GUJARAT HIGH COURT

Ishwarlal Kasanji Naik

Vs.

State of Gujarat

Special Civil Application No. 604 of 1961

(J.M. Shelat, C.J. and A.R. Bakshi, J.)

05/ 11.07.1963

JUDGMENT

J.M. Shelat, C.J.

1. These three orders have been challenged on various grounds which, as aforesaid, have been taken by the respective petitioners in their petitions. As aforesaid, in Special Civil Application No. 827 of 1961, the petitioner therein has raised certain additional grounds which we will deal separately. The first ground amongst the several grounds common to these three petitions is that the three impugned orders have been passed mala fide and are therefore, invalid. The petitioner in Special Civil Application No. 604 of 1961 has alleged (1) that the order impugned by him is mala fide because it has been passed to circumvent the orders passed in his favor in the aforesaid suit filed by him against the respondent, (2) to bring pressure against him for obtaining the said order from the civil Court, (3) that the impugned order was passed at a time when the aforesaid suit had become ripe for hearing, and (4) to deprive him of the possible fruits of the result of the aforesaid suit. The petitioner in Special Civil Application No. 745 of 1961 has also alleged that the impugned order was passed against him mala fide with a view to circumvent his just claim for promotion. Both the petitioners have alleged that it was significant that rule 161 was not invoked against them by the State Government when both of them attained the age of 50 years.

2. It is not in dispute that rule 161 vests power in the State Government to retire a Government servant in the Bombay Service of Engineers, Class I, on his reaching the age of 50 years if he has not attained the rank of a Superintending Engineer. Admittedly, this provision in rule 161 is a condition of service and is exercisable at the discretion of the Government. That being so, no question of these impugned orders having been passed mala fide can arise. Moreover, on behalf of the respondent, the Deputy Secretary to the Government of Gujarat, Public Works Department, has filed an affidavit in reply in which the allegations of the three orders having been passed mala fide have been categorically denied. Barring some suggestions made in the

petitions and also in the petitioners' affidavit in rejoinder, there is hardly any concrete material on which it could with any certitude be said that these orders were passed mala fide by the respondent. Sri Daru, who appears for the petitioners in Special Civil Application No. 827 of 1961, in fact did not press the allegation as to the mala fides of the respondent in passing the order against the petitioner. In these circumstances, it is impossible to accept the allegation that these orders have been passed mala fide.

3. The orders are next attacked upon the ground that inasmuch as rule 161 was invoked after a lapse of about three years from the petitioners' attaining the age of 50 years and also because the rule being a term of service for the benefit of the State, the State must be said to have waived the power under the rule by not invoking it when the petitioners reached their respective fiftieth year. It is contended that when the petitioner completed his fiftieth year the power under rule 161 could have been invoked then only and not later. The reply of the learned Advocate-General briefly stated was that rule 161 authorized the Government to require a Government servant in the Bombay Service of Engineers to retire if he has reached the age of 50 years and has not attained the rank of a Superintending Engineer. The learned Advocate-General argued that there was nothing in Clause (c)(11)(2) of rule 161 to warrant the construction that the power thereunder should be invoked the moment that such an employee reached the age of 50 years. He argued that the rule conferred a right on the Government, as a condition of service, and became available upon the employee reaching the age of 50 years, provided that such an employee has not attained the rank of a Superintending Engineer. That power can be availed of at any time after the employee has reached the ago of 50 years until he retires in normal course upon reaching the age of 55 years. The learned Advocate-General therefore argued that there was no question of waiver on the part of the respondent.

4. Chapter IX of the rules, in which rule 161 is contained, deals with compulsory retirement. Rule 161(a) provides for the age of retirement in the case of all Government employees "except as otherwise provided in other clauses of this rule." Clause (c)(ii)(2) is a clause which is an exception to Clause (a) and by which compulsory retirement is otherwise provided for. But both Sri Patel and Sri Daru contended that the rule being against a subject and one providing for retirement earlier than normal, the rule should be strictly construed. They also contended that the word "on" used in Sub-clause (2) of Clause (c)(ii) must be construed as meaning "at the time of," i.e., contemporaneously and not "on and after." They also pointed out that whenever the draftsman of the rule wished to provide for retirement after the prescribed stage, he has used a different expression in this very rule and therefore, the word "on" preceding the words "reaching the age of 50 years" should be given its dictionary meaning. That would mean that under Clause (c)(11)(2), compulsory retirement must take place at the time and as from the date when an engineer in the Bombay Service of Engineers, Class I, who has not attained the rank of a Superintending Engineer, reaches the age of 50 years and not thereafter.

5. It was argued that in this very rule, whenever power was given to the Government to make an

employee retire at a given stage or thereafter, the draftsman has used a different and an appropriate expression. For instance, in Clause (c)(i)(1), it is expressly provided that a Chief Judge of the Court of Small Causes, Bombay, and the Administrator-General and Official Assignee, Bombay, may be required to retire at the age of 55 years or "at any point thereafter." Consequently, since such an expression is not used in the impugned clause, it must follow that the meaning of the word "on" must necessarily mean at the stage of reaching the age of 50 years and not thereafter. This argument however does not assist the petitioners. It may be observed that unlike the impugned clause, Clause (c)(i)(1) is expressed in a totally different phraseology. Clause (c)(i)(1) expressly provides that the two officers therein mentioned "should ordinarily be retained in service till the age of 60 years if they continue efficient up to that age; otherwise they may be required to retire at the age of 55 years or any point thereafter." The clause makes it clear that the two officers therein mentioned are ordinarily to be retained in service till they reach the age of 60 years, provided that they continue to be efficient. Efficiency, therefore, is the criterion for their being retained up to the age of 60 years; either of the two officers can be made to retire earlier on reaching the age of 55 or thereafter. The expression "if they continue efficient up to that age" is significant. Efficiency being the criterion and there being a possibility of the lapse or loss of efficiency at any time, the draftsman had to provide that they could be required to retire at the age of 55 years or at any point thereafter. According to both Sri Patel and Sri Daru, the word "on" means contemporaneously, that is to say, the liability to retire earlier would arise on the day that an Executive Engineer reaches the age of 50 years and not thereafter. This construction in our view, is not correct. The word "on" used in the expression "on reaching the age of 50 years" in Clause (c)(ii)(1) suggests a contingency or a condition, without the happening of which the Government cannot exercise the power. It could do so only when such a condition occurs. If that is accepted, the word "on" must mean "on and after". In other words, the proper construction of the word "on" is that it provides a stage when the Government can exercise its power, that is, when an employee reaches the age of 50 years and not before. But this would not mean that it can be exercised only on the day when the employee reaches the age of 50 years or that if the power is not exercised on that very day, it is said to have been waived. If the word "on" were to be interpreted as suggested on behalf of the petitioners, that is to say, on the day that the employee reaches the age of 50 years and not thereafter the rule would become unworkable. The rule provides two conditions which must be fulfilled before the Government can exercise the power there under, the first condition being that the employee should reach the ago of 50 years and the second condition being that when the power under the rule is exercised by the Government, the employee has not attained the rank of a Superintending Engineer. If the word "on" were to be interpreted as "on that very day" and not thereafter, that is, on the day that the employee reaches the age of 50 years, the Government would be required to give an earlier notice and cannot wait till the day when the Executive Engineer reaches his fiftieth year. But no such earlier notice would be possible because although the Government would know that the employee is an Executive Engineer and would also know that he has reached the age of 50 years, Government would not know if he is likely or not to attain the rank of a Superintending Engineer. Intrinsically, therefore, the word "on" cannot mean contemporaneously, as contended by the

