MYSORE HIGH COURT

B.H. Honnalige Gowda

Vs

State of Mysore

Writ Petns. Nos. 393, 424 and 425 of 1962, 81, 91, 121, 129, 135 to 137, 146, 147, 152, 156 to 163, 166 to 168, 171 to 177, 185, 188 to 191 of 1953

(A.R. Somnath Iyer and G.K. Govinda Bhat, JJ.)

09.12.1963

JUDGMENT

Somnath Iyer, J.

1. In these applications, we are asked to pronounce against the constitutionality of a legislation made by the legislature of the new State of Mysore entitled the Mysore Village Offices Abolition Act, 1961 (Mysore Act No. 14 of 1961), and, in the decision of this question, we had the advantage of an interesting and learned argument on bow sides.

2. The applicants are village officers of the new State of Mysore. Some of them are Shanbhogs and the others are patels. We have before us Shanbhogs and patels appointed under the Mysore Village Offices Act, 1908, (Mysore. Act No. IV of 1908) and village officers known as Karnams appointed under the Madras Hereditary Village Offices Act, 1895 (Madras Act No. 111 of 1895). There is one more before us who is called a stipendiary shanbhog appointed under Section 14 of the Mysore Land Revenue Code.

3. In the thirty six matters which were heard together, there are in all 943 applicants 924 out of them are shanbhogs among whom one is the stipendiary; 2 are patels and 20 are karnams.

4. On July 8, 1961, the Mysore Village Offices Abolition Act, 1961 (Mysore Act No. 14 of 1961) enacted by no legislature of the New State of Mysore and which will be referred to as the impugned Act, received the assent of the President. Section 1(3) of the Act declared that n shall come into force on such day as the State Government may, by notification, appoint. The preamble to the Act declared that the purpose of the Act was to abolish village offices held hereditarily before the commencement of the Constitution and the emoluments appertaining thereto.

5. Section 2(1)(n) defines a village office and Section 2(1)(e) defines emoluments. Section 4 abolishes village offices with their emoluments and resumes service grants; but Sections 5 and 6 provide for the regrant or those lands for an occupancy price. Section 7 regulates the eviction of

unauthorized holders or a regnant to them. The existing tenancy laws are made applicable by Section 8 to the lands regranted under Sections 5, 6 and 7. Section y entitles the holders of the abolished village offices to what is described as relief in the form of monetary payment. Section 11 authorizes the State Government to mane rules and Section 12 repeals six existing laws set out in schedule 1 to the Act.

6. Under Section 1(3) there was a notification by the State Government bringing the Act into force from February 1, 1963. This notification was preceded by certain rules called the Mysore General Services (Revenue Subordinate Branch) Village Accountants (Cadre and Recruitment) Rules, 1961, made by the Governor of Mysore on November 29, 1961, under the proviso to Article 309 of the Construction and under various other statutory provisions. The Governor directed that those rules shall come into force on December 1, 1961.

7. Rule 2 referred to a district-wise cadre called the cadre of Village accountants and specified the pay scale of the post. Rule 3 among other matters made it the duty of a village accountant to function as the ex-officio secretary of a village panchayat if so directed. Rule 4 declared that a village accountant belonged to the Class III service of the State. Rule 5 provides for his appointment by direct recruitment and the Deputy Commissioner was name as the appointing authority by Rule 6. Rule 7 set out the minimum qualifications and rule 8 the disqualifications. Rule 9 required the production of a certificate of physical fitness and Rule 10 authorized appointment of eligible existing village officers. The composition of a recruitment committee and the manner of appointment was regulates by Rule 11 and Rule 12 prescribed a course of training after appointment. Rule 13 provided for a period of probation and Rule 14 prescribed the departmental examination. Rule 15 required production of security and Rule 15 authorized transitional appointments known as local appointments. The Mysore State Civil Services (General Recruitment) Rules 1957 were wade applicable by Rule 17 and Rule 18 which made certain other rules similarly applicable provided for reservations for persons belonging to Scheduled Castes, Scheduled 1 ribes and other backward classes. Rule 19 accorded to the talatis of the Bombay area and shanbhogs of the Coorg District the status of Village Accountants appointed under the rules and continued them in their pasts.

8. These rules are assailed as invalid and beyond the competence of the Governor.

9. In the applications before us some of which were presented even before the impugned Act was brought into force, the applicants assert that their posts do not straw abolished and ask us to prohibit their displacement under the impugned Act and the Governor's rules.

10. The posts selected for abolition by the impugned Act are the posts of village offices held hereditarily before the commencement of the Constitution. So, it would be convenient to pause now to understand the process or recruitment to village offices before the Constitution was made, in all the five component parts of the new State of Mysore which originally formed parts of five different States, village offices fell broadly into three categories. The first was the post of the village accountant; the second was the post of a village headman and the third that or a village servant or an inferior village officer. In the areas of the former State of Mysore and in the district of South Kanara which was in the State of Madras and even in what is now the district of Coorg, the village accountant was Known as the shanbhog. In the district of Bellary and in the taluk of Kollegal which were originally in the State of Madras, the village accountant was known as the

karnam. In the four districts of Belgaum, Bijapur, Dharwar and Karwar, he was called the kulkarni or talati and in the districts of Gulberga, Balctiur * and Bidar which formed part of the Hyderabad State, he was known as the patwari. In all these areas the village headman was known as the patel and there were village servants of more than one description.

11. So, the shanbhog of the old Mysore area and me districts of South Kanara and Coorg, the Kulkarnis and taiatis of the Bombay area, the patwaris of the Hyderabad area and the karnams of the Madras area were all village accountants. The patels of all these areas were the village headmen, and, the village servants were the other inferior officers.

12. During the days preceding the Constitution, in all these areas barring the districts of North Kanara and Coorg, persons belonging to a particular family had the preferential right to be appointed to these posts if they possessed the prescribed eligibility in cases in which there was such prescription. But recruitment in that way became impossible after the Constitution came into being, and, indeed, the Bombay Paragana and Kulkarni Watans (Abolition) Act 1950 (Bombay Act No. IX of 1950) abolished Kulkarni watans in the State of Bombay, and salaried village officers called talatis replaced the kulkarnis.

13. The challenge to the constitutionality of the Act is accompanied by the denunciation that it is a colourable piece of legislation and an argument among others that since even during the period preceding the Constitution there was no hereditary village office anywhere, none of the village offices in the State fell within the definition contained in Section 2(1)(n) of the Act, and none stood abolished.

14. That the village office denned by Section 2(1)(n) is a post which never existed and that the legislature expended legislative power for the abolition of inexistent posts is a proposition constructed on the words 'held hereditarily' occurring in the definition and it would be convenient to dispose of this argument involving interpretation, before discussing constitutionality.

15. The definition of a 'village office' reads :

> "2. Definitions. (1) In this Act, unless the contest otherwise requires,-
> * * * *
> (n) "village office" means every village office, to which emoluments have been attached and which was held hereditarily before the commencement of the Constitution under an existing law relating to a village office, for the performance of duties connected with the administration or collection of the revenue or with the maintenance of order or with the settlement of boundaries or other matter of civil administration of a village, whether the services originally appertaining to the office continue or have ceased to be performed or demanded and by whatsoever designation the office may be locally known.
> * * * *

16. Section 4 which abolishes this village office is :

> "4. Abolition of village offices together with incidents thereof - Notwithstanding anything

in any usage, custom, settlement, grant, agreement, and, or in any decree or order of a Court, or in an existing law relating to village offices, with effect on and from the appointed date,-
(1) all village offices shall be and are hereby abolished;"

If it is right to say that there was no hereditary village office before the Constitution there would be no disappearance of any village office achieved by Section 4 and the applicants would remain in their posts. But it was submitted for the State that the village offices defined by Section 2(1)(n) are no other than those offices to which a person belonging to the family of the original or immediately previous holder had a superior claim and that that system of recruitment which inducted into the posts persons who did not always measure up to the required standard was responsible for the deterioration of the village administration.

17. It transpires that notwithstanding the constitutional prohibition against selection to civil posts on the ground of descent, recruitment in that way did continue in the many parts of that is now the new State of Mysore. And even before the pronouncement against such recruitment by the Supreme Court in *Gazula Dasaratha Rama Rao v. State of Andhra Pradesh*[1], there was on the anvil of the legislature of the new State of Mysore the impugned legislation although in a somewhat different form.

18. It was said that the purpose of the impugned law was to abolish for a reorganization of the structure of village administration, all the posts of village accountants, patels and village servants to which appointments used to be made prior to the Constitution of persons who were preferred for their membership of a particular family and that the words 'held hereditarily' allude to an office so held.

19. But in support of the submission to the contrary the appeal made was to the pronouncement of the Privy Council in *Musti Venkata Jagannatha v. Musti Veerabhadrayya*[2], that in the State of Madras the karnam of the village occupied his office not by any hereditary or family right, but, as a personal appointee, though in certain cases, that appointment is primarily exercised in favor of a suitable person who is a member of a particular family.

20. The question in that case was whether a service grant in an appanage of the office and goes with it. Lord Shaw said it was, observing that under the provisions of the Madras Act No. III of 1895, the village accountant called the karnam holds office as a personal appointee and not by hereditary of family right. The noble Lord said :

[1] AIR 1961 SC 564
[2]41 Mad LJ 1 : AIR 1922 PC 96

"These propositions seem to their Lordships to have been part of the law of
Madras long prior to the Acts of 1894 and 1895 which are now to be referred to; but it is to be observed, with regard both to Madras Act No. 2 of 1894, Section 10, and Madras Act No. 3 of 1895, Section 10, that eligibility, whether for nomination to the office of

> Karnam by the proprietor of the village under the former Act or by the Collector under the latter, is a matter personal to the nominee clearly taking into account such things, not only as sex and age, but also the physical and mental capacity to discharge the office, and even the educational qualifications of the person selected.

It is accordingly clear that since that time in Madras the Karnam of the village occupies his office not by hereditary or family right, but as personal appointee, though in certain cases that appointment is primarily exercised in favour of a suitable person who is a member of a particular family. It would accordingly appear, apart from the authorities, that lands held as appurtenant to the office so enjoyed should continue to go with that office and should accordingly be impartible." (at p. 9 of Mad LJ) : (at p. 99 of AIR) Lord Buckmasters during the course of the argument remarked "I do not see how the heir succeeds to the office. He succeeds to the right to be nominated to the office" (at p. 5).

21-22. Section 10 of the Madras Hereditary Village Offices Act on the interpretation of which the decision of the Board rested, consists of many parts. Sub-Section (1) enumerates the qualifications for appointment; Sub-Section (2) says that the rule of primogeniture shall govern succession to a village office. Sub-Section (3) authorizes the appointment of next in order of succession, when the immediately next heir is not eligible. Sub-Section (4) authorizes the temporary appointment of a person outside the family during a temporary, vacancy.

23. An appointee under this section, it was pointed out by the Board, is appointed for his eligibility and not in recognition of any absolute hereditary right. It should be recalled that the source of the power to appoint a village officer in the district of Bellary and the taluk of Kollegal which are now in this State, was, prior to the Constitution the identical provision of the Madras Act which was interpreted by the Board. Since the statutory provisions operating in the areas which preferred persons of a particular family similarly insisted, although not in all cases, upon certain standards of eligibility, it was contended that the principle of the Privy Council decision excludes the concept of a hereditary post under those laws and that the posts held by the applicants and similar posts to which appointments solely on the ground of descent were impermissible, were not posts hereditarily held".

24. So, the question is whether the words 'field hereditarily' occurring in the definition speak only of an office held in the exercise of an at solute hereditary or family right or also of an appointment 'primarily exercised in favour of a suitable person is a member of a particular family'. The distinction is material, since if it is only the first the applicants' offices are not within the definition while if it is also the second, they clearly are.

25. Now, our interpretation of the words 'held hereditarily' should be what promotes the purpose of the Act in which they occur. It is clear from the preamble to the Act that its aim is to abolish the posts of village offices which, were 'held hereditarily' before the commencement of the Constitution. Can we understand those words as taking within their ambit only offices to which an absolute family or hereditary right could have been asserted, or, should they be comprehended as including also posts claimable on the ground of descent if the aspirant is otherwise eligible ? In the pronouncement of the Privy Council which explained that a service grant goes with the office and therefore should be with the person who holds it for the time being, the Board supported that view by the exposition that the village officer under the Madras Act owed his

appointment to his eligibility although primarily to the membership of his family.

