BOMBAY HIGH COURT

P.V. Naik

Vs.

State of Maharashtra

Special Civil Appln. No. 962 of 1966

(K.K. Desai and Chandrachud, JJ.)

16.08.1966

JUDGMENT

K.K. Desai, J.

1. This petition and numerous other petitions are filed in this Court for challenging the validity of the Government Resolution, dated March 18, 1966, as clarified by the two circular letters each dated April 16, 1966. The petitioners also challenge the notices of discharge, each dated April 5, 1966, terminating the services of each of the petitioners and allotting them to services of Zilla Parishads as of and from August 16, 1966. In other petitions also similar notices are challenged. The petitioners have prayed for quashing and setting aside of the notices of discharge and also for a mandamus restraining the Government from allotting the petitioners to the services of Zilla Parishad, Dhulia.

2. The questions arising in this petition being common to several petitions filed in this Court are of general importance in relation to all the Class 3 and Class 4 employees of the State Government (consisting of about 45/ 55 thousand in all) who as surplus staff, are proposed to be allotted and transferred to "District Services" of Zilla Parishads of several districts in the State of Maharashtra.

3. The broad facts leading to the passing of the above resolution and the issuing of the notices of discharge dated April 5, 1966, devoid of numerous details which will require to be noticed in connection with the contentions made by the parties, may be summarized as follows: The petitioners were initially recruited in the Revenue Department as Clerks on various dates between the years 1943 and 1944. They were confirmed as Clerks in the year 1948. They were promoted to officiate as Aval Karkuns in the years 1956 and 1957, Subsequently, in 1965, they were promoted to Officiate as Mamlatdars. Long prior to April 1966, the petitioners were provisionally sub-stantively confirmed as Aval Karkuns and were then officiating as Mamlatdars.

The scale of pay available to the petitioners as Aval Karkuns was Rs. 145 - 8 - 185 - 10 - 215 plus admissible allowances. The petitioners had reached the maximum of Rs. 215 long prior to their promotion to officiate as Mamlatdars in 1965. As officiating Mamlatdars, the petitioners were entitled to the scale of pay of Rs. 300 - 15 - 420 - E. B. - 15 - 450 - 20 - 550. In April 1966, the petitioners were drawing the basic salary of Rs. 315 and admissible allowance amounting to about Rs. 45 per month.

4. The programme of Community Development and National Extension Service was initiated by the State Government in 1952 to provide for a multilateral intensive development of rural areas according to a phased programme. As soon as a particular area was selected to form a project or block for such development, the staff, finance and other requisites were provided according to a set pattern. The staffing pattern included certain normal categories of posts like those of Aval Karkuns, etc. Most or the posts created were treated as temporary additions to the normal cadres of the respective departments and the personnel was also drawn from those normal cadres to meet the requirements of the projects and blocks. The cadre of Aval Karkuns catered to the needs of development blocks and certain posts of Aval Karkuns were specially sanctioned for the work connected with development activities under the control of the District Collectors. All these posts were continued on a temporary basis year after year. On May 1, 1962, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Act 5 of 1962) hereinafter referred to as the Act, came into force. The Act was passed inter alia to provide for the establishment in rural areas of Zilla Parishads and Panchayat Samitis, to assign to them local Government functions and to entrust to them the execution of certain works and development schemes of the State Five-Year Plans. Section 101-B of the Act required the Government to transfer to the Zilla Parishads all completed works and development schemes relating to the activities which fell within their sphere under the Act. On May 1, 1962, the State Government transferred by an order many development activities to Zilla Parishads. Even subsequently, the Government transferred additional schemes and works to Zilla Parishads by passing orders in respect thereof. The posts that were created and continued from time to time since 1952 for the various development activities which came to be transferred to Zilla Parishads became surplus to the Govt. requirements upon the transfer of the activities to Zilla Parishads. The temporary posts that fell surplus and vacant were allowed to lapse at the end of their sanctioned period. The posts as were already permanent continued to exist and were not immediately abolished. Some of the permanent posts were, however, abolished. It was possible for the Government to abolish surplus posts and discharge their holders on payment of terminal benefits. Section 241 of the Act authorised the Government to depute officers in Class I and Class II Services of the State for the work of Zilla Parishads, Section 242, inter alia, provided:

> "* * * * * Such members of the services of the State Government as are allotted to the District Technical Service, Class III, and to the District Service, Class IV, shall be taken over by the Zilla Parishads *****".

Section 244 provided that "The initial appointment of officers and servants under Zilla Parishads or allotment to the District Service as aforesaid shall be made by the State Government *****". By "the appointed day", i. e. May 1, 1962, the Government found it impossible to constitute the District Services of Zilla Parishad in accordance with Section 239 (b) of the Act in connection with the working of Zilla Parishads. The Government accordingly issued (Removal of Difficulties), Order dated April 12, 1962 and Order dated May 1, 1962, provisionally sanctioning for the Zilla Parishads for a period of six months all posts existing prior to the appointed day and authorised the Collectors of each district to make allotment of officers and servants to those posts. In pursuance of those orders, such of the Government servants who were allotted to take charge of their posts started working for the Zilla Parishads as from May 1, 1962. By a circular letter dated December 3, 1962, the Government inter alia stated as regards the Government servants allotted to Zilla Parishads that the allotment had been made under section 242 of the Act adding –

> "Their reversion to Government Department is not now possible, as they belong to District Service of Zilla Parishads concerned."

The Government clarified that they had an option to retire from service. In December 1963, a representative petition, being Special Civil Application No. 13 of 1963 was filed in the High Court on behalf of a group of Class III Government servants challenging the validity of the orders finally allotting them to Zilla Parishads. By a circular letter dated January 24/25, 1964, the Government clarified the position stated in the earlier letter dated December 3, 1962. By this letter, the Government stated that, apart from the cases of Government servants whose orders of allotment had already become final by reason of abolition of their posts, all other Government servants serving with the Zilla Parishads were considered as under provisional allotment and as continuing to hold a lien on the Government posts held by them permanently, until orders abolishing the posts held by them were passed by the Government as being surplus as a result of the implementation of the Act. In the above petition in the High Court, consent terms were filed on February 24, 1964. The parties adopted the position that the petitioners had not been permanently allotted to Zilla Parishads and they continued to have lien on their permanent posts in the Government service. The Government accepted the position that the petitioners had not been allotted to Zilla Parishads under section 242 or section 244 of the Act. On those facts, by consent, no order was made on the petition except as regards costs. The Government found it difficult to proceed on the footing that the staff working with the Zilla Parishads had been permanently allotted to it. A large number of Government servants sent over to Zilla Parishads made representations for repatriation to their posts under the Government. To prevent dislocation of work, the Government promulgated on August 27, 1964 Ordinance No. 4 of 1964, introducing with retrospective effect from May 1, 1962, new section 253-A. The Ordinance has been replaced by Act 43 of 1964. This section was held to be not illegal or unconstitutional by the High Court in February 1966. The section authorized the Government for the period fixed under the section to make temporary allotment of members of Government service to provisionally