petitioners. It is true that the word "on" also occurs earlier in this very clause, namely, that the Government servants in the Bombay Service of Engineers, Class I, must retire on reaching the age of 55 years. Obviously, the word "on" there must mean the day when the employee reaches the age of 55 years. That is so because the event of retirement as provided therein must occur automatically and does not require any action on the part of the Government. In the later part of the rule, however, where the word "on" is used, in respect of retirement when the employee reaches his fiftieth year, the retirement requires some act or some action on the part of the Government, which act or action is at the option of the Government. Therefore, the two contingencies are different, and take place on the happening of two different events. It is true that normally when the same word occurs in the same section or clause, the meaning to be attached to that word would be the same. But it is a settled rule of construction that a legislature, though using the same word, might use it in different connotations, depending upon the context in which it is used at two different places (cf. Craines Statute Law, 5th Edn., 159). The word "on" must mean "on and thereafter," because the stage at which the power can be exercised by the Government is only when he reaches the age of 50 years and not before. The draftsman could not have intended that Government must give him notice requiring him to retire earlier, either on the day that he reaches his fiftieth year or previously. Secondly, the clause contains another condition, namely, that he has not attained the rank of a Superintending Engineer, and therefore the Government has to wait for both the events to happen and then only it can exercise that power. Furthermore there is nothing in this sub- clause to indicate that the employee need attain the rank of a Superintending Engineer by the time that he reaches the age of 50 years. That being so, if the Government ware to wait after the employee has reached his fiftieth year and the employee in the meantime attains the rank of a Superintending Engineer, say at the age of 51 years, the power to retire him earlier at the age of 50 years cannot be used. In these circumstances, we are of the view that the interpretation of the word "on" as suggested by the learned Advocate-General should be accepted. That being so, it is not possible to uphold the contention that the exercise of this power by the Government after the petitioners had attained the age of 50 years was bad or that the Government waived this power.

6. It was next contended on behalf of the petitioner in Special Civil Application No. 604 of 1961 that in his case the rule was not enforceable in any event against him because he had acted for some time as a Superintending Engineer. There is no force in this contention, for the petitioner acted as a Superintending Engineer only for a short period. In order to get the benefit of exemption from the rule, it is necessary that he should have substantively attained the post or the rank of a Superintending Engineer.

7. Sri Patel for the petitioners then argued that the impugned order was in the nature of penalty, its effect being premature termination of service and implying inefficiency or incapacity or misconduct, and therefore, Art. 311(2) of the Constitution applied. He contended that the order was bad as no reasonable opportunity for being heard was furnished to the petitioners. It is obvious that the impugned orders are not in the nature of punishment. Even according to the

petitioners, the liability to retire earlier under rule 161 is a term of service. It is manifest that the effect of the orders is not dismissal, removal or reduction. The orders also are not passed on the basis of any implied stigma such as inefficiency or incapacity or misconduct. The petitioners are made to retire in pursuance of a term of service which gives power to the Government to make them retire earlier. It is clear, therefore, that there is no question of Art. 311(2) being applicable. The earlier termination is the termination of service simpliciter, flowing from a condition of service, and admittedly is not either dismissal, removal or reduction within the meaning of Art. 311.

8. The real and substantial attack on rule 161 is the one contained in Para. 9.A of the petitioner in Special Civil Application No. 604 of 1961. The attack is a twofold one, namely : (1) that rule 161 offends against Arts. 14 and 16 of the Constitution inasmuch as it makes an unfair discrimination in the matter of age of superannuation between Executive Engineers, Class I, who have attained the rank of Superintending Engineers and those who have not, and that this discrimination has no rational basis, and (2) that the rule enables the Government to make discrimination between the members of the same class of Executive Engineers who have not attained the rank of Superintending Engineers, that it confers absolute and unguided power upon the Government to retire any Executive Engineer of the said class at the sweet will of the Government, that the rule does not lay down any guidance, nor does it disclose any policy which the Government should follow in selecting any particular executive engineer for compulsory retirement on reaching the age of 50 years and that the rule thus enables the Government to take action against any officer out of enmity or prejudice, partisan zeal or animosity, favouritism and other improper influences and motives which are easy of concealment and difficult to be detected and exposed. The first of those two grounds cannot obviously stand and has not been pressed. Therefore, it is the contention in Para. 9-A (2) in Special Civil Application No. 604 of 1961 that remains to be considered and it is that which is strenuously pressed, both by Sri Patel and Sri Daru.

