GUJARAT HIGH COURT

G.L. Shukla

Vs.

The State of Gujarat

Special Civil Application Nos. 351 of 1963 and 382 of 1963

(P.N. Bhagwati and A.R. Bakshi, JJ.)

13.03.1967

JUDGMENT

P.N. Bhagwati, J.

1. These petitions raise an interesting question as to the constitutional validity of certain provisions of the Gujarat Panchayats Act, 1961 (hereinafter referred to as the Act). Section 1 of the Act came into force on 24th February 1962 and Sub-section (3) of Section 1 provided that the remaining provisions of the Act shall come into force on such date or dates as may be appointed by the State Government. 21st March 1963 was the date appointed by the State Government in exercise of the power conferred under Section 1 Sub-section (3) and the remaining provisions of the Act, therefore, came into force on that date. By an order made under Section 157 of the Act, the State Government transferred to the respective District Panchayats the powers, functions and duties exercised and performed by the Public Works Department of the State Government in various Divisions and Sub-divisions with effect from 1st April 1963. The Public Works Department consists of five wings, namely, Roads and Buildings, Irrigation, Public Health, Electrical and Mechanical and the divisions and sub-divisions of which the powers, functions and duties were transferred belonged to the Roads and Buildings and Irrigation Wings. Each of these divisions comprised Class I, Class III and Class IV servants belonging to the State service and each of the sub-divisions comprised Class II, Class III and Class IV servants of the State service. We are concerned in these petitions with Class III and Class IV servants and we will, therefore, confine our attention only to them. Class III servants consisted of overseen, clerks, tracers, draftsmen, assistant draftsmen, typists, computers and store-keepers while Class IV servants consisted of Chowkidars and Peons. The Order by which the functions, powers and duties of these divisions and sub-divisions were transferred also allotted to the respective District Panchayats Class III and Class IV servants serving in these divisions and sub-divisions under Section 157 of the Act. Class III and Class IV servants apprehended that the State Government will immediately proceed to allocate them to the Panchayat Service under Section 206(1)(i) of

the Act and the State Government took a step in the direction by issuing a Notification dated 22nd March 1963 under Section 321(1) authorizing the Superintending Engineers of various Circles to exercise I the power of the State Government under Section 206(1)(i) in respect of Class III and Class IV servants. The petitioners who are Clerks belonging to Class III services thereupon preferred Petition No. 351 of 1963 on behalf of themselves and other Clerks of the Roads and Buildings and Irrigation Wings of the Public Works Department and the petitioners who are Class III and IV servants preferred Petition No. 382 of 1963 on behalf of themselves and other Class HI and Class IV servants, except Clerks, belonging to the said two Wings of the Public Works Department. These petitions challenged the vires of Sections 205, 206 and 209 of the Act and sought to restrain the State Government and the Superintending Engineers of various Circles from making any orders of allocation under Section 206 of the Act in respect of Class III and Class IV servants serving in the divisions and sub-divisions transferred under the order. Immediately on filing the petitions, the petitioners applied for interim relief and on the application for interim relief, a consent order was passed as a result of which the respondents agreed to stay their hands and not to issue any allocation orders pending the disposal of the petitions. During the pendency of the petitions the Act was amended by the Legislature and a new Section 206A was introduced. The petitioners, therefore, after obtaining leave of the Court amended the petitions by introducing a paragraph challenging the vires of Section 206A. The petition as amended thus impugned the validity of four sections, namely, Sections 205, 206, 206A and 209.

2. There were three grounds on which the validity of these sections was challenged in the petitions. One was that the sections were in conflict with Articles 310 and 311; the other was that the sections were volatile of Articles 14 and 19(1)(g) and the third was that the sections were repugnant to the Industrial Disputes Act, 1947. Of these three grounds, the last was given up by Mr. Nanavati on behalf of the petitioners and even out of the two legs of the second ground, that based on Article 19(1)(g) was not pressed and the challenge under the second ground was confined to violation of Article 14. The only points which therefore require to be considered are, first, whether the impugned sections are violative of Articles 310 and 311 and secondly, whether they transgress the constitutional inhibition contained in Article 14.

3. In order to appreciate the arguments bearing on these points it is necessary to refer to a few relevant provisions of the Act. The Act, as its preamble shows, was passed with the object of reorganizing the administration pertaining to local government in furtherance of the object of democratic decentralisation of powers in favour of different classes of panchayats. The Act divides the State into districts, districts into talukas and talukas into grams and nagars and Section 3 enacts that there shall be in each district, a gram panchayat for each gram, a nagar panchayat for each nagar, a taluka panchayat for each taluka, and a district panchayat for the district. Section 7 says that each of the panchayats shall be a body corporate with perpetual succession and a common seal. Section 8 gives the hierarchy of panchayats, namely, that the gram panchayat or nagar panchayat shall be subordinate to the taluka panchayat and the district

