

KERALA HIGH COURT

P.S. Menon

Vs

State of Kerala

O.P. Nos.2078, 2303, 2591, 2600, 2709, 2979 and 3057 of 1966

(P. Govindan Nair, K.K. Mathew and T.S. Krishnamoorthy Iyer, JJ.)

02.04.1969

JUDGMENT

Govindan Nair. J

1. The petitioner in each of these Writ Petitions was a member of the Madras State Judicial Service on 81-10-1956 the day prior to the "appointed day" for the purposes of the States Reorganization Act 1956 (hereinafter referred to as the Act), and they have all been allotted by orders passed by the Central Government under Sections 115 (2) and 115(3) of the Act to the Kerala State. The petitions in one form or other challenge the principles adopted in the integration of the petitioners with their compeers in the former State of Travencore-Cochin, and these petitions were heard together.

2. The Act is a law passed by Parliament under the provisions of Articles 2, 3 and 4 of the Constitution of India and inter alia contains supplemental, incidental and consequential provisions relating to the integration of the personnel who are to form the members of the services in the newly formed States. Kerala is a new Part A State comprising the territories mentioned in Section 5 of the Act; the territories of the existing State of Travencore-Cochin, excluding the territories transferred to the State of Madras by Section 4 of the Act; the territories comprised in Malabar district excluding the islands of Laccadive and Minicoy; and Kasarged taluk of South Kanara district. The petitioners were all serving in relation to the affairs of the State of Madras and were working in the Malabar district of the State on 31-10-56. But for a provisional order under sub-section (2) of Section 115, they would have continued to serve in connection with the affairs of the principal successor State to the Madras State, which is Madras State itself as defined in Section 2(m) of the Act Orders were however passed under sub-section (2) of Section 115 of the Act by the Central Government requiring the petitioners to serve provisionally in connection with the affairs of the Kerala State. Orders have also been passed under sub-section (3) of Section 115 of the Act determining Kerala State as the successor State to which the petitioners should be finally allotted and fixing 1-11-56 as the date from which such allotment should take effect These orders need not detain us as the allotment of the petitioners to the State of Kerala, though against the wishes of the petitioners, is not impugned in these petitions. What is challenged in these writ petitions, as indicated earlier, is the method of

integration of the petitioners with the Travencore-Cochin personnel. Very briefly stated the complaint is that there has not been fair and equitable treatment of the petitioners in the matter of integrating them with the Travencore-Cochin personnel. This has been elaborated with reference to the various orders of integration, the provisions of the Act, the principles adopted in the matter of integration, alleged omission to implement the settled principles and orders, and it is even alleged that the settled principles and orders have been misapplied. These will be dealt with when considering the points raised in these petitions.

3. We propose to deal with these petitions by taking up first O. P. No. 2591 of 1966, next O. P. No. 2078 of 1966 and thereafter O. P. Nos. 2600 and 2979 of 1966 as they raise similar, if not common questions; O. P. Nos. 2303, 2709 and 3057 of 1966, also together, as the points raised therein are similar. O. P. No. 2591 of 1966

4. The contention raised in this writ petition is that respondents 4 to 21 who were holding the posts of Judicial Officers in the State of Travencore-Cochin on 31-10-1956 and who were integrated with the petitioner were not judicial officers duly appointed in accordance with the provisions of the Constitution and that therefore they should not have been integrated with the petitioner and other persons allotted to Kerala State from the State of Madras. In dealing with this question, we will be referring to the parties as they are arrayed in this original petition as also to the exhibits in this original petition. If reference is made to any other exhibit or party in any of the other cases dealt with by this Judgment this will be specifically stated. Out of respondents 4 to 21, 4 to 13 were appointed between 26-10-50 and 3-10-53. On 3-10-53 rules were made under Art 234 of the Constitution and respondents 14 to 21 were those appointed in accordance with those rules between the dates 3-10-53 and 1-11-56. Respondents 4 to 19 have been ranked above the petitioner in the final integrated gradation list Ext. P10 dated 26-3-66, It is urged that respondents 4 to 19 should not find a place at all in the final integrated gradation list as they were not and cannot be treated as members of the judicial service. Alternatively it has also been contended that in any event they should not be given ranking above the petitioner and others who belonged to a validly constituted judicial service. To reckon them as members of the Judicial service and rank them above the petitioner and others is neither fair nor equitable and is therefore violative of section 115 (5) of the Act. This sub-section runs thus:

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

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

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

5. Arguments were also advanced on the questions as to whether the Central Government is the original and exclusive authority in the matter of integration of services or whether it was only an appellate authority or whether it was only an authority entitled to give directions as envisaged by section 117 of the Act leaving the matter of integration to the State Governments which are under the provisions of Articles 162 and 309 read with Entry 3 in List II of the Seventh Schedule to the Constitution entitled to make provisions in relation to its services and the members of those services. Decisions taking conflicting views were cited before us. But we consider it unnecessary

to go into this question in detail as it was not disputed before us by any of the petitioners or by the respondents in these petitions that the final authority in the matter of integration of services resulting from the States reorganization effected by the Act is the Central Government. We will therefore proceed on the basis that the ensuring of fair and equitable treatment envisaged by subsection (5) of section 115 of the States Reorganization Act must be by the Central Government.

6. The gamut of the arguments in this case turned on the alleged violation of Article 234 of the Constitution. That Article is in these terms:

"234. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."

7. According to the petitioner rules as envisaged by the Article were framed by the Governor of the State only on 3-10-53. In relation to the appointments of respondents 4 to 13, who were appointed before 3-10-53, it is therefore urged that they have not been appointed in accordance with the rules framed under Article 234 of the Constitution. There is also the further argument that there was no properly constituted Public Service Commission in the Travencore-Cochin State before 1-11-56 and that therefore the rules, if any, that were applied were not those framed after consultation with the Public Service Commission. Even in relation to the appointments after 3-10-53 it is urged that the appointments cannot be deemed as validly made under Article 234 because the rules were framed after consulting the members of the so-called Public Service Commission which commission was not duly or properly constituted in accordance with the provisions of the Constitution and the laws.

8. It is clear from the Article that what is required by its terms in the matter of consultation is about the rules that are proposed to be framed. This consultation must be with the State Public Service Commission and the High Court exercising jurisdiction in the State. In this respect, Article 234 is different from Article 233; the latter requiring consultation with the High Court in the matter of appointment of each and every District Judge.

9. Rules, purporting to be under Article 234 of the Constitution, were admittedly framed and published, only on 3-10-53. Regarding the appointments that have been made to the Subordinate Judicial Service between the dates 26-1-50 and 3-10-53, the contention raised on behalf of the State Government and the Central Government, respondents 1 and 2 to this writ petition, as well as some of the other respondents, is that the appointments in question have been made in accordance with the rules contained in what is called the Civil Courts Guide (Rules 314 and 315 thereof) which were in force in the former Travencore-Cochin as well as what is contained in Order 21 of the Standing Orders of Cochin applicable to the former Cochin State. These provisions, it is urged, are laws. It is further urged that these laws have been kept in force by sections 3 and 4 of the Travencore-Cochin Administration and Application of Laws Act (VI of 1125), and Article 313 of the Constitution. These rules which are laws will do duly for the rules that can be framed under Article 234 of the Constitution till such rules are framed. So even in the absence of rules made under Article 234, the appointments of respondents 4 to 21 cannot be challenged. Regarding the appointments made after 3-10-53 it is urged that they were in

accordance with the rules under Article 234, and therefore no question of invalidity arises. In relation to the contention that there was no properly constituted Public Service Commission in the State of Travencore-Cochin, it is urged that the Public Service Commission that has been functioning in the State had been validly appointed, and an alternative contention has also been raised by the first respondent, the State of Kerala and the respondents 6 and 8 that in these proceedings for the issue of writ of quo warranto as against respondents 4 to 21, no point can be raised about the validity of the constitution of the Public Service Commission or the appointment of the members of the Commission as this will amount to a collateral attack on the Public Service Commission and its members who were admittedly discharging the functions of the Public Service Commission purporting to have been duly constituted.

10. Article 313 read with Article 366 (10) provides for the continuance of the laws in force immediately before the commencement of the Constitution "applicable to any public service or any post which continues to exist after the commencement of this Constitution, as service or post under a State so far as they are consistent with the provisions of this Constitution." And laws will include all Rules and Regulations passed or made before the commencement of the Constitution by any authority or person having power to make the rule or regulation. If the Civil Courts' Guide and the Standing Orders of Cochin are either laws or regulations made by a competent authority, then they will continue to be in force even after the Constitution. But it is urged that neither the Civil Courts' Guide nor the Standing Orders of Cochin are laws or even Rules and Regulations purporting to have the force of law as the respective Maharajas did not even profess to exercise their law-making power in making the Civil Courts' Guide and passing the Standing Orders. It is also urged that the provisions contained in the rules framed on 3-10-1953 are against the terms of Article 234 as they have not been framed after consultation with the Public Service Commission. We do not consider that we should deal with this question in this case or with the question as to whether the Public Service Commission had been duly constituted for we are of the view that there has been substantial compliance with the provisions of Article 234 of the Constitution in the matter of appointment of respondents 4 to 21 as contended by the first respondent and respondents 6 and 8 and that the petitioners are not entitled to question the validity or otherwise of the constitution of the Public Service Commission and the appointment of its members as this will amount to a collateral attack on the constitution of the Public Service Commission and the appointment of its members.

11. What has been done in the matter of appointments of respondents 4 to 21 has been detailed in the affidavit of the first respondent and some of the other respondents. On the 14th June, 1950, the Registrar of the Travencore-Cochin High Court wrote to the Chief Secretary to Government in these terms.

"As vacancies in the cadre of District Munsiffs are likely to arise in the near future, I am directed to request that Government may be pleased to direct the Public Service Commission to select a panel of twelve persons for appointment as District Munsiffs. The Commission may be asked to inform the Registrar of the High Court the date fixed for interviewing candidates so that a Judge of the High Court may be deputed to be present at the interview.

Till the new Rules are framed, the qualifications prescribed in Rules 314 and 315 of the Civil

Courts' Guide for the post of District Munsiffs may be adopted (Relevant extract appended)." The Public Service Commission published a notification dated 24th June, 1950 in the Travencore-Cochin Gazette, dated 4th July, 1950 extracting the relevant parts of Rules 314 and 315 of the Civil Courts' Guide. These parts extracted, detailed the qualifications prescribed in Rule 314 as also the proportion in which Munsiffs will have to be recruited from the services and the Bar. This latter provision regarding the proportion became unnecessary because the recruitment was confined to the members of the Bar at the instance of the Travencore-Cochin High Court. At the time of the interview of the candidates, a Judge of the Travencore-Cochin High Court sat with the members of the Public Service Commission; the list of the candidates so selected was sent to the Government, and after considering the list, the Rajpramukh appointed the twelve persons mentioned in the notification C. J. 4/11946/50/ CS dated 12th October, 1950 published in the Travencore-Cochin Gazette dated 17-10-1950.

