MYSORE HIGH COURT

M.A. Jaleel

Vs

State of Mysore

Writ Petns. Nos. 511 of 1960, 548 and 549 of 1960 connected with W. Ps. Nos. 510 and 540 of 1960

(A.R. Somnath Iyer and A. Narayana Pai, JJ.)

13.03.1961

JUDGMENT

Somnath Iyer, J.

1. The petitioners in Writ Petitions Nos. 511, 548 and 549 of 1960, were Sales Tax Officers Class II in the erstwhile State of Hyderabad and those in Writ Petitions Nos. 510 and 540 of 1960, Sales Tax Officers, Grade III, in the then State of Bombay. When three districts of the erstwhile State of Hyderabad and four districts of the State of Bombay became part of the now State1 of Mysore, which was formed on November 1, 1956, by the States Re-organization Act, they were allotted under that Act for service in the new State of Mysore. They are now in the service of that State.

2. The civil service of the new State of Mysore consisted principally of persons who were before its formation, holding posts under the then States of Mysore, Hyderabad, Coorg, Madras and Bombay. The various services of which there was thus a concourse in the new State of Mysore, required integration, and for that purpose, that State made on May 25, 1957, a list recording the provisional determination of the relative seniority and classification of two classes of its civil servants in the department of Commercial Taxes. The final determination was made on May 3, 1960, and by that determination, the Post of a Sales Tax Officer, Class II of the former State of Hyderabad and that of a Sales-tax Officer, Grade III of the then State of Bombay were equated, with effect from November 1, 1956, with that of an Assistant Commercial Tax Officer in the new State of Mysore. The petitioners contend that by this classification which, according to them, the State had no competence to make, and which transgressed the proviso appearing under Section 115 (7) of the State Re-organization Act, they were reduced in rank in violation of Article 311(2) of the Constitution.

3. Until October, 1957, four sales-tax laws were operating in the new State of Mysore. They were the Mysore Sales-tax Act, 1948 the Hyderabad General Sales-tax Act, the Bombay Sales-tax Act and the Madras General Sales Tax Act. The assessing authorities having power to make assessments of sales tax under those laws were :-

(1) Under the Mysore Sales Tax Act, 1948,
(a) Sales Tax Officers, and
(b) Assistant Sales Tax Officers;
(2) under the Hyderabad General Sales Tax Act,
(a) Sales Tax Officers, Class I,
(b) Sales Tax Officers, Class II, and,
(c) Assistant Sales Tax Officers;
(3) under the Bombay Sales Tax Act,
(a) Sales Tax Officers, Grade II, and,
(b) Sales Tax Officers, Grade III; and
(4) under the Madras General Sales Tax Act,
(a) Deputy Commercial Tax Officers and,
(b) Assistant Commercial Tax Officers.

4. It is admitted that the two classes of posts of a Sales Tax Officer in the Hyderabad State and the two grades of posts in Bombay State were in each case interchangeable in the sense that it was possible to post a Sales Tax Officer from one class or grade to another.

5. But, a notification issued in the year 1954, by the then Rajpramukh of the erstwhile Hyderabad State described a Sales Tax Officer, Class I, as a Senior Sales Tax Officer, and a Sales Tax Officer, Class II, as a Sales Tax Officer simpliciter.

6. In the former State of Mysore, there was only one class of Sales Tax Officers.

7. It was in this situation that the Mysore Sales Tax Act, 1957, (Mysore Act 25 of 1957) was enacted by the Legislature of the new State of Mysore, and it came into force on October 1, 1957. This law, which was extended to the entire new State of Mysore, repealed all the four earlier enactments, which were till then in force. The assessing authorities functioning under this new Act are the Commercial Tax Officers and the Assistant Commercial Tax Officers.

8. The enactment of this law necessitated a re-classification of the then existing assessing authorities, under the repealed laws, and the appointment under Section 3 of its provisions, of Commercial Tax Officers and Assistant Commercial Tax Officers, for the performance of the functions assigned to them by the Act.

9. A notification promulgated for that purpose by the Governor of the State on October 1, 1957, under Sea. 3 of the new Mysore Sales Tax Act, empowered persons who were holding the post of a Sales Tax Officer in the areas, which were formerly in the State of Hyderabad, Bombay and old Mysore, and those who were holding the post of a Commercial Tax Officer in the district of Bellary and in the district of South Kanara, to perform the functions of a Commercial Tax Officer, under the new Act. Similarly, those who were holding the post of an Assistant Sales Tax Officer in the State of Hyderabad, and in the former State of Mysore or that of a Deputy Commercial Tax Officer or an Assistant Commercial Tax Officer in the former Madras area were authorized to perform the functions of Assistant Commercial Tax Officer.
10. As a necessary corollary to this equation, by a further notification promulgated on February

19, 1958, under Section 40 of the new Mysore Sales Tax Act, a Commercial Tax Officer functioning under the new Act was specified as the competent authority to make old assessments which a Sales Tax Officer had the power to make under the repealed Sales Tax laws of the States of Hyderabad, Bombay and old Mysore, and which a Deputy Commercial Tax Officer was competent to make under the repealed Madras General Sales Tax Act. Similarly, an Assistant Commercial Tax Officer under the new Act, was specified as the authority competent to exercise the functions of an Assistant Commercial Tax Officer under the first group of repealed enactments and of an Assistant Commercial Tax Officer under the Madras Act.