sanctioned posts in Zilla Parished. The Government thereafter issued two circular letters dated October 8, 1964. The purport of the first circular was that, though Government servants in Class III and Class IV Services had been temporarily allotted and were on deputation to Zilla Parishads, the number of Government servants on deputation did not correspond to the strength of the cadre from which they were deemed to be on deputation. In order, therefore, to maintain correspondence between Government servants and the strength of the cadre from which they were treated to be on deputation, it was necessary to revive temporary posts which had either been discontinued or allowed to lapse. The Government issued instructions for reviving all temporary posts which had been discontinued and for continuing them for such time as Government servant deemed to be on deputation to Zilla Parishads were finally allotted to them. Under the second circular, the posts in continuous existence for five years or more as were required tinder permanent or long term basis were directed to be made permanent. Such posts were directed to be included in the proposals for conversion of temporary posts, into permanent posts. In connection with the posts revived, the Government issued circular letters dated January 2, 1965 and January 5, 1968. The Government first resolved to revive 50 per cent, of the temporary posts and to make them permanent. The Government ultimately decided to convert 80 per cent, of the temporary posts into permanent posts in accordance with that decision, in each of the districts in Maharashtra 80 per cent, of temporary posts held by Government servants on deputation to Zilla Parishads were revived in the Government services as permanent posts. In connection with the posts at Dhulia, the Government issued an order dated April 19, 1965 showing in the accompanying statement posts which were converted from temporary to permanent and directed the Collector of Dhulia to take action and order confirmations in those posts in accordance with the existing procedure. As is shown in the statement accompanying the above order, 8 temporary posts were converted into permanent posts of Aval Karkuns at Dhulia. Prior to the above order dated April 19, 1965, in fact, in Dhulia, there were 38 permanent posts of Aval Karkuns. The result of the order dated April 19, 1965 was that, as from that day, there were 46 permanent posts of Aval Karkuns at Dhulia.

5. As already recited above, from 1965 the petitioners were promoted to officiate as Mamlatdars. The petitioners were provisionally substantively confirmed as Aval Karkuns respectively on August 31, September 1 and September 2, 1960. They were retrospectively substantively confirmed in the posts of Aval Karkuns respectively as of and from February 1, 1965 and February 18 and 19, 1966. In April 1966, the three petitioners were the three junior-most substantively confirmed Aval Karkuns at Dhulia. They were, however, then officiating as Mamlatdars and receiving a basic salary of Rs. 315 and an admissible allowance of about Rs. 45 every month.

6. The impugned resolution dated March 18, 1966 was passed to provide a scheme for serving notices of discharge (retrenchment) on incumbents of posts rendered surplus (and to be abolished) by reason of transfer of the works of national extension schemes and development project to Zilla Parishads and to offer to the surplus staff an option to accept allotment to

"equivalent posts" in the services of Zilla Parishads. The discharge and allotment were fixed as of and from August 16, 1966, Rule 291 read with R. 266 of the Bombay Civil Services Rules (hereinafter referred to as the Service Rules) envisages service of three months' notice on an employee intended to be discharged from service on account of abolition of his post. We will have to notice the details of the scheme contained in this resolution whilst considering the contentions made in respect of the validity of the scheme and the resolution. The two circular letters dated April 16, 1966 clarifying the enforcement of the scheme in the resolution were issued subsequently.

7. The Collector of Dhulia determined 4 permanent posts of Aval Karkuns and 12 permanent and 50 temporary posts of Clerks on his establishment as surplus and due to be abolished. In the above resolution, the Government had determined that, with effect from August 16, 1966, all surplus posts should be abolished. In accordance with the scheme in the resolution, one Sali and the three petitioners as junior-most permanent Aval Karknns at Dhulia were liable to be retrenched in respect of 4 permanent posts rendered surplus and due to be abolished. They were entitled to three months' notice, having regard to the contents of Rules 291 and 266 of the Service Rules. To all persons rendered surplus, including Sali and the three petitioners, notices of discharge dated April 15, 1966 in the prescribed form were issued. These notices were served on the three petitioners on April 14, 1966. The three petitioners were informed that they were rendered surplus in the posts to be abolished and their services would be terminated with effect from August 16, 1966. They were informed that they would be finally allotted under section 242 in the scale of pay of Rs. 135 - 5 - 145 - 6 - 175 - E. B. - 8 - 215 to the District Service, Class III of Zilla Parishad, Dhulia. They were informed that they were given an option whether or not to become servants of Zilla Parishads with terminal benefits under Rules 4 and 5 of the Zilla Parishads (allocated servants) Premature Retirement Rules. They were given a further option, if they so chose, to continue in their officiating posts of Mamlatdars after forfeiting unconditionally their claim to permanent posts. They were requested to give their intimation so as to reach the Commissioner, Bombay Division, not later than July 15, 1966 as respects the option selected by them. They were informed that, in default of any communication received from them before July 15, 1966, it will be presumed that they had accepted appointments with the Zilla Parishad, Dhulia.

8. The petitioners challenge the notices of discharge served on them in pursuance of the scheme contained in the impugned resolution dated March 18, 1966 read with the two clarificatory circular letters dated April 16, 1966. The petitioners also challenge the scheme in the resolution. The grounds on which the challenge is made are divisible into two heads as follows: (i) challenge to discharge from and/or termination of Government service and (ii) challenge to orders for allotment to the services of Zilla Parishads. We have hereinafter specifically stated each of the grounds on the basis whereof the challenge is made. It is, therefore, not necessary to recite here those grounds. The Government has denied each and all of the contentions and grounds. We will mention the case of the Government whilst dealing with each of the grounds.

9. The first ground is that the impugned notice of discharge dated April 5, 1966 is bad and illegal as being in contravention of the provisions in Article 311 (2) of the Constitution. The submission is that the petitioners will stand discharged from Government service as from August 16, 1966 under the impugned notice. The petitioners will be deprived of their substantive posts and will have lost benefits under the service. This is per se punishment. The impugned notice, therefore, involves removal of the petitioners from service within the meaning of the Article. The petitioners are sought to be removed without affording them an opportunity of showing cause in accordance with the Article. The impugned notices of discharge contravene the Article and are liable to be quashed and set aside.

10. The Government's reply that, to the facts of the case, the provisions in the Article are not attracted. The proposed discharge of the petitioners is a consequence of the proposed abolition of posts which were found surplus to the Government's requirements. The emphatic submission is that, generally, and also having regard to the tenure of a Government servant being at pleasure under Article 310 of the Constitution, the Government has for administrative purposes an absolute right to decide the number of posts necessary for governmental purposes and to abolish posts rendered surplus. The incumbents of abolished posts are liable to be retrenched. Such retrenchment does not attract the provisions in the Article. Having regard to the above controversy, the sole important question which arises for decision is as to whether abolition of posts rendered surplus and discharge and/or retrenchment of Government servants from such abolished posts amounts to removal from posts within the meaning of Article 311 and whether, in respect of such removal, there is an obligation on the Government to give opportunity to the concerned holders of posts to show cause that the posts are not rendered surplus and/or need not be abolished. In the first instance, it may be stated that apparently Articles 309 and 310 of the Constitution contain provisions relating to the authorities entitled to enact rules for terms and conditions of services of the Government employees in Central and State services and specifically provide that the tenure of service is "pleasure of the President". Article 311 restricts the pleasure as regards 3 major punishments of dismissal, removal and reduction in rank and provides protection that an opportunity to show cause against the action (of punishment) proposed to be taken must be afforded. This Article is not in any other manner related to the matter of the tenure of service of the Government employees. It is not contended on behalf of the petitioners that the Government has not got an inherent right to create and abolish posts for administrative purposes and reasons. The submission on behalf of the State, therefore, is that it is clear that Article 311 postulates existence of posts and the vested right that is protected thereunder is in respect of posts which must exist and are not abolished.

11. It further requires to be stated that there is no dispute about the fact that by the impugned notice dated April 5, 1966, the petitioners were informed that it was proposed to abolish their permanent posts and to discharge them owing to abolition as of and from August 16, 1966. The petitioners were offered several options which are not relevant in connection with this first

contention. We have been requested to decide the question on the footing that the impugned notices are orders discharging the petitioners from Government service as of and from August 16, 1966.