12. As we indicated earlier, the consultation with the High Court and the Public Commission envisaged by Article 234 is about the rules that are to be made for the purpose of appointment of persons other than District Judges to the Judicial service. These rules can only provide for the qualifications of the eligible candidates, the age limits if any, and possibly the categories of eligible candidates from among whom the selection will have to be made. The letter sent by the Registrar of the Travencore-Cochin High Court stated specifically that the qualifications of the candidates must be those prescribed in Rules 314 and 315 of the Civil Courts' Guide. These have been stated in the notification published in the Gazette on the 4th July, 1950 by the Public Service Commission. The Public Service Commission has therefore also approved all these qualifications. The Governor mentioned in Article 234 must be read as the Rajpramukh by virtue of Article 238 (1) as Travencore-Cochin State was a Part B State at that time and the appointments have been made by the Rajpramukh in accordance with the rules regarding qualifications prescribed by Rules 314 and 315 of the Civil Courts Guide which were accepted by him in consultation with the Public Service Commission and the High Court. We are satisfied that there has thus been substantial compliance with the provisions of Article 234 of the Constitution and the appointments made cannot be said to be invalid as infringing that Article.

13. It was suggested at the time of the arguments that the appointments made were against the provisions of Articles 15 and 16 of the Constitution in that the principle of communal rotation that was in vogue in the State and which is referred to in Rule 315 of the Civil Courts' Guide was applied in the matter of selection and appointment of the Munsiffs. There is nothing in the letter of the Travencore-Cochin High Court dated 14-6-1950 or in the notification published by the Public Service Commission inviting applications to indicate that communal rotation was adopted in the matter of selection and appointment of Munsiffs. The letter as well as the notification made it clear that it is only that part of Rules 314 and 315 that deals with the qualifications prescribed for the candidates that has been adopted in the matter of selection. No specific averment has been made that any particular person got preferential appointment by the adoption of the principle of communal rotation and that any other person who should have obtained the place because of his superior merit lost the chance. This being a selection, confined to those who applied for the posts and the petitioner being not a person who was an applicant, we do not think he is entitled to raise this point at all. Even otherwise in the absence of specific pleadings the matter cannot be enquired into. We are also not satisfied that the principle of communal rotation was adopted in the matter of selection.

14. The only other question arising is about the existence of a validly constituted Public Service Commission and its members. By Ordinance No. VI of 1124, the United State of Travencore and Cochin Public Service Commission Ordinance, 1124, the Public Service Commission for the United State of Travencore and Cochin was constituted and provision was made for the composition of the staff of the Public Service Commission and regarding their functions. This Ordinance admittedly continued in force till the 16th January, 1950. Before its expiry, Act 1 of 1950, the United State of Travencore and Cochin Public Service Commission (Continuance) Act, 1950 was passed providing that the Public Service Commission constituted under the Ordinance VI of 1124 shall continue till the 26th day of January, 1950 "and function in the same manner and to the same extent and subject to the same conditions as heretofore." In the Travencore-Cochin Gazette dated 7th February, 1950, a notification No. S3-20679/49/CS dated 25th January, 1950 reading as under.

"His Highness the Raj Pramukh has been pleased to re-appoint Sri Rama Varma Thampuran and Sri R. V. Thomas as Members of the State Public Service Commission, on their existing salary for a term of six years with effect from the 26th January, 1950, or until they attain the age of sixty, whichever is earlier was published."

15. By another notification dated 3-3-50 published in the Travencore-Cochin Gazette dated 14-3-50 Shri Ramavarma Thampuran mentioned in the earlier notification was appointed as Chairman and Shri V. Kunhikrishnan as a member in his place Article 315 of the Constitution enjoins that there shall be a Public Service Commission for each State and this provision will have effect from 26-1-50, the date on which the Constitution came into force. There is no need therefore to constitute a Public Service Commission thereafter. All that is required is to appoint its members as envisaged by Article 316 of the Constitution, subject to the restrictions contained in that Article Under this Article as far as the Travencore-Cochin State is concerned, the authority to appoint the Chairman and members of the Public Service Commission of the State is vested in the Raj Pramukh. The appointment of Shri Ramavarma Thampuran and Sri R. V. Thomas by the Raj Pramukh would therefore be a valid appointment of the members of the Commission if it was done on the 26th January, 1950. But it is urged that the notification published in the Gazette dated 7th June, 1950 is actually dated 25th January, 1950 and therefore the appointment was not under the Constitution. The respondents however urged that the notification has specifically stated that the appointments of the members mentioned therein were with effect only from the 26th January, 1950 as stated in the notification and that the notification was published in the Gazette only on the 7th February, 1950 long after the Constitution came into force and so the appointments were validly made under the Constitution. That the members appointed by the Raj Pramukh functioned as the members of the Public Service Commission and discharged effectively the duties of the Public Service Commission during the entire period 26th January, 1950 to 1-11-1956 is not disputed before us. In these circumstances, what is called the de facto doctrine, we consider, must apply.

This doctrine was engrafted as a matter of policy and necessity to protect the interest of the Public and individuals involved in the official acts of person exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact whose acts, public policy requires should be considered valid. (See American Jurisprudence, Volume 43, Section 470 under the heading De Facto Officers). Apart from this, the petitioner cannot in this writ petition be permitted to raise the point that there has been no properly constituted Public Service

Commission and no properly appointed member) thereof as this will amount to a collateral attack on the Public Service Commission and its members. The second prayer in this petition is for the issue of a writ of quo warranto against respondents 4 to 21. The other prayers are incidental to this relief. There is thus no direct attack against the members of the Public Service Commission. Even if there was a direct attack by the petitioner as a citizen the acts of the Public Service Commission have to be protected on the basis of the de facto doctrine at this distance of time. The consultation made with the members of the Public Service Commission who actually functioned before 3-10-53 when rules were framed under Article 234 of the Constitution and at the time of the framing of the rules under Article 234 of the Constitution must therefore be taken to be consultations with the Public Service Commission duly constituted. The principle that there can be no collateral attack has been dealt with by the Travencore-Cochin High Court in the decision in *Parameswaran Pillai Bhaskaran Pillai v. State Prosecutor*, reported in¹ After an elaborate survey of the law of the subject it was held:

"The right of a de facto Judge to hold his office is not open to question nor is his jurisdiction subject to attack in a collateral proceeding. . . . To raise the competency of the Chief Justice to hear and decide certain appeals when they were taken up for hearing or in the proceeding for leave to appeal to the Supreme Court against that judgment, or in the appeal before the Supreme Court would amount to collateral attack."

The particular case arose on an application for leave to appeal to the Supreme Court from a judgment of the Travencore-Cochin High Court and one of the grounds raised in that application was that the Chief Justice of the High Court was not validly appointed. This contention was negatived. The principle of the decision must apply to the facts of this case as well. No decision was cited before us which has taken a

¹ AIR 1951 Trav Co 45

different view.

16. It was finally suggested that the petitioner has been discriminated in that compliance with Article 234 was insisted upon in his case and relaxed so far as the respondents 4 to 21 are concerned. This contention cannot stand as we have found that even in the case of respondents 4 to 21 Article 234 has been complied with and their appointments also have been therefore made in accordance with the provisions of that Article

17. The orders Exts. P4 and P9 cannot be impugned. Nor is the petitioner entitled to any of the other reliefs prayed for. This writ petition fails. We dismiss this petition but direct the parties to bear their respective costs. O. P. 2078 of 1966

18. The petitioner is also an allottee to the State of Kerala from the State of Madras consequent on the reorganization of States under the Act. He was appointed as a Munsiff in the Madras State under rule 11 (2) of the Madras State Judicial Service Rules. His appointment was regularized with effect from 23-6-1955. In the preliminary integrated gradation list published in the Kerala Gazette No. 24 dated 12th June, 1962, Part I, the rank of the petitioner was shown as No. 57 and those of respondents 4 to 8 over whom the petitioner claims seniority were shown as 58, 60, 61, 64 and 65 respectively. Respondents 4, 6 and 8 made representations against the ranking given to them below the petitioner in the preliminary integrated gradation list as on 1-11-1956. The claim

of these respondents that they should be ranked above the petitioner was accepted by the Central Government and orders were issued accordingly. Apparently consequent on this, when the final integrated gradation list was published in the Gazette dated 24-5-1966 the petitioner's rank was shown as No. 67 and those of respondents 4 to 8 as 60, 62, 63, 65 and 66 respectively. This list has been produced by the petitioner along with Ext. P13. Though Ext. P13 states that "if any officer aggrieved against the decisions of the Government of India which have led to the publication of the final list submits review petition/counter representation, such representation will be disposed of in accordance with the instructions issued in circulars No. SI. 2-7725/60/PD dated 16-2-1960. SI 2-26749/ PD dated 2-5-1960 and 40251/SI. 2/62/PD dated 6-7-1962," the petitioner has applied for no such review, nor has he made any counter representation, but has approached this Court for setting aside the list appended to Ext. P13 and restore the list published earlier in 1962 by which the petitioner was ranked above respondents 4 to 8.

19. Two of the main contentions raised in this writ petition are that (1) the service under rule 11 (2) of the Madras State Judicial Service Rules which commenced so far as the petitioner is concerned, on 2-2-1955. must be reckoned for the purpose of seniority in counting continuous service, and not merely the service from the date of regularization of appointment which so far as the petitioner is concerned commenced only on 23-6-1955 and (2) that the period of training must also be counted for the purpose of seniority. The Central Government have clearly ruled that the non-regularized portion of the services of an incumbent allotted to Kerala State from Madras cannot be counted for determining the inter-state seniority of the allotted personal vis-a-vis their compeers in the State of Travencore-Cochin for deciding their rank as on 1-11-1956. It has also been ruled that the period of training cannot be considered as part of service. These decisions have been challenged in the other original petitions, O. P. Nos. 2600 and 2979 of 1966 and O. P. Nos. 2303, 2709 and 3057 of 1966, disposed of by this judgment and for the reasons stated therein we reject these contentions. We shall however refer to the relevant provisions of the rules that were applicable in the State of Madras, at this stage, as they have not been referred to so far, to understand what is meant by non-regularized portion of the service.

20. Rule 11 (2) of the Madras State Judicial Service Rules permits appointments being made, not in accordance with the order in which names occur in the select list, but out of turn, to meet the exigencies of the situation. Such exigencies arose in the State of Madras due to two reasons. The practice in the State of Madras was to post only such judicial officers in an area who knew the language of that area. If a vacancy occurred in a Tamil speaking area and the person to be appointed in accordance with the select list is not a person who knew Tamil, some other person lower down in the select list who knew Tamil will be appointed to that vacancy in the Tamil speaking area. This appointment may be termed loosely an out of turn appointment as the person appointed had no right to be appointed at that time because his turn had not come. Another circumstance when an out of turn appointment may have to be made can arise because of the principle of communal rotation that was applicable. A particular candidate by reason of the community to which he belonged may be entitled to preferential appointment earlier than a person or persons whose names occur above his in the select list. But he may not know the language. So an out of turn appointment will have to be made.