11. These two notifications, it is plain, rested on the assumption that the post of a Sales Tax Officer of whatever class in the Hyderabad State, that of a Sales Tax Officer of whatever grade in the State of Bombay and that of a Commercial Tax Officer under the new Mysore Sales Tax Act were equivalent posts.

12. But, by what purports to be a final integration made by the new State of Mysore, on May 3, 1960, the post of a Sales Tax Officer of the second class of the former State of Hyderabad and of a Sales Tax Officer, Grade III of the State of Bombay were determined to be equivalent to the post of an Assistant Commercial Tax Officer, under the new Mysore Sales Tax Act. The petitioners, according to that determination, had to be regarded as having held only the Post of an Assistant Commercial Tax Officer on November 1, 1956.

13. So, the post of the petitioners which was considered in 1957 and 1958, as equivalent to the post of a Commercial Tax Officer, under the new Act, became retrospectively the post of an Assistant Commercial Tax Officer, under that Act, with effect from November 1, 1956.

14. The question is whether the final integration so made was beyond the competence of the State and amounts to an infraction of the provisions of the proviso under Section 115 (7) of the States Reorganization Act or of Article 311(2) of the Constitution.

15. We will first consider the challenge to competence.

16. The repudiation of the power of the State to make the integration is founded on Section 115 (5) of the States Reorganization Act.

17. The impugned integration which claims the status of a final integration was preceded by the preparation by the State of 'provisional interstate seniority lists' of the officers of the Department of Commercial Taxes, of the first and second class. The relevant Government Order, to which these lists were appended, reads :-

"State Reorganization Secretariat

Dated 25th May, 1957.

No. S. R. D. 1-31 D. I. F. 57. - In accordance with the procedure laid down in Official Memorandum No. S. Section 14456-576/SRD dated 11th January, 1957, the provisional Inter-State Seniority List of Officers belonging to the Department of Commercial Taxes in Class I and

II Services is herewith published for general information. Any Government servant dissatisfied with, his position in this list on grounds connected with the establishment of equivalence of posts or any other matters relatable to States Reorganization may submit his objections through a written application direct to the Secretary to the Government, Revenue Department, Mysore Government Secretariat, Vidhana Soudha, Bangalore-1, and simultaneously send a copy of his representation to the Special Secretary to the Government, State Reorganization Department, Mysore Government Secretariat, Vidhana Soudlia, Bangalore - 1, and to the Commissioner for Commercial Taxes, Mysore State, Bangalore. The objections should be concise and should refer only to relevant matters. Applications not fulfilling these conditions are liable to be summarily rejected. The objections should be sent within 30 days from the date of publication of this Notification in the Gazette.

By Order and in the name of the Governor,
K. Balasubramanyam,
Special Secretary to Government,
State Reorganisation Department.

Explanatory Note.

The Inter-State Seniority List has been prepared in two parts. Part I contains the names of officers placed in Class I, and Part II the names of Officers placed in Class II. The Post of Assistant Collector of Sales Tax Bombay, and Inspecting Sales Tax Officer, Hyderabad, are kept separate and equated to the post of Deputy Commissioner of Sales Tax drawn from the Department in Mysore, the relative Seniority of the Officers allotted against these posts, viz., Shri S.G. Puranik and Shri Khazi Abdul Rasheed, being fixed with reference to the date of their entry into the equated grades. The following posts are deemed to be equivalent to one another and placed in Class I :-

1. The Sales Tax Officers of the former Mysore State.
2. The Sales Tax Officers (Grade II) of the former Bombay State.
3. The Sales Tax Officers (Class I) of the former Hyderabad State.
4. The Commercial Tax Officer of the Madras State.
5. The Agricultural Income-tax Officer of the former Coorg State.

The following posts are deemed to be equivalent to one another and placed in Class II :-

1. The Assistant Sales Tax Officers of the former Mysore State.
2. The Deputy Commercial Tax Officers of the Madras State.
3. The Sales Tax Officers (Class II) of the former Hyderabad State.
4. The Sales Tax Officers (Grade III) of the former Bombay State.
5. The Assistant Agricultural Income-tax Officer of the former Coorg State.

The above equations have been made having regard to the following principles :-

(i) the nature and duties of a post;

(ii) the responsibilities and powers exercised by the Officer holding a Post; the extent of territorial or other charge held or responsibilities discharged.