9. It is contended that though these rules can be framed under Art. 309 of the Constitution which empowers a Governor, so far as State services are concerned, to frame service rules, they must be consistent with the other articles because Art. 309 itself provides that the power to make rules is subject "to the other provisions of the Constitution." It was argued that since the rules made under Art. 309 are laws, they must be consistent with Arts. 14 and 16 and therefore they would be void under Art. 13 if they were violative of the rights guaranteed under Arts. 14 and 16 of the Constitution, namely, the right of equality before the law and equal protection of the laws and the right of equality of opportunity in matters relating to employment or appointment to any office under the State. In *General Manager, Southern Railway v. Rangachari*[1] the Supreme Court, while dealing with the scope of Art. 16(1), observed that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Art. 16(1) to the initial employment and nothing else. But that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provisions as to the salary, the periodical increments

therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are and must be deemed to be included in the expression "matters relating to employment" in Art. 16(1). It would seem from these observations that if there is a legislation or a rule which denies the fundamental right of equality of opportunity in matters relating to employment or appointment to an office under the State by providing a discriminatory provision as to the age of superannuation, such a rule can be successfully attacked on the ground that it is violative of Art. 16(1). The learned Advocate-General however argued that the impugned clause of rule 161 is not discriminatory, as it applies to the whole class of Executive Engineers and not to some. But against that contention, Sri Daru argued that even if a rule or a legislation is apparently uniform in its applicability to the entire class, if it contains power of discrimination in its application and such discrimination is unguided by any policy, criterion or norm, it would be violative of Arts. 14 and 16 as the rule itself enables discrimination, in that it abets discrimination. Sri Daru relied upon the decision in *Pandu Ranga Rao v. Andhra Pradesh Public Service Commission*[2]It is difficult however to understand how the decision in this case can help Sri Daru's contention as formulated above. That decision deals with the discriminatory nature of the rule impugned therein and not with the discrimination in the application of the rule

[1][A.I.R. 1962 S.C. 36 at 40]
[2] [A.I.R. 1963 S.C. 268]

inherent in the rule itself. The decision lays down that the validity of a rule attacked on the ground of contravention of Art. 14 is tested on two principles : (1) that a classification is founded on intelligible differentia and (2) that such differentia has reasonable relation to the object sought to be achieved by the rule. Such differentia may be based on such considerations, as geographical considerations, objects or occupations; but some nexus is necessary between the basis of the classification and the intended object. This decision, therefore, is not strictly applicable to the contentions raised before us, except that it lays down in clear terms the two principles upon which the validity of a rule is to be tested. Sri Daru however argued that a rule can be successfully attacked as being violative of Arts. 14 and 16(1), although it may not lay down classification, if in its application it enables the Government to pick and choose indiscriminately an individual or individuals and thus affect prejudicially such an individual or individuals. In *Ram Krishna Dalmia v. Tendolker*[3] the Supreme Court formulated certain principles which have to be borne in mind by the Court when called upon to adjudge the constitutionality of any particular statute attacked as discriminate and violative of equal protection clause. Among other principles laid down in that decision, the Supreme Court laid down the following:

> "1. A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons, things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and

ascertain if the statute has laid down any principle or policy for the guidance of exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law.

2. A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom the provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification; the Court will uphold the law as constitutional.

3. A statute may not make a classification of the persons or things' to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, in such a case the executive action

[3][A.I.R. 1958 S.C. 538]

but not the statute should be condemned as unconstitutional."

9. As laid down in *Balakotaiah v. Union of India*[4] the policy laid down in the impugned statute or rule must be precise and not altogether vague or general. In a later case of *Jyoti Pershad v. Union Territory of Delhi*[5] the Supreme Court reiterated these principles and observed that if the statute itself or the rule made thereunder applies unequally to persons or things similarly situated, it would be a direct violation of the constitutional guarantee and in that event, both the statute and the rule would have to be struck down. Even if the enactment of the rule may not in express terms enact a discriminatory rule or law but if such an enactment or the rule enables an unequal or discriminatory treatment to be accorded to persons or things similarly situated by vesting discretion in an authority, be it the Government or an administrative official, by legislation which does not lay down any policy or does not disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary powers enabling it to discriminate, the other provisions of the law which enable or permit the authority to discriminate, offend the guarantee of equal protection afforded by Art. 14. But where the legislature lays down a policy and enacts a rule or a line of action which should serve as a guide to the authority and where such guidance is expressed in the statutory provision conferring the power, no question of violation of Art. 14 can arise. Even where such is not the case, but there is a case of transgression by the authority of the

limits laid down or an abuse of power, the order would be set aside in appropriate proceedings, not so much on the ground of violation of Art. 14, but as a rule being beyond its power. Their lordships also laid down that it was not essential for the legislation to comply with the the rule as to equal protection that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself. They made it clear that such guidance may be obtained from or afforded by the preamble read in the light of the surrounding circumstances which necessitated the legislation taken in conjunction with the well-known facts of which the Court may take judicial notice or of which it is apprised by evidence before it in the form of affidavits. At p. 1609, quoting with approval the decision in *Kathi Raning Ravat v. State of Saurashtra*[6] and in *Kedar Nath v. State of West Bengal*[7] their lordships stated that if the impugned legislation enacted the policy which inspired it and the object which it sought to attain, the mere fact that the legislation did not itself make a complete and precise classification of the persons or things to which it was to be applied but left the selective application of the law to be made by the standard indicated or underlying the policy and object disclosed, would not be sufficient ground for condemning it as arbitrary and therefore, obnoxious to Art. 14 So long as the policy was laid down and the standard established by statute, no unconstitutional application of power was involved in leaving to the selected instrumentalities the making of consistent rules within the prescribed limits and the determination of the facts to which the policy as disclosed by the legislature was to apply.

10. Since it is admitted that rule 161 does not in terms create discrimination as it applies to all the Executive Engineers, the only and the real question that can arise is whether the rule is such that it enables the Government to defeat the rights of equal protection and equal opportunity through arbitrary discrimination or by an improper application of the

[4][A.I.R. 1958 S.C. 232]
[5][A.I.R. 1961 S.C. 1601]
[6][A.I.R. 1952 S.C. 123]
[7][A.I.R. 1953 S.C. 404]

rule. The contention of Sri Daru was that it does so because there is no policy and no criterion in the rule which can serve as guidance for the Government or its agents in the application of the rule to any particular individual or individuals. He argued that whereas in the case of the Chief Judge of the Small Causes Court, Bombay, efficiency is expressly laid down as the criterion in the rule, that was not so in the case of an Executive Engineer. Reliance was placed by Sri Daru on the decision in *O. K. Ghosh v. E. X. Joseph*[8] where the Supreme Court reiterated the principles laid down by it earlier, that a restriction on the fundamental right [there Art. 19(1)(a) & (b) was concerned] can only to justified if there is a direct or proximate or reasonable connexion between the restriction and the object sought to be achieved by the legislation.