21. To ensure that such appointments do not work hardship to others who were higher up in the select list or who were entitled to be appointed by reason of the rule of communal rotation provision was specifically made in the rules that the appointment under rule 11 (2) will not count

for probation (See rule 11 (2) and 11 (3) (ii)). That the service which did not count for probation will not be reckoned for the purpose of seniority is also specified in the rules (rule 20). But it is open by virtue of rule 20 itself to regularize the appointment from the date of the original appointment itself or from any subsequent date. This regularization will have to be done by taking into account the number of vacancies and after considering the claims of the persons in the select list to the particular vacancy. When this is determined, a person appointed under rule 11 (2) can get a date only of a vacancy that occurred after the vacancies which should be filled up by the persons whose names are mentioned above his in the list or those who should have been appointed earlier because of the rule of communal rotation have been filled up. From the date of that vacancy the services of that person appointed under rule 11 (2) will be regularized.

22. The appointment under rule 11 (2) is a temporary appointment and it is so stated in the rule itself. Appointment under rule 11 (3) also is a temporary appointment though this can be even of persons who do not figure at all in any select list prepared after the selection by the Public Service Commission. A reading of the rule-rule 11 (3) of the Madras State Judicial Service Rules-shows that this rule will be resorted to in cases of emergency. Suffice to say at this stage that service rendered in a temporary capacity by virtue of appointments under rule 11 (2) or 11 (3), at any rate the whole of it, did not necessarily count for the purpose of inter se seniority among the persons who belonged to the particular service in the State of Madras. The Government of India decided that this service which did not count for inter se seniority among the Madras personnel in the State of Madras and did not count for inter-State seniority in the matter of integration of the personnel that remained in the State of Madras with those that have been allotted to the State of Madras, will not count for inter-State seniority of personnel allotted from the State of Madras to the State of Kerala, for the purpose of integration with the Travencore -Cochin personnel. These rulings of the Central Government, as we indicated earlier, have been the subject-matter of serious challenge and have been dealt with in disposing of O. P. Nos. 2303, 2709, and 3057 of 1966. Counsel appealing for the petitioner has adopted the arguments advanced by counsel who argued the case in O. P. No. 3057 of 1966 and the party himself who argued his own case in O. R. No. 2709 of 1966.

23. The additional point that has been urged by counsel on behalf of the petitioner in this case was that by the application of what is called the K. L. M. Principle, the petitioner was entitled to have the date of commencement of the service of one Sri Sethu Madhavan who had also been, it is accepted on all hands, ordered by the Central Government to serve provisionally in connection with the affairs of the Kerala State. Though there is no specific averment that the said Sethu Madhavan was ordered by the Central Government finally to be allotted to Kerala State, the arguments proceeded on the basis that he had been so allotted. For this purpose reliance was placed on Ext P5 which is in these terms:

"In exercise of the powers conferred by sub-section (3) of section 115 of the States Reorganisation Act, 1956 (37 of 1956), the Central Government hereby determines that all persons who immediately before the appointment day were serving in connection with the affairs of the State of Madras in the territories specified in clause (b) of sub-section (1) of Section 5 of the States Reorganization Act, 1956 (37 of 1956) and who were required to provisionally serve in connection with the affairs of Kerala in the Government of India. Ministry of Home Affairs Order No. 68/3/56-SR. II dated 31st October 1956, shall be

finally allotted to the State of Kerala with effect from the 1st November, 1956."

24. Though this point has not been specifically taken in the original petition we requested the learned Advocate General who appeared for the State Government to make available to us the four orders passed by the Central Government dated 24-8-1960 as well as the schedules appended to three of those orders in original to find out whether the said Sethu Madhavan had been finally allotted to the State of Kerala. These were made available and we find that the said Sethu Madhavan has not been finally allotted to the State of Kerala. This being so, there can be no question of Sethu Madhavan's date, namely 1-7-1954 being allotted to the petitioner. Such allotment of date under what has come to be known as the K. L. M. principle which came into existence in the Travencore-Cochin State by an order No. Section 5-18375/49/C. S. dated 27-9-1950 referred to in page 248 of "Important Orders issued by the Travencore-Cochin Government", cannot apply to the petitioner. We extract the relevant portion of this order.

"The relative seniority of the Travencore and Cochin personnel in any class or grade in the common seniority list will be determined with reference to the date of commencement of continuous service in the same or similar class or grade of posts subject, however, to the condition that the seniority of the Travencore personnel as between themselves or of the Cochin personnel as between themselves should not thereby be disturbed."

25. Though the said Sethu Madhavan commenced service earlier in the State of Madras he was admittedly junior to the petitioner and therefore it will become necessary for settling the inter se seniority of the petitioner vis-a-vis Sethu Madhavan to assign to the petitioner in the integrated gradation list a place above the said Sethu Madhavan. This is so because the principle settled as early as 29-12-1956 by G. O. of that date clearly provided that in effecting integration the inter se seniority of persons in either branch that are integrated should not be affected. The question however cannot arise when there is no need to fix the inter se seniority of the petitioner vis-a-vis the said Sethu Madhavan.

26. No other point arises in this writ petition. We dismiss this writ petition but without any order as to costs. O. P. Nos. 2600 and 2979 of 1966

27. The points raised in these petitions are practically the same and they can be formulated under the following heads:

(1) The principles accepted for the equation of posts in the matter of integration of the members of the judicial service allotted from Madras State to the State of Kerala with the members of the Judicial service in the Travencore-Cochin State, also allotted to Kerala, are not fair and equitable.

(2) Realizing the hardships that will result to the Madras personnel allotted to Kerala, five Posts were reserved exclusively for the 'Malabar personnel' by an order of Government dated 27-5-1958. (Ext. P7 in O. P. No. 2979 of 1966). This reservation was wrongly abolished by order dated 24-7-1961 (Ext. P11 in O. R. 2979 of 1966).

(3) 3 posts of District Magistrates and 8 posts of Sub Divisional Magistrates of executive origin in the criminal judiciary in the erstwhile Travencore-Cochin State were unjustly

and unfairly kept in a separate cadre. To these 11 posts was added yet another of a District Magistrate and that even without consulting the High Court Therefore, four posts of District Magistrates, which were interchangeable with those of Sub Judges so far as the set up in the State of Madras was concerned, and to which Munsiffs in that area could normally and legitimately aspire for promotion, were lost to the Madras personnel allotted to the State of Kerala. This reservation has resulted in further harm to these personnel by virtue of provision made by framing rules under Article 234 of the Constitution for absorption of some at least of the personnel occupying the separate cadre into the civil judiciary. As an instance, the appointment of the 5th respondent in O. P. No. 2979 of 1966 as a District Judge, is relied on.

(4) In integrating the Madras personnel with those of the Travencore-Cochin personnel, 4 persons who were officiating as Sub Judges in the State of Madras at the time of integration were also included in the list of Munsiffs, and these 4 persons being admittedly seniors to the petitioners in these original petitions and some others, while they were in Madras service, the petitioners had to surrender their longer service as Munsiffs to these 4 persons who had lesser service as Munsiffs by the application of what is known as the K. L. M. principle. The inclusion of the names of these 4 persons in the list of Munsiffs is unwarranted. The principles of equation settled postulated that those officiating as Sub Judges must be ranked with Sub Judges which was the equated post. This being so, their names should not have found a place at all among Munsiffs.

(5) The application of the K. L. M. principle is unwarranted and unjust and has resulted in inequities in that persons like the petitioners in these original petitions had to surrender part of their continuous service which resulted in their becoming juniors to some of the respondents. The K. L. M. principle should not have been applied in the matter of integration.

(6) The point that we have dealt with in the judgment in O. P. No. 2591 of 1966 that the persons appointed to the judicial service in the Travencore-Cochin State after the coming into force of the Constitution and before the framing of rules under the Constitution and before properly constituting the Public Service Commission, cannot be treated as members of the judicial service, is repeated in these petitions as well.

(7) In addition, in original petition No. 2600 of 1966 it is urged that the petitioner therein was entitled to count his war service for the purpose of determining his length of continuous service and in both these petitions it is further urged that the training period of Munsiffs must also be taken into account for determining their length of continuous service.

28. We shall deal with these points seriatim. The general principles and procedure for integration of the Travencore-Cochin personnel with those allotted from Madras to Kerala were settled first by an order dated 29-12-1856 (Ext. P2 in O. P. No. 2979 of 1966). The provisions in that order which should be noticed for the purpose of considering the contention that the principles have not been fair or equitable are those contained in paragraph 3 thereof which is in these terms:

"3. EQUATION OF POSTS:

Posts will be equated on a functional basis having due regard to the nature, powers and responsibilities of the posts. Nomenclature is no criterion for this purpose.

NOTE: The scale of pay will not be a criterion, but in case any glaring inequality is brought to the notice, it shall be decided by the Government on an adhoc basis in consultation with the Integration Committee" By an order SI. 2-40451/56/PD dated 11-3-57, the State Government accepted the suggestions of the High Court for the equation of posts coming under the judicial service, the Integration Committee constituted by the Government having earlier considered the proposals of the High Court and having recommended that the suggestions of the High Court be accepted. On the basis of this order a notification dated 3rd June, 1958 was published in the Kerala Gazette publishing the order dated 27th May 1958 which is Ext. P7 in O. P. No. 2979 of 1966. The relevant part of that order runs thus:

"After careful deliberation of all the factors they are now pleased to order that the posts in the two integrating units of the department will be equated as follows in partial modification of the orders issued in their proceedings of even number dated 11-3-1957. (The order already referred to).

Travencore-Cochin	Madras
1. District Judges -I Grade ₹ 800-1000.	District Judges -II Grade Rs 1000-1800.
2. District and Sessions Judge - II Grade ₹ 500 - 800.	District Magistrates (Judl.) ₹ 500-700 plus special pay ₹ 50.
3. District Magistrates-	₹ 500-800. Addl. Dist. Sub-Judges on Sessions Judges and Sub-Judges- ₹ 450-600. ₹ 550-700.
4. Sub-Divisional Magistrates - I Grade ₹ 450 - 600. Munsiffs and Sub-Divisional Magistrates - Grade II on ₹ 250 - 500.	District Munsiffs and Sub-Divisional Magistrates ₹ 300-700.
5. Sub-Magistrates-	₹ 200- 300, Sub-Magistrates ₹ 200-300.

These are the only provisions that have been brought to our notice regarding the actual equation of posts in the orders passed by the Government and which have admittedly been accepted by the Central Government and the attack is against such equation.