12. On this question, strong reliance has been placed on behalf of the petitioners on the decision of the Supreme Court in the case of *Moti Ram Deka v. General Manager, North East Frontier Rly*[1]*.,* The submission is that the ratio of the derision is that every termination of service of a Government servant, except under rules of discharge upon superannuation and reasonable rules for compulsory retirement, would be per se punishment and removal from service within the meaning of the Article. Every termination of service, except under the above two kinds of rules, necessitates affording of an opportunity to show cause against the proposed action in accordance with the provisions in Article 311 (2). The Supreme Court has, in the above decision, not accepted the concept of punishment being necessary for finding a termination of services as amounting to removal within the meaning of the Article. In regard to the observations relating to abolition of posts in the previous decision of the Supreme Court in the case of *Parshotam Lal Dhingra v. Union of India*[2]*,* the submission on behalf of the petitioners is that the same have been disapproved of in the case of Moti Ram Deka, AIR 1964 Supreme Court 600, by a larger Bench of the Supreme Court. The judgment of Subba Rao, J. (now Chief Justice), contains direct observations supporting the above submissions for the petitioners. These observations are binding on this Court and must be followed.

13. The Advocate General for the State has controverted each and all of the above submissions. In his submission, the observations in the decision in Parshottam Lal Dhingra's case, 1958 SCR 828 : AIR 1958 Supreme Court 36, regarding termination of service resulting from abolition of posts being not punishment and not removal within the meaning of the Article are not only not disapproved of but in fact approved of by the

[1] AIR 1964 SC 600

[2]1958 SCR 828 : AIR 1958 SC 36

larger Bench in Moti Ram Deka's case, AIR 1964 Supreme Court 600. In his submission,
the judgment of Subba Rao, J. (now Chief Justice), disapproves of the ratio in Parshottam Lal Dhingra's case, 1958 SCR 828 : AIR 1958 Supreme Court 36, in this respect. But it is not a concurrent judgment but a dissenting one in that respect. He submitted that the phrases "Dismissal", "Removal" and "Reduction in rank" had a legislative history which was directly relevant. The phrases called for an interpretation not according to the dictionary meaning but to a true meaning having regard to that legislative history. Such relevant history had been noticed in the prior decisions and particularly in the case of Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36. The majority judgment in the case of Moti Ram Deka had accepted the decision of the Supreme Court in the case of Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36, as regards the true meaning and interpretation of these phrases. The two phrases were consistently held to be not tautologous. The two phrases had been held to be terms of art and not liable to be interpreted in accordance with the dictionary meaning. In his submission, the learned Judge has expressed a dissent from the previous decisions of the

Supreme Court and the majority view in that connection in this case of Moti Ram Deka, AIR 1964 Supreme Court 600, and has held that these phrases in the Article had their dictionary meaning. In his submission, the observations of the learned Judge indicate his dissent in the matter of (i) the true meaning of these phrases and (ii) the approval by the majority judgment of the observations in the case of Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36, that termination of service consequent upon abolition of post is not "removal". In his submission, the observations made by the learned Judge being contrary to the previous decisions of the Supreme Court are not binding on this Court. Under all the circumstances mentioned above, our main task in this connection is to find out the relevant observations of the Supreme Court in the case of Parshottam Lal Dhingra 1958 SCR 828 : AIR 1958 Supreme Court 36, regarding the Government's right to terminate service upon abolition of post. We have further to find out whether these observations are approved of by the majority Judgment in the case of Moti Ram Deka, AIR 1964 Supreme Court 600.

14. The case of Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36 related to an order of reversion of Parshottam Lal Dhingra from an officiating higher post to his permanent post in lower cadre. Before the order was passed, adverse remarks were made against him in his confidential report by the General Manager of the concerned railway with a note that "he should revert as a subordinate till he makes good the shortcoming noticed". The General Manager had thereupon issued the impugned order reverting him to his permanent post. His case was that the order amounted to reduction in rank without affording him an opportunity to show cause and was punishment and contravened the provisions in Article 311 (2) of the Constitution. In this connection, reference was made by the counsel for the parties and the Court to previous decisions of the Court relating to true effect of the phrases "dismissal", "removal" and "reduction in rank" contained in the Article. Reference was made to the previous legislative history also. The matter of construction and interpretation of all the three phrases directly arose for consideration by the Court. In that connection, reference was made by the parties to the decisions of the Supreme Court in the case of *Satish Chandra Anand v. Union of India*[3], and *Shyamlal v. State of Uttar Pradesh*[4], Reference was also made to several other

[3]1953 SCR 655 : AIR 1953 SC 250

[4]1955-1 SCR 26 : AIR 1954 SC 369

previous decisions. At p. 847, (of SCR) : (at p. 44 of AIR), in the majority judgment, it was stated :

> "What then is the meaning of those expressions 'dismissed' 'removed' or 'reduced in rank? It has been said in *Jayanti Prasad v. State of Uttar Pradesh*[5], that these are technical words used in cases in which a person's services are terminated by way of punishment. Those expressions, it is urged, have been taken from the service rules, where they were used to denote the three major punishments and it is submitted that those expressions should be read and understood in the same sense and treated as words of art. This leads us to embark upon an examination of the service rules relating to punishments to which the Government servants can be subjected."

15. The Court thereupon examined the previous rules and the relevant provisions in the Government of India Acts, 1915 and 1935 and the contents of Article 311 and held:

> "It follows from the above discussion that both at the date of the commencement of the 1935 Act and of our Constitution the words 'dismissed', 'removed' and 'reduced in rank', as used in the service rules, were well understood as signifying or denoting the three major punishments which could be inflicted on Government servants." In that connection, it was stated that these phrases had been explained by the Supreme Court in the case of *S. A. Venkataraman v. Union of India*[6], In further discussion, the Court stated:
> "The foregoing conclusion, however, does not solve the entire problem, for it has yet "to be ascertained as to when an order for the termination of service is inflicted as and by way of punishment and when it is not.

Apart from other findings of the Court, the relevant finding at p. 861 (of SCR) : (at p. 49 of AIR) of the report was as follows:

> "And every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, an has been held by is Court in 1953 SCR 655 : AIR 1953 Supreme Court 250. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in 1955-1 SCR 26 : AIR 1954 Supreme Court 369. In either of the two above mentioned oases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules."

16. In arriving at the above conclusion, at pp. 857-858, (of SCR) : (at pp. 47-48 of AIR), the Court observed:

> "It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the

[5](AIR 1951 All 793)
[6]1954 SCR 1150 : AIR 1954 SC 375

> post until under the rules he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post "unless the post itself is abolished" or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311 (2). Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment". (Underline italic-sic is ours) (Here in " ").

