. I do not wish to say anything upon the proposition of law canvassed by Mr. J.R. Nanavaty for though the principle laid down in it has been held to be applicable to conclusions

reached by the Legislature properly so called, It is a matter of some doubt whether this principle can apply when an action in the nature of subordinate legislation is taken by the executive under a power delegated to it by the Legislature. In some Australian cases it has been observed that this principle should not apply in the case of the executive and that evidence of improper motive in the case of the executive may be admissible for the purpose even of invalidating a legislative act which it is authorized to perform, (vide *Arthur Yates and Co. v. The Vegetable Seeds Committee*[7]*,).* I, therefore, refrain from commenting upon this principle particularly when it is not necessary for me to decide its correctness. The resolution dated 1st April 1960 was clearly not a legislative act on the part of the State and in that view of the matter, the contention of Mr. J.R. Nanavaty cannot be accepted.

45. There was yet another preliminary objection urged against the maintainability of the petition. That was formulated by Mr. J.R. Nanavaty in the following form. Mr. J.R. Nanavaty contended that the resolution dated 1st April 1960 created conditions of service applicable to respondents Nos. 3 to 141 which in fact existed on 1st May 1960 when the State of Bombay as constituted under the Act was bifurcated as a result of the enactment of the Bombay Reorganization Act, 1960. Mr. J.K. Nanavaty drew the attention of the Court to the provisions of Section 81(6), of the Bombay Reorganization Act, 1960, and urged that under the proviso to Section 81(6), the conditions of service applicable immediately before 1st May 1960 to the case of any person provisionally or finally allotted to the State of Maharashtra or Gujarat could not be varied to his disadvantage except with the previous approval of the Central Government. The contention of Mr. J.R. Nanavaty was that respondents Nos. 3 to 141 were provisionally allotted to the State of Gujarat and the conditions of service applicable to them immediately before 1st May 1960 were those which arose to them from the resolution dated 1st April 1960 and which factually existed on 1st May 1960 and that the State itself was, therefore, not entitled to vary those conditions of service the their disadvantage except with the previous approval of the Central Government. If the State had no right to vary the conditions of service accruing from the resolution dated 1st April 1960 to the disadvantage of respondents Nos. 3 to 141 without the previous approval of the Central Government, argued Mr. J.R. Nanavaty, no mandamus or other relief could be grante4 against the State quashing or setting aside the resolution dated 1st April 1960, for that would have the effect of varying the conditions of service of respondents Nos. 3 to 141 to their disadvantage which even the State was not entitled to without the previous approval of the Central Government. This contention is in my opinion patently unsound and the fallacy in this contention lies

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firstly in treating equation of posts and appointment to posts as conditions of service and secondly in regarding the consequences flowing from the resolution dated 1st April 1960 as conditions of service applicable immediately before 1st May 1960. As I shall presently point out when dealing with the arguments on merits equation of posts and appointment to posts could not be regarded as conditions of service, within the meaning of that expression as used in Section 81(6) of the Bombay Reorganization Act, 1960, or Section 115(7) of the present Act and the1

resolution dated 1st April 1960 could not, therefore be said to have laid down any conditions of service. Moreover the conditions of service which were protected under the proviso to Section 81(6) of the Bombay Reorganization Act, 1960, were conditions of service validly applicable immediately before 1st May 1960. If the resolution dated 1st April 1960 was null and void as contended by the petitioners, it could not give rise to any rights in regard to conditions of service and in that event it could not be said that the conditions of service flowing from the resolution dated 1st April 1960 were conditions of service applicable immediately before 1st May 1960. There is, therefore, no substance in this preliminary contention of Mr. J.R. Nanavaty and it must be rejected.

46. Turning to the merits of the controversy. Let me first of all examine the general nature of the problems that must arise in relation to services when States are reorganized. As a result of reorganization a State may either continue to exist with truncated territory or added territory or may altogether cease to exist. A new State may also be formed by carving out territories from an existing State or States. Now if a State continues to exist, its service personnel would not be affected for they would continue to have their employer and their service would continue unbroken. In their case the problem would arise only if some territory is carved out of the existing State. In that event some of the service personnel would be rendered superfluous and the new State formed out of the territory so carved out would be without service personnel. Some provision would, therefore, have to be made for allotment of some of the service personnel of the existing State to the new State both in the interest of the States as also in the interest of the service personnel who might be thrown out of employment. Similar allotment would also be necessary even if the territory carved out from an existing State does not go to constitute a new State but is added to another existing State. If a State ceases to exist, its service personnel would be without service for the master having ceased to exist, the service would come to an end. Some provision would, therefore, have to be made for such service personnel and they would have to be allotted to the State to which the territories of such State are transferred or to the new State if a new State is formed of such territories. Correspondingly a new State formed out of the territories of an existing State or States would have to have service personnel so that it can function properly and effectively. The solution of these problems arising on reorganization of States would involve several processes. The first process would be division, of service personnel amongst the reorganized States. Then the service personnel so divided would have to be integrated in the service of each reorganized State to which they are allotted and, lastly their conditions of service would have to be determined. These processes may take place simultaneously or one after the other, though it is difficult to see how any overlapping of the second and third processes can be avoided. These two last processes cannot by their very nature be divided into two distinct and water-tight compartments. But that is not material and does not affect the determination of the present controversy. All that need be pointed out here is that these three processes must take place if the problems arising from reorganization of States have to be effectively dealt with. The question is : What is the provision made by the Act in relation to these three processes for the effective solution of the problems arising from the reorganization of States

in relation to service personnel ?