(iii) the minimum qualifications, if any, prescribed for recruitment to the post;

(iv) the salary of the post.

The relative Inter-Se Seniority of Officers allotted against the posts referred to above has been

determined with reference to length of continuous service, whether permanent or temporary, in the grades declared as equivalent. The Inter-Se Seniority of Officers drawn from the same State has not been disturbed.

K. Balasubramanyam,
Special Secretary to Government,
State Reorganisation Department."

18. The Government Order publishing the impugned list made on May 3, 1960, which purports to be "the Inter-State Seniority list of Gazetted Officers in the Department of Commercial Taxes as finalized by the State Government", reads :-
"CHIEF SECRETARIAT
General Administration Department (INT.)
Notification dated 3rd May, 1960
(Vaishakha 13, Saka Era 1882).
No. GAD 72 IDI 59. In accordance with the procedure laid down in O. M. No. S. Section 14456/576 SRD dated 11th January 1957, the Inter-State Seniority list of Gazetted Officers in the Department) of Commercial Taxes, as finalized by the State Government, is herewith published for general information.
The same principles as have been announced in Notification No. SRD 131 DIF 57, dated 25th May 1957 have been adopted in finalizing the list, for purposes of determination of equivalence of posts and fixation of Inter-State Seniority. The provisional equation of posts remains unchanged, except for the modification that the Assistant Sales Tax Officers of Hyderabad and Assistant Commercial Tax Officers of Madras including Assistant Commercial Tax Officers of Madras allotted to Mysore State on the eve of merger of Bellary with Mysore have been, equated with Assistant Sales Tax Officers of Mysore, but placed at the bottom as a group. The service of Assistant Sales Tax Officers of Hyderabad is counted only from 1st April 1954 since they became Assessing Officers only from that date. Any Government servant dissatisfied with his position in this list on grounds connected with the establishment of equivalence of posts or any other matters relatable to States Reorganization may prefer an appeal to the Government of India. He has to submit five copies of his appeal-petition in this behalf, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi, through the Additional Secretary to the Government of Mysore, General Administration Department, Mysore Government Secretariat, Vidhana Soudha, Bangalore-1. The objections should be concise and should refer only to relevant matters. The appeal-petition should be sent within 90 days from the date of publication of this Notification in the Gazette. By Order and in the name of the Governor of Mysore B. Beerappa, Additional Secretary to Government, General Administration Department."
On the top of this list, appear these words :

> "Inter-State Seniority List of Gazetted Officers in the Department of Commercial Taxes as on 1st, November 1956."

19. These two Government Orders make it plain that the State Government made the two lists for the express purpose of making an amalgamation of the divers cadres and posts, in the Department of Commercial Taxes and to remove their multiformity, in the professed exercise of its power to make such unification, the claim to which, is also asserted in the counter-affidavits

produced on behalf of the State.

20. An investigation into the validity of this claim involves the construction of the relevant provisions of the States Reorganization Act, to which we shall now refer.

21. Part II of the Act provides for territorial changes, and the formation of new States. It is this part of the Act which created the new State of Mysore.

22. Part X contains provisions regulating services. That part consists of five sections which are Sections 114 to 118. Section 114 refers to All India Services, with which we are not concerned. Under Sub-Section (1) of Section 115, the civil servants of the former State of Mysore were, as from November 1, 1956, statutorily allotted to serve in the new State of Mysore. Sub-Section (2) of that section requires every civil servant who was immediately before November 1, 1956, serving under an existing State as denned by the Act, to provisionally continue, to serve under the principal successor State to that existing State, as defined by the Act, unless otherwise required by the Central Government. Sub-Section (3) empowers the Central Government to determine the successor State to which every person referred, to in Sub-Section (2) shall be finally allotted. Sub-Section (5), on whose construction. depends the answer to the main question arising in these cases reads :-

> "115. Provisions relating to other Services. -
> * * * * *
> (5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to -
> (a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and
> (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons."

23. Sub-Section (7) preserves the operation of the provisions of Chapter 1 of Part XIV of the Constitution. The proviso appearing under that sub-section forbids the variation without the previous approval of the Central Government of the conditions of service by which the persons referred to in Sub-Sections (1) and (2) were governed before November 1, 1956. Sections 116 and 117 are :-

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

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

117. Power of Central Government to give directions. - The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary far the purpose of giving effect to the foregoing provisions of this Part and the - State Government shall comply with such directions." 24. Section 118 which contains provisions governing the State Public Service Commission is not material for our purpose.

25. The above provisions demonstrate that the civil servants of the new State of Mysore consisted, firstly, of the civil servants of the former State of Mysore, who became statutorily allotted to the new State of Mysore under Section 115(1), and, secondly, of the civil servants of the other existing States, as defined by the Act, who were allotted provisionally under Sub-Section (2) and finally under Sub-Section (3) of that section.