11. The question, therefore, is whether there is any such connexion, direct, proximate or reasonable, between the obligation to retire earlier than the age of 55 years and the object sought to be achieved thereby, and whether the provision as to the right of the Government to make an Executive Engineer retire on reaching the age of 50 years, has any policy or criterion or object which would guide the Government in selecting one or more Executive Engineers to so retire.

The principle as quoted by Weaver in his Constitutional Law, *1946 Edn., p. 397, from Skinner v. Okle Home*[9] is that a legislature in determining the reach and scope of a particular law need not provide abstract symmetry and that it is open to the legislature to mark and set apart classes and types of problems according to the needs and as dictated and suggested by experience. A classification however must not be arbitrary and there must be a reasonable, natural and substantive distinction in the nature of class or classes upon which the law operates. That the law will work hardship is not enough. Many laws have that effect and the greater part of legislation is discriminatory in the extent to which it operates, the manner in which it applies or the objects sought to be attained by it. At the same time, to justify the interposition of the authority of the State in enacting regulatory measures, it must to shown that the interests of the, public generally, as distinct from those of a particular class, require ouch interference. This very principle was stated by Patanjali Sastri, C.J., in the abovequoted case of *Kathi Raning Ravat v. State of Saurashtra [A.I.R. 1952 S.C. 123]* (vide supra). The learned Chief Justice, on a construction of the provisions of Art. 14, observed that all legislative differentiation is not necessarily discriminatory. Discrimination involves an element of unfavorable bias and it is in that sense that the expression has to be understood in its context. The equal protection claims under Art. 14, he observed, should be examined with the presumption that the State's action to reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must of necessity possess in making laws operative differently as regards different groups of persons in order to give effect to its policies. If the legislative policy is clear and definite and as an effective method of carrying out that policy a discrimination is vested by a statute upon an administrator or an officer to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of the legislation to accordance with the objective indicated in the statute and the discretion conferred on official agencies in such circumstances is not an unguided discretion. It has to be exercised in conformity with the policy to effectuate which the direction is given

[8][1962 - II L.L.J. 615]

[9][316 U.S. 535]

and it is in relation to that objective that the propriety of the classification would have to be tested. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can safely be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not otherwise define a policy or objective and it confers authority on another to make selection at his pleasure, the statute would be held, on the face of it, to be discriminatory, irrespective of the way in which it is applied. Thus it is clear that the mere fact that discrimination is vested by statute or a rule upon the executive to make selective application of the law or the rule to certain groups of persons by itself would not render the law a discriminatory legislation.

12. Bearing in mind these principles, we now proceed to ascertain if the impugned clause of rule 161 can be said to be violative of Arts. 14 and 16(1) of the Constitution. Rule 161 is contained in the chapter dealing with compulsory retirement, and lays down, as a condition of service, first, the retiring age of Government employees in general, namely, the age of 55 years except "as otherwise provided in the other clauses of the rule." In other words, the rule provides for the retiring age, in the first instance, generally and in the second instance, for those who are excepted from the general rule laid down in Clause (a) of the rule. The excepted categories of public servants who are carved out from those to whom the general age of superannuation applies, are as follows :

> (1) Class IV servants for whom the retiring age is 60 years.
> (2) Holders of the posts of the Chief Judge of the Small Cause Court. Bombay, and the Administrator-General and Official Trustee, Bombay, for whom the retiring age is 60 years, subject to their continuing efficient up to that age, but liable to be retired on reaching the age of 55 years or thereafter if they do not continue to be efficient.
> (3) Government servants in the Bombay Service of Engineers, Class I, whose retiring age is 55 years, but who are liable to be made to retire on reaching the age of 50 years provided they have not attained the rank of a Superintending Engineer.
> (4) Stipendiary patels, who would ordinarily be retained in service up to the age of 60 years, provided they continue to be efficient but who are liable to be made to retire at the age of 55 years.
> (5) The Principal Judge of the City Civil and Sessions Court, Bombay, whose retiring age is fixed at 60 years.

13. It is thus clear that rule 161 lays down different ages of superannuation for different classes of public servants, and therefore, lays down different classifications. But that by itself, on the principles laid down by the Supreme Court, would not condemn the rule as discriminatory if it is shown that these classifications follow some object or are for the public interest or benefit or are in consequence of some policy. It is apparent from the rule itself that these classifications are based on the types of services to be rendered by each class of public servants. Class IV servants are presumably to retire on reaching the age of 60 years and they have to render unskilled service and the efficiency is not likely, in their case, to deteriorate before they reach the age of 60 years. The retiring age of the Chief Judge of the Small Cause Court, Bombay, at 60 years, as contrasted with the retiring age of 55 years of the other Judges of that Court, is presumably provided for on the basis that since he has also to do administrative work besides his judicial duties, his experience should be availed of by the State in the interest of the public. The same is presumably the reason in the case of the Administrator-General and the Principal Judge of the City Civil and Sessions Court, Bombay. The normal retiring age of Executive Engineers is fixed at 55 years but, as we have already observed, the rule empowers the Government to retire them on reaching 50 years if the conditions in Clause (c)(2)(ii)(1) are satisfied, namely, that they have not attained the rank of a Superintending Engineer. It is clear that this condition has been inserted in the

impugned sub-clause in order that the State may have the benefit of the knowledge and experience of persons who have risen to the rank of Superintending Engineers. These classifications thus are based upon a definite object and upon a consideration of different types of services to be rendered by each of these classes of public servants and the period up to which the public servants in each class are likely to remain efficient considering the conditions in which they serve and the duties which they are expected to perform. Thus, the classification in our view is based upon a policy and a criterion and is made for public benefit and public interest and, therefore, cannot be condemned as discriminatory.