47. Section 114 deals with All-India Services and makes provision in regard to such services. This Section is in my view not material for the decision of the present case and does not throw any significant light on the true interpretation to be put upon the provisions of Sections 115 and 117 which are the principal Sections requiring to be construed in the present case. The only matter to which attention may be drawn in connection with, this Section is that the power in relation to All India Services is conferred on the Central Government. Then comes Section 115. But before I examine the provisions of Section 115, I might first deal with Section 117. Section 117 empowers the Central Government at any time before or after the appointed day to give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the provisions of Sections 114, 115 and 116 and provides that the State Government shall be bound to comply with such directions. This Section was at one stage relied on by the learned Attorney General and the learned advocates appearing on behalf of respondents Nos. 3 to 141 as conferring power on the Central Government to integrate the services but the contention was manifestly unsound for it ignored the important words "for the purpose of giving effect to the foregoing provisions of this Part" meaning thereby the provisions of Sections 114, 115 and 116. Section 117 no doubt conferred power on the Central Government to give directions to the State Government but by the very terms of the Section that power could be exercised only for the limited purpose of giving effect to the provisions of Sections 114, 115 and 116. The Section could not be read as an independent source of power in connection with any of the matters dealt with in Sections 114, 115 and 116. It merely conferred ancillary power on the Central Government to ensure that effect was given to the provisions of Sections 114, 115 and 116. The persons affected by Sections 114, 115 and 116 being persons employed in connection with the affairs of the State, it would be for the State Government to implement the provisions of Sections 114, 115 and 116 in regard to such persons and the Central Government was, therefore, given power under Section 117 to give directions to the State Government for the purpose of securing such implementation. The substantive power to integrate the services could not, therefore, be read in Section 117 but had to be found in Section 114, 115 or 116 and it was only if the substantive power to integrate the services was in the Central Government under any of Sections 114, 115 and 116 that the Central Government could give directions to the State Government under Section 117 for the purpose of giving effect to the decisions reached by it in exercise of its power to integrate the services under such Section. Unless the Central Government had power to integrate the services and to arrive at decisions in regard to integration of the services under any of Sections 114, 115 and 116, any directions given by the Central Government to the State Government for implementation of such decisions could not be said to have been given for the purpose of giving effect to the provisions of Section 114, 115 or 116. If the Central Government had no power to integrate the services under Sections 114, 115 and 116 but the power to integrate was vested exclusively in the State Government the Central Government could not under Section 117 give directions to the State Government in the matter of integration of the services for in giving such directions the Central Government would not be giving effect to the provisions of

Section 114, 115 or 116 but would on the contrary be interfering with the power or the State Government without there being any provision in Section 114, 115 or 116 authorizing the Central Government to do so. It is therefore apparent that if Sections 114, 115 and 116 did not confer any power on the Central Government to integrate the services, no such power could be spelt out from the provisions of Section 117. Now the direction in the present case was admittedly a direction in the matter of integration of the services. There was some argument before us on the question as to when the process of integration of the services can be said to commence and when it can be said to end. According to the learned Attorney General the process of integration of the services would start with the allotment of service personnel to the State concerned and would cover the determination of equation of posts, the appointment of service personnel to posts and the determination of inter se seniority. He contended that it would also include the fixation of pay scales. Mr. V.B. Patel joined issue with this contention of the learned Attorney General. It is, however, not necessary for me to decide the precise scope and extent of what would be covered by the process of integration of the services. It is sufficient for the purpose of the present petition to hold that the determination of equation of posts and appointments to posts certainly form part of the process of integration of the services. The direction impugned in the present petition was, therefore, clearly a direction relating to integration of the services and it must follow from the aforesaid discussion that the direction could not be sustained unless it could be shown that the Central Government had power under any of Sections 114, 115 and 116 to integrate the services. Out of these Sections, Section 114 need not be considered for the subordinate secretariat services in respect of which the direction was given were not All India Services and Section 114 could not, therefore, be attracted. The only Sections which, therefore, require to be considered are Sections 115 and 116.

48. Turning to Section 115 it is apparent that the Section could be divided into three parts. The first part consisted of Sub-Sections (1), (2), (3) and (4); the second part consisted of sub-section (5) and the third part consisted of sub-section (7). The first part dealt with allotment of service personnel consequent on the reorganization of States. Sub-Section (1) made a statutory allotment of persons serving immediately before the appointed day in connection with the affairs of the Union in the existing States of Aimer, Bhopal, Coorg, Kutch and Vindhya Pradesh and in connection with the affairs of the State, in the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra and provided that such persons shall be deemed to have been allotted from the appointed day to serve in connection with the affairs of the successor State, each of these States having only one successor State. Since the entire territories of each of these States went to one successor State and were not divided amongst different successor States, the Parliament was not faced with the problem of dividing the service personnel of each of these States but it was sufficient to provide that the service personnel of each of these States shall be deemed to have been allotted to serve in connection with the affairs of the successor State to which the territories of such State were transferred. The problem in regard to the service personnel of the other States reorganized under the Act was a little different. The territories of these States were divided between, different successor States. The Parliament had, therefore, to