26. Section 116(1) entitles a person to hold in the new State of Mysore from November 1, 1956, the post or office which he was holding in the area which, after that date, fell within the new State of Mysore. Sub-Section (2) of that section, however, conferred power on a competent authority to terminate that right by an order made under that sub-section.

27. Section 117 confers power on the Central Government to give necessary directions to the new State of Mysore for the implementation of the provisions of Sections 114, 115 and 116 of the Act, and demands obedience to those directions by that State.

28. The construction suggested for the petitioners is that Section 115 (5) of the States Reorganization Act appoints the Central Government as the sole and exclusive authority for the integration of tile services in the States.

29. The competing interpretation placed on this Sub-Section by the State is that the Power to make an integration of the services of the new State of Mysore is part of the general executive power of the State, and that Section 115 (5) of the States Reorganization Act did not divest the State of that power.

30. It is, we think plain, that the executive power of the Government of a State normally in eludes the power to make an integration of its services. Article 162 of the Constitution, read with the Forty-First entry in List II of the Seventh Schedule to the Constitution, makes that position irrefutable. The topic of that entry is "State Public Services : State Public Service Commission." The legislature of a State, having exclusive power under Article 246 of the Constitution to make laws with respect to Public Services of that State, has ordinarily also the power to legislate on jail matters incidental and ancillary to such services. The integration of services of the State being one sudi ancillary matter is also a topic on which such legislation is competent. Now, Article 162 of the Constitution reads :

Extent of Ex-executive power of	162. Subject to the provisions of this Constitution the executive power of a State

State.	shall extend to the matters with respect to which the Legislature of the State has power to make laws :

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

This article which extends the executive power of a State to all matters on which its Legislature can legislate, clearly makes the Power to integrate the services in a State, one of the attributes of the executive power of that State, such integration being a matter on which its Legislature can make legislation.

31. But on the exclusive power so delimited and explained, the proviso to the article places a limitation and a fetter. In a matter on which the State Legislature and Parliament could both legislate, the executive power of the State should, according to the proviso, yield to the executive power of the Union or its authorities expressly conferred by the Constitution or by Parliamentary legislation. This proviso can have however, no relevance in the present context since, the integration of the services of a State is not in the concurrent list.

32. So, under the Constitution the power to integrate its services would normally have formed part of the executive power of the new State of Mysore.

33. The question is whether Section 115 (5) of the States Reorganization Act transmitted that power to the Central Government, and whether the executive power of the new State of Mysore, when it was formed, stood abridged to that extent.

34. The learned Government Pleader argued that the language of Section 115(5) does not lend itself to the construction that it appoints the Central Government as the authority to make the integration but only empowers it to establish advisory committees to assist it to dispose of complaints against the integration made by the State.
35. We think that the language of Section 115(5), its subject matter, and the purpose sought to be accomplished in its enactment make it manifest that the legislative intent was to constitute the Central Government the exclusive authority for integration.

36. We will first examine the language of the statute. When we do so, we find that the language of Section 115 (5) makes it impossible for any one to resist the conclusion that the Central Government was the authority which was charged with the duty and responsibility of making the integration. The provision in sub-section (5) that the Central Government might obtain assistance from the advisory committees 'in regard to' the integration of the services cannot mean anything else than that the integration has to be made by the Central Government and that assistance for that purpose may be obtained from advisory committees.

37. What is plainly implicit in the sub-section is that the Central Government should, with the

assistance of the advisory committees, make the integration of the services in a fair and equitable manner, after considering the representations of the concerned civil servants. It will not be right to think that the States Reorganization Act did not empower the Central Government to make the integration, but nevertheless, quite purposelessly, authorized it to obtain assistance from advisory committees 'in regard to' integration. The argument addressed on behalf of the State, if accepted, would lead to the queer situation that the State should make the integration but the Central Government should take assistance for it.

38. If a statutory provision specifies an authority to obtain assistance 'in regard to' the Performance of a particular act, what it intends is that' that act should be performed by the authority so obtaining the assistance. Normally, no one obtains assistance for an act which has to be performed by someone else. Sub-Section (5) when it empowered the Central Government to appoint advisory committees to assist it in regard to a fair and equitable integration of the services, on a proper consideration of representations made by their personnel, what it did was to appoint it as the authority to make the integration.

39. The argument next advanced was that the integration referred to in Sub-Section (5)(a) was not the integration between the services in the States formed by the States Reorganization Act but an integration among those States. Support for this argument was sought to be derived from the word 'among' occurring in Sub-Section 5(a), and it was urged that the word 'among' does not mean 'in'.

40. This construction is, to our minds, too artificial to merit acceptance. The integration directed by this Sub-Section is an integration of and between the services. It is only when persons belonging to services of more than one State which existed before reorganization, became members of the service of a State formed after reorganization, that any question of integration can arise. The words "among the new States and the States of Andhra Pradesh and Madras" occurring in Sub-Section (5)(a), only mean "in each of the new States and the States of Andhra Pradesh and Madras."