29. Briefly stated, the arguments advanced in these original petitions as well as the other petitions yet to be dealt with (O. P. Nos, 2303, 2700 and 3057 of 1966) may be summed up as follows; Section 115 (5) of the States Reorganization Act, 1956 which provides for the establishment of one or more Advisory Committees for the purpose of assisting the Central Government in regard

to the division and integration of the services among the new States of Andhra Pradesh and Madras; and the ensuring of fair and equitable treatment to all persons affected by the provisions of section 115 of the States Reorganization Act and the proper consideration of any representations made by such persons clearly indicates that in the matter of integration there should be fair and equitable treatment to the personnel concerned. There has been no such fair and equitable treatment because the District Munsiffs of Madras in the scale of ₹ 300-700 on the crucial date, 31-10-1956 were equated with District Munsiffs of Travencore-Cochin on the scale of ₹ 250-500. Even the Sub Judges in the Travencore-Cochin area were on that date only in the scale of ₹ 450-600. This constituted a glaring inequality in the scales of pay and in view of what is stated in the note to paragraph 3 of the order dated 29-12-1956 (Ext. P2 in O. P. No. 2979 of 1966) which we, have already extracted, ad hoc arrangements should have been made in the equation of posts to remedy this glaring inequality in the scales of pay. These discrepancies, it was urged, must be taken along with the facts that the pecuniary jurisdiction of Munsiffs in the State of Madras as well as the territorial area over which they exercised jurisdiction were higher and longer respectively than those of the District Munsiffs in the Travencore-Cochin area. If these aspects had been given due weight and had been taken into account as they should have been, the District Munsiffs in the State of Madras allotted to Kerala and some of whom were already drawing ₹ 500/- in the scale of ₹ 300-700 should not have been equated with the District Munsiffs of Travencore-Cochin area but should have been equated at least with the Sub Judges in that area. This contention is of course controverted by the State as well as the Central Government in the affidavits that have been filed in these cases as also by some of the respondents who are Travencore-Cochin personnel.

30. That the main principle that has been accepted in the matter of equation of posts is functional parity is clear from the order dated 29-12-1956 (Ext P2 in O. P. No. 2979 of 1966). The functional parity must be with reference to the nature, powers and responsibilities of the posts is also clear from the same order. This principle, settled by Ext P2 order, cannot be said to be at variance with what is envisaged by sub-section (5) of section 115 of the States Reorganisation Act. In fact it is not urged before us that the principle as such violates the guarantee of fair and equitable treatment. What is urged is that the principle has not been properly applied because the nature, powers and responsibilities of the posts have not been properly evaluated. It is difficult to accept the argument that the nature of the posts held by the District Munsiffs in the Travencore-Cochin area on the date of integration was different from the nature of the posts held by the Munsiffs who were allotted to Kerala from the Madras State. The functions as far as we are able to see were identical. They were subject to be corrected in appeal by an appellate court and in given circumstances there was a further appeal before the High Court. They decided disputes by following practically identical procedure. Perhaps realizing this aspect what was emphasized was the lack of identity in regard to the powers and responsibilities. This was elaborated with reference to the difference in the pecuniary jurisdiction of Munsiffs in the Travencore-Cochin area and the difference in the territorial jurisdiction of the two sets of Munsiffs. This aspect has been met in the affidavits of the State and Central Governments as well as in the affidavits of some of the respondents. For instance, in the counter-affidavit filed on behalf of the 2nd respondent Union of India, in O. P. No. 2600 of 1966, this is what is stated in paragraph 3:

"The claim of the petitioner that the post of District Munsiff he was holding in Madras

should have been equated with the posts of Additional District Judge in the Travencore-Cochin area is untenable. The contention of the petitioner appears to be based on the reasoning that Munsiffs in Madras exercised jurisdiction over a larger area and that their pay scales were higher. The Government of India applied their mind to those matters and concluded that the claim was untenable. Circumstances such as jurisdiction over a larger territorial area or higher scale of pay are due to various reasons. A higher rate of institution of suits will necessitate an officer for a comparatively smaller area. On the contrary, when the rate of institution of suits is lower the territorial jurisdiction of one officer can be enlarged. The scale of pay also depends upon circumstances such as the financial resources of the State and other matters. The Central Government was of the view that the difference in the area of jurisdiction, scales of pay, etc. were due to historical; geographical and administrative reasonsEquation of posts was effected having due regard to functional parity and consistent with the general principles accepted in this regard.

31. Regarding pecuniary jurisdiction, the 8th respondent in O. P. No. 2600 of 1966 has pointed out in paragraph 12 at his counter-affidavit that the Munsiffs in Devicolam and Shencotta in the Travencore-Cochin area were having pecuniary jurisdiction up to ₹ 5000/-.

32. The point has also been taken in the counter-affidavits that in integrating the Travencore-Cochin Munsiffs who were allotted to the State of Madras with the Madras personnel who were functioning as District Munsiffs in the Madras State, the equation was effected on the identical basis of the Munsiffs of the Travencore-Cochin area being treated as equivalent to the Munsiffs in the Madras area. This was admittedly done on the basis of Ext. P14 dated 17-7-1957 in O. P. No. 2709 of 1966 which settled the principles of integration in the Madras State. The relevant paragraph of that G. O. runs thus:

"1) EQUATION OF POSTS

In absorbing transferred officers into the corresponding Madras cadres the main factors to be taken into consideration are indicated below:

- (a) the nature and responsibilities of the post held by the officer in T. C. State as compared with the corresponding post of Madras State;
- (b) the extent of the territorial jurisdiction of the post;
- (c) the minimum qualifications, if any, prescribed for recruitment to the posts and
- (d) salary of the post"

33. It is clear from this that almost all the aspects emphasized by the petitioners-territorial jurisdiction, powers and responsibilities, and salary-must be taken into account by the Madras Government before integrating the Madras personnel with the Travencore-Cochin personnel. They found after considering these aspects that the Munsiffs of Madras are to be integrated with the Munsiffs in Travencore-Cochin area.

34. We are not satisfied that the petitioners have made out a case that the principles of integration settled by order dated 29-12-1956 (Ext. P2 in O. P. No. 2979 of 1966) had been violated by the equation of the Munsiffs allotted from the Madras State to Kerala with the Munsiffs in the Travencore-Cochin also allotted to Kerala. We reject this contention.

35. Passing on to the next point urged by the petitioners it is necessary to note the order Ext P7 in O. P. No. 2979 of 1966 dated 27-5-1958. It is by paragraph 2 of this order that certain notional posts were created. We shall read that paragraph:

"In Integrating posts on the above basis and on the basis of continuous service in each category; the Government observe that there will be hardship to Malabar personnel in certain categories. In that persons who would have got a promotion by now if they had continued in Madras Service and whose juniors have already been promoted there, will have to wait for some more years to get a similar promotion in Kerala. To mitigate this to some extent the Government are pleased to order that for purposes of integration of Travencore-Cochin personnel with those allotted from Madras as on 1-11-1956 in accordance with the equation of posts specified in paragraph 1 above, the bifurcation of Malabar will be deemed to have been effected as on 31-10-1956. So the post of a District Judge, 2 District Magistrates and 2 Sub Judges also have to be filled by Malabar personnel, thereby notionally creating vacancies of five posts of Sub Judges to be filled up exclusively by Malabar personnel on that date according to seniority. This is only for seniority and integration and will not entitle them to any arrears of pay on this account"

36. Representations were made by the Travencore-Cochin personnel against such reservation of posts on notional basis for the personnel allotted from the State of Madras. These were forwarded to the Central Government by the State Government and the Central Government after consulting the Central Advisory Committee expressed the view that there is no basis for reserving posts in the manner in which it has been done by the State Government by its order dated 27-5-1958. From the files made available to us it is seen that the Central Government have applied their mind to the question of reservation of posts and after following the procedure prescribed by the Act gave directions to the State Government. We may refer to the explanatory note to letter No. 13/2-60-CAC dated 18th February 1960. In paragraph 13 of that note, this is what is stated:

"The next point for consideration is the propriety of the action of the Kerala Government in notionally creating posts of District Judge, District Magistrates and Sub Judges and appointing Malabar Officers to such posts with retrospective effect. The Committee had objected to a similar action taken by the Kerala Government in regard to the posts of Superintendents and Assistant Secretaries in the Kerala Secretariat, where posts were created notionally and officials from the Travencore-Cochin side were appointed to such posts. The justification given this action in respect of the judicial Department is that if these officers had remained in Madras, they would have got promotion much quicker than in Kerala. This position has been controverted by the Travencore-Cochin Judicial officers, who have stated that the Malabar officers were far below in the Gradation List of Madras

and they could not have expected promotion quickly. In any case, the fact that they would have got promotion, if they had continued in Madras would not justify the creation of notional posts. The interests of these officers are fully safeguarded by specifying that they would continue to draw their old scales of pay, not only on the posts in which they were confirmed or were officiating for more than three years, but also in the post next above them. The Committee, therefore, recommend that the notional creation of posts should not be recognized."

37. The recommendations were accepted by the Central Government is clear from letter No. 13/5/60 SR(S) dated 25th May 1961 from the Deputy Secretary, Government of India, Ministry of Home Affairs. In paragraph 3 of that letter it is stated:

"The principle of notional reservation of posts has not been accepted">. The officers will be graded with reference to the posts actually held by them and not with reference to the notional posts created by the State Government."

It is in carrying out this decision that the order Ext. P11 in O. P. No. 2979 of 1966 dated 24-7-1961 was issued by the State Government. The above decision is embodied in paragraph 3 of that order.

38. The principle adopted by the Central Government, we are not convinced, is violative of the provisions of the States Reorganization Act; nor are we prepared to say that this has resulted in the petitioners being treated in an unfair or in an inequitable manner.

39. The third point raised relates to the creation of a separate cadre for District Magistrates and Sub Divisional Magistrates who were functioning in the Travencore-Cochin area on the eve of the Act. There were four District Magistrates and 9 Sub Divisional Magistrates functioning in those capacities on 1-11-1956. They have been termed as Magistrates of executive origin. Before the separation of the executive from the judiciary which took place in the State of Travencore-Cochin in the year 1955 these Magistrates could aspire for promotion to various executive posts. After the separation this avenue to them was closed. The High Court on the administrative side expressed the view that these persons cannot be integrated with the members of the civil judiciary. Some of them did not possess even a law degree. The State Government therefore reviewed their decision embodied in Ext. P7 in O. P. No. 2979 of 1966 dated 27-5-1958 that these persons should be integrated with the members of the civil judiciary and passed an order G. O. MS. 851 dated 24-9-1959 constituting a separate cadre outside the civil judiciary of 3 posts of District Magistrates and 8 posts of Sub Divisional Magistrates. The relevant part of that order runs thus: The High Court has now expressed the view that it will not be proper to equate the District Magistrates and Sub Divisional Magistrates, Grades I and II of Executive Origin belonging to the T-C branch with the Civil Judicial Officers and has suggested that the two should be kept separate until the Magisterial Officers are inducted into the Civil Judiciary in the manner prescribed in Section (Article) 234 of the Constitution". The Government have reviewed the matter and are pleased to accept the advice of the High Court. In partial modification of the order contained in the G. O. No. 9585/SI-5/57/PD dated 27-5-1958, they are therefore pleased to order that the District Magistrates and Sub Divisional Magistrates, I and II grades of the T-C branch will not be integrated with the Judicial Officers on 1-11-1956 or promoted to posts in the