provide for division of the service personnel belonging to these States amongst different successor States. The only independent and outside authority which could be entrusted with the task of division of the service personnel belong to these States was the Central Government. The Parliament, therefore, entrusted that task to the Central Government by Sub-Sections (2) and (3). But the scheme followed was this, namely, that allotment of service personnel to different successor States was in the first instance to be provisional and the final allotment was to be made by the Central Government as soon as may be after the appointed day. This was presumably done so that every person affected by the provisions of the section may have an opportunity of pointing out his difficulty to the Central Government in the matter of allotment before the final allotment was made. In the matter of provisional allotment the Parliament evolved a. simple formula. Instead of asking the Central Government to divide the service personnel amongst different successor, States, which would be a stupendous task within the short time available before the appointed day, the Parliament provided that every person serving immediately before the appointed day in connection with the affairs of any of these States would provisionally continue to serve in connection with the affairs of the principal successor State unless he was required by the Central Government by a general or special order to serve provisionally in connection with the affairs of any other successor State. The effect of following this procedure would be the same, namely, that there would be a division of the service personnel of these States amongst different successor States. But this result would be brought about by a more convenient method which would lighten the task of the Central Government in that the Central Government would not have to compile lists of the entire service personnel belonging to these States for the purpose of dividing them but would have to compile lists of only those service personnel who were provisionally allotted to the successor States other than the principal successor States. But even in effecting division by following this expedient, it would be the Central Government which would be the dividing authority, for the Central Government would have the power to decide whether a particular person should remain in the principal successor State or should be provisionally allotted to another, successor State. This provisional allotment was to be followed by final allotment to be made by the Central Government and such final allotment was to be effective from such date as the Central Government might determine. Sub-Section (4) provided that every person who was finally allotted under Sub-Section (3) to a successor State shall, if he was not already serving therein, be made available for serving in that successor State from such date as might be agreed upon between the Governments concerned, and in default of such agreement, as might be determined by the Central Government. It would be seen from the aforesaid discussion that where division of service personnel was necessary consequent on the reorganization of States, the Central Government was given the power to effect such division. The first process involved in the solution of the problems arising from the reorganization of States in regard to service personnel was thus dealt with by the first part of Section 115 consisting of Sub-Section (1) to Sub-Section (4).

49. Before I deal with the second part of Section 115 consisting of Sub-Section (5), I might first refer to the third part of Section 115 consisting of Sub-Section (7). Sub-Section (7) enacted that

nothing in Section 115 shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State. The reference here was obviously to Article 309 which is in the following terms :-

> "309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State :
> Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act".

The net effect of the enactment of Sub-Section (7) therefore was that the power of the State Legislature to make laws and of the Governor of the State to make rules regulating conditions of service of persons serving in connection with the affairs of the State as a result of the allotment made under Sub-Sections (1) to (4) remained unaffected and the State Legislature could make such laws as it liked and the Governor of the State could make such rules as it pleased him determining the conditions of service of such persons, untrammelled or unfettered by any provision contained in Section 115. Nothing contained in Section 115 could encroach, upon this power of the State Legislature and the Governor of the State and if any conditions of service were determined in exercise of this power by a law made by the State Legislature or rules made by the Governor of the State, such conditions of service prevailed and the Central Government had no power to interfere with them Tinder any provision of Section 115. The only fetter imposed on this power of the State Legislature and the Governor of the State was that contained in the proviso to Sub-Section (7). By reason of the proviso to Sub-Section (7) the State Legislature as also the Governor of the State were precluded from varying the conditions of service applicable immediately before the appointed day to the case of persons allotted under Sub-Sections (1) to (4) to the disadvantage of such persons without the previous approval of the Central Government. The State Legislature could, therefore, make laws and the Governor of the State could make rules regulating the conditions of service of persons allotted to serve in connection with the affairs of the State under Sub-Sections (1) to (4) and determine such conditions of service as the State Legislature or the Governor of the State, as the case may be deemed proper but they could not be less advantageous than the conditions of service applicable immediately before the appointed day to the case of such persons. The conditions of service applicable immediately before the appointed day to the case of such persons were thus protected and they could be altered to the disadvantage of such persons only with the previous approval of the Central Government. The third process involved in the solution of the problems arising from

the reorganization of States in regard to service personnel was thus dealt with by Sub-Section (7) and it is significant to note that even in this process which was otherwise left entirely to the State Legislature and the Governor of the State, the Central Government was brought in as an independent and outside authority whose approval was required to be obtained before the State Legislature or the Governor of the State could prejudicially affect the conditions of service applicable immediately before the appointed day to the case of persons affected by the reorganization of States.

50. One other point may be referred to at this stage for that bears on a true construction of the expression "conditions of service" in Sub-Section (7) of Section 115. Some argument was expended on the true, meaning to be attached to this expression. It was common ground that it must bear the same meaning as it has in Article 309. But what that meaning is was a matter which raised some controversy. It is however not necessary for me to decide this debatable question for one thing is clear and that is the only thing which is material for the purpose of the present petition-that equation of posts and appointments to posts cannot form part of determination of conditions of service within the connotation of that expression as used in Article 309. I may point out here that equation of posts and appointments to posts form part of one single process and the former cannot be dissociated from the latter. Equation of posts cannot exist in the abstract it has to be done for making appointments to posts of science personnel allotted to the State. The question must, therefore, be whether appointments to posts can be said to form part of determination of conditions of service within the meaning of Article 309. Now Article 309 talks of conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The language used clearly shows that appointment to a post is regarded as distinct from determination of conditions of service applicable to the person appointed to the post for the purpose of Article 309. Any particular conditions of service prescribed under Article 309 would become applicable to a public servant on his appointment to a particular post in relation to which, such conditions of service are prescribed. It is, therefore, clear that appointments to posts cannot be said to form part of determination of conditions of service within the meaning of that expression as used in Article 309 and if that be so, equally they cannot be said to form part of determination of conditions of service within the meaning of that expression as used in Sub-Section (7) of Section 115. This construction also receives support from, the provisions of Section 118 where a distinction has been drawn by the Parliament between appointment to the post of a Chairman or member of the Public Service Commission and the conditions of service which the person occupying the post is entitled to receive. I am therefore, of the opinion that equation of posts and appointments to posts did not form part of determination of conditions of service within the meaning of Sub-Section (7) of Section 115 and were consequently not governed by that Sub-Section.