The Advocate General has strongly relied on the above quoted passage in the judgment in the case of Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36 as containing the ratio, and in any event binding observations of the Supreme Court. Justifiably he has submitted that termination of service consequent upon abolition of post has been pointed out by the Supreme Court in the above passage as not attracting the provisions of Article 311(2). The submission on behalf of the petitioners is that the Supreme Court has disapproved of the above quoted passage in the case of Moti Ram Deka, AIR 1964 Supreme Court 600. Before parting with the case of Parshottam Dal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36, the following passage from the judgment in that case given by Bose, J., may be quoted –

> "I also agree with my Lord that the words dismissal, removal and reduction in rank, used in Article 311 have special meaning, I would not have said this had it not been for ambiguities that arise, otherwise. We were faced with that in 1953 SCR 655 : AIR 1953 Supreme Court 250, where we had to construe the words 'dismissal' and 'removal' and to determine whether they were merely tautologous or had been introduced to emphasize a difference in meaning. According to the dictionary, they mean the same thing or, at any rate, have subtle shades of distinction that are meaningless in the context in which they are used. It was therefore necessary to look to the surrounding circumstances and determine whether they had acquired special technical significance at the date of the Constitution. For that purpose, it was necessary to examine the history of the conditions of service under the Crown and look to the various statutes and rules then in force. * * * * * * * * * *"

Moti Ram Deka's case, AIR 1984 Supreme Court 600 deals with validity of the Rules 148 and 149 of the Railway Establishment Code, Rule 148 (3) related to non-pensionable railway service and, inter alia provided:

> "The service of other (non-pensionable) railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not however required in the case of dismissal or removal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution, retirement on attaining the age "of superannuation, and termination of service due to mental or physical incapacity".

As regards this Rule, the Court observed:

> "It is thus clear that Rule 148 (3) empowers the appropriate authority to terminate the services of other non-pensionable railway servants after giving them notice for the specified period, or paying them their salary for the said period in lieu of notice under Rule 148 (4)."

After 1957, non-pensionable services were ended, and Rule 149 (3) provided:

> "Other railway servants :- The services of other railway servants shall be liable to termination on notice on either side for the period shown below * * * * * * *".

The Court observed :

> "Just as under Rule 148 (3) the services of the railway employees to which it applied could be terminated after giving them notice for the period specified, so under Rule 149 (3) termination of services of the employees concerned can be brought about by serving them with a notice for the requisite period, or paying them their salary for the said period in lieu of notice under Rule 149 (4)."

On the question that arose the Court said :

> "That takes us to the question as to the true scope and effect of the provisions contained in Article 311 (2), and the decision * * * * * * * * *"

The Court then gives the previous legislative history as had been done in the case of Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36. The ratio of the decision of the Court admittedly is contained in paragraph 26 at p. 610 of the judgment. As regards the permanent railway servants, the Court held:

> "A person who substantively holds a permanent post has a right to continue in service, subject of course to the rule of superannuation and the rule as to compulsory retirement. "If for any other reason that right is invalid" and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal. In other words termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must per se amount to his removal." (Italic is ours) (Here in " ").

Having made the above findings, the Court held that Rules 148 (3) and 149 (3) contravened the provisions in Article 311 (2) and were, therefore, invalid. The submission on behalf of the petitioners is that we must take cognisance of the phrase "if for any other reason that right is invaded" as contained in the above passage. The submission is that the Supreme Court had carved out only two exceptions to the ordinary rule that the termination of service must inevitably mean the defeat of Government servant's right to continue in service and as such would be in the nature of a penalty and amounted to removal. The two exceptions were the rule of superannuation and the rule as to compulsory retirement. The Advocate General has submitted that, in the above passage, the observations made by the Supreme Court in the case of

Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36, relating to the Government's right to abolish posts and retrench Government servants have not been considered. The Supreme Court was not at that stage called upon to carve out all the exceptions to the rule that the termination of service must per se amount to penalty. He has further submitted that, in fact, in the latter part of its judgment, the Supreme Court has considered the relevant observations in the case of Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36, and has approved of the same.

17. In the majority judgment in paragraph 40 at p. 614 the following is quoted from the majority judgment in Parshottam Lal Dhingra's case, 1958 SCR 828 : AIR 1958 Supreme Court 36 :-

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

The Court then observed :

> "Reading these two observations together, there can be no doubt that with the exception of appointments held under special contract, the Court took the view that wherever a civil servant was appointed to a permanent post substantively, he had a right to hold that post until he reached the age of superannuation or was compulsorily retired "or the post was abolished". **** ***" (Italic is ours) (Here in " ").

In paragraph 41 at p. 615, the Court quoted from Parshottam Lal Dhingra's case, 1958 SCR 828 : AIR 1958 Supreme Court 36 the following :

> "It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, 'he cannot be turned out of his post unless the post itself is abolished, or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311 (2)'. Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment". (Italic (here into ' ') is ours). Now, in disapproving of a part of the observations from the abovequoted passage in the case of Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36, the Court observed as follows :-
> "The learned Chief Justice * * * * * * * * has made 'two' significant additions * * * * *

> "he refers to a contract or service rules which may permit the authority to terminate the services of a permanent servant without taking the case under Article 311 (2), though such termination may not amount to ordinary or compulsory retirement. 'The absence of contract, express or implied, or a service rule which has been introduced' in the present statement are not to be found in the earlier statements * * * * * and additions of these two clauses apparently is due to the fact that the learned Chief Justice considered Rule 49 and the explanations attached thereto and brought them into the discussion of a permanent servant, and that, we venture to think, is not strictly correct". (Italic (here into ' ') is ours).

The Supreme Court quoted the following further passage from Parshottam Lal Dhingra's case, 1958 SCR 828 : AIR 1958 Supreme Court 36, in the next paragraph :

> "As already stated, if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause * * * * * * *".

and observed :-

> "With respect, we wish to make the same comment about this statement which we have already made about the statement just cited."

We have in some detail referred to the above passages from the judgment in Moti Ram Deka's case, AIR 1964 Supreme Court 600 in order to find out if the observations in the case of Parshottam Lal Dhingra, 1958 SCR 828 : AIR 1958 Supreme Court 36 relating to the termination of service of a Government servant upon abolition of his post have been disapproved of by the Court in Moti Ram Deka's case, AIR 1964 Supreme Court 600 and/or whether these observations have ceased to be binding on us. We have given anxious consideration to the question and have come to the conclusion that, in fact, in Moti Ram Deka's case, AIR 1964 Supreme Court 600, the majority judgment does not refer to the third exception specifically mentioned in Parshottam Lal Dhingra's case, 1958 SCR 828 : AIR 1958 Supreme Court 36, viz. "unless the post itself is abolished" in the above passage where the "two significant additions" have been disapproved of. The above third exception, therefore, may justifiably be held to have been approved of. In any event, it cannot be held to have been disapproved of and the law of the third exception as enunciated in Parshottam Dhingra's case, 1958 SCR 828 : AIR 1958 Supreme Court 36, must be held to be binding.

18. It is significant that whilst dealing with the Additional Solicitor General's contention that the Rules 148 and 149 of the Railway Code only provided for cases of termination of services simpliciter in cases where rules provided for retirement and/or posts were abolished, the Court had an opportunity to disapprove of this third exception, viz. termination of service arising on

abolition of post but the Court did not do so. (See paragraph 33 of the judgment). This supports our conclusions mentioned in the foregoing paragraph.

19. This conclusion derives support from the decision of the Supreme Court in the case of *Champaklal v. Union of India*[7], In paragraph 11 at page 1861 the Court observed : "One reason for terminating the services of a temporary servant may be that the post he is

[7] AIR 1964 SC 1854

holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end". This decision reaffirms the previous view of the Supreme Court that termination of service simpliciter consequent upon cessation and abolition of post does not attract provisions in Article 311

20. It is clear that Subba Rao, J. (now Chief Justice) in his judgment in Moti Ram Deka's case, AIR 1964 Supreme Court 600 ascertained afresh the true meaning of the phrases "dismissal" and "removal" and arrived at a dissenting conclusion in respect of "rules relating to compulsory retirement" and observed in respect of retrenchment, abolition of post and compulsory retirement that "if an opportunity is given * * * * * * * * * to show cause against the proposed action, he may plead and establish that either there was no genuine retrenchment or abolition of posts or that others should go before him". These findings are not adopted by the majority and are, with respect, contrary to the other binding decisions of the Supreme Court referred to by us.