26. Now, under the many statutory provisions which operated before the Constitution in the many areas which now form the new State of Mysore, the only village offices the appointment to which was made only on the ground of descent without insistence on any minimum qualifications were the posts of patels of the Hyderabad area and the districts of North Kanara and Coorg and of the village accountants of the Hyderabad area. Every other post to which an appointment could be made primarily on the ground of descent required certain basic qualifications. If a post to which a person could be preferred for appointment on the ground of descent provided he has the prescribed eligibility, does not belong to the class of posts 'held hereditarily', many of the village offices which according to the State stand abolished by Section 4, would very much exist. The foundation for the view pressed on us that they so exist, is the dictum of the Privy Council.

27. It is clear that if the words 'held hereditarily' are understood as indicating an office held solely on the ground of descent, the elucidation by the Privy Council would completely support the postulate that the only village offices abolished by the impugned Act are those which before the Constitution could be held by persons solely on the ground of descent without being obliged to possess any other form of eligibility.

28. So, the question is whether the office filled up primarily on the ground of descent but only if the person who could be so appointed has other qualifications, is not an office held hereditarily and is therefore outside the definition.

29. In Musti Venkata Jagannatha's case, 41 Mad LJ 1 : AIR 1922 PC 96, the Board did not define hereditary offices. The limited investigation made was whether the Madras law authorized the appointment of a karnam solely on the ground of descent, and the conclusion was that it did not, although the primary ground of appointment was descent. But the main question before the Board was whether the emolument went with the office, and, it is for founding a decision on that question that the Board reviewed the basis of appointment.

30. So the question arises whether there is a further pronouncement by the Board that an office under the Madras Hereditary Village Offices Act, is not an office 'held hereditarily' in the sense in which those words are employed in the impugned Act.
31. But our primary duty is to ascertain the meaning of those words with the aid of settled rules of interpretation.

32. While the ascertainment of the meaning of a statute from the statute alone, is the normal rule, recourse to extrinsic aids for the ascertainment of the intention of the legislature is not excluded, and, the circumstances in which the legislation was made, the state of contemporary legislation and the law which preceded it, and the historical background of the new legislation are only a few of those outside aids.

33. The words 'held hereditarily' are not defined by the Act. The difficulty presented by the ambiguity which stands enhanced by the fascinating argument grounded on the high authority of the Privy Council decision, has made an argument which denudes Section 4 of the greater part of its vitality, possible. But our dominant purpose in construing a statute

> "is to ascertain the intent of the legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts and from foreign (meaning extraneous) circumstances so far as they can justly be considered to throw light upon the subject."

Hawking v. Gathercole[3], If the imperfection of the language obscures the intention, our endeavour should be to ascertain the circumstances "with reference to which the words were used" and "the object appearing from those circumstances which the person using them had in view". (*River Wear Commrs. v. Adamson*[4],) That in the construction of a statute it is both legitimate and convenient to refer to the old law and to as certain the evil which the old law had occasioned was that Lord Halsbury said in *Eastman Photographic Materials Co., Ltd. v. Comptroller-General of Patents*[5], Although-the view which once held the field was that no Act of Parliament can be considered by reference to history, it is now believed that there can be no such rule of universal application. In *Thomson v. Lord Clanmorris*[6], Lord Lindlay M.R. observed :

> "In construing any enactment, regard must be had not only to the words used but to the history of the Act and the reasons which led to it being passed. You must look to the mischief which had to be cured as well as to the cure provided."

Support for the admissibility of general history as an aid to interpretation is also *obtainable from Read v. Bishop of Lincoln*[7], in which Lord Halsbury explained, that the meaning of the terms employed by the legislature could only be properly ascertained by being considered in relation to the circumstances existing at the tune.

34. So, the words 'held hereditarily' whose promiscuity shrouds their real meaning require the ascertainment of the real intention of the legislature by these permissible processes.

35. Now, the impugned legislation was conceived in the year 1959 and a bill called

[3](1855) 6 De GM and G 1 at p. 20 [5]1898 AC 571 at p. 575 [7]1892 AC 644 at pp. 652; 653; 655
[4](1877) 2 AC 743 at p. 763 [6](1900) 1 Ch 718 at p. 725

the Mysore Hereditary Village Offices Abolition Bill, 1959, was published in the issue of the Mysore Gazette bearing the date December 22, 1959. The preamble in that Bill stated that it was expedient to-abolish the "hereditary village offices". The essential part of the definition of a 'hereditary village office' was that it was an office held hereditarily under an existing law relating to a hereditary office. Clause 4 abolished 'hereditary village offices'.

36. Paragraph 1 of the Statement of Objects and Reasons which accompanied the Bill read :

> "In pursuance of the Government policy off abolition of intermediaries, it is considered desirable to abolish all the hereditary village offices, viz., Patels Shanbhogs, Kulkarnis and inferior Revenue Administration at the point where it touches the people most, in consonance with the modern spirit. Moreover, these offices are a relic of the old feudal system and Government considers that the time has come to abolish them. The present

Bill, therefore, provides for the abolition of hereditary village offices."

37. A select Committee to which the Bill, was referred made its report on April 3, 1961. After noticing the decision of the Supreme Court in Gazula Dasaratha Rama Rao's case, AIR 1961 SC 564, and the true constitutional position explained by it, the Committee recommended that the provisions in the Bill for the payment of compensation be substituted by provisions for an ex-gratia payment. The deletion of the word 'hereditary' which had no longer any meaning after the offices had stopped being hereditary, was the further advice.

38. The aim of the legislation as revealed by the Statement of objects and reasons was a comprehensive and complete abolition of all the hereditary posts of 'patels shanbhogs, kulkarnis and inferior village servants' and the purpose was the substitution of a more progressive village administration. The criticism of the existing administration was that it was not in tune with the "modern spirit", and was "a relic of the old feudal system".

39. That the authors of the Bill did not understand the expression 'hereditary village office' in any technical sense, is demonstrated by the report of the Select Committee which assumed a village office under the Madras Hereditary Village Offices Act (Act 3 of 1895) which was before the Privy Council in Musti Venkata Jagannatha's case, 41 Mad LJ 1 : AIR 1922 PC 96 and considered by the Supreme Court in Gazula Dasaratha Rama Rao's case, AIR 1961 SC 564, to be a hereditary office before the commencement of the Constitution but ceased to be one thereafter.

40. That the village offices selected for abolition and described as 'hereditary village offices" in the Bill, and, as offices 'held hereditarily' by the Act, included offices similar to the village offices under the Madras Hereditary Village offices Act (Act 3 of 1895) the appointments to which though primarily made on the ground of descent depended also upon eligibility, is thus shown to be as plain as the deduction that the words 'hereditary' or 'held hereditarily' were not intended to abridge the abolition or to confine it to the smaller group of offices to which appointments could be made solely on the ground of descent.

41. The provisions of two other existing laws assist this view. Section 14 of the Mysore Land Revenue Code and Section 16 of the Bombay Land Revenue Code in their original form, alluded to a hereditary patel or village accountant and allowed the appointment of a stipendiary if the hereditary officer did not exist. The similitude between a village accountant in Mysore and Bombay and a karnam in Madras was that an unqualified person could not claim it merely on the ground of descent. Although the two sections now stand progressively amended and the objective 'hereditary' qualifying the noun 'village' accountant disappeared in Bombay in 1951 references to hereditary patels were removed in both the laws by the impugned Act, it is material to observe that both the laws as they stood before the Constitution called the offices hereditary. It is reasonable to suppose that the adoption of that nomenclature by the impugned Act, was in no measure influenced by the implications of the Privy Council Pronouncement which could not have been in the mind of the draftsman who chose an expression found in the other laws and intended them to have the same meaning.

42. The ascertainment of the meaning of the statute from the statute alone does not produce a different result. Section 9 of the impugned Act entitles the holder of a village office to 'relief' as it

is called, in the form of monetary compensation and prescribes a formula for its determination, one part of which directs the multiplication of the annual cash allowance of the holder by the specified multiple. But the second proviso to that section directs the exclusion from such annual cash allowance, the enhanced cash allowance ordered by various notifications in the respective areas. Clause (iv) of that proviso refers to more than one notification promulgated in the district of Bellary from time to time. In the District of Bellary among the village offices proposed to be abolished, there is none to which appointment is possible solely on the ground of descent, and, if the more restricted interpretation suggested is accepted, no village office in that district will stand abolished and clause (iv) of the second proviso to Section 9 would become unmeaning.

43. The context and general purpose of the Act incline me to rest my interpretation of the definition on the ordinary and natural sense of its words and so interpreted the definition would also include offices to which an appointment though primarily exercised on the ground of descent insists on prescribed qualifications, and which are popularly and sometimes statutorily known as hereditary offices. It is in this sense that I shall refer to a hereditary office in the discussion which remains.

44. Any other construction might be productive of difficulty. The existing laws governing existing village offices and which stand repealed, by Section 12 of the impugned Act, are enumerated in Schedule I to the Act; and the acceptance of the suggested construction would continue many village offices without a law to regulate them. An interpretation which results in such consequence cannot be sound.
45. A too literal construction would exclude from the definition in addition to pos
es to which there is no absolute hereditary right, those held by a stranger temporarily appointed on account of the unavailability of a member of the family of the original holder.

46. One other matter of interpretation over which some argument was expended should be noticed in this context.

47. Section 14 of the Mysore Land Revenue Code like Section 16 of the Bombay Land Revenue Code authorized the Deputy Commissioner to appoint a stipendiary village officer in villages where no hereditary patel or village accountant existed. Both these Codes are in force in the new State of Mysore and while the Mysore Code is in force in the old Mysore area the Bombay Code operates in the Bombay area. The impugned Act amended these two statutes by deleting from them references to hereditary village officers. But, before those amendments were made, the duties of a stipendiary appointed under their provisions were declared by them to be the duties of a hereditary patel and village accountant. The question posed was whether the post to which a stipendiary could be so appointed and one of the applicants before us is one so appointed is the same post as that which, could be held by a hereditary patel or village accountant or a distinct additional post which could be created by the Deputy Commissioner.

48. The answer to this question has relevance as an answer to the further question whether a post to which a stipendiary is appointed under these sections also stands abolished under the impugned Act. The argument maintained was that that post was not within the definition and, therefore did not stand abolished. This contention has a plurality of purpose. The Endeavour of the only applicant before us who is a stipendiary is to remain in his post with the assistance of this interpretation, while, that of the other applicants is to establish discrimination between equals

to support the challenge to constitutionality.

49. But the complaint against discrimination can survive only if we can say that a stipendiary's post is not abolished.

50. On behalf of the State Government, it was asserted that village offices to which stipendiary appointments were made are equally within the sweep of the impugned Act and stand abolished.

51. Section 14 of the Mysore Land Revenue Code which is similar to Section 16 of the Bombay Land Revenue Code, reads :

Stipendiary patel and village accountant to be appointed where no hereditary patel or village accountant accountant exists.	14. In Villages where no hereditary patel or village accountant exists it shall be lawful for the Deputy Commissioner under the general orders of the Government and of the Revenue Commissioner to appoint a stipendiary patel or village accountant who shall perform respectively all the duties of hereditary patois or village accountants as hereinafter prescribed in this Act or in any other law for the time being in force and shall hold their situations under the rules in force with regard ,to subordinate revenue officers.

52. It is seen from the provisions of these sections that a stipendiary village officer could be appointed by the Deputy Commissioner only in villages in which no hereditary patel or village accountant exists. It was said for the State Government that they do not confer power for creation of a new post but only authorize the appointment of a stipendiary to a post which could be occupied by a hereditary village officer but who does not 'exist'.

53. It seems to me that on their proper construction, these two sections support the construction suggested by Mr. Advocate General. The provision that a stipendiary could be appointed only when no hereditary village officer exists, which means that a stipendiary could not be appointed if there is one, makes it plain that the post to which a stipendiary could be appointed is the post which could have been occupied by the hereditary village officer if one existed. That Section 14 proceeds to explain that the duties and functions of a stipendiary are identical with those of a hereditary village officer, reinforces that conclusion. It does not appear to me that the concluding words of Section 14 that the stipendiary shall hold his situation under the rules in force with regard to subordinate revenue officers can justify any other conclusion. Whatever may be the rules by which the stipendiary is controlled, his post is no other than that which becomes vacant by the inexistence of a hereditary village officer.

54. Paragraph 72 of the Mysore Revenue Manual (Volume I, page 57, 1938 edition) removes the dubiety if any. The Revenue Manual which is a compilation of decisions of Government in appeals and revision petitions, and, includes administrative instructions to subordinate revenue officers from time to time, can constitute useful guidance to the interpretation of the provisions of

the Land Revenue Code. The elucidation in this compilation that a stipendiary shanbhog is appointed to a vacancy caused by the unavailability of a hereditary shanbhog, seems to negative the concept of an independent post.