51. In view of this construction of the provisions of Sub-Section (7) of Section 115 it is not necessary to consider whether the Rules of 1957 and the equation of posts made by the State Government by the resolution dated 25th October 1957 were made with the previous approval of

the, Central Government. There was controversy between the petitioners on the one hand and the Central Government and respondents Nos. 3 to 141 on the other as to whether the Rules of 1957 and the equation of posts made by the State Government by the resolution dated 25th October 1957 were approved by the Central Government. The petitioners asserted that they were so approved while the Central Government and respondents Nos. 3 to 141 denied this assertion of the petitioners. Considerable correspondence was produced by the learned Attorney-General in support of the stand of the Central Government in this respect. It was also contended on behalf of the Central Government and respondents Nos. 3 to 141 that even though the Rules of 1957 were forwarded by the State Government to the Central Government on 18th November 1957 along with the progress reports for the month of October 1957, the resolution dated 25th October 1957 equating posts was not forwarded by the State Government to the Central Government and it was only when the Central Government received the representations of Mr. V.B. Amin and thirty others along with the recommendation of the State Advisory Committee that the Central Government came to know for the first time about the equation of posts made by the resolution dated 25th October 1957. It is not necessary for me to go into these controversial questions of fact for, as I have already stated above, equation of posts and appointments to posts did not form part of determination of conditions of service within the meaning of Sub-Section (7) of Section 115 and it was, therefore, entirely immaterial whether previous approval of the Central Government had been obtained by the State Government in regard to these matters.

52. That leaves Sub-Section (5) of Section 115 which is the most crucial provision for the purpose of the present case. The learned Attorney General and the learned advocates appearing on behalf of respondents Nos. 3 to 141 leaned heavily on this Sub-Section for the purpose of spelling out by necessary implication power in the Central Government in regard to integration of services, Mr. V.B. Patel on the other hand contended that, on a true construction, this Sub-Section did not confer any power on the Central Government to integrate the services but that the power to integrate the services remained exclusively in the State Government under the Constitution without any directive power in the Central Government in that behalf. I shall presently discuss the validity of these rival views and arrive at a true interpretation of the provisions of this Sub-Section, but before I do so, I might as well dispose of an argument advanced by Mr. V.B. Patel, learned advocate appearing on behalf of the petitioners, in support of the validity of the view canvassed by him. He-contended that the power to integrate the services was in the State Government under Article 162 read with Entry 41 of List II of the Seventh Schedule and Article 309 and that the Parliament had no power to enact any provision impinging upon this Constitutional power of the State Government. He of course conceded that the vires of no provision of the Act was challenged in the petition but contended that he was relying on this argument not for the purpose of attacking the vires of any, provision of the Act but for the purpose of persuading the Court to accept the construction suggested by him, as that construction would avoid the invalidation of Section 115 which would otherwise result if the construction contended for on the other side were accepted. He invoked the well-known rule of construction that if two interpretations are possible, one of which would violate a Constitutional provision and

the other would not, that interpretation must be preferred which is in conformity with the constitutional requirement. There is in my opinion no substance in this contention and I shall immediately proceed to state my reasons for taking this view.

53. The contention of Mr. V.B. Patel involves a consideration of some of the Articles of the Constitution. Article 2 provides for admission or establishment of new States in the Union and enacts that Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit. Article 3 deals with formation of new States and alteration of areas, boundaries or names of existing States. This Article empowers Parliament by law to form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, or to increase the area of any State, or to diminish the area of any State, or to alter the boundaries of any State or to alter the name of any State. There is a proviso to this Article which lays down the requirements in connection with the introduction of a bill relating to any such law in the House of Parliament. Then comes Article 4 which is a very material Article. It is in the following terms:

> 4. (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law as Parliament may deem necessary.
> (2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368."

Relying on this Article it was argued by the learned Attorney General in answer to the contention of Mr. V.B. Patel that the Act. in the present case was an Act made by the Parliament under Article. 3 and that the Act could, therefore, contain not only such provision for the amendment of the First Schedule and the Fourth Schedule as might be necessary to give effect to the provisions of the Act but also such supplemental, incidental and consequential provisions as the Parliament might deem necessary. The Parliament had power under1 this Article, argued the learned Attorney General, to make such supplemental incidental and consequential provisions as ft deemed necessary and a provision in regard to integration of services was clearly a supplemental, incidental and consequential provision which the Parliament was competent to enact. The learned Attorney General contended that since the Parliament was empowered by this Article to make provision in regard to integration of services in the reorganized States, the Parliament could entrust such integration of services to the Central Government and there would, therefore, be no transgression of constitutional limits if the Parliament were held to have conferred the power of integration of services on the Central Government. Now the learned Attorney General is right in his contention that the Parliament can under Article 4 make such supplemental, incidental and consequential provisions as it may consider necessary in a law made by it under Article 3 and