21. Following the majority decision in Moti Ram Deka's case, AIR 1964 Supreme Court 600 and the other binding decisions of the Supreme Court, we hold that termination of service consequent upon abolition of posts does not involve "removal" from service within the meaning of Article 311 and does not involve punishment at all. As the discharge from service indicated in the impugned notices is to result upon abolition of posts, the petitioners were not entitled to any opportunity to show cause against the impugned notices (and orders) of discharge. The notices are therefore not invalid as contravening Article 311 (2) and the first contention fails.

22. The second ground is that the matter of permanent allotment of surplus staff in Class III and IV Government services subsequent to the appointed day (May 1, 1962) has been specifically provided for in section 242-A which came on the Statute Book on December 15, 1962. None of the other sections in the Act deals with or makes provision for such a subsequent allotment. It is rightly pointed out that this section enables and authorises the Government to allot the surplus staff to District Services, Class III and IV of Zilla Parishad within a period of three years from the appointed day, i.e. on or before December 1, 1965. The impugned notices are for allotment of the petitioners to Class III Service in Zilla Parishad as of and from August 16, 1966, and for that very purpose terminate employment with the Government. The submission is that the three years' period from the appointed day (May 1, 1962) having expired on May 1, 1965 the Government had ceased to have any power of allotting the surplus staff to Zilla Parishad as from and after May 1, 1965. The impugned notices (orders) allotting the petitioners having been issued after

May 1, 1965, are illegal and of no effect and not binding. The allegations and submissions made in that connection in paragraph 6 of the petition have been dealt with in paragraph 9 of the affidavit in reply by denying the same.

23. The relevant part of section 242-A provides :

> "Where consequent on the transfer or entrustment of powers and functions by or under this Act to Zilla Parishad there is found to be surplus staff in Government offices throughout the State, then, notwithstanding anything contained in this Chaper, the State Government may, within a period of three years from the appointed day ***** allot any of the Government officers or servants from such staff to the District Technical Service**** of the Zilla Parishad * * * * * *"

The phrases "notwithstanding anything contained in this Chapter" and "within a period of three years from the appointed day" in the section are significant. It is clear that the section makes a specific provision in connection with the staff determined as surplus subsequent to the appointed day. It is clear that the power to allot such surplus staff to the services of Zilla Parishads is directed to be exercised within a period of three years from the appointed day. It is clear that any other provision in the Act enabling the Government to allot the surplus staff to Zilla Parishad has been withdrawn and the power is restricted and limited to be exercised within a period of three years from the appointed day. This being a specific provision in respect of the staff determined and ascertained as surplus and to be allotted after the appointed day to Zilla Parishad, it applies in all particulars to the cases of the petitioners and all other members of the staff who have been ascertained as surplus staff subsequent to the appointed day.

24. It is well established that when specific provision in a statute is applicable to a particular set of facts, any other general provisions in respect of the same matter in the same statute cannot be held to be applicable to those facts. The matter must be held to be governed by the specific provision. Having regard to the above finding and the fact that the petitioners were ascertained surplus staff to be allotted after the appointed day, we have no doubt that the only power enabling the Government to allot the petitioners to Zilla Parishads was contained in section 242-A of the Act. The Government was under that section entitled to allot the surplus staff to Zilla Parishads within a period of three years from the appointed day i. e. on or before May 1, 1965. The purported exercise of the powers contained in this section for allotting the petitioners and other persons similarly situated to Zilla Parishads as on and from August 16, 1966, is not in consonance with the provisions in the section. The Government had therefore, no power to allot the petitioners and persons similarly situated to Zilla Parishad on and after May 1, 1965.

25. In this connection, the learned Advocate General relied upon the preamble and sections 103, 242, 244 and 253-A and the general scheme of the Act and contended that the scheme and the sections clearly envisaged that different works of National Extension Schemes and Block Development Projects were from time to time intended to be transferred to Zilla Parishads even subsequent to the appointed day (May 1, 1962), Section 253-A which by an Ordinance and

amending Act has since August 27, 1964 come into force made all previous allotments of Government servants to Zilla Parishads temporary and provisional. He contended that in fact up to the date of the impugned notices Government servants had not been permanently allotted to Zilla Parishads. According to him, for these reasons, the power of the Government under section 242 read with section 244 to make "initial appointments and "permanent allotments" of Government servants had continued even subsequent to May 1, 1965, and had not become exhausted or lapsed as contended on behalf of the petitioners. He has submitted that in construing sections 242 and 242-A, grammatical and literal construction need not be adhered to, and the rule of construction enunciated in Hayden's case and approved of by the House of Lords and accepted by the Supreme Court in several cases should be followed. He has relied upon the decisions in the cases of *Attorney General v. (Prince) Hanover*[8], at 460-1-3; and *R. M. D. Chamarbaugwalla v. The Union of India*[9] and Maxwell on Interpretation of Statutes, 221 (11th Edition). He relies upon the facts which

[8]1957 A. C. 436

[9]1957 SCR 930 : AIR 1957 SC 628

led to enactment of section 253-A and the fact that permanent allotments to Zilla Parishads had not been made up-to-date.

26. The provisions in sections 242, 244, 246 and 242-A and 253-A require to be read together for ascertaining the correctness of the above submission. Section 242 provides that "Subject to the provisions of this Chapter', such members of the services of the State Government service as are allotted * * * * * shall be taken over by Zilla Parishad ***" and further provides for matters of tenure and terms and conditions of service of the allotted staff. The proviso one in the section provides: "Provided the terms and conditions of service applicable immediately before 'the appointed day' ******* shall not be varied to "disadvantage of such staff except with the consent of the Government. Section 244 provides that "The initial appointment of * * * * * or servant under a Zilla Parishad or allotment * * shall be made by" the Government or nominated Government officer. Section 246 provides that "Nothing in the foregoing provisions shall apply to "any servant . . . allotted * * * * who by notice in writing given ***** before 'the appointed day' or 'as the case may be on the date of his allotment under section 242-A' ***** "intimates his option of not desiring to become' .* * * * * *servant of Zilla Parishad **** * * and thereupon he shall be permitted to retire from Government service *** and shall be entitled to such terminal benefits * * * * * * * * * *as may be prescribed * ****." Subsequently enacted section 242-A provides for allotment within 3 years from the appointed day as already noticed. Section 253-A still subsequently enacted provides for provisional allotment for a limited period. (Italic (here in ' ') is ours). It is clear to us that power with Government to make

> "initial allotment" of the Government servants and the consequence thereof have to be gathered from the contents of the Sections 242 and 244. It appears to us that the Legislature had intended that District Services for each of the Zilla Parishads should be constituted and the orders for initial appointments and allotments of the Government servants to Zilla Parishads should be made respectively under sections 229, 242 and 244

so as to come into effect as on and from the "appointed day" (May 1, 1962). The phrases "the appointed day" in the proviso one to section 242 and section 246 and "initial" in section 244 go to show that above is the true effect and construction of these sections in respect of the scheme of allotment contained therein. It is in this connection important to remember that under Section 246 an absolute right to claim retirement by giving one month's notice in writing is conferred on the allotted Government servant. The one month period commences with the "appointed day in respect of initially allotted servants whilst in respect of servant subsequently allotted under section 242-A, it starts with a subsequent date of allotment. Under section 242, Zilla Parishads are compelled to accept and lake over allotted servants whilst under section 242-A allotment is liable to be made only with the consent of Zilla Parishads. It is clear to us that the restrictions on powers of of allotment particularly as regards time under section 242-A would be illusory and negatived if it is held that section 242 empowered the Government to make allotments after the appointed day. The provisions in that section are in fact subject to the provisions in the rest of the Chapter XIV including the sections 242-A, 244 and 253-A. We are, therefore, unable to accept the submissions made as above on behalf of the Government. The fact that the Government had as on and from May 1962 transfered works to Zilla Parishads and treated all Government servants engaged in those works as initially allotted to Zilla Parishads cannot be disputed. The initial allotments were challenged in Special Civil Application No. 23 of 1964 and the Government then treated the initial allotments as invalid. In that very connection, section 253-A was enacted. These facts, however, cannot alter our conclusion that the provisions in sections 242 and 244 are not applicable to the allotments which could only be made under section 242-A.