panchayat and the taluka panchayat shall be subordinate to the district panchayat and declares that all the panchayats shall be subject to the overall control of the State Government. The gram panchayats, nagar panchayats, taluka panchayats and district panchayats, according to Section 11 Sub-section (1) constitute the Panchayat Organisation of the State and Section 11 Sub-section (2) reiterates the control of the State Government over the panchayats. Certain functions are statutorily entrusted to the gram or nagar panchayat, taluka panchayat and district panchayat and they are to be found respectively in Schedules I, II and III. The List of functions enumerated in Schedules I, II and III is known as Panchayat Functions List (Vide Section 2(22)). In addition to the functions set out in the Panchayat Functions List, the panchayats are also expected to perform certain other functions which are transferred to them by or under the provisions of the Act. Sections 149, 155, 157, 158, 325, 326 and 327 provide for the transfer of various functions, powers and duties to the panchayats. Now in order to exercise these powers and perform these functions and duties, the panchayats would require service personnel. Section 155 Sub-section (1) Clause (e) transfers to the taluka panchayats and the district panchayat the employees of the District school boards which are dissolved under the main part of Sub-section (1) of Section 155. Section 325 Sub-section (2) Clause (x) makes the employees of the old village panchayats, employees of the new gram panchayats until other provision is made in accordance with the provisions of the Act. The employees of the district local boards which are dissolved under Section 326 are transferred to the service of the successor panchayat under Clause (k) of that section, subject to provisions of the Act. When any powers, functions and duties are transferred by the State Government to the district panchayat under Section 157, the State Government is required by that section to allot to the district panchayat such personnel as may be necessary to enable the district panchayat to exercise the powers and discharge the functions and duties so transferred. The district panchayat in its turn may delegate any of these powers, functions and duties to any panchayat subordinate to it and if it does so, it may allot to such panchayat such staff as may be necessary to enable the panchayat to exercise the powers and discharge the functions and duties so delegated. Section 158 provides for statutory transfer to the district panchayat of the staff employed for the performance of the functions and duties transferred under that section. The service personnel drawn from different sources is thus allotted or transferred to the different panchayats and by its very nature it would be heterogeneous in composition with widely differing scales of pay and conditions of service. This, it was realised, would not be conducive to healthy and efficient administration of the panchayat organization. It was also felt that since the panchayat organization was being set up for the exercise of decentralized powers of local Government, it would be desirable that there should be a distinct independent service of persons employed in the discharge of functions and duties of panchayats with uniform scales of pay and uniform conditions of service. The Legislature, therefore, with a view to constituting such service and integrating the service personnel allotted or transferred under various sections of the Act into such service, enacted Chapter XI containing provisions relating to services. This Chapter contains a fasciculus of sections commencing from Section 203 and ending with Section 211. Section 203 provides for constitution of a Panchayat Service in connection with the affairs of panchayats and this service is to be distinct from the State service. The Panchayat Service is to

be constituted as follows as set out in Section 203:-

> "203. (1) For the purpose of bringing about uniform scales of pay and uniform conditions of service for persons employed in the discharge of functions and duties of panchayats, there shall be constituted a Panchayat Service in connection with the affairs of panchayats. Such service shall be distinct from the State service.
> (2) The Panchayat service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre shall be such, as the State Government may by order from time to time determine:-
> Provided that nothing in this sub-section shall prevent a district panchayat from altering, with the previous approval of the State Government, any class, cadre or number of posts so determined by the State Government.
> (2A) (a) The cadres referred to in Sub-section (2) may consist of district cadres, taluka cadres and local cadres.
> (b) A servant belonging to a district cadre shall be liable to be posted whether by promotion or transfer to any post in any taluka in the district.
> (c) A servant belonging to a taluka cadre shall be liable to be posted, whether by promotion or transfer to any post in any gram or nagar in the same taluka.
> (d) A servant belonging to a local cadre shall be liable to be posted whether by promotion or transfer to any post in the same gram or, as the case may be, nagar.
> (2B) In addition to the posts in the cadres referred to in Sub-section (2A), a panchayat may have such other posts of such classes as the State Government may by general or special order determine. Such posts shall be called "deputation posts" and shall be filled in accordance with the provisions of Section 207.
> (3) Subject to the provisions of this Act, the State Government may make rules regulating the mode of recruitment either by holding examinations or otherwise and conditions of service of persons appointed to the panchayat service and the powers in respect of appointments, transfers and promotions of officers and servants in the Panchayat Service and disciplinary action against such officers or servants.
> (4) Rules made under Sub-section (3) shall in particular contain:-
> (a) a provision entitling servants of such cadres in the Panchayat Service to promotion to such cadres in the State Service as may be prescribed.
> XXX XXX XXX XXX XXX XXX XXX"

Section 204 provides that, subject to the rules which the State Government may make in that behalf, the expenditure towards the pay and allowances of and other benefits available to, an officer or servant of the Panchayat Service serving for the time being under any panchayat shall be met by that panchayat from its own fund. Section 205 lays down the mode of appointment to the Panchayat Service and it says:-

> "205. Subject to any rules made under Section 203, appointments to the posts in

Panchayat Service shall be made:-

(i) by direct recruitment;
(ii) by promotion or
(iii) by transfer of a member of the State Service to the Panchayat Service."