that since the Act was a law made under Article 3, the Parliament was empowered under Article 4 to make such supplemental, incidental and consequential provisions in the Act as it deemed necessary. But this power to make supplemental, incidental and consequential provisions can be exercised by the Parliament only in conformity with the provisions of the Constitution. The Parliament cannot in exercise of the power to make supplemental, incidental and consequential provisions override any other provisions of the Constitution. The supplemental, incidental and consequential provisions made by the Parliament in exercise of its power under Article 4 must be consistent with the other provisions of the Constitution and if there is any conflict between them, the Parliamentary legislation must give way to the Constitutional provisions. Article 4 does not empower the Parliament to amend the Constitution under the guise of making supplemental, incidental and consequential provisions. The power is no doubt conferred on the Parliament to make supplemental, incidental and consequential provisions but the power cannot be exercised so as to override the other provisions of the Constitution for that would amount in effect and substance to an amendment; of the Constitution. The framers of the Constitution could never have intended to confer power on the Parliament to amend the Constitution as if by a side-wind. It would indeed be a dangerous principle to introduce-danger both in its character and in its consequences-to infer a power to amend the Constitution by implication. As a matter of fact wherever the Constitution-makers intended to confer a power to amend the Constitution, they have done so in express terms. Even in Article 4 itself such power is conferred expressly in relation to the First Schedule and the Fourth Schedule. Of course clause (2) of Article 4 provides that no law made under Article 2 or Article 3 shall be deemed to be an amendment of the Constitution for the purposes of Article 368. But that provision is made clearly for the purpose of obviating the procedure prescribed by Article 368 even though the law might contain provision for the amendment of the First Schedule and the Fourth Schedule which Clause (1) of Article 4 expressly authorizes the Parliament to do. That provision is referable to the amendment of the First Schedule and the Fourth Schedule expressly authorized by Clause (1) of Article 4 and it would be impermissible to imply from the existence of that provision any conferment of power on the Parliament under Clause (1) of Article 4 to amend the Constitution by making supplemental incidental and consequential provisions. The power to make supplemental, incidental and consequent trial provisions can, therefore, be exercised by that Parliament only in conformity with the other provisions of the Constitution and if any supplemental, incidental or consequential provision made by the Parliament conflicts with or derogates from any provision of the Constitution, such supplemental, incidental or consequential provision would be null and void to the extent to which it conflicts with or derogates from the Constitutional provision. This, however, does not create any difficulty so far as the present case is concerned. Article 162 provides that subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. This Legislature of the State has power to make laws with respect to matters set out in List II of the Seventh Schedule, to the Constitution and1 item 41 of that List reads inter alia "State public services". The executive power of the State thus extends to State public services by virtue of Article 162. Now the power to determine equation of posts and to make appointments to posts in

so far as the subordinate secretariat staff is concerned clearly forms part of the executive power of the State in relation to State public services and the State would, therefore, have the power to determine equation of posts and to make appointments to posts, but this power is expressly by the very terms of Article 162 made subject to the other provisions of the Constitution. The power of the State to determine equation of posts and to make appointments to posts in so far as the subordinate secretariat staff is concerned is, therefore, subject to the provisions of Article 4 and the Parliament can, therefore, make in any law passed under Article 3 such supplemental, incidental and consequential provisions as it deems necessary even in derogation of this power of the State, and such supplemental, incidental and consequential provisions would be valid and binding. There would be no conflict between such supplemental, incidental and consequential provisions on the one hand and the provisions of Article 162 on the other, for the provisions of Article 162 are expressly made subject to other provisions of the Constitution including Article 4. There is, therefore, no substance in the contention of Mr. V.B. Patel that if the construction contended for by the learned Attorney General and the learned advocates appearing on behalf of respondents Nos. 3 to 141 were accepted, such construction would involve violation of the constitutional power of the State to determine equation of posts and to make appointments to posts in so far as the services in the subordinate secretariat staff of the State are concerned. I may mention that even if such were the position that would be no ground for refusing to place upon the words used by the Parliament the construction which they must necessarily bear. If such construction of the section violates any constitutional requirement, the section may require to be struck down to the extent it violates the constitutional requirement but the construction which in the opinion of the Court is the right construction must be put upon the section. Before I part with, this point I may make it clear that this petition concerns only the subordinate secretariat staff in respect of whom tie power to determine equation of posts and to make appointments to posts is under the Constitution vested in the State by virtue of Article 162 and the aforesaid conclusion reached by me is therefore confined only to the persons belonging to the subordinate secretariat staff.