27. In the result, we accept the contention that the purported allotment of the petitioners to the services of Zilla Parishads as of and from August 16, 1966, is in contravention of section 242-A and is therefore invalid and of no effect.

28. The third contention is that the impugned resolution dated March 18, 1966, as clarified by the two circular letters dated April 16, 1966, contain two standards to be followed for retrenchment of incumbents of surplus posts differently for (1) permanent servants and (2) temporary servants. The submission is that there is no rational basis for classification of permanent servants and temporary servants differently, and there is no nexus between such classification and the object of retrenchment. The two standards allowed to be followed leave the matter of application of either standard to the discretion of the Collectors arbitrarily. One or the other of the above standards has been applied by different Collectors. The Collectors have been left with the discretion of picking and choosing from amongst the Government servants for their removal and retrenchment arbitrarily. The result has been that seniors are discharged and juniors are retained in several districts including Dhulia. The submissions if that the scheme contained in the impugned resolution as clarified by the above two circular letters permits unwarranted discrimination in the matter of retrenchment and is violative of the provisions of Articles 14 and

15 of the Constitution.

29. Before referring to the relevant facts, it is convenient to notice the scheme of retrenchment contained in the above resolution and the two clarificatory circular letters. The relevant provisions in these documents are as follows. In paragraph 1 of the resolution, it is recited that, in the subsequent paragraph, directions are given for final allotment to the Zilla Parishads of Class III and Class IV Government servants borne on the cadres of posts, the duties and functions of which have partly or wholly been permanently transferred to Zilla Parishads. The second paragraph directs that final allotment to Zilla Parishads should be made to the extent permanent and temporary posts are rendered surplus as a result of transfer of Government's activities to Zilla Parishads and are consequently abolished. Directions are then given regarding the method to be adopted to ascertain the posts rendered surplus and consequently to be abolished. The third paragraph relates to the scheme of allotment of Class III and Class IV services to Zilla Parishads by the abolition of surplus posts. It also relates to the discharge of Class III and Class IV servants from Government service, and the sub-paragraph (2) provides as follows:

> "On abolition of surplus permanent and/ or temporary posts from a concerned cadre of Class ******** service of a Government department, final allotment of Government servants to Zilla Parishads or discharge from Government service*** be made in the order of their inter se juniority amongst substantive holders of posts in the case of abolition of permanent posts in the cadre and inter se juniority in the whole cadre in the case of abolition of temporary posts as the case may be *****."

Sub-paragraph (3) contains directions for service of a notice of three months on a Government servant due to be finally allotted to Zilla Parishad giving him an opportunity to exercise option not to accept allotment to Zilla Parishad and thus to accept discharge from Government service, Sub-paragraph (4) contains the scheme for retrenchment in respect of abolished permanent and/or temporary posts of Class III and Class IV services. The relevant parts of the sub-paragraph (4) are as follows :

> "Where a substantive holder of a permanent post in a cadre officiates for the time being for a temporary post in another cadre * ** * * *, action should be taken as under :
> (a) If he is due to be finally allotted both with reference to his officiating temporary post and his substantive post, he should be finally allotted to Zilla Parishads * * * * *.
> (b) If he is due to be finally allotted with reference to his officiating temporary post but not his substantive post, he should opt in writing for (1) being finally allotted to Zilla Parishad * * * or (2) being retained in Government service after reversion, if necessary to a suitable post * * * * *.
> (c) If he is due to be finally allotted with reference to his substantive post but not his officiating temporary post, he should opt in writing for (1) being finally allotted to Zilla Parishad ***** or (2) being retained in Government service in the post he is officiating on

a purely temporary basis and after forfeiting unconditionally all his claims to his substantive post."

Paragraph 4 provides that final allotment to Zilla Parishads or the action in lieu of such allotment should take effect not later than August 16, 1966. The two clarificatory circular letters dated April 16, 1966 inter alia contain the following instructions, Paragraph 1 in the first letter points out that the scheme in paragraph 3 of the resolution dated March 18, 1966 was decided upon on the presumption that all the permanent posts in the concerned cadre would be duly substantively filled in by the time notices were due to be issued. It is further stated that it had been ascertained that, in a few cadres, a large number of permanent posts had been meant to be substantively filled in and that the failure to carry out confirmations in a large number of parmanent posts in a few cadres was likely to affect the purpose underlying the scheme of final allotment. The Government had, therefore, re-examined the position. The Government, therefore, clarified that on abolition of surplus permanent posts from a concerned cadre which had not been substantively filled in final allotment of Government servants to Zilla Parishads or discharge from Government service ***** should be made in the order of inter se juniority in the whole cadre. In that connection, the Government directed that sub-paragraph (4) of paragraph 3 of the resolution dated March 18, 1966 would be applicable in cases where surplus permanent posts were not substantively filled in on the footing that the word "temporary" in sub-paragraph (4) was deleted. In the second circular letter, in view of the instructions in the first circular letter, instructions were given as regards Government servants who should be given notices of final allotment to Zilla Parishads in respect of surplus permanent posts not filled in and substantively vacant. The instructions contained in paragraph 2 are as follows :

"* * * * * If the number of surplus substantive holders of permanent posts borne on a concerned cadre is less than the number of surpuls permanent posts borne on the cadre, persons to whom notices of final allotment should be given against surplus permanent posts that are substantively vacant will be from among the junior-most permanent or temporary Government servants officiating in the cadre ****** and notices in the proper form should forthwith be issued to permanent persons who are junior-most as stated above among the officiating personnel in the cadre as stated above."

Notices are directed to be served not later than April 23, 1966.

30. It appears that the scheme for retrenchment as contained in the above resolution and the two clarificatory circular letters provides as follows. On abolition of permanent surplus post from a concerned cadre of Class III and Class IV services, discharge from service must be made in the order of inter se juniority amongst the substantive holders of posts in the cadre. In the case of abolition of temporary posts, discharge from service must be made in the order of inter se juniority in the whole cadre. Government servants who are thus liable to be discharged should be finally allotted to Zilla Parishads with an option not to accept allotment and retire from the Government service. In this very connection, in respect of Government servants officiating for

the time being in another cadre but being substantive holders of permanent posts abolished, the question regarding permanent posts found surplus and to be abolished is to be dealt with in the manner mentioned in paragraph 4 of the resolution. For the purpose of retrenchment in respect of abolition of permanent surplus posts, the standard prescribed under paragraph 3 (2) was inter se juniority amongst substantive holders of post in a cadre, whilst, in respect of abolition of temporary posts, the standard was inter se juniority in the whole cadre.