Section 206 is an important section and we would, therefore, set out that section in full:-

"206. (1) The State Government shall by a general or special order allocate to the Panchyat Service:-

(i) such number of officers and servants out of the staff allotted or transferred to a panchayat under Sections 157, 158 and 325 as it may deem fit,
(ia) all officers and servants of the municipalities dissolved under Section 307,
(ii) all officers and servants in the service of district local boards and district school boards immediately before their dissolution under this Act and transferred to the panchayats under Sections 155 and 326,
(iii) such other officers and servants employed in the State service as may be necessary to enable the panchayats to discharge efficiently their functions and duties under this Act.
(2) The Officers and servants allocated to the Panchayat Service under Sub-section (1) shall be taken over by such panchayats in such cadre and on such tenure, remuneration and other conditions of service as the State Government may by general or special order determine;
Provided that the conditions of service of any such officer or servant shall not be less favourable than those applicable to him immediately before such allocation:
Provided further that nothing in the aforesaid proviso shall entitle an officer or servant to claim the same cadre and designation which he had before allocation."
The Act as originally enacted did not contain Section 206A but it was introduced subsequently by an amendment made by Gujarat Act 13 of 1963. Section 206A as amended from time to time provides as follows in its material part:-
"206A. (1) Notwithstanding anything contained in Section 206, the allocation to the Panchayat service made under Section 206 of officers or servants allotted or transferred to a panchayat under Section 157 or 158 shall initially be provisional and it shall be lawful for the State Government to review their allocation within a period of four years from the 1st April, 1963 and if necessary to reallocate by an order made in that behalf any of such officers or servants to the State Service for any of the following reasons, namely:-
(i) if out of the officers and servants so allocated any officers or servants are found to be surplus in any category of the Panchayat Service;
(ii) if in the interest of public service, it is considered necessary to recall any such officer or servant;
(iia) if in pursuance of any information called for in this behalf by or on behalf of the

State Government at any time after the 1st April 1963, any such officer or servant has preferred to revert to the State Service and after taking into consideration the exigencies of service in the panchayat organisation and also of service under the State Government, the State Government thinks fit to recall such officer or servant,

(iii) any other person prescribed by rules.

(2) Any officer or servant, who is not re-allocated under Sub-section (1) and continues in the Panchayat Service immediately before the expiry of the aforesaid period of four years shall on such expiry be deemed to be finally allocated to the Panchayat Service.

(3) The conditions of service of an officer or servant re-allocated to the State service shall not be less favourable than those applicable to him immediately before such reallocation.

XXX XXX XXX XXX XXX XXX XXX"

Section 207 empowers the State Government to direct by a general or special order that such number of officers of the Indian Administrative Service and of Class I and Class II services of the State and such number of officers or servants allotted or transferred to a panchayat under Section 157 or 158 but not allocated to the panchayat service under Section 206 shall be posted under such panchayat and for such period and subject to such conditions as may be specified in the order. Section 208 provides for loan of services of any officer of Government to a panchayat. Section 209 says that notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law for the time being in force, the allocation of any officer or servant to the Panchayat Service under Section 206 shall not entitle such officer or servant to any compensation under that Act or law; and no claim for any such compensation shall be entertained by any Court, Tribunal or authority. Sections 210 and 211 finally provide for establishment of a Gujarat Panchayat Service Selection Board and a District Panchayat Service Selection Committee for recruitment. It is in the context of these provisions that we have to decide the question of vires of Sections 205, 206, 206A and 209.

4. We will first consider the question whether these sections are ultra vires Article 310. The argument of the petitioners on this point was as follows. When the State Government makes an order of allocation under Section 206, the Government servant who is allocated ceases to be a servant of the State and becomes a servant of the Panchayat by which he is absorbed and a termination of his existing service with the State is brought about by the order of allocation. Section 206 thus empowers the State Government to terminate the service of a Government Servant by making an order of allocation in respect of him. But this is impermissible under Article 310 since that Article entitles the Government servant to continue to hold office until removed by the President or the Governor according as he is a member of the Public Service of the Union or the State and no authority other than the President or the Governor can be empowered to terminate the service of such a Government servant. Section 206 which empowers the State Government to terminate the service of a Government servant is, therefore, violative of Article 310 and must be struck down as invalid. This argument was sought to be supported by reference to the decision of the Supreme Court in *State of U.P. v. Babu Ram*[1], But we do not

think the argument is well-founded. The decision of the Supreme Court does not support it and it must be rejected. Our reasons for saying so are as follows.

5. We may straightway point out for reasons which we shall discuss a little later, that the order of allocation made by the State Government under Section 206 does not have the effect of bringing about termination of services of the Government in respect of whom the order of allocation is made and the whole argument based on violation of Article 310 is, therefore, misconceived and unsustainable. But quite apart from the fact that this fundamental postulate of the argument is lacking, it is difficult to see how Article 310 can be invoked even if the effect of the order of allocation were to terminate the State service of the Government servant and to appoint him a new to the Panchayat service. Article 310 embodies the doctrine "tenure at pleasure" and Clause (1) of that Article says:-

> "310. (1) Except as expressly provided by this Constitution, every person who is a member of a defense service or of a civil service of the Union or of an All - India service or holds any post connected with defense or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State."