54. On the question as to what should be the true construction of Sub-Section (5) of Section 115, I have set out the rival views urged by the learned advocate appearing on behalf of the petitioners on the one hand and the learned Attorney-General and the learned advocates appearing on behalf of respondents Nos. 3 to 141 on the other. Mr. V.B. Patel relied on various circumstances in support of his contention that Sub-Section (5) did not yield any implication of a power in the Central Government in regard to integration of the services. He referred us to various provisions of the Act and pointed out that wherever power was intended to be conferred on the Central Government it was always conferred in express terms and that there was not a single provision in the Act which conferred power on the Central Government by implication. He urged, that no power should, therefore, be inferred in the Central Government by implication from the provision of Sub-Section (5). He also emphasized the context in which Sub-Section (5) occurred and pointed out that it really followed upon Sub-Sections (1) to (4) and merely carried forward the idea referred to in those Sub-Sections by providing a machinery by which the Central

Government could assist itself in the exercise of its powers under those Sub-Sections. He pointed out that if the construction contended for by the learned Attorney-General and the learned advocates appearing on behalf of respondents Nos. 3 to 141 were accepted, Sub-Section (5) would be inappropriately placed and the only way of placing Sub-Section (5) in its proper setting would be to regard it as ancillary to the exercise of the powers of the Central Government under Sub-Sections (1) to (4). When it was pointed out to him that on the construction contended for by him the word "integration" occurring in clause (a) of Sub-Section (5) would be rendered meaningless, he urged that in the juxtaposition of the words "division" and "among", the word "integration" must be given a broad and liberal meaning and should be held to denote a mere ringing together of different parts of services in one State. He urged that the word "integration" was used in antithesis to the word "division" and that if the word "division" meant physical division, the word "integration" also meant physical bringing together of different parts of services in one State. He also relied strongly on the use of the preposition "among" and contended that if the word "integration" was given the narrow and limited meaning contended for by the learned Attorney General and the learned advocates appearing on behalf of respondents Nos. 3 to 141, namely, fitting service personnel into their respective places so as to form a compact homogeneous service, the preposition 'among' would be rendered inapt because one cannot have such integration of the services 'among' the reorganized States but only 'in the' reorganized States. He urged that either the preposition "among" could not be said to have been properly used or the word "integration" must bear the broad and liberal meaning which he sought to place upon it and that as the Parliament must be presumed to have used correct grammar, the word "integration" must in the context mean only bringing together of different parts of services in one State. He contended that the only way of rendering the use of the preposition "among" grammatical was to accept the broad and liberal meaning of the word "integration" suggested by him and that it was clear that what was intended to be referred by Clause (a) of Sub-Section (5) was division and integration as representing two converse concepts resulting from one single process of allotment referred to in Sub-Sections (1) to (4). These were broadly the arguments urged in support of the construction contended for on behalf of the petitioners.

55. This construction attractive though it may appear at first blush is on closer scrutiny defective in that it places undue emphasis on some minor considerations and ignores several important considerations. The basic fallacy underlying the argument of Mr. V.B. Patel is that it does not give proper effect to the word "integration" occurring in clause (a) of Sub-Section (5). Though it is no doubt true that dictionaries are not to be taken as authoritative exponents of the meaning of the words used in legislative enactments it is a well known rule of Courts of law that words should be taken to be used in their ordinary sense and the Court may, therefore, assist itself in the discharge of its duty of interpretation by any help it may derive from reference to well known and authoritative dictionaries. According to Shorter Oxford English Dictionary, the word "integrate" means 'to render entire or complete; to make up (a whole);" or "To combine (parts or elements) into a whole". The meaning of "integration" given in the same dictionary is "the making up of a whole by adding together or combining the separate parts or dements". Webster's

New World Dictionary also gives the same meaning of the verb "to integrate" namely, "to make whole or complete by adding or bringing together parts; to put or bring (parts) together into a whole;". It would be seen from these meanings given in standard dictionaries that it is not merely the bringing together of different parts that constitutes the process of integration. The parts brought together have to be woven into a whole. Mere bringing together of different parts and jumbling them up cannot be said to amount to "integration". The parts must be fitted in their proper places so as to constitute a whole and then only .can integration be said to have taken place. Mr. V.B. Patel referred us to a statement of Terrell, J., writing for the majority of, the Supreme Court of Florida on the petition of Florida State Bar Association, which has been given in Black's Law Dictionary. This statement is in the following terms : "When we say the bar is integrated we mean that every lawyer within a given area has membership in a cohesive organization". This statement cited by Mr. V.B. Patel itself shows that something must be done to build up a cohesive organization before it can be said that the members of that organization are integrated. I cannot, therefore, accept the argument of Mr. V.B. Patel that integration of services could mean bringing together of different parts of services in one State. The concept of integration of services clearly involves the fitting in of the service personnel into their respective places so as to form a homogeneous service and it is this integration of services which is referred to in clause (a) of Sub-Section (5). It is no doubt true that the word "integration" is used in juxtaposition with the word "division"; but to my mind that is no reason for refusing to place upon the word "integration" any meaning other than that which it can bear. As a matter of fact even the juxtaposition of the word "division" does not really help the petitioners. When the division of the services among the States would take place as a result of allotment, such division would have the effect of breaking up the integrated service in each of the States and the service personnel divided would be torn out of their respective positions in the integrated services of the existing States and after being so divided, they would have to be integrated in the services of the reorganized States. The antithesis between the words "division" and "integration" on which so much reliance was placed by Mr. V.B. Patel cannot, therefore, be regarded as a factor lending support to the construction contended for by him. The preposition "among" is no doubt not very happy. But it must be remembered that a single preposition has been used by the Parliament to govern two concepts namely "division" and "integration" and it is admittedly appropriate so far as the concept of division is concerned. If this particular circumstance is borne in mind, there is really no difficulty in giving effect to the true meaning of the word "integration" occurring in clause (a) of Sub-Section (5).