55. It is true that Section 8 of the repealed Mysore Village Offices Act, 1908, contains elaborate provisions for the appointment to a vacancy in a similar situation. So it may be said that the provisions of Section 14 of the Mysore Land Revenue Code overlap the provisions of Section 8 of Village Offices Act 1908, and, it may be asked why the Land Revenue Code should authorize an appointment which could be made under the Village Offices Act, and whether it is not therefore, reasonable to say that the post of a stipendiary is a new post created by the Land Revenue Code to which an appointment cannot be made under the Village Offices Act.

56. I must confess that this incongruity does not fail to produce some perplexity. But not all the careful thought which I found possible to bestow on these parallel provisions could transport me to the conclusion that the casual and ad hoc post of a stipendiary is not the same old post which could be hereditarily held, but, which could not be so held on account of adventitious circumstances, and what impels my construction is the insistence on the non-existence of the hereditary village officers and the identity of the powers and duties of the two posts.

57. We were however asked to say that the village officers of the district of South Kanara were not hereditary village officers. The statutory provisions corresponding to those of Madras Act 3 of 1895 which was not brought into operation in the District of South Kanara, were the Standing Orders of the Board of Revenue of Madras which have been recognized as having the force of law. An accurate statement of the position in that district was made by Narayana Pai, J., in *H. Balakrishna Hegde v. K. Shankara Hegde*[8], who observed

> "It is common ground that in the District of South Kanara to which the Madras Hereditary Village Offices Act, 1895, (Madras Act 3 of 1895) did not apply, the principles of that Act were nevertheless observed and applied as a matter of custom. Accepting that principle there have been resolutions and instructions issued by the Madras Board of Revenue governing the manner of selection of persons for appointment to the hereditary posts of village offices." (at p. 651 of Mys LJ) : (at p. 234 of AIR).

58. An office to which recruitment was so made cannot stay outside the definition. I turn now to the argument of unconstitutionally which was supported by these submissions :

> (1) That the legislature had no competence to abolish village offices which were civil posts under the State;
> (2) What the impugned legislation which discriminates between similarly situated village officers and deprives the applicants of their fundamental right to hold their posts, transgresses Articles 14 and 19(1)(f) of the Constitution;
> (3) That the impugned legislation being a void legislation and the right to hold the abolished offices being property, there was deprivation of property in transgression of Article 31(1) of the Constitution;
> (4) That the abolition of the village offices is really an acquisition of those offices and that

the impugned legislation which neither provides for the payment of compensation nor specifies the principles for its determination, offended against Article 31(2) of the Constitution;

(5) That the abolition of the village offices was a mere pretence and was only a device for inducting into those offices others in substitution of the existing holders and that the impugned legislation is colourable and void.

59. I shall discuss these criticisms in a convenient order.

60. That the abolished village offices are civil posts under the State and that those laws which authorized dependence on descent as a ground of appointment to them became unconstitutional after the commencement of the Constitution is now the authoritative pronouncement in Gazula Dasaratha Rama Rao's case, AIR 1961 SC

[8](1961) 39 Mys LJ 650 : AIR 1962 Mys 233

564.

61. So, from the date of the commencement of the Constitution no village office was a hereditary village office. Although in some parts of the new State of Mysore some offices which were hereditary before the commencement of the Constitution were abolished and stipendiary posts were created, in some others there was no discontinuance of the old system. But the history of the impugned legislation discloses that its original purpose was the abolition of what the legislature still considered to be posts to which appointments could be made on the ground of descent. That the posts were still hereditary posts whose continuance was inexpedient and that their abolition was possible only be legislation, was the belief which generated the desire for the impugned legislation.

62. But, after the authoritative elucidation of the law by the Supreme Court that there could be no hereditary village office after the commencement of the Constitution, the purpose of the legislation as originally conceived no longer survived. If the legislature thought that even after the commencement of the Constitution, there were hereditary offices still in existence, and, that appointments made to those offices on the hereditary principle were not likely to yield the best results, and, that was the purpose of the impugned legislation, the decision in Gazula Dasaratha Rama Rao's case, AIR 1961 SC 564 made it clear that the foundation for the legislation did not exist. That appointments to those village offices which were originally hereditary were stripped of that character by the constitution and could be made only in the way in which appointments to the other civil posts in the State are possible, was the elucidation of the law in that case, which obliterated the impression once entertained to the contrary, and, resulted in the transformation of the proposed legislation which aimed at the abolition of hereditary village offices into a legislation abolishing village offices which were once hereditary.

63. It was said that if the eradication of what was considered to be the evil hereditary system was the principal purpose of the proposed legislation, since that method of recruitment even if it was believed to be productive of public mischief was not possible after the commencement of the Constitution, as explained in Gazula Dasaratha Rama Rao's case, AIR 1961 SC 564, which demonstrated the needlessness of the proposed legislation, its abandonment became inevitable. But, with the changing conditions and evolution of thought a process of recruitment once

believed to be impeccable can conceivably become objectionable and harmful to governmental administration. The machinery of recruitment which becomes unacceptable in that way can always be displaced by a more satisfactory arrangement which would always be within the power of the competent authority provided vested rights are not disturbed or endangered.

64. That a claim to power to abolish even by legislation any sector of public service on the ground that posts in that segment of public service had been filled up by a method which did not commend itself subsequently could not be sustained, and, that persons appointed under a system of recruitment created by law cannot be displaced by the abolition of their posts by the legislature on the ground that their appointment was under a faulty system of recruitment, was the substance of the submission.

65. This takes me to legislative competence.

66. Now, the forty first entry of the State List authorizes the State legislature to make laws with respect to the State public services. That entry reads :

> "41. State Public Services; State Public Service Commission."

That the legislature has power of the widest amplitude to make every legislation on the topic of this entry subject however to constitutional limitations is reasonably clear. A law made under this entry could regulate every matter relating to the State Public Services. It can create posts and legislate on their conditions of service and the like. Although under Article 162 of the Constitution the executive power of the State extends to all matters on which the legislature of the State has power to make laws so long as the legislature does not make a law on any of those matters it would be within the executive power of the State to exercise executive power in that regard to the extent permissible and to create posts and offices in the civil service of the State in the exercise of that power, it would not be necessary to discuss the content of that executive power since this is not a case in which any challenge is made to any executive action taken in that way. The hereditary village offices abolished by the impugned legislation are offices created in the main by laws made by competent legislatures. They were posts created by the appropriate legislatures which prescribed the methods of recruitment and enumerated the attributes of those posts the emoluments payable to its holders, the conditions of service applicable to them, their tenure and the like.

67. That the broad field of the forty-first entry of the State List also bestows competence to legislate on abolition of civil posts is so unexceptionable that in *Parshotam Lal Dhingra v. Union of India*[9], S.R. Das, C.J., proceeded on the assumption that displacement by abolition was not removal for the purpose of Article 311 of the Constitution and said :

> "In the absence of the special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the "post until., under the rules, he attains the age of superannuation or is compulsorily retired after haying put in the prescribed number of years' service or the post is abolished and bus service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him." (at p. 42).

68. The sources of power for State legislation in the sphere of abolition are Articles 245 and 246 of the constitution read with the forty first entry of the State List which bestow absolute and unreserved power to legislate in that field subject only to the restraints imposed by the Constitution. The power so confided would thus include the power to create and abolish offices, to enhance or reduce emoluments and to increase or diminish the tenure as long as no restrictions are placed on the exercise of that power by the Constitution, so long is the continuance of a pest and its incidents

[9] AIR 1958 SC 36

defensible at the will of the legislature which is the repository of all inherent power necessary for a proper administration, of the services, provided us exercise does not transcend the power conferred by tie Constitution. Civil servants being persons appointed to civil posts with defined powers for performance of public duties confided by law, legislative removal of their posts linear the influence and force of great public necessity, if otherwise irreproachable, cannot invite the challenge of incompetence. The question is not whether the law by which the legislature abolishes the post was politic or impolitic; nor even whether it is unnecessary or harsh; but whether there is power to make the law, and, of the existence of that power, there cannot be the slightest doubt.

69. Power which authorizes creation of an once, carries with it authority for abolition for good reason, for, if creation of a public office is for public good, its abolition dictated by public interest is equally possible, if superfluity, inutility or unsubserviencs are factors which can properly prompt subduction of posts from any segment of public service, withdrawal of posts sentenced to abolition for inaptitude in changed conditions if demanded by the need for the emendation or reconstruction, of a sphere of governmental administration cannot be condemned as illegitimate, provided the abolition is not spurious or a mere device for the elimination of condemned incumbents if circumvention of the Constitution. Else, civil posts by their very creation Become permanent and irremovable and I would soon swell and outnumber the incumbents.

70. There is respectable authority supporting the truth of this postulate which has never been doubted.

71. Among the American decisions, the earliest case which investigated the content of the power of the legislature to legislate for the abolition of Civil posts or for the alteration of their tenure, emoluments and duration, is *John B. Butler v. the Commonwealth of Pennsylvania*[10], The plaintiffs in that case were appointed by the Governor of the State to the place of Canal commissioners on a remuneration of four dollars a diem each, and the appointment was renewable annually. By a subsequent statute, the remuneration payable was reduced to three dollars a them and future appointments were transferred to the people to be made by election. The matter was brought up before the Supreme Court of the United States by a writ of error, and, it was contended that the impugned legislation which impaired the plaintiffs' right under a contract entered into between, them and the State by the reduction of their remuneration during the middle of their appointments, and, which impaired the protection afforded by the tenth section of the first article of the federal Constitution, was unconstitutional.

72. The Supreme Court of Pennsylvania overruled that submission, and, that view was affirmed by the Supreme Court of the United States. Danial, J. in whose opinion Mclean, J. concurred,

began with the statement of the firmed established rule that to pronounce a law to be a violation of the Constitution was a solemn function demanding the gravest and most deliberate consideration, and repelling the argument that there was a contrast between the pontiffs and the Stats, said that civil posts under

[10](1843) 10 How 402

the State were appointments made for the benefit of all, "and from the necessity of the case and according to universe; understanding, to be varied or discontinued as the public good shall require." He observed

> "the selection of officers, who are nothing more wan agents for the effectuating of such public purposes, is matter of public convenience or necessity, and so, too, are the periods for the appointment of such agents; but neither the one nor the other of these arrangements can constitute any obligation to continue such agents, or to re-appoint them, after the measures which brought them into being shall have been found useless, shall have been fulfilled, or shall have been abrogated as even detrimental to the well being of the public. . . To insist beyond this on the perpetuation of a public policy either useless or detrimental,... . . . would appear to be reconcilable with neither common justice nor common sense. The establishment or such a principle would arrest necessarily everything line progress or improvement in government; or if changes should be ventured upon, the government would have to become one great pension establishment on which to quarter a host of sinecures."

He concluded the discussion with the following words :

> "It follows, then, upon principle, that, in every perfect or competent government, there must exist a general power to enact and to repeal laws; and to create and change or discontinue, the agents designated for the execution of those laws. Such a power is indispensable for the preservation of the body politic, and for the safety of the individuals of the community. It is true, that the power, or the extent of its exercise, may be controlled by the higher organic law or constitution of the State, but where no such restriction is imposed, the power must rest in the discretion of the government alone."

73. In *Eben Newton v. Commrs. of Mahoning County*[11] Swayne, J. emphasised the unavailability of the protection of the contract clause of the Constitution of the United States where the statute was a public law relating to a public subject within the domain of the general legislative power of the state and involving public rights and public welfare of the entire community affected by it. The effect of the decision in Butler's case, (1843) 10 Howard 402 was stated by him in the following words :

> "The legislative power of a state, except so tar as restrained by its own constitution, is at all times absolute with respect to all offices within its reach. It may at pleasure create or abolish them, or modify their dunes. It may also shorten or lengthen the term of service. And it may increase or diminish the salary or change the mode of compensation. (1843) 10 Howard, 402."

He proceeded to remark that it was impossible to conceive the grounds on which a different result could be vindicated without destroying all legislative sovereignty.

74. The impugned statute in Powers Higginbotham v. City of Baton Rouge,
[11](1880) 100 U.S. 548
Lausisiana[12], abolished the office of Commissioner of Public ranks and Streets of a city transferred its functions to the Mayor and further provided that the person then, filling the once of commissioner should be entitled to enter the employ or the city on his own salary and should have the right to continue in the said service during good behavior until the next general municipal election. The State Court them that the office was a public office and that the legislation abolishing it did not contravene the constitutional provision, as to impairment of contracts. In the appeal preferred by the plaintiff Hughes, C.J. affirmed the decision of the State Court and depended upon the decision in Newton's case, (1880) 100 U.S. 548 which he said rested on a 'familiar principle.'