14. The next question is : Does the impugned rule enable the Government to discriminate one from the other in the selective application of the rule by giving the Government an arbitrary and unguided power ? It is true that in the application of the impugned clause the Government has the authority to pick and choose, but that again would not by itself render the rule violative of either Art. 14 or 16. The impugned clause provides that though the age of superannuation is 55 years an Executive Engineer is liable to be made to retire upon his renching the age of 50 years if the person concerned has not attained the rank of a Superintending Engineer. An Engineer in Class I service admittedly would be in charge of a subdivision, the nature of his service would necessitate supervision over his entire region and consequently, frequent movements from one place to another. The rule seems to presume that unlike an employee acting on the post of a Superintending Engineer, his efficiency would depend upon both his physical and mental conditions. It is clear, therefore, that the criterion underlying the impugned rule is administrative efficiency. Just as the Chief Judge of the Small Cause Court at Bombay can be asked to retire before his age of superannuation at 60 years, similarly the Government can direct retirement of an Executive Engineer on his reaching 50 years, the criterion of such action being efficiency, i.e., public interest. In our view, rule 161 indicates a policy upon which the classifications of different types of public servants are founded. The rule also indicates the object, namely, administrative efficiency, upon which the policy of classification itself is based. Once a clear and a definite object or policy is found in a statute or a rule, the mere fact, as laid down by the Supreme Court, that a selective application is provided for, is not by itself a ground for striking down the statute or the rule. The discretion in such cases is not and cannot be said to be an unguided discretion, for it has to be exercised in conformity with the policy or the object in the rule and imports a duty on the executive to use that power in conformity with the objective indicated in the rule or the statute. Thus, rule 161 in Chap. IX applies to all public servants, but in making this rule, certain excepted categories of public servants are carved out. Those exceptions are carved out on considerations of requirements of these posts, efficiency being the criterion, and then the provisions as regards retirement are made. It is true, as we have already stated, that the power to retire Executive Engineer reaching the age of 50 years is given to the Government, but that is done on a consideration of administrative efficiency. Since that is so, it is not possible to say that the rule is without a policy or a principle. It must be remembered that the power under rule 161 to retire an Executive Engineer before he reaches the age of 55 years is vested in the Government and not in an executive official unlike rule 165(a) which confers power on a competent authority,

that is to say, an officer. The impugned order is passed by the Government and not by some executive officer. In such a case, the presumption is, unless pointed out to the contrary, that the power is exercised in conformity rather than in contravention of the policy or the object underlying the rule.

15. The next question is whether the impugned orders against the three petitioners are invalid. Such orders can be challenged on two grounds : (1) that they are ultra vires in the sense that they are in contravention of or not being in accordance with the rule, and (2) that the orders are violative of either Art. 14 or 16(1). So far as the first head of attack is concerned, we may state that none of the three petitioners in his respective petition has made a clear and definite averment that the orders in question are ultra vires the rule, that is to say, that they are not in accordance with the rule. Sri Patel however relied upon the allegations made in Para. 7 of the petition in Special Civil Application No. 745 of 1961 as averments alleging that the order in question was ultra vires as having been passed contrary to the policy in the rule. It is true that both in Special Civil Applications Nos. 745 and 604 of 1961, certain instances have been cited with a view to show that the Government exercised the power indiscriminately and as not having been based upon any policy at all. These instances, however, do not disclose any names of the officers concerned or any other particulars. That being so, it is impossible to treat these averments as proper averments showing that the orders in question were ultra vires, that is to say, not being in accordance with the rule or in contravention of the policy in the rule or the objective indicated therein. As regards the second attack that the order is indiscriminatory and therefore violative of Arts. 14 and 16 of the Constitution, the averments in the petition in respect thereof also cannot be said to be proper averments. As observed in *Ramanlal Nagardas Sheth and others v. M. S. Palnitkar, Collector of Mehsana District*[10] it is necessary to plead in such a case that the impugned action or the act was both intentional and purposeful. In other words, it has to be shown and established that the act in question was not only discriminatory in nature, but also done with a certain bias and prejudice. There is no such averment in any of the three petitions. In fact, Sri Daru stated that so far as his petition was concerned, Para. 7-C of that petition attacked the order on the basis of its being ultra vires and not as being violative either of Art. 14 or 16. Paragraph 7-C alleges of certain unfit persons having been promoted by the Government. These averments are again general and vague and without any particulars and therefore, cannot be said to constitute proper averments on which the allegation as to the acts of the Government being ultra vires can be founded. There is in fact no specific averment even in the paragraph that the Government was guilty of not having followed the policy contained in rule 161. Sri Daru also relied upon the affidavit in reply in Special Civil Application No. 827 of 1961 where in Para. 10-B it is stated : "that vague instances cited by the petitioner are admissions to show that the Government does not follow any definite policy for compulsory retirement of officers under rule 161(c)(ii)(1) of the Bombay Civil Services Rules." From the perusal of the affidavits in reply in the other two petitions, which are similar and almost verbatim to this affidavit in reply, it is clear that the word

[10][2 G.L.R. 38 at 55]

"admissions" has occurred in the aforesaid paragraph through a typographical mistake. In the affidavit in reply in Special Civil Application No. 745 of 1961, the expression used is "an attempt to show" and not the word "admissions." It is thus clear that the word "admissions" has been inadvertently written in this affidavit and therefore, the sentence relied upon by Sri Daru cannot be said to be an admission on the part of the respondent. That being so, we must hold that the petitions do not contain necessary and proper averments which would enable the respondent to reply to them or upon the basis of which Sri Daru and Sri Patel would be entitled to base their contention with regard to the invalidity of the impugned acts of the Government. Even if these averments were to be accepted as proper averments, these have been categorically denied by the respondent and there is no proper or adequate material before us to hold that the impugned orders were passed in contravention of or not in accordance with rule 161 and the object and the policy underlying the rule or that they were passed in a discriminatory way so as to justify the conclusion that they were violative of Art. 14 or 16. For the reasons aforesaid, we must hold that the contention of Sri Daru and Sri Patel regarding the alleged invalidity of rule 161 and the orders passed thereunder, must fail.