41. Some argument was expended over the expression 'in regard to the division and integration of the services' occurring in Section 115(5). It was urged that these words authorized the obtaining of assistance 'in regard to' and not for the purpose of integration, and demonstrated that the Central Government was not invested with competence to make the integration but only to exercise supervisory jurisdiction 'in regard to' the integration after it was made by the State.

42. We do not accept this contention. The words 'in regard to' occurring in a statute must be given the interpretation justified by the context in which they occur. In the context in which they occur in Section 115 (5), those words, in our opinion, mean 'for' or 'for the purpose of. That being so, the assistance which the Central Government is authorized to take from the advisory committees, is assistance necessary for the purpose of the integration or for the integration. If it may obtain assistance in that way, it is clear that the purpose for which it may obtain assistance is one which is its duty to accomplish.

43. Now, Section 115 first provides for the composition of a civil service of a State formed under the States Reorganization Act. Sub-Section (1) statutorily allots the civil servants of a particular area to a particular State, and Sub-Sections (2) and (3) provide for the provisional and final

allotment of some others. Sub-Section (4) provides for a decision by the Central Government in the event of disagreement between one or more State on a matter referred to in that Sub-Section, and Sub-Section (5) then proceeds to state that the Central Government may establish advisory committees for the purpose of division and integration of services and for according fair and equitable treatment to the civil servants affected by the provisions of Section 115 and for the consideration of their representations.

44. Sub-section (5) deals with four matters. It provides in the first instance for the division of the services; secondly, for their integration; thirdly, for fair and equitable treatment to the civil servants; and, fourthly, for the proper consideration of their representations.

45. It is for obtaining assistance 'in regard to' these four matters that Section 115 (5) authorizes the constitution of advisory committees by the Central Government. The duty to divide the services, save in cases provided for by Sub-Section (1) of Section 115, which makes statutory allotments of certain classes of civil servants, is, as Sub-Sections (2) and (3) indicate, exclusively that of the Central Government. Sub-Section (5) next ensures fair and equitable treatment to the civil servants affected by the provisions of Section 115 and it is clear from this Sub-Section that the responsibility of according that fair and equitable treatment is again that of the Central Government. The proper consideration of representations made by the civil servants, either in the matter of the division of services or their integration is similarly made part of the statutory duty imposed upon the Central Government.

46. It is thus incontrovertible that three of the functions to be performed under Sub-Section (5), namely, the division of the services, the according of fair and equitable treatment to the civil servants, and, the proper consideration of their representations, are exclusively assigned by Section 115 (5) to the Central Government. The argument that the remaining fourth function was not assigned to the Central Government would involve the construction of Sub-Section (5) in so far as it refers to the integration of the services, in a manner different from that in which it has to be understood with reference to the three other matters dealt with by it, and should, therefore, be rejected.

47. The legislative intent deducible from the subject matter and purpose of Section 115 (5), does not appear to us to be different.

48. The scheme of Section 115 is to create and evolve a homogeneous civil service for each of the States formed by Part II of the States Reorganization Act. It first creates the personnel of that service, by the machinery provided by Sub-Sections (1), (2) and (3). Its next objective is the blending and amalgamation of the services to which such personnel belonged before the formation of States, and, for that purpose, it authorizes the establishment of advisory committees both for the division of service's and for their fusion. The fair and equitable treatment required by Section 115 (5) and the representations, a proper consideration of which is directed, are clearly relatable not only to the division of the services, but also, to their integration. So, the purpose of the establishment of the committees is to aid the division, and integration. The subject matter of Section 115 is the division and integration of the services and the purpose of Sub-Section (5) of that section is to create the machinery for its execution. That Sub-Section, which is a complete and exhaustive code on the subject matter of such integration, plainly bestows ultimate power to make the integration only on the Central Government.

49-50. There are, in our opinion, other weighty considerations justifying that conclusion.

51. As a result of the reorganization, persons in the civil services of more than one State were either transformed into civil servants of another State or were allotted to it. Section 116 directed the continuance of such persons in the posts or offices which they previously held.

52. The various services which came together in that way in a particular State could not have possessed the same attributes or incidents. Diversity in regard to the qualifications, the conditions of service, the grades, the duties and responsibilities, and jurisdictions in relation to each of those services was an inevitable factor. It was clear that a multitude of difficulties were likely to present themselves in bringing about a proper coalescence of those services. For such amalgamation, the posts in the services of one State had to be equated with the posts in the services of another and in making that equation, the attributes of the post of one State had to be compared with those of another. These were problems involving manifold difficulties, requiring the application of the mind of an authority whose stature and pre-eminence inspired confidence and guaranteed even-handed treatment. It is clear that Parliament selected the Central Government as the authority to accomplish that important and difficult work of making an impartial and fair integration at the highest level.