75. That therefore, the State legislature had legislative competence to made a law abolishing the village offices in the State, and that that legislative power was subject only to the provisions of the Constitution being plain, it remains to investigate whether any constitutional provision makes it impermissible. I see none save the limitations found in part III of the Constitution, and there is nothing in the Constitution which attenuates that power. Whether, as contended, there is a transgression of any of those limitations, is a question which shall presently discuss.

76. But at one stage the course of the argument was rather to suggest that there was something in Article 311 of the Constitution which impairs such power. I cannot read Article 311 in that way. That article, which only regulates imposition of the specified punishments on a civil servant does not control legislative power for abolition; and the supposition to the contrary misses the distinction between the abolition of a post and the punishment of its occupant. Article 311 has no other purpose than protection against arbitrary punishment and if no punishment is possible unless there is some one to be punished, it follows that that article does not concern itself with the continuance of the post as it does with the continuance of its occupant. A civil servant can claim in protection of Article 311 only if he holds a post. But the legislature has power to abolish it as it undoubtedly has, unless restrained by the Constitution. Such abolition, if real, causes the disappearance of the post and also the disappearance of the necessity for dismissal or removal since the right to continue in the post is plainly dependent upon the continuance of the post.

77. The provisions of Article 311 which place an interdict on the termination of the employment of a civil servant except in accordance with its provisions can have therefore no relevance to legislative activity in the sphere of abolition of a public office. The appeal to that article cannot therefore be fruitful.

78. I shall now turn to the criticism that the impugned Act disregarded the restraints imposed by Articles 14, 19(1)(f) and clauses (1) and (2) of Article 31 of the Constitution.

79. That the impugned Act singled out the posts of only some of the village accountants for abolition was the complaint of discrimination. It was said that the village accountants all over the State were holding similar posts and in every way equal to one another and that the exclusion of

the posts of village accountants in the

[12](1939) 306 U.S. 535

Bombay and Coorg areas from the scope of abolition was discriminatory, was the argument maintained on the equality clause of Article 14.

80. In defence of the classification, it was mentioned that since the purpose of the abolition had already been accomplished in the areas where the posts of village accountants were retained, their abolition was both supererogatory and unreasonable.

81. It is true that the talaties of the Bombay area and the shanbhogs of the Coorg area whose posts do not stand abolished, are also called village accountants, as the holders of the abolished village offices. But the question is whether the commonness of the nomenclature makes them equals.

82. It is however asserted that in every respect there was dissimilarity between the one group of village accountants and the other. These dissimilarities, it was said, were produced by disparity in the matter of Jurisdiction, qualifications, conditions of service and the like. it is not disputed and the information placed before us can be found collocated in a report prepared by Mr. Narasimha at the instance of Government, that while the average area entrusted to a village accountant in the former Mysore State varied between 2.2 square miles and 9.9 square miles, that of the village accountant of the Bombay area varied between 12.6 square miles and 21.2 square mites; and that of the Hyderabad village accountant did not exceed 5.8 square miles. The village accountant of South Kanara, Bellary, and Kollegal respectively exercised jurisdiction over an area of 11 square miles, 10 square miles and 22 square miles, as contrasted with the village accountant of Coorg whose area is 49.06 square miles.

83. That generally speaking, one observable feature of the abolished village accountants posts was that the area of operation was incommensurate with their numerical strength is demonstrated by the following analysis.

	Name of District.	**Present strength of village accountants.**	**Average area of the village accountants in square miles.**
1	Bangalore	1047	2.9
2	Kolar	1890	2.2
3	Tumkur	891	4.6
4	Chitraidrag	415	9.9
5	Shimoga	670	5.9
6	Chikmagalur	295	9.2
7	Hassan	613	4.3
8	Mandya	802	2.4
9	Mysore	684	5

	(except Kolleogal Taluk)		
10	Dharwar	419	12.6
11	Bijapur	309	21.2
12	Belgaum	274	18.8
13	North Kanara	287	13.9
14	Bidar	599	3.5
15	Gulbarga	1345	4.7
16	Raichur	933	5.8
17	South Kanara	294	11
18	Bellary	389	10
19	Kollegal Taluk	49	22
20	Coorg	32	49.06

84. As to qualifications, it will be seen from the Bombay Civil Services Classification and Recruitment Rules, that R. 7 of those rules authorises the Government to prescribe qualifications in respect of age and education required to be possessed by candidates for admission to subordinate services. Paragraph 26 of Appendix D of these rules appearing at page 100 of the manual published under the authority of the Government of Bombay, sets out the qualifications of the talatis. The qualifications are that the candidate for selection should have passed one of the following examinations.

(1) The Bombay University Matriculation Examination or an equivalent examination specified in Appendix 'J'.
(2) The Cambridge School Certificate Examination.
(3) The Cambridge Senior Local Examination.
(4) Primary School Leaving Certificate Examination.
(5) The Bombay Government Commercial and Clerical Certificate Examination.
(6) The Senior London Chamber of Commerce Certificate Examination in the following single subjects :
(1) English,
(2) Commercial Arithmetic,
(3) Commercial Geography,
(4) Book-keeping and Accountancy, and in two of the following optional subjects, viz.,

Shorthand, Typewriting, Secretariat Practice, Modern Office Appliances and Systems, Banking and Currency.

(7) The School Leaving Examination conducted by the Government of Bombay.

85. A candidate in the Northern, Central and Southern divisions is further required to pass a departmental examination, failure to pass which, entails loss of appointment.

86. While this is so, the eligibility for the village accountant of Coorg is regulated by rules made under the Coorg Land and Revenue Regulation (1 of 1899). Rule 38 requires the candidate to pass an examination in survey and village accounts conducted annually by the Assistant Commissioner, in addition, he is required to have completed the third form course or passed some higher examination. This is what Rule 38 says although it is a little difficult to understand why completion of the third form course is equated with success in a higher examination.

87. The qualification for the post of a village act count ant in the Mysore area is prescribed by Rule 25 of the Rules made under the Mysore Village Offices Regulation (1908). He is required to pass an examination in the following subjects.

(1) Reading and writing Kanarese well and neat figuring;

(2) Arithmetic up to simple interest;

(3) Land Revenue Rules with special attention to the rules relating to the maintenance and repair of field boundary marks;

(4) Village Officers' Manual; and

(5) Drafting reports regarding occurrences in the village.

88. The qualification of a village accountant in the area of the districts of South Kanara and Bellary and the taluk of Koilegal prescribed by Section 10 of the Madras Hereditary Village Offices Act is the educational test prescribed by the Madras Board of Revenue. Paragraph 5 of Standing Order 147 made by the Board prescribes an educational test in :

(1) Village Manual of Accounts for proprietary villages,

(2) Powers and duties of village officers, and

(3) Survey.

89. In the Hyderabad area, it is not necessary for the village accountant to possess any qualification.

90. The incidents of office and the conditions of service similarly vary, the talatis of the Bombay area are salaried whole time Government servants to leave, pension and other facilities available to Government servants. The village accountant of Coorg is a second division clerk with a fixed travelling allowance and dearness allowance, in the pay scale applicable to him. Both in the Bombay and Coorg reas, the posts are pensionable and the village accountants could be transferred from place to place. But the village accountants in the other areas who could not be so transferred do not hold full time posts, and, except in the Madras area, they are not remunerated by any salary. Their posts are not pensionable and there is no age of retirement prescribed. They could also engage them selves in other professions unlike the Talatis of Bombay and the

Shanbhogs of Coorg.

91. It will be seen from the narration that here are some features of unlikeness between the posts of the village accountant in the Bombay and Coorg areas and the posts in the other areas of the State. The question 19 whether these diversities disestablish discrimination.

92. The assumption underlying the argument of discrimination is really founded on the supposition that a legislation for abolition of a class of posts, is discriminatory when all the posts belonging to that class are not abolished. Now, when the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 was enacted, the posts which stood really abolished, did not include the posts of village accountants in the North Kanara district, which, even prior to the Constitution had ceased to be hereditary. Although the inclusion of that law in the ninth schedule to the constitution protected it against the attach of discrimination, it was said that what introduces an element of integument differentia between the talatis posts and the abolished posts, is that the abolished posts were hereditary before the Constitution, as in the three districts of Bombay. That appointments to these posts did not bring in the best talent or the most worthy persons, since, a person with the prescribed minimum qualification stood clothed with a preferential right to appointment, and, that that superior claim inevitably excluded betters, was, it was said, what principally prompted their abolition, it was next explained that the purpose of the abolition was the reorganisation of the entire structure of village administration in areas in which the posts were hereditary before the Constitution and therefore occupied by persons who were not the Best among those who were otherwise eligible. That such reorganisation had already been completed in the Bombay area and was unnecessary in the Coorg area and that therefore, the abolition was restricted to the posts in the other areas, was how the classification was supported.

93. It will be seen from the relevant statutory provisions for appointment in the Bombay and Coorg areas that the basis of selection was merit and that save for reservations authorized by the Constitution. One who has superior attainments has a claim to preference over one who is his inferior, though qualified. If recruitment in Coorg was all along proceeding on that basis and the posts in the Bombay area in which recruitment was on the hereditary principle had already been abolished, and, appointments to those posts and the posts in North Kanara were exercised on a system similar to that in Coorg, the abolition of those posts in respects of which the purpose of we impugned legislation had already been achieved, was scarcely necessary and would not have had the support of reason.

94. There is no rule more firmly settled than that a legislation assailed under the equality clause can be defended en the basis of a reasonable classification, although the differentia on which that classification rests should be real "as distinguished from one which is seeming, specious or fanciful, so that all actually situated similarly, will be treated alike and that the object of the classification must be the accomplishment of a purpose or the promotion of a policy, which is within the permissible functions of the state and that the difference must bear a relation to the object of the legislation which is substantial, as distinguished from one which is speculative, remote or negligible." *Quaker City Cab Co. v. Pennsylvania*[13], speaking of into problem presented by the equal protection clause, which is 'essentially one of classification and the demarcation' or the separating boundaries it was observed in *Dominion Hotel v. Arizona*[14],

> "The Fourteenth Amendment is not a pedagogical requirement of the impracticable. The

equal protection of the laws does not mean that all occupations that are caned by the same names must be treated in the same way fine power of the State may be determined by degrees or evil or exercised in cases where detriment is especially experienced." *Armour and Co. v. North Dakota*[15] It may do what it can to prevent what is deemed an evil and stop short of those cases in which the harm to the few concerned is thought less important man the harm to the public that would ensue if the rule fold down were made mathematically exact. The only question is whether we can say on our judicial knowledge that the legislature of Arizona could not have had any reasonable ground for believing that there were such public considerations for the distinction made by the present law. (Railroad restaurants were exempted from an hours of labour law applicable to hotels.) The deference due to the judgment of the legislature on the matter has been emphasized again *Hebe Co. v. Shaw*[16], Of course, this is especially true when local conditions may affect the answer, conditions that the Legislature does but that we cannot know. *Cusack Co. v. Chicago*[17],..... if in its theory, "the distinction is justifiable, as for all that we know it is, the fact that some cases, including the plaintiffs are very near to the line makes it none the worse. Thai is the inevitable- result of drawing a line where the distinctions are distinctions of degree; and the constant business of the law is to draw such lines."

95. We can say that the line which the legislature drew in this case between the posts abolished and those that were not, was an artificial line unrelated to the purpose of abolition, dividing into two categories posts which were all similar and of the same pattern ? The main prop of the argument supporting the theory of similarity was that the duties and functions of all the village accountants an over the State were the same and that there was really no material disparity in the qualifications.

96. The reply to it was that the posts to be now created in place of the abolished posts, the attributes of which can be gathered from the Governor's rules, are quite dissimilar to the abolished posts but substantially similar to the posts in the Coorg and Bombay area. Since the equality clause does not insist on equality of mathematical exactitude, the claim to similarity has to be examined on that principle.