It is clear from the opening words of Article 310(1), namely "Except as expressly

[1] A.I.R. 1961 S.C. 751

provided by this Constitution" that if there is a specific provision in some part of the Constitution giving to the Government servant a tenure different from that provided for in Article 310(1), that Government servant is excluded from the operation of Article 310(1). These words are obviously intended to refer inter alia to Articles 124, 148, 218 and 324 which provide that the Judges of the Supreme Court, the Auditor General, the Judges of the High Court and the Chief Election Commissioner shall not be removed from their offices except in the manner laid down in those Articles. But apart from Government servants falling within these categories for which different tenure is provided in other parts of the Constitution, every Government servant holds office during the pleasure of the President or the Governor, as the case may be, under Article 310(1). The tenure of every Government servant is subject to the pleasure of the President or the Governor, as the case may be, and the President or the Government, as the case may be, has overriding power to put an end to the tenure of any Government servant at his pleasure. This pleasure of the President or the Governor is absolute and cannot be fettered or circumscribed in any manner by any law made by the Legislature. It is undoubtedly true that the words "conditions of service" in Article 309 in their comprehensive sense take in the tenure of a civil servant and the Legislature can, therefore, make a law providing for the tenure of a Government servant but such law must not impinge upon the overriding power of the President or Governor recognized under Article 310(1). Article 309 opens with the restrictive clause, namely, "subject to the provisions of this Constitution" and, therefore, it is subject to the provisions of Article 310(1) and consequently the power of the Legislature to prescribe the tenure of persons appointed to public

services is subject to the "tenure at pleasure" under Article 310(1) and no law can be made by the Legislature so as to affect the overriding power of the President or the Governor, as the case may be, in putting an end to their tenure at his pleasure. Subject, however, to this overriding power of the President or the Governor under Article 310(11, the Legislature can make a law prescribing the tenure of a Government servant and laying down in what circumstances and by which authorities his service shall be liable to be terminated. Such a provision would not conflict with the overriding pleasure of the President or the Governor under Article 310(1). When the authority under the statute terminates the service of the Government servant, it would be doing so in exercise of the statutory power conferred upon it and this statutory power would be always subject to the overriding pleasure of the President or the Governor. Article 310(1) does not confer a right on a Government servant to insist that he shall continue to hold office until removed by the President or the Governor, as the case may be. On the contrary it makes the tenure of the Government servant subject to the overriding pleasure of the President or the Governor and declares that the President or the Governor shall be entitled to put an end to the tenure of the Government servant at his pleasure. This overriding pleasure of the President or the Governor cannot be placed on the pedestal of a right in the Government servant to continue to hold office until removed by the President or the Governor in the exercise of such pleasure. There is no Constitutional right given to a Government servant under Article 310(1) that no one except the President or the Governor, as the case may be, shall be entitled to terminate his service. Article 310(1) does not operate as a limitation on conferment of statutory power on any other authority to terminate the service of a Government servant and if a law validly made under Article 309 or under any other provision of the Constitution confers power on any other authority to terminate the service of a Government servant, such law would not be bad and the only effect of Article 310(1) would be that such law would be subject to the overriding power of the President or the Governor under Article 310(1) and the overriding power of the President or the Governor under Article 310(1) would remain intact and unaffected.

6. The decision of the Supreme Court in *State of U.P. v. Babu Ram* (supra) far from helping the contention of the petitioners, supports the view which we are inclined to take as to the construction of Article 310(1). The question which arose in this case was whether an order of dismissal of a Sub-Inspector of Police passed by the authorities under Section 7 of the U. P. Police Act, 1961 was invalid on the ground that it was passed without complying with the provisions of paragraph 486 of the Police Regulations made under Section 46 of the Act. It was not disputed on behalf of the State that the provisions of Paragraph 486 of the Police Regulations were not complied with by the authorities before passing the order of dismissal but the argument of the State was that the Police Regulations were merely administrative directions to enable the exercise of the pleasure of the Governor by the concerned authorities in a reasonable manner and any breach of those regulations could not confer any right on or give a cause of action to the aggrieved Government servant to go to a Court of law and vindicate his rights. This argument was rejected by the Supreme Court and the view taken by the majority judges was that a law made by the appropriate Legislature or the rules made by the President or the Governor, as the

case may be, under Article 309 may confer power on a particular authority to remove a public servant from service but the conferment of such power does not amount to a delegation of the Governor's pleasure and, therefore, the authorities passing the order of dismissal under Section 7 of the Police Act were not acting in exercise of delegated pleasure of the Governor but were acting in pursuance of express power conferred upon them by the statute. The majority Judges observed that it is competent to the Parliament or the Legislatures of States to make a law regulating the conditions of service of a public servant including proceedings by way of disciplinary action without affecting the powers of the President or the Governor under Article 310(1) read with Article 311 and if a statute can be made by the Legislature within these limits, the rules made by an authority in exercise of the power conferred under the statute would also be efficacious within the same limits and, therefore, the police regulations governing disciplinary proceedings were binding and had the force of law subject to the overriding power of the President or the Governor under Article 310(1) as qualified by the provisions of Article 311. It was contended before the Supreme Court that the conferment of statutory power on an authority other than the Governor to remove a public servant from service under a law made by the Legislature under Article 309 would conflict with the exercise of the Governor's pleasure under Article 310(1) but this contention was repelled by the majority Judges and Subba Rao J., as he then was, speaking on behalf of the majority Judges said:-

"This argument is based upon the misapprehension of the scope of Article 309 of the Constitution. A law made by the appropriate Legislature or the rules made by the President or the Governor, as the case may be, under the said Article may confer a power upon a particular authority to remove a public servant from service; but the conferment of such a power does not amount to a delegation of the Governor's pleasure. Whatever the said authority does is by virtue of express power conferred on it by a statute or rules made by competent authorities and not by virtue of any delegation by the Governor of his power. There cannot be conflict between the exercise of the Governor's pleasure under Article 310 and that of an authority under a statute, for the statutory power would be always subject to the overriding pleasure of the Governor."