56. Apart from these considerations there is one other consideration which in my opinion considerably assists the Court in coming to the conclusion that the word "integration" was used in its plain and natural meaning and was not used in the loose sense of mere bringing together of different parts of services in one State. When one turns to the provisions of the Bombay Reorganization Act, 1960, the same provision is also to be found in that Act. The Bombay Reorganization Act, 1960, was undeniably an Act dealing with a similar subject matter, namely, reorganization of the State of Bombay. The State of Bombay was divided into the State of

Maharashtra and the State of Gujarat and the same problem of service personnel arose as a result of this bifurcation of the State of Bombay and the Parliament made the same provision in Section 81 of the Bombay Reorganization Act, 1960, as it has made in Section 115 of the present Act. Sub-Section (4) of Section 81 used identical language as Sub-Section (5) of Section 115. Sub-Section (4) provided that the Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to the division and integration of the services among the States of Maharashtra and Gujarat. Now under the Bombay Reorganization Act, 1960, the State of Bombay was bifurcated into two States and the only question which could arise in regard to service personnel was dividing service personnel between the two States and integrating service personnel in each of the two States. There was no question of bringing together of different parts of services into one State. Yet the Parliament used the expression "division" and "integration" of services amongst the States of Maharashtra and Gujarat in Clause (a) of Sub-Section (4) of Section 81. There the word "integration" unquestionably cannot bear the meaning suggested by Mr. V.B. Patel, for there was no question of bringing together different parts of services in any State. The word "integration" was obviously used by the Parliament to mean fitting service personnel into their proper places so as to make a compact homogeneous service and if that is the sense in which the word "integration" was used by the Parliament in the Bombay Reorganization Act, 1960, which deals with a similar subject matter and which seeks to solve similar problems, it can be safely assumed that the Parliament used the word "integration" in the same sense in the prior enactment of 1956. The latter statute can certainly furnish legislative interpretation of the earlier if it is in par material and the provisions of the earlier Statute are ambiguous. Of course, as I have said above, the meaning of the word "integration" as used in clause (a) of Sub-Section (5) of Section 115 is not ambiguous but even if it were so the ambiguity can be resolved by reference to the use of the same word in the Bombay Reorganization Act, 1960. I am, therefore, of the opinion that the word "integration" must be given its natural meaning and not the unnatural meaning which Mr. V.B. Patel seeks to place upon it.

57. Now if the word "integration" in Clause (a) of Sub-Section (5) is to be given its proper meaning, it must follow as a necessary corollary that power must be inferred by necessary implication in the Central Government to act in regard to integration of the services. Sub-Section (5) provides that the Central Government may establish one or more Advisory Committees for the purpose of assisting it in regard inter alia to integration of the services among the different States. Why should assistance have been provided to the Central Government in regard to integration of the services unless the Central Government had the power to act in the matter of integration of the services ? If such power were denied to the Central Government, the enactment of Sub-Section (5) in so far as it authorizes the Central Government to establish one or more Advisory Committees for the purpose of assisting it in regard to integration of the services would be rendered futile and the provision enacted in the Sub-Section would to that extent be reduced to silence. It may be a lamentable way of legislation that the Courts should be driven, to get at the true meaning of the Section by removing difficulties by construction rather than that the intention

of the Legislature should be clearly expressed upon the face of the Section, but it is well settled that where the effect of not implying something which the Legislature has omitted to state in express terms would be to render1 certain words futile and devoid of meaning, implications can and must be made by the Court for the purpose of gathering the true legislative intent. Mr. J.R. Nanavaty drew the attention of the Court to a passage from Maxwell on Interpretation of Statutes, Eleventh Edition, page 128, where the learned author has referred to certain cases of the English Courts and pointed out that in those cases jurisdiction was held to have been conferred on the Court of Admiralty by implication made from the provisions of the County Courts Admiralty Jurisdiction Act, 1868, and the County Courts Admiralty Jurisdiction Amendment Act, 1869. It is also clear having regard to the scheme of Section 115 that Sub-Section (5) conferred power on the Central Government in regard to integration of the services. Section 115 makes provisions relating to services other than All India Services. As I have pointed out above, three processes would be involved in the solution of the problems arising in relation to services as a result of the reorganization of States. The first process has been dealt with by Sub-Sections (1) to (4); the third process has been dealt with by Sub-Section (7). Then is it not reasonable to assume that the, second process has been dealt with by Sub-Section (5) ? That process is the process of integration. The Parliament has obviously dealt with the process of integration in Sub-Section (5). This interpretation has the merit of making Section 115 a self-contained code providing solution for all the problems arising in relation to services from the Reorganization of States. It is a fair assumption to make in the interpretation of a statute that the statute offer solution for all the problems created by the statute. There is also another consideration which weighs with me in taking this view. So far as division of service personnel is concerned, that work was entrusted by the Parliament to the Central Government in the manner indicated by me above. So far as the conditions of service of persons affected by the reorganization of States are concerned, the Parliament again provided protection of an Independent and outside authority like the Central Government by enacting that the conditions of service applicable immediately before the appointed day to the case of such persons shall not be varied to their disadvantage except with the previous approval of the Central Government. If in the two processes, one of division and that other of determining conditions of service, the Parliament cast on the service personnel affected by the reorganization of States the protective cloak of the Central Government, it is difficult to believe that the Parliament did not provide any protection of the Central Government in so far as the process of integration was concerned. All these considerations incline mo to the view that by Sub-Section (5) the Parliament conferred power on the Central Government in regard to integration of the services in the reorganized States and the Central Government was, therefore, entitled to act in the matter of integration of the services. If this be the true interpretation of Sub-Section (5), it must follow likewise that under that Sub-Section the Central Government was also entitled to act in connection with the ensuring of fair and equitable treatment to all persona affected by the provisions of Section 115 and the proper consideration of any representations made by such persons. The net effect of the provisions of Sub-Section (5) therefore was that power was conferred on the Central Government to integrate the services and the Central Government was entitled in the matter of integration of the services to consider

representations which might be made to it by any persons affected by the provisions of Section 115 and on such representations or otherwise to ensure fair and equitable treatment to such persons, and for achieving this purpose, the Central Government was given power under Section 117 to give directions to the State Government which the State Government was bound to comply with.