31. As regards the manner in which the scheme of retrenchment came to be applied in regard to permanent posts of Aval Karkuns in District Dhulia, the relevant facts are as follows. Prior to April 29, 1966, the Collector of Dhulia found and held that there were 46 permanent posts of Aval Karkuns. He further found that, due to transfer of National Extension and Block Development Projects to Zilla Parishads, four of these permanent posts were rendered vacant. He further found that, in fact, 42 posts were held by permanent Aval Karkuns. Vacancies in 4 of the permanent posts had not been filled in. There were 4 permanent posts of Aval Karkuns that were surplus and to be abolished. The 4 vacancies not filled in had arisen because (1) S. D. Deshmukh, the holder of the post, lost lien on the post, (2) U. A. Chaudhary, and (3) L. C. Chaudhary were appointed to other substantive posts, and (4) B. R. Patil had retired. The Collector further found that A. D. Sali and the 3 petitioners were the senior-most provisionally substantively confirmed Aval Karkuns entitled to become substantively confirmed Aval Karkuns in the above four vacancies. He, therefore, passed directions substantively confirming A. D. Sali and the 3 petitioners in the permanent post of Aval Karkuns respectively as from April 1, 1963, February 1, 1965 and February 18 and 19, 1966. The result of these directions was that there were 46 substantive holders of 46 permanent posts of Aval Karkuns. Four of these posts were rendered surplus and to be abolished. To carry out retrenchment of four posts, he served notices of discharge on A. D. Sali and the 3 petitioners each dated April 5, 1966. The 3 petitioners received these notices on April 14, 1966. The scheme of retrenchment that was followed in the case of these four occupants of permanent posts was in accordance with the directions contained in paragraph 3 (2) of the resolution dated March 18, 1966. These four persons (including the petitioners) were selected for discharge, because they were junior-most among the substantive holders of posts in the cadre from which four posts were determined surplus and to be abolished as on and from August 16, 1965.

32. Difficulties, subsequently and after the date of the above notices of discharge, arose as follows. By an order dated September 7, 1965, the Government had made new permanent posts of Class III services in respect of occupants of these posts in the office of the Commissioner, Bombay Division. The posts which were made permanent were :

(1) Aval Karkun 11

(2) Senior Clerks in Aval Karkun's grade 3

(3) Clerk 1

The above 11 posts of Aval Karkuns working in the office of the Commissioner, Bombay Divison, were liable to be distributed in the districts in the Bombay Division on the basis of ratio

of non-gazetted permanent post of each category in each district to the total number of non-gazetted permanent posts of such category in all the districts in the Division. The Commissioner had not distributed these posts in the 7 districts in the Bombay Division on the above basis until April 29, 1966. By the order dated April 29, 1966, he distributed 11 permanent posts of Aval Karkuns is the 7 districts. Two of the posts came to be distributed and allocated to Dhulia District. The result was that there were in all 48 permanent posts of Aval Karkuns at Dhulia. The Collector, had, however, found and taken action and given notices of discharge to Sali and the 3 petitioners previously on the basis that there were 46 permanent posts of Aval Karkuns and not 48 as fixed as a result of the order dated April 29, 1966. This situation was met with by withdrawing notices of discharge served on A. D. Sali and petitioner No. 1, P. V. Naik, who were to the other two petitioners as holders of permanent posts of Aval Karkuns. By this method two permanent posts of Aval Karkuns stood retrenched in respect of petitioners Nos. 2 and 3. The two last permanent posts of Aval Kerkuns, being 47 and 48 had remained unfilled. In respect of these unfilled posts, directions for confirming two senior-most provisionally substantively confirmed Aval Karkuns were not carried out. Such directions previously issued had been carried out in the case of the three petitioners and Sali as already recited above. The retrenchment in respect of the last two unfilled permanent posts was effected in accordance with the scheme in the second clarificatory letter dated April 16, 1966, by removal of the two junior-most in the cadre of Aval Karkuns, viz. temporary and/or officiating Aval Karkuns, to their permanent posts of Clerks.

33. The petitioners contend that the above facts glaringly disclose discrimination against the petitioners in the matter of retrenchment of posts in accordance with the directions contained in the resolution dated March 18, 1966. The contention is that, for the particular purpose of retrenching four permanent posts of Aval Karkuns, the petitioners were not liable to be confirmed in these posts as was done by the Collector after March 18, 1966. The submission is that, in connection with the abolition of these posts, the only course open to the Government was to proceed on the basis that Class III and Class IV services were a single class. In the result, the four junior-most in Class IV services should have been retrenched from service. In the alternative, the submission is that, in any event, the Class III services were a single class and retrenchment should have been effected by removing four junior-most in the whole cadre-class. Thus, the holders of permanent posts of Aval Karkuns and those who were substantively provisionally confirmed in these posts as also the holders of temporary and/or officiating posts of Aval Karkuns formed one single class belonging to the same cadre of service. The four junior-most holders of temporary and/or officiating posts of Aval Karkuns should have been retrenched. The further alternative submission is that the holders of permanent posts of Aval Karkuns and the holders of provisionally substantively confirmed posts of Aval Karkuns formed a single class in the same cadre. In the result, the four junior-most in this class viz. junior most of the provisionally substantively confirmed Aval Karkuns should have been retrenched. The further alternative submission is that the action of confirming Sali and the 3 petitioners in the permanent posts of Aval Karkuns merely to remove and discharge them from service was removal not of the

junior-most from the concerned cadre and was glaringly and prima facie discriminatory. In fact, this scheme having been followed in all the 7 districts in the Bombay Division and also in the whole of the State of Maharashtra, the retrenchment will be prima facia glaringly discriminatory. This result has followed from the directions given in the resolution dated March 18, 1966, as clarified by the two circular letters dated April 16, 1966. The result of the directions has been that, though the last two petitioners were prior to March 1966 senior-most provisionally substantively confirmed Aval Karkuns, because the two substantive permanent posts of Aval Karkuns remained unfilled, the two provisionally substantively confirmed next two juniors to the petitioners have not been retrenched. In other words, P. B. Mohodikar and S. S. Chaudhary, ranking next to the petitioners have not been retrenched by not filling in two vacant permanent posts of Aval Karkuns. The discrimination, therefore, is apparent. The discrimination is the result of the scheme in the resolution dated March 18, 1966, which permitted the Collectors to pick and choose from amongst the services for removal by not filling in the permanent posts.

34. By paragraphs 16 and 17 in the affidavit in reply, it is denied that discharge of Government servants was left to the will of the Collector. Confirmations by the Collector had been carried out according to the principles previously laid down by the Government for its services, and the question of the will or the choice of the Collector was irrelevant. The Collector had not taken action with improper motive. It is pointed out that the distribution of posts by the Divisional Commissioner by his order dated April 29, 1966 resulted in two permanent additional posts of Aval Karkuns in Dhulia Collectorate. The Collector of Dhulia made no substantive appointments in those posts since that would have left no adequate time for him to issue two fresh notices of discharge to persons who became due for confirmations and thereupon for final allotment. In view of these two additional posts, the Collector withdrew notices served on A. D. Sali and petitioner No. 1.

35. The further reply of the Government is that, after careful consideration of methods to be employed for the allotment of Government servants to Zilla Parishads, the Government arrived at the formula set out in the resolution dated March 18, 1966. The formula would result in the least inconvenience to the Government servants. It did not involve denial of equality.