These observations clearly recognize that a power can be validly conferred by law on any authority to remove a public servant from service and such power would not conflict with Article 310(1) for it would always be subject to the overriding pleasure of the Governor under that Article. The contention of the petitioners that Section 206 is ultra vires Article 310 must, therefore, be rejected.

7. That takes us to the next contention as regards the invalidity of the impugned sections by reason of contravention of the constitutional safeguard guaranteed to a public servant under Article 311(2). The petitioners urged that termination of service of a public servant holding substantively a permanent post by making of an order of allocation under Section 206 would amount to removal of such public servant within the meaning of Article 311(2) and since Section 206 authorizes the State Government to remove such public servant without complying with the requirements of Article 311(2), it is violative of the constitutional guarantee enshrined in Article 311(2) and is, therefore, invalid. Now it is well-settled and in view of the decision of the

Supreme Court in *Motiram Deka v. North East Frontier Railway*[2], there can be no doubt or dispute about it, that if the service of a public servant holding substantively a permanent post is terminated otherwise than by operation of the rule of superannuation or the rule of compulsory retirement, such termination would amount to removal within the meaning of Article 311(2). It is clear from the Bombay Civil Service Rules that a civil servant who substantively holds a permanent post has a right to hold the post until he reaches the age of superannuation or until he is compulsorily retired under the relevant rule. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such it is in the nature of a penalty and amounts to removal. Of course if the post itself is abolished, the termination of his service in consequence of the abolition of the post cannot be regarded as removal (vide *Purshottamlal Dhingra v. Union of India*[3], but if the post continues to exist, the civil servant substantively holding the post cannot be asked to go and termination of his service otherwise than on the ground of superannuation or compulsory retirement would per se amount to his removal within the meaning of Article 311(2) It can, therefore, hardly be disputed that if the effect of an order of allocation made under Section 206 is to bring about termination of service of the civil servant affected by the order of allocation, it would be violative of the constitutional guarantee prescribed by Article 311(2) in so far as it would operate against a civil servant substantively holding a permanent post for it would have the effect of removing such civil servant from service without complying with the requirements of Article 311(2) and Section 206 which obliges or at any rate permits such removal from service would be bad as offending Article 311 (2). Mr. Kaji, learned Advocate General appearing on behalf of the State attempted to escape from the logic of this conclusion by arguing that when an order is made by the State Government under Section 157 allotting Government servants necessary for the discharge of functions transferred to the District Panchayat under that section, the posts held by such Government servants in the State service are abolished and, therefore, the subsequent allocation of such Government servants to the Panchayat service under Section 206 would not amount to removal within the meaning of Article 311(2). This argument, we are afraid, tries to read much more in Section 157 than what it contains. It is not supported by the language of Section 157. All that Section 157 provides is that when

[2] A.I.R. 1964 S.C. 600

[3] A.I.R. 1958 S.C. 36 at 42

the State Government transfers any powers, functions and duties to the district panchayat,
the State Government shall allot to the district panchayat such personnel as may be necessary to enable the district panchayat to exercise the powers and discharge the functions and duties so transferred. The Government servants who are allotted continue to be members of the State service holding substantively their respective posts in the State service and the said posts are not abolished as a result of the order of allotment. The main pivot of the argument of the State was that when the powers, functions and duties attached to the posts are transferred, there would be no point in keeping the posts in existence and the posts must be deemed to be abolished by necessary implication. But this contention suffers from several infirmities. In the first place

merely because certain powers, functions and duties are transferred, it does not mean that the posts which carry these powers, functions and duties necessarily become redundant. It may be that there are not sufficient number of posts commensurate with the needs of the State service and even after some powers, functions and duties are transferred, the State Government may find it necessary to continue the existing posts. Secondly, if the posts are abolished, the incumbents of the posts who are allotted would be without lien on any posts though continuing in State service and this is a situation which could hardly have been contemplated by the Legislature. Thirdly, it is rather strange that if the intention of the Legislature were that the posts of which the powers, functions and duties are transferred should be abolished, the Legislature should not have used clear and explicit language to effectuate its intention but should have instead left its intention to be gathered by doubtful implication. Brevity is not a merit of this Act and there was nothing to prevent the Legislature from saying in so many words that on allotment the posts shall be deemed to be abolished. It is, therefore, not possible to accept the contention of the learned Advocate General that when Government servants are allotted to the district panchayat under Section 157, the posts held by them are abolished and consequently their subsequent allocation under Section 206 does not come within the mischief of Article 311(2). As a matter of fact, logically, if the posts held by them are abolished on allotment, it is inconceivable as to how they can continue to be in State service which they admittedly do, at any rate until allocation. The learned Advocate General then contended that in any event there is abolition of posts when allocation is made under Section 206 but this contention must also be rejected for the first and the third of the aforesaid reasons. It may also be added that even if the posts become redundant by reason of allocation under Section 206, there is no need to make an implication that the posts are abolished, for redundant posts can continue to exist in a service and they are not an impossibility. There is, therefore, no abolition of posts either on allotment under Section 157 or on allocation under Section 206 but even so the contention of the petitioners that Section 206 is violative of Article 311(2) must be rejected for there is a basic fallacy affecting the contention and the fallacy lies in the assumption that the order of allocation brings about termination of service of the Government servant who is allocated as a result of the order of allocation.