Civil Judiciary. The G. O. dated 27-5-1958 regarding equation of posts in the Judicial Department stands modified to this extent. The Government had also ordered on 22-9-1958 that the District Magistrates and Sub Divisional Magistrates Grades I and II should work in civil judicial posts for a period of one year before their claims for promotion to higher posts are considered. This order dated 22-9-1958 was also cancelled by the order G. O. Ms. 851 dated 24-9-1959 (Ext. P21 in O. P. No. 2709 of 1966). There is the further direction that the three posts of District Magistrates will be, exclusively reserved for promotion of the 8 Sub Divisional Magistrates, if found suitable. These posts of District Magistrates and Sub Divisional Magistrates thus constituted outside the civil judiciary would cease to exist when the existing incumbents ceased to be in service either by retirement or by promotion or otherwise and suitable civil judicial posts were to be created in those places where necessary. This order of the State Government was accepted by the Central Government is clear from the explanatory note to letter No. 13/2/60-CAC dated the 18th February 1960, already referred to in another connection. In paragraph 12 of that explanatory note, this is what is stated:

"12. As pointed out above, the Kerala Government have omitted from the equation the posts of District Magistrates and Sub Divisional Magistrates in Travencore-Cochin: The District Magistrates in Travencore-Cochin enjoyed the same scale of pay as Second Grade District and Sessions Judges, but were graded in a separate category altogether. The present incumbents of the posts of District Magistrates were holding executive posts before the separation of the Judiciary. One of them it appears, does not possess a Law Degree. In Madras, on the other hand, the District Magistrates were borne on the cadre of Sub Judges. Any attempt, therefore, to equate the posts of District Magistrates (Judicial) in Travencore-Cochin with corresponding posts in Madras would present difficulties. The Committee, therefore, agree with the proposal of the Kerala Government to omit from the equation three posts of District Magistrates and 8 posts of Sub Divisional Magistrates and to set apart the three posts of District Magistrates for promotion exclusively from the eight Sub Divisional Magistrates. This arrangement will last only till the 11 incumbents retire or are provided elsewhere. The Committee recommend that such of the present incumbents in this separate cadre as are qualified should be considered by the State Government and the High Court for promotion to posts in the Civil Judiciary."

40. It was on the above basis that provision was made in the order Ext. P11 in O. P. No. 2979 of 1966 dated 24-7-1961 in paragraph 4 as follows:

"Three posts of District Magistrates and eight posts of Sub Divisional Magistrates of the T-C area will be kept in a separate cadre till the present incumbents retire or are provided elsewhere. Such of the present incumbents in the separate cadre as are qualified may be considered by the State Government and the High Court for promotion to the posts in the Civil Judiciary."

Thereafter by order G. O. Ms. No. 114 dated 21st February 1962 (Ext. P26 in O. P. No. 2709 of 1966) the State Government expressed the view that on 1-11-1956, the date of formation of Kerala, there were four posts of District Magistrates and 9 posts of Sub Divisional Magistrates in

the T-C area, and after referring to the order G. O. Ms. 851 dated 24-9-1959 (Ext. P-21 in O. P. No. 2709 of 1966), and the order dated 24-7-1961 (Ext. P-11 in O. P. No. 2979 of 1966) and after reading the letter from the Government of India dated 2-1-1962 came to the conclusion "that the fixation of the number of posts of District Magistrates as 3 in the separate cadre against the 4 posts of District Magistrates that existed on 1-11-1956 is not justified". They therefore in modification of the order dated 24-7-1961 ordered that the number of posts of District Magistrates in the separate criminal judicial service be fixed as 4 instead of 3.

41. The creation of a separate cadre for these Magistrates has been challenged on the ground that these places of District Magistrates became unavailable for promotion to the members of the civil judiciary. It was further urged that the increase in the number of District Magistrates from 3 to 4 was effected without either consulting the High Court or the Central Government and the increase was therefore in any view unjustified. The reservation of the 4 places of District Magistrates for promoting exclusively the Sub Divisional Magistrates, 8 in number, included in the separate cadre has also affected the petitioners, it is urged, prejudicially, in that Sub Divisional Magistrates of very much lesser service than Munsiffs (a corresponding cadre) became entitled to promotions much earlier and stood a further chance after being promoted as District Magistrates of being absorbed in the civil judiciary as Sub Judges before the Munsiffs got promotion as Sub Judges.

42. It is clear that the State Government acted on the advice of the High Court on the administrative side in creating a separate cadre. The High Court so advised because of the peculiar circumstances that were obtaining in the State resulting from what transpired before the Act. That the personnel holding the posts of District Magistrates and Sub-Divisional Magistrates could not be fairly integrated with the members of the civil judiciary as well as the District Magistrates (Judicial) who came from Madras which posts were inter-changeable with that of Sub Judges is evident from what has been stated in the order dated 24-9-1959, (Ext. P 21 in O. P. No. 2979 of 1966). In these circumstances it seems to us inevitable that there should be a separate cadre for these officers. It also seems to us to follow that at least the four places of the District Magistrates must be available for promotion for the Sub Divisional Magistrates as those places appear to be the only avenue open to them for the betterment of their lot. That the creation of a separate cadre has had the approval of the Central Government and the Central Government have had the benefit of the recommendations of the Advisory Committee is seen from what we have already adverted to. The fact that if those places of District Magistrates in the Travencore-Cochin area were also available to the members of the civil judiciary the chances of promotion of Munsiffs in the Kerala State would have been perhaps better is not a criterion for coming to the conclusion that the method adopted is neither fair nor equitable. In matters of integration where persons working in different systems and in different States have to be integrated it is possible that all the hopes and expectations of those who are to be integrated may not be fulfilled or realized. From this alone to posit that the principles settled are inequitable would not be proper or justified. If the District Magistrates of executive origin working in the Travencore-Cochin area had been integrated with the members of the civil judiciary they would have occupied 4 places of Subordinate Judges and those places would not have been available for promotion of District Munsiffs. By keeping them separate nothing worse has happened. It has also to be remembered that this is a purely ad hoc arrangement applicable only to the persons who were working as District Magistrates and Sub-Divisional Magistrates at the time of integration. All those Sub Divisional Magistrates have now ceased to be in service. And among the District Magistrates

there are only two remaining. This category will cease to exist in the near future. Temporary arrangements to satisfy all those to be integrated were worked out in the best light of the High Court of Kerala on the administrative side of the State Government and the Central Government, advised by the Central Advisory Committee. Only one person, the 5th respondent in O. P. No. 2979 of 1966 was absorbed into the civil judiciary as a Sub Judge on the basis of these provisions. No doubt two of the Sub Divisional Magistrates were taken in as District Magistrates. But by virtue of these appointments it cannot be said that the principles settled for integration were wrong. These appointments did not form a part of the settled rules of integration. We see no infirmity in the arrangement made justifying interference in proceedings under Article 226 of the Constitution.

43. The clarification that there would be four posts of District Magistrates places instead of three given by the order Ext. P26 in O. P. No. 2709 of 1966 was also challenged. The reasons for this have been stated in the order itself that there were actually four posts of District Magistrates places on the date of integration and what has been done is only to apply the principle accepted by Ext. P11 order in O. P. No. 2979 of 1966 to all the four District Magistrates that were functioning on the date of integration. The State Government has also stated in the affidavit that what was done was only to rectify the mistake committed in thinking that there were only 3 District Magistrates whereas in fact there were 4 (vide paragraph 14 of the counter-affidavit of the State of Kerala in O. P. No. 2709 of 1966). We see nothing wrong in this.

44. The further aspect remaining under this head of attack is about the framing of the rules for the absorption of the personnel that occupied the posts of District Magistrates and Sub Divisional Magistrates into the civil judiciary. This was done on 24-9-1959 by promulgating Ext. P27 in O. P. No. 2709 of 1966. This rule was further modified by Ext. P28 in O. P. No. 2709 of 1966 which was published on 11-2-1966. The main differences between these two sets of rules are that under the earlier rule the probation must be for a period of two years whereas under the later rule, the probation was to be as provided in the Kerala Judicial Service Rules. Further the later rules provided that for the purpose of determining seniority in the category of Subordinate Judges or Munsiffs the date of commencement of continuous service in the post of District Magistrate or Sub-Divisional Magistrate, as the case may be, shall be deemed to be the date of first appointment to the category of subordinate Judge or Munsiff. The framing of the rules for the absorption of the Magistrates concerned in the civil judiciary was attacked. But what was more vehemently attacked was the provision for counting service as Magistrates in reckoning seniority in the posts of Subordinate Judges or Munsiffs as the case may be. We are not satisfied that these provisions have anything to do with the integration as such of the Madras personnel with the Travencore-Cochin personnel. After having completed the integration, provision was made by the rules for recruiting further members into the judicial service by the rules, Exts. P27 and P28 in O. P. No. 2709 of 1966. These of course refer to Magistrates for whom a separate cadre had been created. But such rules could have even provided for recruitment of suitable candidates by direct recruitment. We do not conceive that it will be open to the members of a service to complain if provision is made for direct recruitment into any grade or category because the State Government is satisfied that that was the best method of ensuring efficiency in the matter of judicial service or being fair to the members of the bar who we assume will be the main applicants if not the exclusive applicants for such posts. Whatever that be, if provision is made for members of the criminal judiciary who have been discharging responsible functions of District Magistrates and Sub Divisional Magistrates which are comparable with those

respectively of Sub Judges and Munsiffs and in a case where the State is satisfied that there was no other avenue open to those personnel and when they were further satisfied that the persons recruited into the civil judiciary are competent to discharge the functions of the members of such service, it is not possible to question the provisions made in that behalf by contending that the rules are violative of Article 16 of the Constitution. We will assume that in the matter of chances of promotion also there should be an equality of opportunity. It is not as though any set of members of the civil judiciary who are governed by rules in the matter of promotion motion have been treated differently from the other set who from the other members of the same service. In such cases it is easy to come to the conclusion when there has been an unequal treatment between the two sets that there has been violation of Article 16 of the Constitution. Such is the case that was dealt with by the Punjab High Court in the decision in *Brijlal Goswami v. State of Punjab, reported in*² But when provision is made for inducting into the service fresh members which will affect all and every one in the service it is not possible to say that there has been discrimination affecting any particular set of members of the service. By inducting others they may ho doubt be affected. But we do not consider Article 16 of the Constitution as guaranteeing that once a person has become a member of a service nothing will be done by the State Government to alter what the members of the service consider to be their chances of promotion according to the rules prevailing at the time of recruitment. If this be so, rules framed under Article 309 of the Constitution can never be altered. If a set of persons who can have no claim whatever to be appointed as members of the judicial service or who lack in qualification which is essential for the discharge of their functions are to be inducted into the judicial service a case may arise as to whether the equal opportunity guaranteed by Article 16 has been violated. This then arises out of the fact that persons unequally situated are treated alike. Apart from referring to Article 16 of the Constitution, it has not even been suggested that the Magistrates who are to be taken into the judicial service are unsuitable, or are incompetent, or are unqualified, and therefore there has been a discrimination in the sense that persons who were palpably unequal were treated alike. We are unable to accept the contention that these rules have violated the guarantee under Article 16. We are also not satisfied that permitting the District Magistrates to reckon their services as District Magistrates and of permitting the Sub Divisional Magistrates to reckon their services as Sub Divisional Magistrates in determining their length of continuous service respectively as Sub Judges or Munsiff's there has been any violation of Article 16. As we said earlier these persons were discharging duties similar to those of Sub Judges and Munsiffs and certainly those equally responsible. They were dealing with judicial matters. They have had judicial experience. Their services in those circumstances in posts which may be considered to be similar need not necessarily be ignored when they become members of the civil judiciary. It appears to us that if their services were to be ignored they stood nothing to gain by coming into the civil judiciary as they will have to be placed at the bottom of the list of Sub Judges or Munsiffs, as the case may be at the time of recruitment. This will clearly be unjust to them and as good as

² AIR 1965 Pun 401

denying them any chance of bettering their lot. The purpose envisaged by the order dated 24-9-1959 is that all of them need not remain stultified as District Magistrates or Sub Divisional Magistrates but may have further chances of promotion in given cases if they were found suitable. This was envisaged from the beginning when the idea of creating a separate cadre was mooted. This had the approval of the Central Government. That provision for absorption may be made by such action being taken under Article 234 of the Constitution is specifically mentioned in the order passed. We therefore are unable to accept the contention that these rules are violative

of the Constitution and in so far as these rules have been pressed into service interference by this court is called for.