53. There is, it seems to us, no foundation: for the submission that the integration was the function of the State Government, and that the Central Government had only the power to revise, modify or alter the integration made by the State Government. That is not what Section 115 (5) states. Since the Act does not authorize the State to make the integration or to make decisions on questions arising in the process of integration, not unnaturally, it contains no provision for an appeal by the civil servant to the Central Government. The authority conferred on the Central Government is not in the nature of appellate power. It is plain original authority. If, as contended by the Government Pleader, what the Central Government was empowered to do under Sub-Section (5) was only to hear appeals from aggrieved civil servants, one should have been able to find in the Act, provision for an appeal and a period of limitation prescribed for it, and there is none.

54. We should now refer to a letter addressed by the Government of India to the Government of Madhya Pradesh on November 11, 1959, on which reliance was placed on behalf of the Petitioners. That letter required that the preparation of "the final common gradation list", reflecting the integration of services in a State should be preceded by the following steps :

> (a) the preparation of a common provisional gradation list, in accordance with the principles laid down by the Central Government;
> (b) the publication of such provisional gradation list;
> (c) the affording of opportunity to the aggrieved service personnel to make representations to the Government of India, and,
> (d) decisions on those representations in consultation with the concerned advisory committee. That letter also required the State to prefix to the notification publishing "the final common gradation list" a preamble reading :

"PREAMBLE.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in accordance with the decisions of the Government of India under the provisions of Section 115 (5) of the States Reorganization Act, 1956 (Central Act 37 of 1956), the Governor of (name of the State) is pleased to publish the final gradation list of the (name) establishment/Department, which shall be in force retrospectively from the 1st November, 1956."

55. From the form of the letter addressed to the State of Madhya Pradesh, it appears that the procedure prescribed in that letter had to be followed not only by the State of Madhya Pradesh but also by the other States in which the integration of the services had to be made.

56. "The final common gradation list" referred to in this communication is presumably the list prepared incorporating the result of the final integration. "The principles laid down by the Central Government" referred to in this communication are obviously those evolved in a Conference of the Chief Secretaries, convened by the Government of India, to which reference was made in an official memorandum published by the Government of the new State of Mysore on November 8, 1956.

57. The preparation by the new State of Mysore, of a provisional "Inter-State Seniority List" on May 25, 1957, rested, according to the petitioners, on the principles settled by the Central Government, and to which a reference was made in the letter addressed to the Government of Madhya Pradesh. It was urged that the procedure suggested to the Government of Madhya Pradesh being equally applicable to the preparation of the final common gradation list in the new State of Mysore, it was necessary that the final common gradation list relating to the services of the new State of Mysore should also be Preceded by the four steps enumerated in that letter. That letter, it was urged, made it abundantly clear that the final integration, after the consideration of the representation made by the aggrieved service personnel was one which the Central Government alone could make and that that view was reinforced by the preamble which was required to be prefixed to the final common gradation list.
58. It does emerge from the instructions imparted to the Government of Madhya Pradesh that the cardinal principles on which the final integration of the services should rest are those enunciated by the Government of India, and that, although the State Government was required to prepare a provisional list and publish it,-representations made against the correctness of that list had to be decided by the Government of India. The emphasis of the preamble which formed an enclosure to that letter was on the exclusive authority of the Central Government to make the integration.

59. The procedure suggested by the Government of India to the Government of Madhya Pradesh, does, in our opinion, afford some support to the argument presented on behalf of the petitioners. However that may be, our interpretation of Section 115(5) must rest, as it does, on its plain language, without being influenced by the construction placed on it by the Central Government or the Government of Madhya Pradesh.

60. Our view that Section 115 (5) of the States Reorganization Act constituted the Central Government the repository of the power to make the integration leads to the consideration of the impact of that statutory provision on the general executive power of the new State of Mysore, of which, as we have pointed out, the power to make an integration would have been a normal

attribute.

61. The States Reorganization Act is a law made by Parliament under Article 3 of the Constitution, which bestows competence on it by law to form a new State, or alter the area, boundary or name of any other State. Article 4 reads :

4. (1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental incidental and Consequential Provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.	Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental incid-ental and consequential matters.
(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368.?	

62. The integration of the services in the newly formed State which comprised areas of more than one old State, is, it cannot be disputed, supplemental, incidental and consequential to the reorganization plan. When a new State is created, and the component parts of that State are areas which were in more than one old State, and the civil servants holding posts in those areas become civil servants of the new State it is clear that the co-ordination of the constituent services of which those civil servants were formerly members, is a matter which is supplemental, incidental and consequential to the creation of the new State. Parliament, when it enacted the States Reorganization Act, providing for the formation of States, had clearly thus the power to provide in that law for the integration of the services of which there was a confluence in the newly formed State and it is that power which Parliament exercised when it enacted Section 115 (5) of the States Reorganization Act. With the enactment of that Section, there was an attenuation of the normal executive power of the new State of Mysore, the power to make an integration, which under the Constitution would have formed part of such executive power, having been statutory bestowed on the Central Government. The executive power of the new State of Mysore, when it was born, was thus what remained of the Constitutional executive power of a State, after such depletion and therefore did not include the power of integration.