8. When an order of allocation is made under Section 206, the Government servant who is allocated does not cease to be a State servant and become a servant of the panchayat. There is no termination of his service as a State servant and the only effect of the order of allocation is that whereas, prior to the order of allocation, he was a member of one civil service of the State, namely, the State service, he is now, after the order of allocation, a member of another civil service of the State, namely, the panchayat service. He is merely transferred from one civil service of the State to another. The panchayat service contemplated under the Act is as much a civil service of the State as the State service. The Legislature by enacting the Act provided for the establishment of the Panchayat Organization of the State and for the efficient administration of the Panchayat Organization, particularly in view of the fact that a large part of the service personnel would be drawn from different sources and would, therefore, be heterogeneous in composition with widely differing scales of pay and conditions of service, the Legislature felt

that it would be desirable to have a separate civil service of persons employed in the discharge of functions and duties of panchayats with uniform scales of pay and uniform conditions of service and, therefore, with that end in view the Legislature provided for constitution of the panchayat service. All the provisions of the Act relating to the panchayat service point unmistakably and inevitably to one and only one conclusion, namely, that the panchayat service is one single service with the State as the master. The panchayat service is to be constituted by the State Government and its strength is also to be determined by the State Government. Section 203 Sub-section (2) says that the panchayat service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre shall be such as the State Government may by order from time to time determine. The cadres in the panchayat service are to be of three kinds, namely, district cadres, taluka cadres and local cadres. (Vide Section 203 Sub-section (2)). This sub-section provides that a servant belonging to a district cadre shall be liable to be posted, whether by promotion or transfer, to any post in any taluka in the district; a servant belonging to a taluka cadre shall be liable to be transferred whether by promotion or transfer, to any post in any gram or nagar in the same taluka and a servant belonging to a local cadre shall be liable to be posted, whether by promotion or transfer, to any post in the same gram or, as the case may be, nagar. The provision of different cadres in the panchayat service and the transferability of persons employed in the panchayat service from a post in the district cadre to a post in any taluka in the district and from a post in the taluka cadre to a post in any gram or nagar in the same taluka emphasize that the panchayat service is one single service with one master, namely, the State and each panchayat is not the master of the servant employed in the discharge of its functions and duties. It is difficult to imagine that the Legislature should have provided for transfer of servants from one master to another. The provision of promotion also supports this conclusion, for promotion postulates two posts under the same master, one a lower post and the other a higher post, the promotion being from the lower post to the higher post. This conclusion is further strengthened by the provision enacted in Section 203 Sub-sections (3) and (4). Sub-section (3) vests the power to make rules regulating (1) the mode of recruitment and conditions of service of persons appointed to the panchayat service; and (2) the powers in respect of appointments, transfers and promotions of officers and servants in the panchayat service and disciplinary action against any such officers and servants, in the State Government and such rules are required by Sub-section (4) to contain inter alia a provision entitling servants of such cadres in the panchayat service to promotion to such cadres in the State service as may be prescribed by the rules. The mode of recruitment, the conditions of service and matters relating to appointments, transfers and promotions of persons employed in the panchayat service as also disciplinary action against them are all determined by the State Government and that is consistent only with the State being the master in the entire panchayat service. The mandatory provision for promotion from panchayat service to State service which is required to be made in the rules also shows that both the services are services of the State. There could be no question of promotion from one service to another if the masters in the two services were different. Then it would be a case of termination of one service and appointment to another. Section 204 also points in the same direction. It declares that the expenditure towards the pay, allowances of and other benefits