16. We now deal with the additional questions raised by the petitioner in Special Civil Application No. 827 of 1961. The additional contentions raised in this petition are :

> (1) that the petitioner being a public servant in the service of ex-Junagadh State prior to its integration in the State of Saurashtra, was governed by the pension rules of that State and not by the Bombay Civil Services Rules, and
> (2) that assuming that the Bombay Civil Services Rules applied to the petitioner, by reason of the events that took place after the integration of that State, rule 161(c)(2)(ii)(1) of those rules lays down terms and conditions of service which are less advantageous to the petitioner than those applicable to him immediately before 1 November 1956, i.e., before the passing of the States Reorganization Act of 1956. Therefore, the terms of services applicable to the petitioner immediately before the aforesaid Act have been varied to his disadvantage and no previous approval of the Central Government having been obtained for such variation, the rule is in violation of S. 115(7) of the States Reorganization Act, 1956, and the Bombay Reorganization Act, 1960. Sri Daru contended that the rule was illegal in its application to the petitioner and the order passed against him was illegal and the petitioner cannot be made to retire until he reached the age of 55 years. As against those contentions, the learned Advocate-General submitted that there was nothing to show that the petitioner, on the integration of the State of Junagadh into the State of Saurashtra, opted to be governed by the Junagadh State Rules, that rule 241(a) of the Junagadh Rules did not deal with the age of retirement but concerned itself with the manner in which pension was to be computed, and that therefore, that rule was irrelevant for the purpose of this petition. He also argued that after the States Reorganization Act, 1956, was passed, under which the servants of the erstwhile State of Saurashtra became the servants of the newly formed Bombay State, an option was given

to choose whether they wished to be governed by the rules which governed them till then or by the Bombay Rules. He argued that it was notified in the circulars issued by the Government that unless a Government servant expressed his option, he would be governed by the Bombay Rules, that the petitioner did not opt for the rules by which he was governed prior to 1 November 1956 and consequently on and after that day, he was governed by the Bombay Rules including the rules contained in the Bombay Civil Services Rules.

17. It is an admitted fact that on 23 September 1948, the erstwhile State of Saurashtra adopted the Bombay Civil Services Rules. The erstwhile State of Junagadh integrated in the State of Saurashtra on 20 January 1949 and the Supplementary Covenant under which the said integration took place, preserved the rights of public servants of the erstwhile Junagadh State. Prima facie, therefore, the Bombay Civil Services Rules as adapted by the erstwhile State of Saurashtra would not govern the public servants of the Covenanting State, namely, the State of Junagadh, and that those rules as adapted by the State of Saurashtra would only apply to those public servants who were directly recruited by the State of Saurashtra. This position appears to have been realized by the State of Saurashtra and therefore, the Rajpramukh made and promulgated rules under Art. 309 which were published in the Saurashtra Gazette, dated 8 July 1955. These rules having been made under Art. 309, they had an overriding effect over all the previous rules and also the clauses in the Supplementary Covenant under which certain rights of the public servants of the State of Junagadh were preserved. As admitted by Sri Daru, the service rules of the erstwhile State of Junagadh are not any more applicable or relevant and that the rules which would apply in the present case would be the Saurashtra Rules of 1955. It is therefore not necessary for us to determine the terms and conditions of service of the petitioner while he was in the public service of the erstwhile State of Junagadh.

18. Rule 1, Cls. (1) and (3), of the Saurashtra Rules of 1955 provides that these rules may be called the Saurashtra Covenanting States Servants (Superannuation Age) Rules, 1955, and that they were to apply to those servants of the Covenanting States who were absorbed in the posts and in service in connexion with the affairs of the State of Saurashtra. Under Clause (2) of rule 2A "Covenanting State" was defined as meaning a State of Kathiawar, the ruler of which had signed the Covenant and included, amongst other territories, the estate of Junagadh. Clause (4) of rule 2 defines a "Government servant" as meaning a servant in a Covenanting State absorbed in service in connexion with the affairs of the State of Saurashtra. There is no doubt that the petitioner would be a servant within the meaning of rule 2 of these rules and would be governed, therefore, by these rules. Rule 3 dealt with the age of retirement and provided that "Notwithstanding anything contained in any law, rule, circular, notification, order etc., issued by a competent authority of a Covenanting State, or in any order or decree of a civil Court, a Government servant shall, unless for special reasons otherwise directed by Government, retire from service on his completing 55 years of age." Clause (2) of rule 3 provided that a Government servant who has retired on completing 55 years of age before the coming into force of these rules

shall be deemed to have been lawfully retired and shall have no claim against the Government merely on the ground that under the conditions of service applicable to him under the law of the Covenanting State to which he belonged, he should have been continued in service even after the completion of 55 years of age. It appears that after the various Covenanting States integrated into the State of Saurashtra and their employees were absorbed into the service of the newly formed State of Saurashtra, the Government of Saurashtra State believed that the Bombay Civil Services Rules adapted by it in September 1948 applied, not only to the employees recruited directly by the State Government but also to those employees who came from the Covenanting State and who, under the Covenant, were absorbed in the public services of the State of Saurashtra. It also appears that though several of these public servants were entitled to retire at different ages under the terms and conditions applicable to them in the Covenanting States, some of them were made to retire on completion of 55 years as provided in the Bombay Civil Services Rules. In one case which went up to the Supreme Court, the Supreme Court held that this was wrong and that the servant concerned was entitled to the benefits of the rules of the Covenanting State from which he was absorbed. [See *Bholanth J. Thaker v. State of Saurashtra*[11]. It was therefore that these rules of 1955 were made by the Rajpramukh under the power reserved to him under Art. 309. The object of making these rules was to make the age of retirement uniform and definite, and also to prevent, as indicated by Clause (2) of rule 33, those who had been made to retire on reaching the age of 55 years under a mistaken belief that the Bombay Civil Services Rules applied to them, though by virtue of the Covenant they were governed by the conditions of service under which they had entered the service of the respective Covenanting States, to claim reinstatement or to take proceedings. Rule 3, Cls. (1) and (2), of these rules clearly shows the object of framing these rules and also the fact that after the aforesaid decision of the Supreme Court, the State Government realized its mistake and the possibility of those servants, who were made to retire, demanding either their reinstatement or taking proceedings against the aforesaid action of the State. It is against this back ground that these rules have to be looked at and construed.