97. Even in the case of the abolished posts, the qualifications prescribed for one group are not similar to the qualifications prescribed for the other, and, likewise, the qualifications prescribed for any of the groups of abolished posts, are not the same as those prescribed for the un-abolished posts. In respect of the posts which are retained, the qualifications in Coorg are not the same as those in the Bombay area. Although it

[13](1927) 277 U.S. 389 at p. 406
[14](1919) 249 U.S. 265 at P. 268
[15](1916) 240 U.S. 510 at pp. 517, 548
[16](1919) 248 U.S. 297, at p. 303
[17](1516) 242 U.S. 526 at PP. 530, 531

may be said - and I am not sure in my mind that there is no room for difference of opinion on that matter that the qualifications for any group of posts are really not higher than those presented for the other group of posts for which qualifications are actually prescribed - and it should be recalled that in the Hyderabad area there was no qualification the real different between the two main groups which has relevance to the purpose of the Act, is that the posts in the abolished groups could be occupied by persons having the barest minimum qualifications if they belonged

to the holders' family, while those holding the retained posts could be the best among the eligibles.
This differentia attains some importance from the magnitude of the area of jurisdiction, although it may be true that a village accountant of the abolished posts was entrusted with duties not very different from those entrusted to a village accountant of the retained posts, me other factors which make the differentia more pronounced, are the other attributes such as the insistence on whole time service, the annexation to a specified cadre, transferability, superannuation, right to pension and leave facilities, and the like.

98. So, if the complaint of discrimination becomes ephemeral, it becomes unsupportable for the reason that although the legislature is not free to pick and choose posts in a given area for abolition, there can be no principle which can support the assertion that there can be no abolition of a group of posts unless the abolition is of all the posts belonging to that species. It should be remembered trial the posts of patels stand abolished an over the State. The posts of village accountants also stand abolished everywhere except in the areas of Bombay and Coorg. It is thus plain that the differentia which excluded the retained posts from abolition, was, the transformation of the old posts into a now pattern. Whether those reconstructed posts also merited abolition or whether they did not, was a matter on which the legislature was free to form its own judgment provided there was a rational basis for the classification which it made, and, unless the discrimination is plain which in my opinion is not, I should hesitate to pronounce that there was a transgression of the equality clause.

99. I should say the same thing about the submission that there was at least some similarity between the posts in the South Kanara and Coorg districts. There is, in my opinion, no more resemblance between these two sets of posts than between any one of the other sets and the officers.

100. The argument of discrimination was founded upon the further submission that the village accountants in three districts of the Bombay area who are known as talatis were appointed to the post of the kulkarni, which, was a Hereditary post before the Constitution and that since the post of the kulkarni which was as hereditary as the abolished posts did not stand abolished, there was again discrimination.

101. The supposition, underlying this argument that there were still some posts in the Bombay area which were hereditary before the Constitution and which did not stand abolished when the impugned Act was made, is clearly groundless. The village accountants of the Bombay area fell into two groups. The first group consisted of persons who were village accountants in the district of North Kanara and the second comprised village accountants in the remaining three districts. The village accountants of North Kanara ceased to hold a hereditary office quite a long time ago, and, during the reign of Tippu Sultan within whose territories was situate the district of North Kanara, their posts ceased to be hereditary as explained, and never again became hereditary at any time before the commencement or the Constitution. While this is so, although the posts of the kulkarni in the remaining three districts which were hereditary before the Constitution ceased to be hereditary as explained in Uazula Dasaratha Rama Rao's case, AIR 1961 SC 564, when the Consultation came into being, the posts themselves were abolished by the Bombay paragana aid Kulkarni Watans (Abolition) Act, 1950. The theory that that legislation did not abolish the posts but only the watans relating to those posts is completely answered by the interpretation placed by

the Supreme Court in *Collector of South satara v. Laxman Martadev Deshpande*[18], of the Bombay paragana and Kulkarni Watans (Abolition) act, 1950, which declared that all kulkarni watans "shall be deemed to have been abolished". As to the meaning of the word 'watan' appearing in this section, it was explained : "The watan property, if any, and the hereditary once and the rights and privilege attached to them together constitute the watan."

102. It is thus clear that with the abolition of the watan, the office and the property both disappeared, and, it the post of the talati which replaced that of the Kulkarni was subsequently created, the suggestion that the Kulkarni's post continued to exist cannot be correct.

103. I now turn to the submission resting on Article 19(1)(f) and Article 31 of the Constitution. They were :

> (a) That there was a fundamental right guaranteed by Article 19(1)(f) to hold the abolished posts which by reason of their having been hereditary posts before the Constitution, were the property of the holders;
> (b) That since the impugned law which violated other fundamental rights was a void law, here was an invasion of the fundamental right guaranteed by Article 31(1) that there should be no deprivation of property save by the authority of law; and
> (c) that even if the impugned Act was not void, since the effect of the abolition was an acquisition of the abolished posts and the impugned Act omitted to provide for compensation, and specified no principles for its determination, there was a violation of clause (2) of Article 31.

104. It was not urged that all public offices are property, but, that a hereditary public office is; since it could be inherited with the emoluments of the office, that the contention that a hereditary village office governed by the Madras Hereditary Village Offices Act "was an office cum property" was advanced and negatived in Gazula Dasaratha Rama Rao's case, AIR 1961 SC 564 in which it was explained that an appointment under that Act was to at once with an emolument such as 'the use of land' or money or salary or the like, and did not involve the grant of land burdened with service. That view was in effect affirmed in the later decision of the Supreme Court in Civil Appeal No. 289 of 1961 D/-13-2-1963 : AIR 1963 SC 326 in which, while referring to the hereditary kulkarni watans abolished by the Bombay Paragana and

[18] Civil Appeal No. 289 or 1961, D/-13-02-1963 : AIR 1954 SC 326 on Section 3(1)

Kulkarni Watans (Abolition) Act, 1950, it was observed

> "The watan property, if any, and the hereditary office and the rights and privilege attached to them together constitute the watan .... .the State having created the watan, is entitled to put an end to the watan, i.e., to cancel the watan and to resume the grant : ..... "The State Government having the power to abolish a watan office, and to resume land granted as remuneration for performance of the duties attached to the office was not obliged to compensate the watandar for extinction of his rights."

105. It will be observed that the general scheme of that Bombay law is similar to that of the

impugned Act.

106. If the office of the Kulkarni in Bombay and the hereditary village offices in Madras are not property according to these decisions, none of the abolished posts can have that attribute. The pronouncement of the Privy Council In Musti Venkata Jagannatha's case, 41 Mad LJ 1 : AIR 1922 PC 93, that there can be no absolute claim to a village office under the Madras Hereditary Village Offices Act, which together with its emoluments could be refused even to an unqualified person belonging to s particular family although he his a preferential right to be appointed, weakens the argument to the contrary. In Gazula Dasaratha Rama Rao's case, AIR 1961 SC 564, the endeavour was to sustain the theory that a village office governed by the Madras Hereditary Village Offices Act was not an office simpliciter but an office cum property, and, that Article 16 was inapplicable, since the person entitled to the office had a pre-existing right to it and its emoluments which he could enforce by a suit Repelling this argument, the Supreme Court observed.

> "Learned counsel for respondent 4 has relied on the decision of this Court in *Angurbala Mullick v. Debabrata Mullick*[19], where it was held that in the conception of shebaiti under Hindu law, both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. He has argued that on the same analogy the office of a village Munsiff must be held to be an office cum property. We do not think that the analogy holds." (at p. 570)

Sustenance for this view from the following observations in *Venkata v. Rama*[20], was derived :

> "When the emoluments consisted of land, the land did not become the family property of the person appointed to the office, whether in virtue of an hereditary claim to the office or otherwise, it was an appanage of the office inalienable by the office holder and designed to be the emolument of the officer into whose hands so ever the office might pass. If the Revenue authorities thought fit to disregard the claim of a person who asserted an hereditary right to the office and conferred it on a stranger, the person appointed to the office at once became entitled to the lands which constituted

[19] 1951 SCR 1125 : AIR 1951 SC 293

[20] ILR 8 Mad 249 (FB)

> its emolument."

107. The high authority of the Supreme Court relieves us from the discussion of the decisions in *Berar Provincial Patels and Patwaris Association v. State of Bombay*[21], *Kanteti Sastrulu v. Madupalli Venkateswara Rao*[22], and *Chandru Chowdary v. Board of Revenue*[23], which it was asserted gave expression to a contrary view, or of the other cases deciding the character of the right of management of mahants 'or hereditary trustees' which is not comparable.

108. With the failure of the argument founded on Article 19(1)(f), the argument resting on clauses (1) and (2) of Article 31 must also fail, since, those articles can have relevance only if there is a deprivation or acquisition of property. Nor would there be any occasion for the

investigation of the complaint that Section 6 which provides for relief to holders of abolished offices in the form of monetary compensation is no provision for compensation or that the relief obtainable under its provisions is illusory.

109. So, if the impugned Act in its true nature and character is a legislation on abolition, it does not become susceptible to the criticism that the legislature which enacted it transcended legislative power or disobeyed constitutional interdicts. But, even so, the legislation was denounced as one born in abuse of power. Unconstitutionality in this form was attempted to be deduced from the persistence with which the legislation discovered redundant in the form originally proposed, was transfigured into one of a different pattern basing the proposed abolition on a factor, which, ceased to have relevance after the Constitution. That the abolished village offices were indispensable institutions whose occupants during the past many centuries had maintained a glorious record of service in village administration, and, that the impugned legislation which was both thoughtless and, unwise would seriously disorganize and imperil the stability of governmental administration, and, that it was the consciousness of that danger which persuaded the State of Andhra Pradesh among others to discountenance similar legislation, was the criticism in this context.

110. This argument is really an invitation for trespass upon forbidden regions beyond those assigned for judicial review.

111. However obvious it may be that legislation for abolition should be undertaken only on grounds promoting national interest or the public welfare of the community, it has to be admitted that the assignment of reasons for such legislation is not always necessary, those reasons having no relevance save in the context of the reasonableness of the legislation and the like, when such questions-become justiciable. If a legislature makes a law abolishing useful offices bringing in the wake of that legislation a break-down of the administration and the declaration of the functioning of the governmental apparatus, it is surely not the function of the Court to condemn the legislation on the ground of its unwisdom or impropriety.

[21] AIR 1958 Bom 300 [23] AIR 1959 And Pra 343

[22] AIR 1959 And Pra 232 (FB)

Whatever may be the embarrassment and difficulty in which the legislation might involve itself by such mistaken and imprudent legislation, the law enacted by it is impervious to judicial review, if the legislature has the power to make that law, it is not for the Court to make a probe into the why and wherefore of it. Wherever else the legislature may be called upon to defend a law enacted by it, and, whatever may be the prejudice to which it exposes itself by the enactment of a retrograde or absurd law, the Court is not the arbiter in that matter. Its only concern is with the vires of the law and its true character and not with its policy for which the sole responsibility is that of the legislative wing of the State.

112. If the legislature abolishes offices for a reason which it considers to be good, of the sufficiency of the reason, the legislature alone can be the judge. The legislature is under no duty so long as the legislature is within its competence, to defend the sufficiency of the grounds for the legislation and it is not for the Court in the context of the argument of unconstitutionally for pronounce upon the soundness of the administrative, financial or economic policy that impelled the legislation and not even its severity. Whether the legislation went beyond what in truth was necessary or has gone too far or has accomplished something incommensurate with what public

interest demanded are questions not failing within the ambit of judicial review, if the legislation is constitutionally above reproach.

113. That there was, therefore, no occasion for the abolition of the village offices by the impugned legislation and that the abolition proceeded on the mistaken supposition that recruitment to those offices was still possible on the hereditary principle, are not matters which produce justiciability and so it follows that even if the impugned legislation was not founded on reason, the legislature owes no duty to explain to the Court why it enacted it, so long as that duty does not arise from a justiciable issue.

114. There is a large volume of authority thus restricting judicial review In a matter of this kind. In *A.G. for Dominion of Canada v. A.G. for Provinces of Ontario, Quebec and Nova Scotia*[24], Lord Herschell said this :

> "The suggestion that the power might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the Courts of any limit upon the absolute power of legislation conferred. The Supreme legislative power in relation to any subject-matter is always capable of souse, but it is not to be assumed that it will be improperly used; if it is, the only remedy is an appeal to those by whom the Legislature is elected."

115. In *Osborne v. The Commonwealth and George Alexander McKay*[25], Barton J., remarked :

> "Questions of the abuse of power are for the people and Parliament. We can only determine whether the power exists, and if so, whether Parliament has in fact and in substance acted within it."

[24] (1891) AC 700 at p. 713
[25] 12 Comm-W. LR 321 at p. 345

116. Dixon J., as he then was, made a fuller elucidation in *Miller v. The Commonwealth*[26],

> "On a question of ultra vires, when the end is found to be relevant to the power and the means not inappropriate to achieve it, the inquiry stops. Whether less than was done might have been enough, whether more drastic provisions were made than the occasion demanded, whether the financial and economic conceptions inspring the measure were theoretically sound, these are questions that are not in point. They are matters going to the manner of the exercise of the power, not to its ambit or extent."