58. Of course the power of the State Government to deal with its own services in the secretariat department in the exercise of the executive power under Article 162 was not taken away by any provision of the Act. Merely because power was conferred on the Central Government to integrate the services by Sub-Section (5) of Section 115, it does not mean that the power of the State Government to deal with its own services in the secretariat department was abrogated. If this power of the State Government was intended to be abrogated, I should have expected express provision to that effect. I may of course hasten to make it clear that when I say this, I must not be understood to mean that this power of the State Government could not be taken away by the Parliament except by express enactment; it could certainly be taken away by necessary implication, but I find that there is nothing in the Act which, can lead to any such conclusion. As a matter of fact if the view be taken that the power of the State Government to deal with its own services in the secretariat department was abrogated as a result of the enactment of Sub-Section (5) of Section 115, the result would be that until the Central Government chose to exercise its power under Sub-Section (5) of Section 115, the State Government would be helpless in connection with its own public services and would have to look on and wait until the Central Government chose to act. The State Government would not be in a position even to make appointments of its service personnel, to various posts in the secretariat department and the entire administration of the State would be paralyzed pending action by the Central Government. It would not, therefore, be right to take the view that the power of the State Government to deal with its own services in the secretariat department was taken away by any implication to be drawn from the provisions of Sub-Section (5) of Section 115 or any other provisions of the Act.

59. The final conclusion which thus emerges is that the State Government can deal with its own services in the secretariat department in such, manner as it likes but the final power to integrate such services being with the Central Government under Sub-Section (5) of Section 115, the Central Government can give directions to the State Government for the purpose of integration of such services and if the Central Government give any such directions, the State Government would be bound to comply with the same. No equation of posts or appointments to posts made by the State Government in the secretariat department can be final, for the Central Government having the power to integrate the services can in the exercise of that power give directions to the State Government which the State Government would be bound to carry out. Equation of posts and appointments to posts made by the State Government in the secretariat department even if followed by seniority, orders and publication of gradation lists would not amount to integration so long as the Central Government has not set its seal of approval on what has been done by the State Government. So long as integration of the services in the secretariat department is not

complete by the exercise of the power of the Central Government tinder Sub-Section (5) of Section 115, the Central Government can always give directions to the State Government in the matter of integration of such services and for the purpose of assisting it in that task, the Central Government may take the assistance of one or more advisory committees. The Central Government may consider representations made by persons affected by the reorganization of States and take decisions for the purpose of ensuring fair and; equitable treatment to such persons either on such representations or otherwise and give directions for the purpose of implementing such decisions to the State Government so long as integration of services in the secretariat department has not been finalized by the Central Government in exercise of its power under Sub-Section (5) of Section 115. Of course once integration of the services in the secretarial department is completed by the Central Government in exercise of its power under Sub-Section (5) of Section 115, that power would be exhausted and the Central Government would not thereafter be entitled to give any directions to the State Government in the matter of integration of such services, but so long as integration of such services is not completed, that power would continue and the Central Government would be entitled to give directions to the State Government which the State Government would be bound to carry out.

60. If this is the correct interpretation of the relevant provisions of the Act, it is clear in the present case that integration of the services in the secretariat department was not complete at the date when the Central Government gave the impugned direction contained in the letter dated 5th February 1960. The documents on record, Exhibits 2, 4 and 5 to some of which reference has been made by My Lord the Chief Justice in the majority judgment clearly show that even after the State Government fixed the equation of posts and issued absorption and seniority orders the State Government itself invited appeals from persons aggrieved by such equation of posts and absorption and seniority orders and sought the direction of the Central Government on such appeals. It is manifest from those documents that even the State Government did not regard the determination of equation of posts and issuance of absorption and seniority orders made by it as amounting to integration of the services but merely treated it as provisional integration of the service which could be finalized only after the directions of the Central Government were obtained. The Central Government did not at any time until 5th February 1960 when it gave the direction complained of to the State Government to accept the equation of posts and absorption and seniority orders issued by the State Government or give its approval to the same and integration of the services was, therefore, not complete at the hands of the Central Government as set out in the preceding paragraph and the Central Government was entitled to give the impugned direction to the State Government in regard to integration of the service personnel referred to in the letter dated 5th February 1960. If the Central Government had the power to give such direction, as I hold it had, it is apparent that the State Government was bound to comply with such direction and if in compliance with such direction the State Government passed the resolution dated 1st April 1960 the validity of such resolution obviously cannot be assailed with any success.

61. In this view of the matter, I agree with the order passed by My Lord the Chief Justice and I accordingly direct that the petition be dismissed with each party bearing and paying his or its own costs of the petition.

Petition dismissed.