19. There can be no doubt that prior to the enactment of the States Reorganization Act, XXXVII of 1956 i.e., prior to 1 November 1956, the petitioner was governed by the Saurashtra Rules of 1955 and not by the Bombay Civil Services Rules though they were adopted by the State of Saurashtra. It is however in the affidavit of the respondent that on and after 1 November 1956, the public servants serving under the erstwhile State of Saurashtra were absorbed in the public services of the newly formed bilingual State of Bombay by their having been allotted to the new State and that these public servants therefore became subject to the Bombay Civil Services Rules. The learned Advocate- General also urged that circulars were sent to the various Government offices in the State, giving option to the public servants who were absorbed, if they wished to opt for the conditions of service applicable under the rules of the Saurashtra State, but that the petitioner failed to exercise that option and therefore, became liable to be governed by the Bombay Civil Services Rules. So far as the latter proposition is concerned, we are of the view that the circulars issued by the executive cannot deprive a public servant of the rights and

privileges he would be entitled to under the provisions of the States Reorganization Act, 1956. The argument that on and after 1 November 1956 the petitioner became absorbed in the service of the newly formed State of Bombay and became thereafter subject to the Bombay Civil Services Rules is also, in our view, erroneous because that argument omits to take into consideration S. 115 of the 1956 Act. Sub-Section (1) of S. 115 is contained in Part X which deals with public services. Sub-section (1) of S. 115 provides that every person who, immediately before the appointed day, is serving inter alia in connexion with the affairs of any of the existing States of Mysore, Punjab, Patiala, East Punjab States Union and Saurashtra, shall, as from that day, be deemed to have been allotted to serve in connexion with the affairs of the successor State to that existing State. It is undisputed that by reason of S. 115(1) the petitioner, who was until then serving in connexion with the affairs of the Saurashtra State, came to be

[11](A.I.R. 1954 S.C. 680)

allotted to the successor State, namely, the bilingual State of Bombay. Under Sub-section (7) of S. 155, he would be governed, on and after the appointed day, by the provisions of Chap. I of Part XIV of the Constitution in relation to the determination of the conditions of service, and therefore, by the rules made in pursuance of the powers of the Governor of the new State of Bombay reserved under Art. 309 of the Constitution. Chapter I of Part XIV of the Constitution deals with services and contains, among other things, Art. 309 which provides for recruitment and conditions of service of persons serving the Union or a State. By Sub-sec (7) of S.115 of the 1956 Act, a servant allotted to the State of Bombay would be governed by the provisions of Art. 309 and therefore the rules made thereunder by the Governor of the State of Bombay. Therefore, the Bombay Civil Services Rulse made by the Governor of Bombay and published in 1959, which include rule 161, would apply to the petitioner and others who prior to 1 November 1956, were the State of Saurashtra but who were allotted to the Bombay State on and after 1 November 1956. This position, however, is subject to the proviso to S. 115(7) which provides that "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." It is conceded by the learned Advocate-General that no previous approval of the Central Government has been obtained to vary the conditions of service of the absorbed public servants who, until 1 November 1956, were serving in the State of Saurashtra. Therefore, the question that has to be decided is whether the application of rule 161 to the petitioner has the effect of varying to his disadvantage the conditions of service contained in 1955 rules of Saurashtra which, as aforesaid, were applicable to him before the appointed day. Sri Daru argued that it did, while the learned Advocate-General argued that it did not. In considering these rival contentions, we have to see the effect of rule 161(c)(2)(ii). Under this clause, though the age of retirement is fixed at 55 years of age in the case of Executive Engineers, these Executive Engineers are liable to be made to retire on reaching the age of 50 years. This power, as observed before, is however hedged by two conditions : (1) that the petitioner cannot be made to retire earlier than 55 years of age unless he has reached the age of 50 years, and (2) that he has not attained the rank of a Superintending Engineer. This means that the power to retire earlier than the age of 55 years is neither absolute

nor unconditional. Let us now compare this condition with the condition under the rules of Saurashtra State of 1955. Clause (1) of rule 3 provides that a Government servant shall, unless for special reasons otherwise directed by Government, retire from service on his completing 55 years of age. It is true that under this clause the age of superannuation is 55 years, but that is subject to the provisions contained in the expression "unless for special reasons otherwise directed by Government." But Sri Daru argued that the proper interpretation of this expression is that a public servant has to retire at the age of 55 years unless for special reasons the Government directs that he should retire at some later age. In other words, according to him this clause provides for the extension of the age of superannuation and not the reduction thereof. The learned Advocate-General, on the contrary, argued that the expression in its context can mean only one thing, namely, that though the retiring age under this rule is fixed at 55 years, a Government servant, for special reasons, can be directed to retire earlier and that too, at any age earlier than 55 years, - a condition certainly disadvantageous than the one in rule 161. In view of these rival submissions, it becomes necessary for us to determine what the true construction of Clause (1) of rule 1 of Saurashtra Rules of 1955 is.

20. There can be no dispute that a provision in a statute or a rule must be construed by the language used in it and that the language should be given its ordinary dictionary meaning unless it is used in any technical sense or unless the context requires it to be construed in a different way. Public servants under this clause must retire on completing 55 years of age unless for special reasons Government directs otherwise. As the expression "unless for special reasons Government directs otherwise" stands, there is nothing in that expression to justify the circumscribed interpretation given by Sri Daru on the one hand and the learned Advocate-General on the other. The expression "unless for special reasons otherwise directed by Government" would mean both ways, namely, that the Government may direct, of course for special reasons, that the servant in question should not retire at the age of 55 years but later. On the other hand, the Government might direct, again for special reasons, that he should retire earlier than the age when he completes his 55 years. As we have said, there is nothing in the words used in Clause (1) to warrant a limited construction sought by Sri Daru and the learned Advocate- General.