117. Latham C.J., agreeing with what Dixon J. said in Miller's case, (1946) 73 Comm-W. LR 187, proceeded to say this in *Australian Communist Party v. Commonwealth*[27],

> "It is not in my opinion a function of a Court to determine whether legislation 'goes too far' or 'is incommensurate' or 'is too drastic' or 'is or is not reasonably necessary.' The only function of a Court when the validity of legislation is challenged as ultra vires the

Commonwealth Constitution is to determine whether it is legislation 'with respect to' a specified subject-matter. If a law has a connection with a subject-matter which is real, it is not the function of a Court to ask whether the law was in fact 'reasonably necessary'. In the recent case of *Bank of New South Wales v. The Commonwealth*[28], the Court had to consider the validity of the Banking1 Act, 1947. Some sections of that Act provided penalties of £ 10,000 per day in the case of certain conduct, but no argument was heard (in a case which was fully argued) that the legislation 'went too far'. J agree with what Dixon J. said in (1946) 73 Comm-W. LR 187 at p. 203."

118. The next branch of the argument was directed to the establishment of the objurgation that the impugned legislation was colourable and therefore void.

119. In *Gajapati Narayan Deo v. State of Orissa*[29], Mukherjea, J. as he then was, made a clear exposition of the objectionable features of colorable legislation which has also the appellation 'indirect legislation'. This was its description :

"It may be made clear at the outset that the doctrine of colorable legislation does not involve any question of 'bona fides' or 'mala fides' on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power, vide Cooley's Constitutional Limitations, Vol. I, p. 379. A distinction, however, exists between a legislature which is legally omnipotent like the British Parliament and the laws

[26](1946) 73 Comm.-W. LR 187 at p. 203 [28](1948) 76 CLR 1

[27]83 Comm-W. LR 1 at p. 153 [29] AIR 1953 SC 375 at p. 379

promulgated by which could not be challenged on the ground of incompetency, and a legislature which enjoys only a limited or a qualified jurisdiction.

"If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute, or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this fatter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. As was said by Duff, J. in *'Attorney General for Ontario v. Reciprocal Insurers'*[30],

> "'Where the law making authority is of a limited or qualified character it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is that the legislature is really doing.'
> "In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing an indirect method."

120. Adopting this elucidation, in *Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation*[31], Subba Rao, J., explained :

> "The Court will scrutinize the law to ascertain whether the Legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant."

121. Whether the impugned legislation is an indirect legislation on a topic outside the field assigned to the legislature is the material question. That the real but disguised substance of the legislation was the removal of existing incumbents from their posts which was not possible even by legislation unless preceded by the steps enjoined by Article 311 of the Constitution, was what according to the argument established indirect legislation.

122. If such be the true character of the legislation although it masquerades as a legislation for abolition the indirection will be plain. The true character of the legislation being thus the deciding factor, the question is whether in truth it is an

[30]1924 AC 328 at p. 337
[31] AIR 1959 SC 308 at p. 316

abolition law or whether as contended, the abolition is a mere pretence, and, the removal of incumbents is the real topic of legislation.

123. Since the 'substance of the legislation and not its form' is what supplies the answer to this question and the test being 'whether the enactment does fall in Substance within the authorized relevant subject-matter or whether it touches it incidentally and makes a law on a different subject', the name of the Act and its language do not necessarily conclude the matter, for, regard must be had to 'things and not to mere words' The King and the Minister of State for. The *Commonwealth v. Barger*[32], nor would the indirect effect of admitted power have relevance since it is not permissible for the ascertainment of the substance of the legislation to seek out the effects of legislation and say that they represent the substance. *Amalgamated Society of Engineers v. The Adelaide Steamship Co. Ltd*[33].,

124. What is decisive of the matter is not the displacement of the incumbents from the posts which is the inevitable consequence of every abolition law but whether the legislation is not on abolition which is the subject-matter, but for removal. Ex facie the law is an abolition law expressly providing as it does, for abolition, resumption of emoluments and their regrant and

payment of compensation ex gratia or otherwise. If that be its plain appearance, but a clear inference is possible that it deals with a matter outside the ambit of power, its invalidity becomes manifest.

125. The main if not the only submission in aid of the challenge of indirection was that the posts which were proclaimed by Section 4 as abolished posts, continue to exist as part of the village administration and that the history of the legislation and the steps taken for its implementation unmask the disguised substance of the legislation.

126. If the true position is that Section 4 speaks of an abolition which is a mere camouflage1 for the concealment of the true character of the legislation and if it is an artifice for legislating the unwanted incumbents out of their posts, so that others may be substituted, nothing more would be necessary to substantiate indirection.

127. A clear statement of the law on this matter is to be found in 42 American Jurisprudence, pp. 904 and 906 (paragraphs 33 and 35). It reads :

> "33. Modification or Abolition of Offices - The power to create an office generally includes the power to modify or abolish it. The two powers are essentially the same. As stated above, the distinction drawn between offices of legislative creation and those created by the Constitution is one of location of power to alter or abolish. A constitutional office cannot be legislated out of existence, although a constitutional office or any other office may be abolished by constitutional provision. But where the office is of legislative creation, the legislature may, unless prohibited by the Constitution, control, modify, or abolish it whenever such course may seem necessary, expedient, or conducive to the public good. .... . ."
>
> "35. ..... The legislature may not evade provisions by a sham or pretended

[32](1908) 6 Comm-W. LR 41 at p. 75

[33](1920) 28 Camm-W. LR 129

> abolition of an office, as where there is a mere colourable abolition of the office for the purpose of getting rid of its incumbent. This may happen where an office is abolished in terms and promptly re-created under the same or a different name, provided, of course, the legislature does not attach duties and burdens to the new office of a character such as to make it in reality a different office."

128. In explanation of the true scope of the law, in paragraphs 6 and 7 of the counter-affidavit produced on December 3, 1962, what was stated by Mr. P. Nagesha Rao, Under - Secretary to Government in the Revenue Department, who is its deponent, reads :

> "6. The petitioners' allegation that the abolition of the hereditary village offices, is merely an excuse for removing the present incumbents from offices, is baseless. The hereditary system does not take into account the ability, qualifications or suitability of the incumbents to the offices, and comes in the way of the best persons being selected for

these offices. The hereditary system is also not conducive to maintenance of discipline and efficiency. The hereditary system prevents transfer of village officers from one place to another. Such transfers are generally considered in the interest of service. The hereditary system deprives equal opportunity for all citizens to hold offices."

"7. As the hereditary system is unconstitutional, the object of abolition of hereditary offices, is to remove a system repugnant to the Constitution and to substitute an, efficient system of village administration."

129. These avertments allude to the old system of recruitment which transmitted a village office from one generation to another and therefore demanded the annulment of the offices themselves. The complaint is not against the incumbents but against the system which inducted them into their posts.

130. After the Presidential assent to the impugned legislation on July 8, 1961, the Governor of the new State of Mysore made certain rules called the Mysore General Services (Revenue Subordinate Branch) Village Accountants (Cadre and Recruitment) Rules, 1961, on November 29, 1961, regulating recruitment to posts of village accountants and their conditions of service. While the applicants say that these rules authorise appointments to the very posts supposed to have been abolished in the vacancies arising out of the displacement of their holders, the competing view pressed was that the village accountants' post referred to in the rules is a new and distinct post. Mr. Advocate General stated that a large number of applications for recruitment under those rules had been received and that a selection of a large number of persons from among them had already been made and that the persons so selected after having been trained in accordance with the provisions of the rules are now ready to be appointed to that reconstructed post.

131. The reasons influencing the conviction that abolition was not the substance of the legislation according to the applicants are :

(a) that in the Statement of Objects and Reasons published in the Gazette of December 22, 1959 it was explained that the necessity for the impugned legislation arose out of the antecedent faulty system of recruitment;

(b) that although the decision of the Supreme Court in Gazula Dasaratha Rama Rao's case, AIR 1961 SC 564 completely demonstrated the groundlessness of the assumptions that recruitment was still possible on the hereditary principle, the legislation was not abandoned;

(c) that the transformation of the proposed legislation into an entirely different form of legislation revealed the determination on the part of the legislature to eliminate the exiting holders by some form or other of legislation;

(d) that it was for that purpose that the legislation originally designed was transfigured into a legislation for abolition of another form, for the manifestly irrelevant reason that at one stage those offices were hereditary; and that whereas the bill prepared at the inception purported to be a law for the removal of village offices which were still believed to be hereditary, the legislation eventually made was for the abolition of the village posts not because they were still hereditary but because they were at some stage hereditary;

(e) that if the real purpose of the legislation was the eradication of the evil which had already emanated from recruitment under the old system, it would have been enough for the legislature to alter the incidents of the posts;

(f) that not even the fact that some of the village officers were part time officers or that for its holders there was m tenure or that their duties or responsibilities required variation, or, that their emoluments should take a different pattern or shape, could be a ground for the abolition of the posts themselves; and that any such reorganisation in the structure of the village offices was possible without their abolition since they were all matters governed by conditions of service whose variation alone could have been made by the legislatures without recourse to the extremely drastic step of obliterating the posts themselves;

(g) that in the amendments made by the impugned Act to Sections 14 and 16 of the Mysore and Bombay Land Revenue Codes was implicit the continuance of the old posts of village accountant and patels.

(h) that the rules made by the Governor in furtherance of the purpose of the Act clearly referred to recruitment in the old Mysore area to the old post of the Village accountant defined by Section 3 (24) of the Mysore Land Revenue Code and to no other; and that,

(i) the instructions issued by Government through the communications of January 5, 1963 and January 17, 1963 for the implementation of the Act which directed appointments to old posts, revealed the true position.

132. That the impugned legislation when it was first conceived, assumed the possibility of appointments to the abolished posts under the old system which was not applauded by the legislature, and, that the enunciation to the contrary by the Supreme Court was what prompted its metamorphosis, constitute in my opinion insufficient indication of any indirection in the legislation both in its original form and after its change of shape. Judged by appearance and phraseology, the law originally proposed is as much a law on abolition as the impugned law, the only difference being that the proposed law abolished hereditary posts while the enacted law abolished posts which were once hereditary. That alteration in the form of the legislation was rendered necessary by the inexistence of any hereditary village offices when the law was enacted, although their existence was assumed at the inception. But there cannot be the smallest doubt about the identity of the posts which were proposed to be abolished. The posts intended to be abolished under the proposed law were no other than the posts which Section 4 of the impugned law abolished. The change in the form of the law which was discovered necessary after the pronouncement of the Supreme Court, thus affords small scope for the inference of indirection, since, the course of the impugned legislation from the inception, continued in the direction in which it started without suffering any deviation. It is, therefore, plain that the allusion in the inpugned Act to the quondam hereditary character of the offices had no other purpose than the proper identification of the abolished posts.

133. That the legislation which was on the anvil was not abandoned after the explanation of the true position in Gazula Dasaratha Rama Rao's case, AIR 1961 SC 564 cannot have relevance. It is not proper for us to involve ourselves in adjudications on controversies surrounding questions of policy for resolving which the Court is not the arena.

134. It is true that the impugned Act made some amendments to the Mysore and Bombay Land Revenue Codes which have produced some obscurity as to their impact on the abolition provisions. One of the village offices abolished is the office of the Shanbhogue of the old Mysore, area who was described as a village accountant in Section 14 of the Mysore Land Revenue Code and Section 16 of the Bombay Land Revenue Code. Section 3(24) of the Mysore Law which defines a village accountant reads :

> "3. In this Act, unless there be something repugnant, in the subject or context-
> * * * *

Interpretation.

> * * * *

(24) 'village accountant' means the officiator, Shan –

135. There was a similar definition in the Bombay few.

136. Before its amendment, Section 14 of the Mysore law which provided for the appointment of a stipendiary village officer read :

Stipendiary patel and village accountant to be appointed where no hereditary patel or village accountant accountant exists.	14. In Villages where no hereditary patel or village accountant exists it shall be lawful for the Deputy Commissioner under the general orders of the Government and of the Revenue Commissioner to appoint a stipendiary patel or village accountant who shall perform respectively all the duties of hereditary patois or village accountants as hereinafter prescribed in this Act or in any other law for the time being in force and shall hold their situations under the rules in force with regard ,to subordinate revenue officers.