45. We may add that the only person singled out for attack is respondent No. 5 in O. P. No. 2979 of 1966. He was the only person who was recruited to the civil judicial service by applying these rules. Before that nobody was appointed and since then also nobody has yet been appointed. We have also pointed out that there are few remaining who have a chance of being considered for absorption. There are only two District Magistrates left and no Sub Divisional Magistrates. This Court will not be justified in interfering with what was done in the best interests of everybody concerned.

46. The 4th point raised, as we have grouped the contentions relates to the method adopted for showing the names of four persons, Sarvashree E. K. Moidu, P. Unnikrishna Kurup, V. M. Prabhakaran Nair and P. Kunhiraman Vydair, who were all officiating Sub Judges in the State of Madras before the date of integration both in the list of Sub Judges as well as in the list of Munsiffs. It is clear from Ext. P2 in O. P. No. 2979 of 1966 itself that this is the principle that should be followed. We may refer to paragraph 5 of that order:

"5. Gradation lists:

A combined gradation list will be drawn up for each category and grade of post in the order of seniority. The list for each category or grade will include both permanent and officiating incumbents. If a person is permanent in one category and officiating in another, his name will be shown in both the lists at the appropriate place." We may also refer to paragraph 14 of the counter-affidavit filed on behalf of the State in O. P. No. 2600 of 1966 and paragraph 11 of the counter-affidavit filed on behalf of the Central Government in the same original petition. In paragraph 14 of the State's counter-affidavit there is the following statement:

"According to the fundamental principles of integration and service Rules an officer having a substantive lien in one category and officiating in a higher category has to be assigned rank and seniority in both the officiating and substantive posts. The above mentioned persons have therefore been assigned ranks in the integrated gradation list of Sub Judges on 1-11-1956 with reference to their regular continuous service as Sub Judges based on their officiating status. Considering their substantive status as Munsiff's they have also been ranked among Munsiffs on the basis of their regular continuous service as Munsiffs without disturbing their inter se seniority among Munsiffs of Madras Branch. But as three of them have only less service as Munsiff than their juniors like the petitioner in Madras, the longer service of the petitioner had necessarily to be assigned to one of his seniors in the Madras Branch under the K. L. M. Formula of date assignment adopted for integration on 1-11-1956."

Similar is the statement in paragraph 11 of the Central Government's counter-affidavit which reads thus:

"The averments contained in paragraph 15 of the Original petition are not entirely correct.

The four persons mentioned by the petitioner were officiating as Subordinate Judges and were permanent District Munsiffs in the State of Madras at the time of their allotment to the State of Kerala. They had a substantive lien in one category and were officiating in a higher category. Hence they had to be assigned ranks in both substantive and officiating categories. Seniority was assigned to them in the officiating cadre with reference to their regular continuous service in their officiating cadre. Similarly, seniority was assigned to them in their substantive posts also without dislocating the seniority in their parent service. This action does not suffer from any illegality."

47. There is the authority of the Supreme Court in the decision in *State of Rajasthan v. Ram Saran, reported in*³ that the holder of an officiating post has no legal right to continue in that post. If therefore exigencies of service required that he should be reverted he must find a place in the cadre in which he had a substantive lien. If the names of these four persons were not shown in the cadre of Munsiffs it will be impossible to work out their position in case of reversion. They will naturally be entitled to earlier promotions than the other Munsiffs who still remained as Munsiffs when they were functioning as Sub Judges. This means that they must be given their proper places and their ranks assigned in the cadre of Munsiffs. This is what has been done and this is in accordance with the principle laid down in the G. O. dated 29-12-1956 (Ext. P2 in O. P. 2979 of 1966) and we see no grounds to interfere with this principle.

48. This leads us to the next point; the application of what has been termed as the K. L. M. principle. The principle of this formula is contained in an order passed by the Travencore-Cochin Government which is seen from the "Important Orders issued by the Travencore-Cochin Government" at page 251. This was evolved for the purpose of integrating the personnel of Travencore and Cochin States. Briefly stated, this formula means only this. If A was senior to B in the State of Madras, by the integration effected of A and B with Travencore-Cochin personnel for the purpose of the State of Kerala, A should not become junior to B. This can happen in given cases as in the case before us. Three of the Sub Judges allotted from Madras to Kerala have had lesser service as Munsiffs than the petitioners in these original petitions. If in the integrated list of Munsiffs their length of continuous service as Munsiffs alone was taken into account they would rank below the petitioners. This will affect the inter seniority between them on the one hand and the Munsiffs there on the other as it

³ AIR 1964 SC 1361

existed in the Madras State and will be against the principle settled for the purpose of the equation as embodied in paragraph 6 of the order dated 29-12-1956, Ext. P2 in O. P. No. 2979 of 1966 which has provided that inter se seniority of the integrating groups should not be affected by the integration. The only method by which this guarantee could be fulfilled is by assigning the dates of officers who have had longer continuous service to the senior officers allotted from the Madras State. It was thus that the petitioners had to surrender some of their continuous service to their seniors in the State of Madras. This principle has been accepted by the Central Government is clear from the explanatory note to letter dated 13-2-1960 which we have already adverted to and also embodied by the Kerala State in its order dated 24-7-1961. This is unassailable.

49. The next point raised, we have already dealt with in our judgment in O. P. No. 2591 of 1966, and for the reasons stated therein we reject this contention.

50. The only point remaining is that raised in O. P. No. 2600 of 1966 that war services of the petitioners should have been reckoned for determining the length of continuous service. This was not considered as part of judicial service by the Madras State itself long before the integration. How it can now be trotted out as a ground for the purpose of integration is ununderstandable.

51. Some of the petitioners have contended that training period of Munsiffs must be counted for determining their continuous service. This too has been negated by the Central Government after consultation with the Central Advisory Committee and we do not think wrongly. We reject this contention as well.

52. These writ petitions fail and have to be dismissed. We do so. No costs.
O. P. Nos. 2303, 2709 and 3057 of 1966

53. The point remaining for consideration arises out of the contentions urged by the petitioners-allottees from the State of Madras that the service rendered by them in the State of Madras before the reorganization of the States on appointment under Rule 11 (2) of the Madras State Judicial Service Rules should be counted for determining their continuous period of service for the purpose of integration with the Travencore-Cochin personnel also allotted to the State of Kerala. The inter-State seniority of the petitioners, it is urged, must be determined by taking into account their period of service under Rule 11 (2) also. This service was taken into account for the purpose of inter-State seniority at the time of the settlement of the preliminary integrated gradation list dated 24-4-1962 evidenced by Ext. P8 in O. P. No. 3057 of 1966 is admitted. It is equally beyond controversy that this service has not been taken into account in settling the final list published along with Ext. P31 in O. P. No. 2709 of 1966.

54. Whether this particular service should or should not be taken into account must primarily depend upon the decisions of the Government of India which are treated as directions issued by the Government of India under Section 117 of the Act, the other provisions of the Act; and particularly the provision in sub-section (5) of Section 115 of the Act. This sub-section guarantees fair and equitable treatment in the matter of integration of the personnel dislocated as a result of the reorganization of the States and allotted to a new State to be integrated with others, also allotted to that State.

55. Before we proceed to deal with the various orders and the communications, from which we have to spell out the directions given by the Central Government, it is necessary to refer to certain facts which happened in the State of Madras during the years 1950 and 1951 because we consider that these facts are necessary for understanding properly the case pleaded by the petitioners in O. P. Nos. 2709 and 3057 of 1966. These petitioners were Munsiffs on 1-11-1956. They both were appointed on the same day, 26-5-1951. Those appointments were made pursuant to a selection made by the Public Service Commission of 84 candidates; some in the list were those to be directly recruited, others those to be appointed by transfer from eligible categories in service. Pursuant to the selection appointments were made. Those appointments were under Rule 11 (2) of the Madras State Judicial Service Rules. Apart from this it was also specified by the State of Madras at the time of the appointment that those appointments were purely temporary appointments, that by virtue of those appointments, the persons appointed have no right to the post to which they were appointed, that the service rendered after such appointment will not count for probation or for seniority or for any other purpose. It was so stated, it appears, because of the communal G. O. which provided for reservation of posts for backward classes had been

under challenge before the appointments were made. The principle of the communal G. O. was also applied in the matter of selection and appointment of Munsiffs is admitted. In fact one Venkataramana, a candidate who was chosen by the Public Service Commission and whose rank in the select list was higher than that of the two petitioners in O. P. Nos. 2709 and 3057 of 1966 was not appointed on 25-5-1951 because of the application of the principle of the communal G. O. The said Venkataramana did not take this lying down. He filed a petition under Article 32 of the Constitution before the Supreme Court and that petition was allowed. Consequently, the petitioner therein was appointed as a Munsiff on 5-10-1951. After the appointment of the said Venkataramana, the appointments of the two petitioners in O. P. Nos. 2709 and 3057 of 1966 were regularised as envisaged by Rule 20 of the Madras State Judicial Service Rules with effect from 6-10-1951. These facts which we have mentioned are discernible from the judgment of the Andhra Pradesh High Court in *Y. Vasudevarao v. State of Andhra Pradesh reported in*⁴ The decision of the Supreme Court on the petition of the said Venkataramana is also reported in *B. Venkataramana v. State of Madras*⁵,

56. So when the two petitioners in the above-mentioned original petitions came to the State of Kerala having been provisionally allotted to that State by an order passed under Section 115 (2) of the Act, they came with service regularized with effect from 6-10-1951. It is admitted that had they continued in the State of Madras, for the purpose of their inter se seniority with their compeers in the same grade, i. e. Munsiffs, the service between 26-5-1951 and 6-10-1951 would not have been counted. That such service did not count for probation is clear from the provision in Rule 11 (2) itself and that the period that did not count for probation will not count for seniority is clear from Rule 20. That rule further provides that service could be

⁴ AIR 1961 And Pra 229

⁵ AIR 1951 SC 229

regularized from its inception or from any day thereafter. This regularization must naturally depend on other factors, such as the claims of others to an earlier appointment.