available to an officer or servant of the panchayat service shall be met by the panchayat under which he is for the time being serving. If the panchayat under which an officer or servant of the panchayat service is serving were the master of such officer or servant, it would be assuredly and indubitably liable to meet the expenditure towards the pay, allowance and other benefits admissible to him and no statutory provision like Section 204 would be necessary to declare such liability. But this provision had to be enacted because every person employed in the panchayat service is a servant of the State and not of the panchayat under which he may for the time being be posted and therefore it was necessary to declare that the panchayat though not the master shall be liable to meet the expenditure towards the pay, allowances and other benefits admissible to an officer or servant for the time being serving under it. Section 205 lays down the modes of appointment to posts in the panchayat service and one of the modes provided is by transfer of a member of the State service to the panchayat service. The word used is "transfer" and that clearly indicates that when appointment by this mode is made, there is no termination of one service and commencement of another; it is a transfer from one service to another, both the services being under the same master, namely, the State. Then comes Section 206 which provides for making of an order of allocation to the panchayat service. All officers and servants of the Municipalities dissolved under Section 307 who are deemed to be officers and servants of the interim panchayats and all officers and servants of district local boards and district school boards dissolved under Sections 155 and 326 who are transferred to the panchayats under the said respective sections are to be allocated to the panchayat service under Clauses (ia) and (ii) of Section 206 Sub-section (1) since their old masters being extinct, they must be accommodated and fitted in the new set up. And out of the staff allotted or transferred to a panchayat under Sections 157, 158 and 325, such number of officers and servants as the State Government may deem fit are to be allocated under Clause (i) and under Clause (iii) the State Government is required to allocate such other officers and servants employed in the State service as may be necessary to enable the panchayats to discharge efficiently their functions and duties. This provision relating to allocation of officers and servants under Clauses (i) and (iii) does not contemplate any termination of service of such officers and servants or any fresh appointment to a new service. There is no concept of termination of the existing service and reappointment to a new service involved in the process of allocation: the concept is only of transfer from one service of the State to another without any break in the continuity of service and that clearly postulates that both services are under the same master, namely, the State. Section 206A also reinforces this conclusion. It makes the initial allocation provisional and permits the State to review the allocation within a period of four years from 1st April 1963. The State Government can at any time within this period reallocate an allocated servant back to the State Service if the case falls within any of the clauses of Sub-section (1) of that section. One case where reallocation may be made is where out of the officers and servants allocated, any officers or servants are found to be surplus in any category of the panchayat service. Obviously in such a case the surplus officers and servants should not be allowed to remain as a drag on the Panchayat Organization and equally they should not be discharged because they are civil servants of the State and if found surplus in the service to which they are transferred, they must be sent back to their original

service. Anothar case where reallocation is permissible is where it is necessary in the interest of public service to recall any officer or servant. A third case where reallocation may be made is where the officer or servant who has been allocated exercises a preference to revert to the State service and the State Government, after taking into consideration the exigencies of service in the Panchayat Organization and also of service under the State Government, thinks fit to recall such officer or servant. And lastly, reallocation may be made for any other reason prescribed by the rules. This provision of re-allocation clearly supports the thesis that the panchayat service is a civil service of the State as much as the State service and an officer or servant can be recalled from the panchayat service to the State service. There could be no objection in such re-allocation because the officer or servant is merely transferred from one service to another under the same master, namely, the State and his conditions of service are not prejudiced as a result of such transfer. If the master of the officer or servant allocated to the panchayat service were the panchayat under which he is posted for the time being, the result would be that he would be transferred from one master to another under the order of allocation and then again re-transferred from the latter master to the former under the order of re-allocation. It is not possible to believe that the officer or servant could have been intended by the Legislature to be treated like a chattel which can be tossed about from one master to another. The only reasonable way of looking at the matter seems to be and that conclusion is inevitable on the language of these provisions, that the panchayat service is a civil service of State like the State service and since both the services are civil services of the State with the State as the master, an officer or servant can be allocated from the State service to the panchayat service and re-allocated from the panchayat service to the State service. It is no doubt true that Section 209 provides that the allocation of any officer or servant to the panchayat service shall not entitle such officer or servant to any compensation under the Industrial Disputes Act, 1947, or any other law for the time being in force and this provision might seem to suggest that but for it, such officer or servant might be entitled to claim compensation which could be only on the footing that his allocation to the panchayat service amounted to termination of his service with the State but it is not at all uncommon to find legislative provisions enacted ex abundanti cautela for the purpose of removing any doubts which may arise as to intention of the Legislature and making clear and explicit that which might be apprehended to be ambiguous and uncertain. Sections 210 and 211 also indicate that the panchayat service is of the same nature as the State service. It may also be noted that under the rules persons employed in the panchayat service may be transferable from one post to another and if every panchayat were the master of the officer or servant for the time being serving under it, the result of transferability would be that with every transfer, there would be change of master. It would indeed be difficult to conceive of a single homogeneous service in which there are as many masters as there are panchayats.

9. The conclusion which emerges from this discussion is that the panchayat service is a distinct and separate service set up for serving the Panchayat Organization of the State and it is as much a civil service of the State as the State service. The State can have many services such as State service, police service, engineering service etc. and panchayat service is one of them. In the

panchayat service, as in the State service, the State is the master and every officer or servant employed in the panchayat service is the servant of the State and not of the panchayat under which he may be serving for the time being. The panchayat service is one single service with the State as the master. There is, therefore, no termination of service when an officer or servant of the State service is allocated to the panchayat service. On allocation he is merely transferred from one civil service of the State to another, his master remaining the same, namely, the State. His service under the State continues unbroken and uninterrupted, the only difference being that whereas prior to the order of allocation he was a member of one civil service of the State, namely, the State service, he is, after the order of allocation, a member of another civil service of the State, namely, the panchayat service. The order of allocation does not, therefore, bring about termination of service of the officer or servant of the State who is allocated to the panchayat service and Section 206 cannot be assailed as authorizing or permitting violation of the constitutional guarantee contained in Article 311(2). The challenge to the validity of the impugned sections on the ground of contravention of Article 311(2) must, therefore, fail and be rejected.