> * * * *

137. Section 16 of the Bombay law was similarly worded.
138. Section 12(2) of the impugned legislation made certain amendments to these two sections. The amended section substituted for Section 14 of the Mysore law is found in the fourth column of Schedule II to the Act and it reads :

> "14. Appointment of Stipendiary Patel and village Accountant.

It shall be lawful for the Deputy Commissioner, under the general orders of the State Government to appoint a Stipendiary Patel or Village Accountant or both for a village or group of villages.

> "The village accountant and the Patel shall perform all the duties including the duties of Village Accountant or Patel as hereinafter prescribed in this Act or in any other law for

the time being in force and shall hold office under the rules in force with regard to subordinate Revenue Officers."

139. Section 16 of the Bombay law was similarly amended.

140. These amendments which authorise appointments to the post of a village accountant which the impugned Act professes to have abolished, constituted the foundation on the assertion that there was in truth no abolition, but, that on the contrary, the old post denned by Section 3(24) of the Mysore law was statutorily continued by the amendment made to it. We were asked to say that the village accountant referred to in the amended fourteenth section of that law is, no other than the village accountant defined by Section 3(24) who again is the old village accountant. It will be seen that any difficulty arising out of this skilful ratiocination is not presented by the amendment of the Bombay law, which has no such definition.

141. But, the solution to the difficulty is supplied by a proper comprehension of the impugned Act. It professes to abolish the erstwhile hereditary village accountants. But, that it does so, cannot mean that the legislative intent was that there should be no village accountants in the State. If the apparent aim of the abolition was the vivification of the village administration believed to have suffered deterioration by defective recruitment, the creation of more suitable posts for manning that sphere of governmental activity in place of those abolished, should follow as a matter, of course; and, in that situation, the village accountant referred to in the amended provisions can only refer to the officer to be appointed to the post to be so created.

142. That is also what I should say about the amendments made to the corresponding provisions of the Hyderabad and Coorg law and about the stipendiary patel who could be appointed under some of those provisions. It is true that under the Governor's rules as explained to us, the village accountant to be appointed under those rules fills the role of both the old patel and old village accountant, and, it appears that there is thus no proposal now, to revive the post of rd patel in any form. But even so, although the stipendiary patel of the Land Revenue Code is not the village accountant of the Rules, it is more than clear that he is not the old patel.

143. So, on the principle that a construction which is destructive of the operation of Section 4 of the impugned Act should be rejected in favour of what promotes its purpose, it would be reasonable to say that the legislature which made the abolition made only consequential amendments to the two laws and did not contradict itself. It will be remembered that Sections 14 and 15 of the Mysore and Bombay laws contained references to hereditary offices and it is seen that the main purpose of the amendment was to delete such references. If that was the purpose of the amendment, an interpretation which is repugnant to Section 4 of the impugned Act should not appeal, if, a harmonious construction is possible. Since, in the Bombay area, the posts of the talatis were not hereditary offices, it is also possible to think that the amended sixteenth, section of the Bombay Land Revenue Code while speaking of a village accountant referred to the new posts of talatis which replaced the old hereditary posts.

144. The next endeavour was to establish the identity between the old post and the post of the village accountant to which recruitment is regulated by the Governor's rules made on November 29, 1961. These rules are called the Mysore General Services (Revenue Subordinate Branch)

Village Accountants (Cadre and Recruitment) Rules, 1961 and Rule 2 refers to the Cadre of the village accountant. The appellant 'Village Accountant' is again in the main, the slender foundation for the theory of identity. It is however plain that the village accountant of the rules is no more the old village accountant or patel than the stipendiary village accountant or patel of the Land Revenue Code. The structure of the new post makes it difficult to mistake it for the old, and these are its salient qualities :

(a) The higher qualifications for the new post (Rule 7).
(b) The district-wise cadre which entails transfers within the district (Rule 2).
(c) The performance of additional duties as Secretary of the village panchayat (Rule 3).
(d) The combination of the office of the old village accountant and patel in the new post.
(e) The training and probation which precede the appointment (Rule 12).
(f) The inclusion of the new post in Class III Service with tenure, salary, pension, leave and the like which makes it awhile time post (Rule 4) and
(g) Recruitment by Selection on merit.

145. It is thus clear that the name of an old post continued; the post itself did not.

146. It was however said that Rule 10 negatived the concept of a new post. That rule reads :

"10. Initial Recruitment to Village Accountant-Notwithstanding anything contained in these rules recruitment for the first tune in respect of the posts of Village Accountants shall be made :
(i) from amongst persons holding the posts of Village officers on the date of commencement of these Rules and whose age does not exceed 40 years on the said date and who possess the minimum qualification prescribed in Rule 7 and who are not disqualified under Rule 8 and who are selected under Rule II.
Provided that in the event of persons satisfying the said qualifications not becoming available even after advertising the vacancies twice, recruitment shall be made from among persons holding the posts of Village Officers who are not more than 50 years of age on the date of the commencement of these rules and who have passed the Lower Secondary or Vernacular Final, or equivalent Examination."
(ii) and also by direct recruitment."

147. The meaning of clause (i) of this rule is that if an existing incumbent has the eligibility specially prescribed for him, and is selected under rule II, he can claim precedence over another, equally qualified man. Rule 11 constitutes a Recruitment Committee for the selection to which Rule 10 refers. That rule does not state how the selection has to be made and leaves it to the Committee to formulate its own principles for such selection.

148. But the importance of Rule 10, it was stated, is, that other things being equal, the existing incumbents can claim priority in the matter of appointment to the posts. But that it is so does not very much advance the contention that the old post has continued, or that the similarity between the new post and the old is to pronounced as to attract the reproach that the recreation of the post

is a mere sham.

149. The other step in the argument was this. It was pointed out that after the professed abolition neither the Government nor the legislature created any substitute posts. If in that situation the Governor who could only make transitional rules regulating recruitment and conditions of service without the power to create a post spoke of a village accountant in his Rules, it was urged that that village accountant could be no other than the old village officer. But this suggestion overlooks sequence, and the significance of the Governor's Rules following abolition and for its implementation. Whether appointments under those rules are possible without the creation of posts by the appropriate authority whichever it may be, is not a matter on which we should say anything. Nor should we say whether such appointments are possible under the rules or only under the amended Land Revenue laws specified in Schedule II to the impugned Act. These are matters which do not arise for discussion in these cases. However that may be, the Rules contain nothing very clear on which can be constructed the argument that the abolition is a mere pretence.

150. In this context, our attention was asked to two communications addressed by the Government to the Deputy Commissioners of the State. On January 5, 1963, instructions were issued by the Government to the Deputy Commissioners, explaining the procedure to be adopted for filling tip the offices which fell vacant in consequence of the impugned legislation. The statement in paragraph 2 of this communication that arrangements would have to be made to fill up the vacancies of the posts of Village Offices which may arise can, it was said, have no other meaning than that the effect of the impugned legislation was to create vacancies in the posts of village offices and that the direction that certain persons who had already completed their training should be posted as village accountants as stated in that paragraph, can have no other meaning. The direction that existing shanbhogues who conformed to a particular description should 'also be continued in their present posts' and that even unqualified persons should be allowed "to continue in their office", and the explanation in paragraph 3 that the implementation of the instructions would make it possible to secure the required number of persons "to man all the posts of village Accountants" in the districts, became, according to the argument, inexplicable except on the hypothesis that the impugned legislation was not intended to result in the disappearance of the posts and that the only effect which was sought to be achieved by that legislation was the removal of the existing incumbents and the absorption of new ones.

151. These instructions issued to the Deputy Commissioner on January 5, 1963, were followed up by a fresh set of instructions incorporated in another letter addressed by the Government to the Divisional Commissioners on January 17, 1963. That communication reads :

"GOVERNMENT OF MYSORE.
Mysore Government Secretariat,
No. RDE, 327 GVO. 62.Vidhana Soudha,
Bangalore, dated 17th Jan., 1963.
From
The Secretary to the Government of Mysore,
Revenue Department.
To
All the Divisional Commissioners.

"Sir,
Sub. : Continuance of Patels and Inferior Village Servants.

In inviting your reference to the penultimate paragraph of this Department's letter of even number dated 5th January 1963, I am directed to state that Government have since decided to continue provisionally the offices of patels and inferior village servants beyond the 31st of January, 1963, and till the end of March, 1963, subject to the same terms and conditions of service under which the present incumbents are now serving but without hereditary rights. I am to request you kindly to instruct the Deputy Commissioners to make an offer to the existing incumbents of these offices to continue in service subject to the same terms and conditions of service (including emoluments) by which they are now governed but without hereditary rights. In case any patel or inferior village servant does not agree to continue to work subject to the conditions specified above, the Deputy Commissioners may be instructed to fill up their places by appointing other locally available candidates as a temporary measure so that local officers should not be handicapped in getting through Government work.
A report of action taken may kindly be sent to Government before the end of this month. Copies of this letter are being sent to the Deputy Commissioners direct.
Yours faithfully,
Sd/- N. Narasimha Rau,
(N. Narasimha Rau),
Secretary to Government,
Revenue Department."

152. The Divisional Commissioners, were by this communication directed to continue provisionally the offices of patels and inferior village servants even beyond January 31, 1963. The Divisional Commissioners were asked to instruct the Deputy Commissioners to continue existing incumbents in the posts of patel and inferior servants in the abolished posts under the same terms and conditions of service which were applicable to them, but without hereditary rights. Deputy Commissioners were further instructed to fill up the posts of village officers who were reluctant to continue in their posts by appointment of local candidates as a temporary measure.

153. That the continuance of the old village officers or the appointment of locally available candidates was demanded by the vital consideration that there should be no break down of the governmental apparatus is clear from the words "so that local officers should not be handicapped in getting through Government work." appearing in this communication.

154. It cannot be denied that these instructions which regulate transitional appointments, speak of appointments to the old posts which Section 4 of the impugned Act in terms abolished. But that imprecise phraseology employed for executive instructions during the transitional period, cannot obscure, or dwarf the importance or effect of the abolition accomplished by the legislature. Although it is unnecessary to consider the propriety of determining the true scope of a legislation on the basis of executive action for its enforcement, it is perfectly manifest that if the legislature makes an abolition law whose true nature and character is a legislation on the subject of abolition becomes complete when, that law begins to operate notwithstanding any amount of executive conduct to the contrary.

155. What remains to be considered on the question of constitutionality is the discriminatory character of Section 9 of the impugned Act which provides 'relief to holders of abolished offices. That the 'relief where the service grant measures 3 acres and more is less than the 'relief claimable by smaller holders and that inferior village officers are entitled to additional reliefs was the complaint.

156. The relevant provisions ate the first proviso appearing under clause (b) of Section 9(1) and clause (c) of that Sub-Section. Clause (c) which affords relief of inferior village officers deprived of perquisites and similar emoluments to which the other village officers were not entitled, cannot produce a complaint. That the formula for the determination of the quantum of relief prescribed by the impugned proviso is a little more favorable to the smaller holders cannot be condemned as Irrational or unreasonable.

157. My opinion is that the Mysore Village Offices Abolition Act, 1961 (Mysore Act No. 14 of 1961) is not unconstitutional, and, in that conclusion, I stand supported by the famous words of Marshall C.J.

> "that in no doubtful case would it (the Court) pronounce a legislative act to be contrary to the Constitution;" and that the most useful guidance could be derived from 'safe and fundamental principles."

158. What next constituted the subject of attack were the Governor's Rules made under many provisions including the proviso to Article 309 of the Constitution. The argument was that by the amendments made to Sections 14 and 16 of the Mysore and Bombay Land Revenue Codes, the legislature created two categories of village posts called stipendiary village accountant and stipendiary patel if those expressions cannot be understood as referring to the old posts. That through, those amendments, the legislature regulated recruitment and conditions of service by investment of the power to appoint in the Deputy Commissioner under the general orders of the State Government and by attaching to those posts the rules governing the subordinate revenue office, was the further submission. It was further said that the legislature having made a law on a matter on which the Governor could make rules only if the legislature had not occupied that field, the competence of the Governor to make the impugned rules did not exist. Rule 19 of the rules was assailed on the ground that the talatis of Bombay and the Shanbbogues of Coorg were selected for more favourable treatment.

159. No question of competence can arise in these cases in which nothing justifiable so far has been done under the rules. We should, therefore, say nothing on that matter. Since it has already been demonstrated that the village accountants of the Bombay and Coorg areas fell into a reasonable classification, the criticism of Rule 19 cannot succeed.