57. Now turning to the petitioner in O. P. No. 2303 of 1966, he was appointed after due selection on 29-2-1956 by Ext. P3 order in that petition, passed by the Governor. He took charge after training on 21-5-1956. His services were regularized with effect from 17-2-1957. As far as this petitioner is concerned the question is as to whether the period between 21-5-1956 and 17-2-1957 should or should not be included for the purpose of reckoning his inter-State seniority in the matter of integration with the Travencore-Cochin personnel also allotted to the State of Kerala.

58. We may at this stage refer to such of those communications and orders of the Central Government and of the State Government, which will give an idea of their decisions on the principles that should be applied for integrating the Madras personnel allotted to Kerala with those from Travencore-Cochin also allotted to Kerala. We may first refer to the communication contained in the letter dated 3rd April 1957 written by the Central Government to the State Governments. This letter as such is not before us but the letter has been noticed by the Supreme Court and a reference to the judgment of the Supreme Court in the decision in *Union of India v. P. K. Roy reported in*⁶ would show that this letter enunciated certain principles. The one with which we are concerned in this case is about the reckoning of service and regarding that, the provision in that letter, is as follows:

"Length of continuous service, whether temporary or permanent, in a particular grade;

this should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement."

59. Almost the same words have been used in the order passed by the State Government on 29-12-1956 (vide paragraph 4 of Ext. P13 in O. P. No. 2709/ 1966). The only difference is instead of "fortuitous" the word used in Ext. P13 is "emergency arrangement". We shall quote the relevant portion from Ext. P13: "Length of continuous service, whether temporary or officiating, quasi-permanent or permanent in the equated grade (this should exclude periods for which an appointment is held in a purely stop-gap or emergency arrangement). Service on probation will also be counted."

60. When we look at rule 11 (2) of the Madras State Judicial Service Rules, it will be seen that there is no use of the words "stop-gap", "emergency", or for that matter "fortuitous". Though the word "emergency" does occur in rule 11 (3) of the Madras State Judicial Service Rules, the expressions "stop-gap" for "fortuitous" do not occur in those rules or for that matter in the Madras State and Subordinate Service Rules. We shall now read rules 11 (2) and 11 (3) of the Madras State Judicial Service Rules:

"11. Temporary appointments. –

(2) Where the appointment of a person as District Munsiff in accordance with these rules would involve excessive expenditure on travelling allowance or

⁶ AIR 1968 SC 850 at p. 852

exceptional administrative inconvenience, the Governor may appoint any other person in the list of approved candidates. A person appointed under this rule shall not be regarded as a probationer in the service or be entitled by reason only of such appointment to any preferential claim to future appointment to the service.

(3) (i) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in the category of District Munsiffs and there would be undue delay in making such appointment in accordance with these rules, the Government may appoint a person by transfer from among the categories mentioned in sub-rule (i) of rule 4 in consultation with the High Court, otherwise than in accordance with these rules temporarily until a person is appointed in accordance with these rules :

Provided that such temporary appointment shall be made only if the candidate possesses the qualifications prescribed in rule 12 (b).

(ii) A person appointed under clause (i) shall be replaced as soon as possible by a member of the service or an approved candidate qualified to hold the post under these rules and the person appointed shall not be regarded as a probationer in the post or be entitled by reason only of such appointment to any preferential claim to future appointments thereto."

61. We have to mention here that service whether it is under rule 11 (2) or under 11 (3) of the Madras State Judicial Service Rules, has been termed by those rules as "temporary service". Such service also does not count for probation does not count for increments; and does not count for seniority. In other words, no distinction is drawn between an appointment under rule 11 (2) and an appointment under rule 11 (3) in the above respects. In view of the expressions "stop-gap

arrangement", "fortuitous" and "emergency arrangement" used in the communications and orders (letter dated 3-4-1957 and order dated 29-12-1956 already referred to) supposed to contain the principles for integration, a certain amount of uncertainty, not to mention confusion, resulted, giving rise to further correspondence, controversies, representations and appeals, followed by clarifications and further orders. It has become necessary to refer to these in view of the very elaborate arguments that have been advanced before us which included the contention that the Central Government did not know and was not told about the difference between "emergency service" and what is called "temporary service" under rule 11 (2) of the Madras State Judicial Service Rules, and that the directions as given by the Central Government were given in oblivion of this vital distinction.

62. The next order that was passed by the State Government which settled the question as to whether the service rendered under rule 11 (2) must or must not be taken into account for the purpose of inter-State seniority is the order dated 16-8-1961 (Ext. R 3 in O. P. No. 3057 of 1966). This order refers to four other orders, the earliest of which is the one dated 29-12-1956 (Ext. P13 in O. P. No. 2709 of 1966), the second is an order dated 2-4-1958 (Ext. P3 in O. P. No. 2979 of 1966), the third, an order dated 3-12-1958 which we consider is unnecessary for our purpose because it related particularly to Junior Engineers and Supervisors and it is so stated in the order dated 16-8-1961, and the fourth, an order dated 7-10-1959 (Ext. P9 in O. P. No. 2979 of 1966) and this order is not very material for it refers only to the training period with which we are not concerned in these original petitions. So the relevant orders read while passing the order dated 16-8-1961, are only the order dated 29-12-1956 and the clarification of that by order dated 2-4-1958. By the order dated 16-2-1961, the State Government came to the conclusion that "emergency Service" if continuous with regular appointment will be taken into account in fixing the relative seniority except in the case of Junior Engineers/Supervisors of the Public Works Department. This is mentioned in the last sentence in the order dated 16-8-1961. The previous sentence of that order is in these terms:

"Government have examined the question and they have decided that the views of the Central Advisory Committee conveyed by the Government of India and accepted by them in the Government Order fourth cited will apply to the Munsiffs of the Judicial Department alone and are not relevant to other officers and Departments."

63. We may repeat here that this order, namely, the fourth cited in the order dated 16-8-1961, did not refer to what has been termed as "emergency service" but dealt with only the question as to whether the training period should be counted or not. How the conclusion embodied in the last sentence followed from this, we are not able to follow. But this does not seem to be material because the order dated 16-8-1961 has been varied.

64. This variation of the provision in the order dated 16-8-1961 ensued as a result of a query from the Central Government by a letter dated 2-12-1961. This letter has been produced as Ext. D1 with C. M. P. 9841 of 1968 in O. P. No. 3057 of 1966 praying that this and other documents produced along with the petition may be admitted in evidence. We, by a separate order allowed that petition. It is necessary to read this letter dated 2-12-1961.

"I am directed to refer to the recommendation made by the State Advisory Committee

regarding counting of emergency service on the representations received from the personnel of the Public Works Department and to say that, as the period of emergency service was not counted for purpose of seniority in the former Madras State, the Government of India are tentatively of the view that it should not be counted for purposes of fixing inter-State seniority in the Kerala State also". The comments of the State Government in this regard may kindly be furnished.

65. The answer to this letter is seen from Ext. R2 produced along with C. M. P. No. 9841 of 1968 in O. P. No. 3057 of 1966. By Ext. R2, the State Government informed the Central Government that in the view of the State Government no modification of the decision embodied in the order dated 16-8-1961 is necessary. Ext. R2 is dated 25th January 1962 and this is the letter that the Central Government referred to in giving further directions as is seen from Ext. P32 in O. P. No. 2709 of 1966, a letter dated 1-3-1962. The relevant part of that letter is in these terms:

"(ii) In respect of Madras personnel allotted to Kerala and who have only emergency service to their credit, such service need not be taken into account; on the other hand, if any portion of their service prior to 1st November 1956 is either regularized or taken into account for increments in the time-scale, such portion of their service, if continuous, should be reckoned for purposes of seniority."

The communication further specifically stated that:

"The State Government's orders issued in G. O. MS. No. 656 Public (Intgn) Department dated the 16th August 1961, may be modified in accordance with the decision of the Government of India. The decision is of general applicability and should be applied in respect of Madras Officers in all the departments."

66. Then followed a further letter dated 19-9-1962 from the Government of India to the Kerala State by which the attention of the State Government was drawn to the representations cited in the margin to that letter from Sri A. V. Raghavan, Member, Lok Sabha, and Shri A. K. Gopalan, Member, Lok Sabha, as well as the representation dated 17th July 1962 from Shri P. G. Purshothaman Pillai, Professor of Malayalam, Palghat. The State Government was requested for its comments and also for comments on paragraph 4 of Sri Raghavan's letter.

67. The State Government replied by letter dated 31-12-1968 and after referring to the different types of "emergency service", in paragraph 6 of the letter the particular type of emergency service arising for consideration was detailed and specified. Before reading this portion of the letter it is necessary to note the beginning of paragraph 3 which we consider significant. Here the State Government categorically stated that "temporary appointments" in Madras State are commonly known as "emergency appointments" and further stated that what they are trying to clarify is in what circumstances can "emergency appointments" arise. They stated in paragraph 6 of the letter:

"There was a third type of cases in which candidates selected by the Public Service

Commission or other competent authority were appointed on an emergency basis in the first instance on account of administrative reasons. The cases mentioned in G. O. 191 Pub (Ser) dated 1-2-1962 of the Government of Madras come under this class."

68. After having stated so, the recommendations of the State Government were embodied in paragraph 7 which runs thus:

"This Government are of the view that the officers allotted from Madras should not be decided the privilege of counting their emergency service by their allotment to Kerala if such service would have been regularized from the date of their emergency appointment and counted for inter-State seniority in integration on 1-11-1956 had they remained in Madras". The principle laid down by the Madras Government (Vide G. O. MS. 2184/Public (Judl) A, dated 17-7-1957 copy enclosed) so far as it relates to the counting of service for determining the inter-State seniority of Madras Officers and those allotted from T-C to Madras on 1-11-1956 can be adopted for deciding the inter-State seniority of Madras and T-C. Officers in Kerala also on 1-11-1956.

69. This recommendation as far as we can see has been fully accepted by the Central Government. This is seen from Ext. P33, a letter dated 16-2-1963, addressed by the Central Government to the State Government. The only addition in that letter is the following:

"The Government of India would have no objection even to the principles, initially adopted by the State Government in their orders No. SI. 2-40451/56/PD dated the 29th December 1956, and No. G. O. MS (P) 40451/SI. 2/56/PD dated the 2nd April 1958, wherein the State Government had prescribed that the inter-State seniority should be determined on the basis of length of continuous service in the equated grade, subject to exclusion of service rendered in a purely stop-gap arrangement or emergency arrangement and that for computing length of continuous service only 'short periods' for which appointment was held in a purely stopgap or emergency arrangement will be excluded."