21. Assuming that the expression "unless for special reasons, etc." is capable of any ambiguity, the background in which these rules were made, namely, the attempt on the part of the Government of Saurashtra State to bring about uniformity in the conditions of service applicable to its servants, directly recruited by it and those absorbed from the Covenanting States and its previous attempt to apply the Bombay Civil Services Rules to persons even from the Covenanting States, would seem to show that the Rajpramukh wanted to reserve power to the State Government to make a person retire earlier than his superannuation age, as could be done in the case of servants directly recruited by the State of Saurashtra and governed by the Bombay Civil Services Rules, adopted by that State, and at the same time to have the power to extend, in a suitable case, the age of retirement so that in exceptional cases, the State Government can

utilize his special equipment and experience for the benefit of the public. Considering the conditions prevailing then, it is not possible to accept the contention of Sri Daru that the power was only to extend the age of retirement. The reason for this view is fairly clear. While framing these rules, the draftsman knew or must have known that an Executive Engineer recruited directly by the State Government was subject to the Bombay Civil Services Rules as adopted by the State and therefore, was liable to be made to retire under rule 161 on reaching the age of 50 years. In our view, it is improbable that while framing these rules of 1955, the draftsman would give special preference to an Executive Engineer absorbed from a Covenanting State and frame this clause so as to circumscribe the power of the State Government only to extend his age of retirement and not to confer the power, of course for special reasons, both to extend and to reduce. In this view, the Saurashtra rule as pointed out above would be more onerous than rule 161 of the Bombay Civil Services Rules; for a servant governed under the former rules was liable to be made to retire at any age earlier than 55 years and even if he had attained at the time the rank of a Superintending Engineer. Under rule 161 he can be made to do so only if the two conditions existed - (1) that he has reached the age of 50 years which means that he can be made to retire at worst only five years earlier, and (2) provided that he has not reached the rank of a Superintending Engineer. In that view, it is not possible for us to say that the impugned clause of rule 161 is in violation of the proviso to S. 115(7) of the 1956 Act.

22. The learned Advocate-General then pointed out that prior to 1 July 1959, which is the date of publication of the present Bombay Civil Services Rules, similar rules prevailed which were made by the Governor under S. 241(2)(b) of the Government of India Act. 1935, and were brought into force on 1 November 1938. These rules also contained rule 161 in Chap. IX similar to the present rule 161. By virtue of Art. 313, the rules made in 1938 continued to be in force until rules were made under Art. 309 in 1959. Under S. 2(h) of the States Reorganization Act of 1956, these rules were laws. Under S. 119 of the Act, however, they could apply only to the old territory of Bombay and not to the new regions added to the original State of Bombay. Therefore, the public servants of the erstwhile State of Saurashtra who came to be absorbed in the new State of Bombay were governed by the Saurashtra Rules of 1955. This was the position up to 1 November 1956. The learned Advocate-General then pointed out that by a resolution dated 7 January 1957, the Bombay Civil Services Rules were made applicable to the public servants of the erstwhile State of Saurashtra who were allotted to the newly formed State of Bombay, except in two matters, namely, the amount of leave and pension. He argued that under S. 120 of the 1956 Act, the appropriate Government had power to adapt a law by means of an executive order and that the appropriate Government under that section would be the State Government of Bombay. The question then is, dose the resolution dated 7 January 1957, have either the effect of adaptation or modification of the existing Bombay Civil Services Rules and applicable territorially to the original territories of the State of Bombay. According to the learned Advocate-General, this resolution is an adaptation resolution within the meaning of S. 120 of the 1956 Act. In our view, the argument is not tenable, for the adaptation contemplated under S. 120 is one by repeal of the existing law or by modification of that existing law. In our view, the resolution of 7

January 1957 does neither and cannot, therefore, he held as an adaptation contemplated under S. 120. We are in this conclusion fortified by the view taken by the High Court of Kerala in *Mangalore Ganesh Bidi Works v. State of Kerala*[12] where it was held that the power conferred by S. 120 is only a power of adaptation for the purpose of facilitating the application of a law and not a power to introduce new laws into any portion of the State. The power to adapt laws in order to facilitate their application cannot possibly be construed as embracing a power to widen the territorial ambit of any legislation, primary or delegated. On this reasoning it was held that S. 120 would not empower the Government of Kerala to introduce a law in force in the Travencore-Cochin portion of the Kerala State into the Malabar district or vice versa. In the result, though the Bombay Civil Services Rules of 1959 became applicable to the petitioner, they were subject to the proviso of S. 115(7) of the States Reorganization Act. 1966, and S. 81(6) of the Bombay Reorganization Act of 1960. The resolution dated 7 January 1957, therefore, cannot be said to have subjected the petitioner to the Bombay Civil Services Rules as they existed then.

23. The learned Advocate-General next contended that the question whether rule 161 was in any way disadvantageous to the petitioner should be considered not merely from one condition, namely, the one dealing with the power of the State Government to retire the petitioner earlier than on his fifty-fifth year, but from a totality of conditions to which he became both entitled to and subject to after the rules of 1959 came into force. Sri Daru on the other hand contended that this was not a correct view of the rights of the petitioner which he derived by virtue of the proviso to S. 115 (7) of the 1956 Act and S. 81 (6) of the Bombay Reorganization Act of 1960. He contended that although the petitioner might have derived other benefits by reason of the application of the Bombay Civil Services Rules of 1959, even if there was one condition therein which placed him in a

[12][A.I.R. 1952 Ker 96]

disadvantageous position than he was in prior to November 1956, the rule would be in violation of the protection given by the proviso to S. 115(7) of the 1956 Act. It is not necessary for us to decide this vexed question in view of our finding that the condition in rule 161(c)(2)(ii) is not shown to be less advantageous to the petitioner than the condition in Clause (1) of rule 3 of the Saurashtra Rules of 1956 to which the petitioner was subject to until 1 November 1956.

24. For the reasons aforesaid, we hold that the impugned clause of rule 161 doses not suffer from invalidity as the classifications there under made are not discriminatory, and even if so, are founded on a definite policy, a definite object or a criterion, namely, administrative efficiency and public interest. The rule also does not suffer from invalidity, though it confers discrimination, in its practical application, to the Government, for the rule furnishes an object and a criterion according to which the State Government has to exercise its power of selection and, as observed by the Supreme Court in more than one decision, the State Government is presumed, unless shown to the contrary, that it would use its discriminatory power in accordance with the aforesaid policy and object which would serve as guidance to the State Government in its application of the rule. Nothing contrary to such presumption having been proved, these petitions must fail.

25. In the result, the petitions are dismissed and rules discharged with costs.
Petitions dismissed.