160. Before concluding, I should notice a matter which was much mooted during the argument. The question was whether a land of which a partition or alienation was permitted by the proviso to Section 5 of the Mysore Village Offices. Act, 1908 (Mysore Act No. IV of 1908) was still an unenfranchised service inam resumable under Section 4 of the impugned Act. The definition of the word 'emoluments' occurring in the second proviso to Section 4 of the old Act states that emoluments can be of more than one kind, one of which, is a land. The posts of a Shanbhog and

patel hr the Mysore area which were governed by the old Act are old institutions which were in existence even before the enactment of that law, and, it is admitted that what are now service inams were granted to persons holding those posts. It is clear from what is summarized in the Mysore Revenue Manual Volume I page 299 that these service inams which should have been normally in the possession of the village officer holding the office, had on occasions been alienated. Since it is an essential characteristic of a service inam that it is resumable when service is not performed, the Government had the power to resume the lands so alienated. But a more indulgent view appears to have been taken when the alienation was an old alienation and was not discovered within a reasonably short time. So, one of the methods by which the inam was permitted to be enfranchised was by the imposition of full assessment.

161. It is also clear that even before the enactment of the old Village Offices Act, the emoluments used to consist of a remuneration paid1 in cash which used to form a certain percentage of the land revenue. From the provisions of the Village Manual it is seen that that cash remuneration used to be the aggregate of two sums of money. The first was that which represented the remitted part of Jodi payable in respect of the inam and the second was the cash remuneration shown as payable in the relevant accounts. The aggregate of these two sums of money was the rash remuneration.

162. Section 5 of the old Act which prohibited partitions and alienations of emoluments, made an exception in the case of emoluments assigned to the holder, by rules made under Section 22 of that Act. Section 22 of that Act confers power on the Government to make rules for many purposes one of which is to determine what remuneration is payable to the village officers. Section 5 prohibits the alienation or attachment of the emoluments so assigned. That emolument goes with the office and whoever is the holder of the office is entitled to it. But the Act refers to an emolument which is not assigned to the holder of the office, and a partition, transfer, encumbrance or alienation of this emolument is permitted by the proviso to Section 5 as between the members of the family of the hakdars. The expression 'hakdars' refers to persons who belong to the family of the original grantee of the emoluments and who were before the commencement of the Constitution potential successors to the office when succession to the office was hereditary.

163. These provisions are contained in Section 5 which reads :

Emoluments of village offices inalienable imparti-ble and not liable to attachment.	5. The emoluments of village offices whether such offices be or be not here-ditary shall not be liable to be transferred partitioned or encumbered in any manner whatsoever and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof :
Proviso.	Provided that in the case of lands which are not assigned as emoluments to the holder of a village office under rules framed under Section 22 nothing contained in this section shall be deemed to affect transfers partitions or eneurabrances as between different members of a haltdar?s family..

164. An alienee of an emolument is called by the impugned Act as an authorized holder who is

defined by Section 2(1)(b) which reads : -

> "2. Definitions (1) in this Act, unless the context otherwise requires -
> * * * *
> (b) 'authorized holder' means a person in whose favour a land granted or continued in respect of, or annexed to, a village office by the State or a part thereof has been validly alienated permanently, whether by sale, gift, partition or otherwise, under the existing law relating to such village offices;
> * * * *"

165. Under Section 4(3) of the Act, every land 'granted or continued in respect of or annexed to a village office by the State' stands resumed. It is assumed by the Act that a land which is in the possession of an unauthorized holder is also so resumed, as revealed by the provisions of Section 6 of the Act under which the authorized holder is given the option to become the owner of the land on payment of the occupancy price prescribed by it.

166. It was said that the resumption of a land whose alienation or partition in one form or the other is permitted by the proviso to Section 5 of the old Act, is not possible under Section 4(3) since the land so permitted to be alienated or partitioned, ceased to be a service grant and, that in any event when there was a partition or alienation permitted by the proviso to Section 5, there was a disannexation of the land from the office and that the alienee or the person to whose share it fell during the partition, became the owner of the land which no longer had character of a service grant.

167. It would be first necessary to understand Section 4(3). That section brings about a resumption of the emoluments attached to a village office and one of those emoluments is a land 'granted or continued in respect of or annexed to a village office by the State'. The word 'or' occurring after the word 'grant' is a word of ambiguous import, and, literally construed, includes land which was at some point of time granted as a service inam whether it was continued or annexed as an emolument to a village office or not.

168. But that such interpretation is neither fair nor reasonable and that the land resumed by Section 4(3) is a laud which continued to have the character of a service grant when the impugned Act came into force, was not controverted by Mr. Advocate-General. So, it is clear that it is not every land which was once a service grant that stands resumed under Section 4(3) and that what stands so resumed is a land which had not shed the attribute of a service grant when the impugned Act came into force. The question which therefore, presents itself is whether the land whose alienation or partition was permitted by the proviso to Section 5 of the old Act was stripped of the character of a service grant by the enactment of that proviso and whether even otherwise, the partition or alienation permitted by it, if made had the same effect.

169. In support of the proposition that such was the effect of the proviso, the view taken by the Government of the former State or Mysore in more than one appeal decided by them was brought to our notice. One of these cases was Appeal No. 32 of 1911-12. The view taken by the Deputy Commissioner in that case that the partition of a land permitted by the proviso was no longer a service grant, was affirmed by the Government.

170. But it does not appear to me that we should proceed to discuss this matter since the question whether a land was granted or continued in respect of or annexed to a village office by the State, is made justifiable by Section 3 of the impugned Act, which provides also for an appeal by a person aggrieved by the decision of the Deputy Commissioner on that question, to the District Judge. It is however clear that the resumability of the land depends upon that land possessing the character of a service grant on the date when the impugned Act came into force. If by then, the Inam had become enfranchised and therefore, did not possess that character, its resumption becomes impossible. So, if there is an attempted resumption of a land which does not fall into that category, the person aggrieved has a remedy provided by the Act and it is to that remedy that he should have recourse. So, we should in my opinion, say nothing beyond this in these cases.

171. I now proceed to sum up my conclusions :

(A) The impugned Act does not contravene the Constitution and is above the reproach of unconstitutionality.

(B) My interpretation of the definition of a 'village office' contained in Section 2(1)(n) of the impugned Act, yields the following results :

(a) The definition of a 'village office' contained in Section 2(1)(n) of the impugned Act - speaks not only of a village office to which there was before the commencement of the Constitution an absolute family or hereditary right such as the village offices of the districts of Raichur, Bidar and Gulbarga which were in the erstwhile State of Hyderabad, but also of village offices to which the appointment was exercised primarily in favour of a person who belonged to a particular family although he could not be so appointed if he did not have the prescribed eligibility. This, is the meaning of the expression 'held hereditarily' occurring in that definition. Section 4(3) abolishes all such offices.

(b) So, the offices of the applicants who are the shanbhogties and patels of the area of the former State of Mysore or the karnams of the district of Bellary and the taluk of Kolegal stand abolished.

(c) The post of the shanbhog of the South Kanara district is also an office 'held hereditarily before the commencement of the Constitution' and is within the definition in Section 2(1)(n) and so stand similarly abolished by Section 4(3).

(d) Posts of stipendiary village accountants to which appointments were made before the commencement of the impugned Act, in the old Mysore, and Hyderabad areas stand abolished similarly. So, the post of the applicant in Writ petition No. 425 of 1962 is one such abolished post.

(e) The posts of all stipendiary patels in every part of the State, fall within the definition and also stand abolished.

(f) The posts of all village servants who are described as holders of inferior village offices by the impugned Act also fall within the category of abolished posts.

(g) The post of the kulkarni in the districts of Belgaum, Bijapur and Dharwar of the Bombay area although hereditarily held before the Constitution stood abolished under the provisions of the Bombay Paragana and Kulkarani Watans (Abolition) Act, 1950, and the post of talati which replaced that abolished post being a new post not held hereditarily

before the Constitution, does not stand abolished.
(h) The post of the village accountant in the district of North Kanara who is also called a talati, was not a hereditary post before the Constitution, and therefore, does not stand abolished. (1) The post of a shanbhog in Coorg was at no time a hereditary post and is not among the abolished posts.
(C) The provisions of Article 311 of the Constitution have no relevance to availability of power to legislate on abolition. Articles 245 and 246 of the Constitution read with the forty-first entry of the State list authorise legislation both for creation and abolition of posts subject only to restraints and limitations imposed by the Constitution. In enacting the impugned legislation, the legislature did not transcend its legislative competence.
(D) On the question whether the impugned Act infringes fundamental rights, my opinion is :
(a) The impugned Act is not discriminatory and does not offend against Article 14 of the Constitution. There is no similarity of the required degree, between posts of village accountants, which are abolished, and those that are not.
(b) The abolished village offices are not property and no fundamental right to hold them is claimable under Article 19(1)(f) of the Constitution.
(c) So, the impugned Act does not also invade any fundamental right created by clauses (1) and (2) of Article 31 of the Constitution.
(E) On the criticism that the impugned Act is colorable and that the legislature which enacted it has by indirect legislation displaced the applicants who could not be directly so displaced, what I say is :
(a) The impugned law is not an indirect legislation on a subject outside its field, and is not, therefore, colorable legislation; judged by its true nature and character, it is a law on abolition and not a law for displacement of the occupants of the abolished posts.
(b) The penetration of the form of the legislation in a search for its substance without mechanical adherence to words, which is what we should do fails to find any colorable device.
(c) The displacement of the applicants from the abolished posts, is, a consequence of the abolition law and not its substance.
(d) The abolition made by Section 4(3) of the impugned Act is not a mere pretence. The abolished posts have in truth perished and do not, continue.
(F) Neither the severity of the impugned legislation nor its incommensurateness nor its wisdom each of which touches in essence a question of policy of which the legislature is the sole judge, can properly be discussed by the Court.
(G) The provisions of Section 6 of the impugned Act which provide monetary relief to the holders of the abolished offices are not discriminatory and, the classification made for quantification by different methods in different cases is a rational and reasonable classification.
(H) The post of the village accountant regulated by the Rules made by the Governor on November 29, 1961, is a new and distinct post and not one of the abolished posts.

(I) Rule 19 of those rules which accords to the talati of the Bombay area and the shanbhog of the Coorg area the status of a village accountant under the rules is not discriminatory.

(J) The question whether the amendments made by Section 12(2) of the impugned Act to the Revenue Laws set out in Schedule II to it, which authorize the appointment of a stipendiary patel and a stipendiary village accountant, denuded the Governor of his power to make his rules does not arise in these cases and is left undecided.

(K) The land which stands resumed under Section 4(2) of the impugned Act is a land which continued to be a service grant when the impugned Act came into force and not a land which has post that character by that date.

(L) The question whether a land whose partition or alienation is permitted by the proviso to Section 5 of the Mysore Village Offices Act, 1908, ceased to be a service grant when that proviso was enacted or in any event when it is so partitioned or alienated, is left open since that question is one for adjudication by the Deputy Commissioner under Section 3 of the impugned Act and by the District Judge in appeal.

172. The importance of the purpose of the declaration of unconstitutionally sought by the applicants, is, that that pronouncement alone can be the matrix for the further direction prohibiting their displacement. These applications emanate from the realization on the part of the applicants that if under the Governor's rules made on January 29, 1961 the village accountants whose recruitment is controlled by those rules are appointed, the applicants have to stand aside for those appointees, and can no longer continue in their posts, although the true position is, that, in law, such displacement is conterminous with abolition. It is that fear that asked for the further adjudication that the Governor's rules are also invalid.

173. I have said that the validity or otherwise of the Governor's rules does not arise for investigation in these matters and I have therefore desisted from expressing my opinion on that question. But it is clear that whatever may be the view which one can take about the validity of those rules, the applicants the abolition of whose posts is announced by the impugned Act, can claim the right to continue in office, only if the challenge to constitutionality succeeds. If that be the position, the question whether the appointment to the post of a village accountant referred to in the Governor's rules could be made by the employment of the machinery created by those rules, or, whether no other procedure is permissible than that specified in the sections which stand amended in the Revenue laws enumerated in Schedule II to the impugned Act, has really no materiality. Whatever the process by which appointments may be made to the posts which stand substituted for the abolished posts, and, whether as contended the post of the village accountant referred to in the Governor's rules has been created or is not yet born, the endeavor of the applicants to remain in their posts cannot, it appears to me, succeed.

174. The asserted right of the applicants to stay in their posts thus depended not on the efficacy of tile Governor's rules as it did on a verdict of unconstitutionally. If our judgment cannot find that foundation, these applications must fall. We can, therefore, make no other order than to dismiss them. They are accordingly dismissed.

175. In the circumstances, there will be no direction for costs.

Govinda Bhat, J.

176. I agree.
Petitions dismissed.