63. That Parliament has power by a law referred to in Article 4, to vest in the Central Government power which might have ordinarily formed an element of the constitutional executive power of a State, so as to bring about a diminution of that general constitutional power is incontrovertible.

64. Clause (2) of Article 4 of the Constitution provides that no law referred to in Article 3

containing supplemental, incidental and consequential provisions, shall be deemed to be an amendment of the Constitution for the purposes of Article 368. The meaning of this clause, as pointed out in *Madappa Chidri v. Apparao*[1], is that the States Reorganization Act containing Section 115 (5), is not open to the criticism that it contravenes the Constitution, which is the source of the general executive power of a State.

65. That the proviso to Article 73(1) of the Constitution, forbids the abridgement of the executive power of a State except by express parliamentary legislation and that the normal executive power of the new State of Mysore to integrate its services was not so expressly abridged was the next argument advanced. The weakness of the argument firstly is that the proviso to Article 73(1) does mot speak of the abridgement of the executive power of the State but provides for the enlargement of the power of the Union. If it can be said that Section 115 (5) of the States Reorganization Act enlarges the executive power of the Union, our interpretation of that provision is that it expressly enlarges such power. Secondly, that proviso forbids only an encroachment in respect of matters in the concurrent list and has therefore no

[1]38 Mys LJ 780 : AIR 1960 Mys 310

relevance. The source of the power to enact Section 115 (5) of the States Reorganization Act consists of Articles 3 and 4 of the Constitution, and the inevitable Consequence of the enactment of that Sub-Section was that the new State of Mysore, when it was formed, had been deprived of its power to make an integration, in the broad field of its executive authority.

66. It was contended that the prohibition of Article 73 against encroachment by the Union, on matters referred to in the concurrent list, by necessary implication, involves a similar interdict. On encroachments in the field of the State list. The ready and complete answer to this argument is that the words 'subject to the provisions of this Constitution', which are the opening words of Article 73, make it clear that that article which; defines the area of the executive Power of the union is controlled by the other provisions of the Constitution and therefore by Articles 3 and 4 of the Constitution and by the provisions of Section 115 (5) of the States Reorganization Act, enacted there under.

67. It was, however, contended that the Central Government had made a delegation to the Government of the new State of Mysore of the power of which it was the grantee under Section 115(5) of the Act, in so far as it related to the integration of the services in that State. The impugned list, it was urged, was made by the new State of Mysore, as such delegate and is, therefore, above reproach.

68. We were not shown any evidence of such delegation. It is also clear that it was not permissible for the Central Government, which was a delegate of Parliament, to assign to the Government of the State as it is stated to have done, its entire responsibility to make the integration. The common law maxim that delegated Power cannot be delegated, does not, it is true, incorporate any rigid and inflexible rule forbidding the delegation of any portion of the power confided to a statutory functionary, although certain cases may call for its rigorous application. Power confided to a Person in circumstances demonstrating the special confidence or trust reposed in his individual judgment and discretion, such as judicial power or other power involving appreciable skill and judgment, is clearly not delegable. Such power is exercisable personally by the functionary to which it is committed. But, there may be cases in which a

delegation of some part of the work to be done is permissible, although it would be difficult to make any exhaustive enumeration of cases in which such delegation would be valid or to precisely define the limits of delegable power. But even in cases in which some part of the work to be performed by a statutory functionary may be assigned to another agency or his delegate, it is clear that what cannot be delegated is the final disposition of the matter or the ultimate responsibility for the act. What may be delegated in such cases is the preparation for the final disposition, including preliminary measures, provisional decisions, ministerial acts and other composite steps that lead to the eventual determination.

69. The preliminary steps and measures for the integration, the collocation of relevant facts, the preparation of Provisional lists, the gathering of material and the performance of such other incidental and subsidiary acts as would aid and assist the final integration are all, therefore, acts which would fall within the orbit of permissible delegation and therefore delegable. That the State could at the request of the Central Government or even on its own motion, make the entire preparation and ground work for the integration, is, we think, abundantly clear.

70. The power of the Central Government to assign to the State, the authority to preliminarily decide objections to the provisional lists is similarly unquestionable, so long as the power to make a final adjudication on those objections is not abdicated, and, whatever the State might do or may be called upon to do in this matter is only a step in the process of the ultimate integration, the Power to make which is entirely that of the Central Government.

71. But, the integration which, when completed, finally settles the pattern of the civil service in the State, integrating the service personnel drawn from different States or areas is what the Central Government alone can make. Whatever assistance the Central Government might derive or requisition from the State, can only form the material on which such integration may rest.