10. That leaves the contention based on Article 14. The petitioners contended that Section 206(1)(i) confers a naked arbitrary power on the State Government to pick and choose any officer or servant it likes out of the staff allotted under Section 157 for the purpose of meeting out discriminatory treatment in the shape of allocation to the panchayat service and there is no guiding principle or policy laid down by the Legislature to control or regulate the discretion of the State Government in the matter of such selection. The discretion vested in the State Government to select officers and servants for allocation to the panchayat service is left completely unguided and unfettered and the Section is so framed that the power conferred by it can be capriciously exercised without offending the section. The language used in Section 206(1)(iii) was contrasted with that used in Section 206(1)(i) and it was pointed out that whereas Section 206(1)(iii) furnishes a guiding principle by using the words "as may be necessary to enable the panchayats to discharge efficiently their functions and duties under this Act", similar words are absent in Section 206(1)(i) and the words used in Section 206(1)(i), namely, "as it may deem fit" leave the entire matter of selection to the unrestrained will of the State Government and enables the State Government to discriminate between one officer or servant and another though similarly situate. The case was thus attempted to be brought within the third class of cases enumerated in *Ram Krishna Dalmia v. Justice Tendolkar*[4], But this attempt is, in our view, futile and must fail.

11. It is not possible to accept the contention of the petitioners that Section 206(1)(i) vests an arbitrary uncontrolled discretion in the State Government to select such officers and servants out of the staff allotted under Section 157 as it likes without any guiding principle or policy to control or regulate the exercise of such discretion. There is in our view a clear principle or policy to guide the State Government in the selection of officers and servants to be allocated to the panchayat service under Section 206(1)(i). Such principle or policy is to be found not only in the

object and purpose of the statute but also in Section 206(1)(i) itself. Section 206(1)(i) hedges discretion of the State Government in several ways. In the first place, the area of selection is limited to a specified class, namely, the officers and servants allotted under Section 157. The allotment of officers and servants under Section 157 is made by reference to the standard provided by the words "as may be necessary to enable the panchayat to exercise the powers and discharge

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

the functions and duties so transferred". The officers and servants allotted under Section 157 are, therefore, officers and servants who are necessary to enable the district panchayats to exercise the powers and discharge the functions and duties transferred to them and it is out of such officers and servants that allocation has to be made under Section 206(1)(i). But even out of such officers and servants some may not be found fit or desirable for the panchayat service and discretion must, therefore, be left to the State Government to decide in the interest of efficient administration of the Panchayat Organization, which officers and servants should be allocated to the panchayat service. Section 206(1)(i) therefore provides that out of the staff allotted under Section 157, such number of officers and servants shall be allocated as the State Government may deem fit, that is, proper for the panchayat service. The selection of the officers and servants to be allocated is not left to the sweet will of the State Government. A principle or policy is provided by the Legislature to guide the State Government and that principle or policy is the constitution of an efficient panchayat service capable of serving the needs of the Panchayat Organization. The object and purpose of the Act is to set up the Panchayat Organization for the purpose of democratic decentralisation of powers and in order that the Panchayat Organization may function smoothly and efficiently, there must be an efficient panchayat service. The constitution of an efficient panchayat service is, therefore, the purpose of the enactment of the provisions relating to services contained in Chapter XI and it is by reference to this purpose that the State Government has to decide which officers and servants are fit for the panchayat service and should, therefore, be allocated. It is no doubt true that the language employed in Section 206(1)(iii) is different from that employed in Section 206(1)(i) but the difference in language is necessitated by the difference in the nature of the two provisions. When allocation is made under Section 206(1)(iii), it is made out of the extremely wide range of "officers and servants employed in the State service" and some guidance is therefore necessary to be given to the State Government as to how the selection for allocation shall be made. The words "as it may deem fit" would not provide sufficient guidance for many officers and servants may be quite fit or proper for the panchayat service but their service may not be necessary for efficient administration of the Panchayat Organization. The Legislature, therefore, provided the standard for selection by using the words "as may be necessary to enable the panchayats to discharge efficiently their functions and duties under the Act". But these words are not necessary in Section 206(1)(i) for the requirement denoted by these words is already taken into account at the time of the allotment under Section 157 by reason of the words "as may be necessary to enable the district panchayat to exercise the powers and discharge the functions and duties so transferred" in Section 157. It is therefore not possible to accept the contention of the petitioners that Section 206(1)(i) confers a

naked arbitrary power on the State Government to discriminate between one Government servant and another. A discretion is undoubtedly conferred on the State Government to select officers and servants out of the staff allotted under Section 157 for allocation to the panchayat service but that discretion is guided and controlled by a principle or policy laid down by the Legislature and is not vagrant or uncanalised. Section 206(1)(i) cannot, therefore, be held to be violative of Article 14.

12. We are, therefore, of the view that the impugned sections are valid and the State Government has the power to make an order of allocation under Section 206 in respect of the officers and servants allotted under Section 157. We, therefore, dismiss the petitions and discharge the rule issued in each petition. There will be no order as to costs of each petition.

Petitions dismissed.