70. Based on these letters Exts. P32 and P 33, two orders have been issued by the State Government and they are Exts. R1 and R 2 produced by the 7th respondent in O. P. No. 2709 of 1966 along with his counter-affidavit. Ext. R 1 is in consonance with Ext. P 32. Ext. R 3 is in accordance with Ext. P 33 excepting that what is stated in the letter of the Central Government that the Central Government have no objection to adopt the principle embodied in the order dated 29-12-1956, does not find a place in the order.

71. From what we have stated above we have come to the conclusion that the final decision of the, Central Government after considering the various aspects brought to their notice by various persons and the State Government is that if the service rendered under appointment under rule 11 (2) - we feel no doubt that "emergency service" referred to encompasses service pursuant to appointments under rule 11 (2) also - will be taken for the purposes of inter-State seniority only if

that service would have been regularized and would have thus counted for seniority inter se or for inter-State purpose had these personnel's allotted to the Kerala State remained in the State of Madras. We are not impressed by the argument that the Central Government had "effaced itself" in that they failed to give a decision and allowed the State Government to have their own say in the matter by virtue of the fact that there was a sentence in Ext. P33 which we have already read that the Central Government will have no objection to the State Government applying the principle stated in the order dated 29-12-1956. This order, we may state, is not easy to understand unless scope and content is given to the expressions "stop-gap arrangement" or "emergency arrangement" and this is what has been tried to be done by the State Government in their letter dated 31-12-1962 and by the Central Government in their letter dated 16-2-1963. When the State Government accepted this and passed the order Ext. R2 they were not acting on their own but they were carrying out the mandate of the Central Government. That they did not take into account the lack of objection of the Central Government will not invalidate the order nor make the decision contained in Ext. R2, a decision of the State Government. The Central Government has no case in any of the counter-affidavits filed in any of these petitions that the State Government has gone beyond what has been directed by the Central Government or that they have acted against what is stated in Ext. P33.

72. The arguments specifically advanced by the petitioner himself in O. P. No. 2709 of 1966 and by counsel on behalf of the petitioner in O. P. No. 3057 of 1966 that in so far as the services of those two petitioners from 26-5-1951 to 6-10-1951 have been counted for the purpose of increments by virtue of an order Ext. P6 in O. P. No. 2709/1966 as far as the petitioner therein is concerned, and by similar orders in the case of others, that service must be counted for the purpose of inter-State seniority by virtue of what is stated in Ext. P32 communication of the Central Government and in Ext. R2 order, does not arise for consideration as we are of the view that the final direction of the Central Government is contained in Ext. P33 which has superseded Ext. P32.

73. We have therefore come to the conclusion that the final list as evidenced by Ext. P31 in O. P. No. 2709 of 1966 has been drawn up in accordance with the decisions of the Central Government. In fact all the orders have been read in Ext. P31; there is specific reference to the orders Exts. R1 and R2 and even an order dated 21-8-1961, Ext. P14 in O. P. No. 3057 of 1966.

74. Further questions have been urged before us, and the main one pertains to the question of violation of the principles of natural justice. It has been suggested in more than one original petition, in the affidavits in support of more than one original petition - for instance the affidavits in O. P. Nos. 2079 and 3057 of 1966 - that these directions of the Central Government (Exts. P32 and P33) were given behind the back of the petitioners, that they were not called upon to state their cases before the directions were given, that they had no chance of making representations against those directions, that the rule that has been adopted in settling the preliminary integration list has been altered without the persons affected thereby being told why and for what reason, and that therefore, the final list must be set aside at least on this ground and the Central Government directed to give an opportunity to the petitioners to state their cases.

75. The orders Exts. R1 and R2, at any rate R2 was published in the Gazette of the State and both the orders were also sent to the Heads of Departments concerned evidently for informing the employees concerned which we must assume has been done. Apart from this the order Ext. P31

towards the concluding part of it has specifically permitted, the petitioners to make representations against the decisions of the Central Government. The petitioners have chosen to ignore this and have come to this Court and the reason for this is stated in O. P. No. 2709 of 1966 in paragraph 23 of the affidavit in these terms: The petitioner has no efficacious and alternative remedy except to invoke the extraordinary jurisdiction of this Honble Court under Article 226. Further representation and appeal to the Central Government through the State Government is ineffective and illusory in view of the definite prejudicial stand they have taken and final orders passed on the prior representations and appeals."

76. In the above circumstances we are not satisfied that there has been any denial of an opportunity to state their case. We will not be justified in interfering with the final list on this basis.

77. Counsel for the petitioner in O. P. No. 2303 of 1966 made a further point that there is some inconsistency between the stand taken by the State Government in the counter-affidavit that has been filed in that petition and that what is stated in Ext. P14 in O. P. No. 2709 of 1966. The passage that has been referred to from the affidavit is contained in paragraph 11 thereof and runs thus:

"Both in Travencore-Cochin and in Madras, service rendered in temporary (in the sense not regular)/provisional appointments were not counted for inter se seniority and based on the decisions of the Government of India service which did not count for seniority in the parent State has been excluded for inter-State seniority on 1-11-1956 in the case of both Travencore-Cochin and Madras Officers."

78. It is urged that this assertion is clearly against what is contained in paragraph 2 of Ext. P14 in O. P. No. 2709 of 1966. What is contained in that paragraph is as follows :

"When an officer is absorbed in a post in the Madras Cadre, his seniority in that cadre shall be determined by the date from which he was continuously holding the corresponding post in the T-C State."

79. Counsel has contended that this meant that the service which was of a provisional nature of Travencore-Cochin personnel in the State of Travencore-Cochin was taken into account for integrating them with the Madras personnel allotted to Madras when they had been allotted to the State of Madras and therefore the assertion in the affidavit is incorrect.

80. It is not at all clear that paragraph 2 of Ext. P14 means that provisional service in the Travencore-Cochin State which did not count for seniority in the Travencore-Cochin State was taken into account for the purpose of integrating Travencore-Cochin personnel allotted to the State of Madras with the Madras personnel. On the other hand, the assertion in all the affidavits on behalf of the State is that the same principle that has been applied for integrating Travencore-Cochin personnel allotted to the Madras State with Madras personnel, has been adopted for integrating Madras personnel allotted to the State of Kerala with Travencore-Cochin personnel also allotted to that State. In the absence of any specific instance pointed out by which it can be established that something different has been done, we see no point in this contention.

81. There remains only one argument and that was a general argument on the assumption that the Central Government has decided that this service under Rule 11 (2) for the period for which it has not been regularized shall not count for the purpose, of inter-State seniority in integration is violative of fair and equitable treatment guaranteed by sub-section (5) of Section 115 of the Act. That there should be fair and equitable treatment cannot be denied. That what is fair and equitable treatment should be determined by the Central Government ultimately, whether as original authority or as appellate authority, also seems to be clear from the provisions of the Act. But the question whether if they have decided what is fair and equitable we will be justified in interfering with that decision raises a difficult question. We are exercising jurisdiction under Article 226 of the Constitution. Decisions whether quasi-judicial or otherwise are not normally interfered with unless they be decisions taken without jurisdiction or decisions which are perverse or arbitrary or at least which are palpably erroneous. Can it be said that when service which was not counted for the purpose of inter se seniority in Madras State was not counted for the purpose of inter-State seniority in the matter of integration there has been any palpable error committed by the Central Government, justifying interference by this Court in proceedings under Article 226 of the Constitution?

82. To answer the above question it is necessary to bear the following factors in mind. When a person who is not entitled to immediate appointment is appointed under rule 11 (2) and thus gains service under that rule, he is not given the benefit of that service because the person who should have been appointed was denied that place. In effect, therefore, if not actually, the service rendered by the appointee under rule 11 (2) goes to the benefit of the person who should have been appointed and such person becomes senior to the appointee under rule 11 (2), notwithstanding the earlier appointment of that person under Rule 11 (2). This is clearly what would have happened if both these persons remained in the State of Madras. This is clearly what should happen if both these persons have been allotted to a newly formed State. The benefit of the service rendered under rule 11(2) thus being taken by another employee who was entitled to be appointed earlier, normally it would be unfair to suggest that that service must again be counted for the purpose of granting seniority to the appointee under rule 11 (2). This in effect means that the service rendered under rule 11 (2) must be counted twice: once for the sake of the person who was entitled to an earlier appointment and a second time in favor of the appointee under rule 11 (2). There is of course justification in giving the first of these benefits to the person who was entitled to an earlier appointment. Having given that benefit, again to give the same benefit to the appointee under rule 11 (2) would be unjust.

83. We must also remember that one of the settled and unchallenged principles of integration is that the inter se, seniority of persons allotted to a State should not be upset while integrating them with others with whom they have to be integrated. By giving the benefit of the earlier service under rule 11 (2) to those who would not have been entitled to count that service and they remained in the State of Madras the settled principle will be upset for a junior in the Madras service can become senior to his senior in that service. This normally should not be permitted. If such a thing is allowed, it will have to be rectified. No doubt this can be done by applying what has been termed as the K. L. M. principle to which we have already adverted to. This in its turn may lead to anomalies. For in given cases it will be the senior in Madras service who will get the benefit of the service under Rule 11 (2) and not the person who actually served under rule 11 (2). It can also be that such a method, if adopted, will give that senior service from a date anterior to

that from which his service was regularized. This will give an unfair advantage to that person over those who were appointed earlier than the date from which his service was regularized but after the date of commencement of service under rule 11 (2) of his junior. Considering these aspects in mind, it is difficult to conceive that there has been any palpable error in the directions given by the Central Government. We are also unable to spell out any unfair and inequitable treatment violative of sub-section (5) of section 115 of the Act, warranting interference by this Court in proceedings under Article 226 of the Constitution.

84. The petitioner in O. P. No. 2709 of 1966 raised two further points. According to him the Central Government was not consulted before the final list appended to Ext. P31 in that petition was drawn up. The final list is based on the orders read while passing Ext. P31 is clear from that order itself. We have elaborately referred to the relevant orders that have been read. These orders, we have also seen, have been passed on the directions of the Central Government. Those directions pertain to the particular service with which we are concerned in these petitions is equally clear. It is those principles that have been applied in drawing up the final list seems to be beyond doubt. In these circumstances it cannot be said that the final list has been drawn up not in accordance with the directions of the Central Government.

85. It was further suggested that the final list must be published by the Central Government itself and not by the State Government Authority is not wanting for this proposition. But there are other decisions which have taken a different view. It has even been held that the State Government alone has the power to settle the principles of integration and that the only provision in the Act is that such principles should not be against the directions given by the Central Government under section 117 of the Act. Whatever be the correct position - it is unnecessary to decide the question in these cases - we are satisfied that what has been done by the State Government is merely the implementation of the directions of the Central Government. We do not consider that every mechanical factor such as the drawing up of the list and the publication thereof should also be done by the Central Government. There is no provision in the Act which insists that this should be so It is the principles that should govern the drawing up of the list, that are material. The principles are the important elements in the matter of integration. The drawing up of the list etc. are only the implementation of these principles. Such implementation, we conceive, can be by the State Government. We see no force in this contention either.

86. We dismiss these petitions as well but without any order as to costs.
Petitions dismissed.