72. Their Lordships of the Supreme Court in *Rradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court*[2], observed :

> "It is well recognized that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides - is the ultimate responsibility for the exercise of such power."

73. Judged by this principle, any assignment by the Central Government of its ultimate responsibility for the exercise of the power to make the integration was plainly impossible.

74. There is nothing justifying a contrary view in Article 258 of the Constitution, on which the learned Government Pleader depended. That article which merely empowers the entrustment to the State of some of its own executive functions does not authorize the delegation of a power of which the Central Government is the donee under a law like the States Reorganization Act, made under Articles 3 and 4 of the Constitution.

75. The argument that the Central Government, could under Section 117 of the States

Reorganization Act divest itself of its duly to make the integration and direct the State to do that work, does not appear to us to rest on a correct construction of that section. The direction authorized by that section, is, it is clear, one necessary for the integration to be made by the Centre or for its implementation after it is so made.

76. The attempt finally made to save the impugned list was to suggest that it could be sustained as one made in the exercise of the general administrative authority of the Government of the State, which it possessed to make a provisional reorganization of its services.

[2] AIR 1956 SC 285

77. We think that the conferment of authority on, the Central Government to make the integration did not deprive the Government of the State of its power to consolidate its governmental operations through a transitional reorganization of its administrative structure during the interregnum between the formation of the new State and the amalgamation of the integrant parts of its civil service by the Central Government.

78. Interim classifications and equation of posts, promotions, postings and the like, and the displacement of a civil servant from the post or office, his continuance in which is guaranteed by Section 116(1) of the States Reorganization Act, are all matters falling within the scope of that power, provided its exercise does not infringe Constitutional guarantees or violate the protection afforded by the proviso appearing under Section 115(7) of the States Reorganization Act. It may not be easy to accurately define by any select combination of words, the frontiers of that power, but it is clear that the denial of that authority would only result in the paralysation of the apparatus of public administration.

79. But the recognition of that power cannot be of any assistance to the State in these cases. The impugned integration was not made in the exercise of any such power. It was professedly made in the exercise of the supposed power to make the final integration which, the Central Government alone has the power to make. The provision for appeals to the Central Government, in the Government Order, to which the inter-State Seniority List incorporating such integration is appended, makes it clear that the status claimed for that list is that which could be claimed for the integration finally accomplished by the Central Government.

80. The impugned integration demonstrates that the Government of the State addressed itself to the very problems which were required to be solved by the Central Government. It made the equation of posts in the Department of Commercial Taxes as on November 1, 1956, annulling in effect the previous equiparation implicit in the notification issued under Section 3 of the new Mysore Sales Tax Act on October 1, 1957.

81. It is clear that the Government of the State intended its list to be a final list subject only to modifications and alterations, in appeal, by the Central Government, the Central Government having no jurisdiction to rectify or alter or disturb it if no such appeal was preferred. If, Section 115(5) of the States Reorganization Act committed the responsibility of making the integration to the Central Government and it thus became the original authority for making it, what has been now done by the State is to substitute itself for the Central Government as such original authority and to transform the Central Government into an appellate authority.

82. This, in our opinion, is plain usurpation of power.

83. On the question whether by the integration made by the State Government the petitioners were reduced in rank. We express no opinion. The consideration of this question involves a determination by us of the very matter which the Central Government is required to determine, namely, whether the post of a Sales Tax Officer, Class II of Hyderabad, a Sales Tax Officer, Grade III of Bombay and a Deputy Commercial Tax Officer or Madras can be regarded as a post equivalent to that of a Commercial Tax Officer, functioning under the new Mysore Sales Tax Act. It is only if we can come to the conclusion that these three posts in the States of Hyderabad, Bombay and Madras and the post of a Commercial Tax Officer functioning under the new Mysore Sales Tax Act are all equivalent posts that we can hold that there was a reduction in tank of the petitioners before us. On that question on which the Central Government, with the assistance of its advisory committees has to make its adjudication, we should not be justified in expressing any opinion and we abstain from doing so.

84. The contention that the impugned integration violates the protection of the proviso appearing under Section 115(7) of the States Reorganization Act, appears to us groundless. That proviso forbids the variation of a service condition of a civil servant to his disadvantage without the previous approval of the Central Government. The argument based on this proviso overlooks the distinction between the variation of the conditions of service of a civil servant relatable to the post held by him and his displacement from that post. However that may be, it has not been demonstrated to us that by the integration which the petitioners Impeach, their conditions of service were altered to then detriment.

85. But, our view that the impugned integration was not within the competence of the State Government entails its annulment on that ground.

86. The petitioners have prayed for many other reliefs, but it is not necessary for us to do anything more in these cases than to quash the impugned inter-State Seniority List, and the Government Order to which it is appended, as one made without authority and, that, is the order which we make in these cases.

87. In the circumstances we make no order as to costs.
Order accordingly.