36. The question is as to whether the submissions made on behalf of the petitioners relating to the effect of the resolution dated March 18, 1966 read with the two clarificatory circular letters dated April 16, 1966 are correct and whether the action taken in pursuance of the directions in the above documents as mentioned above involves discrimination and unequal treatment in violation of the provisions in Articles 14 and 16 of the Constitution. In this connection, the important fact to be noticed is that, in view of the transfer of the work of National Extension Schemes and Block Development Projects to the Zilla Parishad at Dhulia the Collector of Dhulia determined 4 permanent and 26 temporary posts of Aval Karkuns and 12 permanent and 50 temporary posts of Clerks on his establishment as rendered surplus and due to be abolished. This determination was administrative and direct result of the provisions in the Act and is not questioned as being mala

fide or invalid or not binding. The Government had to determine and frame a scheme for carrying out the consequential work of discharging 4 permanent and 26 temporary Aval Karkuns and 12 permanent and 50 temporary Clerks from the establishment of the Dhulia Collectorate and of offering allotment to discharged employees to the Zilla Parishad at Dhulia. Similar was the situation in all the districts. The resolution dated March 18, 1966 and the two clarificatory circular letters dated April 16, 1966 of instructions contain the scheme evolved by the Government for the above purpose or the whole of the State of Maharashtra. This scheme is not directed against any particular employee in District Dhulia or in any other district in the State of Maharashtra. This is a general scheme and, therefore, not liable to be described as mala fide and/or intending to affect the rights of any particular employees in Government service. The resolution under the circumstances justifiably gives directions in connection with (1) abolition of surplus permanent posts and (2) abolition of surplus temporary posts. In connection with each surplus permanent post, discharge from service (and allotment) is directed to be made in the order of inter se juniority amongst the substantive holders of posts and in the case of temporary posts in the order of inter se juniority in the whole cadre. Now, we have found it difficult to accept the contention that, in connection with abolition of surplus permanent posts of Aval Karkuns and surplus temporary posts of Aval Karkuns, retrenchment should have been ordered on the footing that Class 3 and Class 4 services is a single cadre (or class) and the junior-most of the Clerks should have been retrenched. "Cadre" has been defined in the Bombay Civil Services Rules, hereinafter referred to as the Service Rules, as follows :

> " 'Cadre' means strength of service or a part of service sanctioned as a separate unit." Now, having regard to the terms and conditions of services of Aval Karkuns on the one hand and Clerks on the other, it is clear that the cadre of Aval Karkuns is a sanctioned separate unit. It is not one with the other separate sanctioned unit of "Clerks". To abolish posts, temporary and/or permanent, in the cadre of Aval Karkuns, retrenchment of Clerks would prima facie be irrelevant. We are unable to hold that retrenchment of Clerks could serve the purpose of abolition of permanent and/or temporary posts of Aval Karkuns. On the contrary, it is clear to us that the abolition of these posts, could only be successfully carried out by retrenchment of Aval Karkuns and not otherwise.

37. The question is as to whether, in connection with the retrenchment of the permanent posts of Aval Karkuns and allotment of occupants of such permanent posts on the one hand and retrenchment of temporary posts of Aval Karkuns and allotment of occupants of those temporary posts to Zilla Parishads on the other, a distinction could be justifiably made that the Aval Karkuns in these two different kinds of posts did not belong to the same cadre. Apparently, it would be difficult to make a finding that permanent Aval Karkuns and temporary Aval Karkuns belong to different cadres or sanctioned units of service. We have no doubt that they all belong to the same cadre. There is, however, a strong distinction between the holders of substantive permanent holders and temporary posts inasmuch as the olders of temporary posts can have no vested right to continue in their temporary posts. Retrenchment of the holders of temporary posts would not

have served the purpose intended to be achieved by the abolition of permanent posts. It was, therefore, essential and necessary in connection with the retrenchment of four surplus permanent posts of Aval Karkuns that the permanent holders of such four posts (whose lien to these posts could not be destroyed even by consent) would have to be retrenched. Now, if this is the true position, we cannot accept the contention that the purpose of retrenching the four permanent posts of Aval Karkuns could be carried out by effecting retrenchment of the holders of temporary posts of Aval Karkuns. The classification of the holders of permanent posts as being different from that of the holders of temporary posts has thus direct nexus with the objects of retrenchment and offering retrenched staff allotment to permanent and temporary posts with Zilla Parishads. The classification has reasonable and rational basis, having regard to the twin objects of retrenchment and allotment as discussed above. The two classes were, therefore, justifiably differentiated, and different standards in respect of retrenchment of these classes could Justifiably be provided for. In the case of AIR 1964 Supreme Court 1854, questions arose as regards the different treatment meted out to permanent servants and temporary servants in the rules for retirement from service. It was contended that the rules were violative of Article 16 in respect of equality of opportunity in employment in public services. The Court negatived that contention the Court examined the nature of differences in the employment and posts of permanent and temporary employees and held as regards the matter of retirement from service that –

> "The classification of Government servants into these classes is reasonable and the difference * * * cannot be said to be discriminatory * * *".
> "In particular the very fact that the service of a Government servant is temporary makes him a class apart from those in permanent service and such Government servant cannot claim all the advantages which the permanent servant has * * *".

These observations are applicable to the matter of retrenchment and allotment arising in this case.

38. But it has been pointed out on behalf of the petitioners that, by the above mentioned two clarificatory letters in respect of abolition of unfilled permanent posts and filled permanent posts, two different standards of instructions were given. Thus, by the first clarificatory letter it was directed –

> "On abolition of surplus permanent posts from a concerned cadre which could not have been substantively filled in, final allotment of Government servants to Zilla Parishad or discharge from Government service should be made in the order of inter se juniority in the whole cadre".

In that very connection, by the second clarificatory letter, it was directed in respect of the posts not substantively filled that notices of final allotment should be given to the junior-most permanent or temporary Government servants officiating in the cadre. Apparently, the scheme was that, in respect of abolition of unfilled permanent posts of Aval Karkuns, retrenchment

should be made by giving notices to the juniormost in the whole cadre which would include and mean temporary and/or officiating Aval Karkuns. In contrast, under the original scheme in the resolution dated March 18, 1966, where permanent posts were filled to the fullest extent, retrenchment was directed to be made and is sought to be affected by retrenching the holders of permanent posts of Aval Karkuns.

39. In the instant case, the result of the above scheme as already recited above was that, in the first instance, notices of discharge were given to Sali and the 3 petitioners as junior most holders of four surplus permanent posts of Aval Karkuns. This was done by the impugned notices dated April 5, 1966. On April 29, 1966 the Commissioner, Bombay Division, distributed two additional permanent posts of Aval Karkuns at Dhulia. The result was that Sali and the 1st petitioner were found not to be holders of two permanent posts of Aval Karkuns due for abolition at Dhulia. Notices of discharge served on them were withdrawn. Petitioners Nos. 2 and 3 continued to be under retrenchment. In connection with abolition of two unfilled permanent posts the junior most officiating and/or temporary Aval Karkuns became liable to be retrenched. The two senior most provisionally confirmed Aval Karkuns, being the two next juniors to petitioners Nos. 2 and 3 i. e. Moidekar and Choudhary, were not served with notices for retrenchment. Apparently, therefore, according to the petitioners, the scheme in the resolution and the two circular letters is discriminatory. In this connection, it appears to us that abolition of permanent posts could not be achieved except by retrenching the holders of permanent posts. In our view, therefore, under every possible circumstance, petitioner Nos. 2 and 3 being the juniormost holders of permanent posts of Aval Karkuns always liable to be retrenched. None in the class of holders of permanent posts has been treated differently or unequally or is discriminated against by retrenchment of the petitioners. The default in not confirming Moidekar and Choudhary in the permanent posts arose because the Collector of Dhulia had made confirmations in permanent posts of Aval Karkuns on the footing that there were 46 such posts only. That was the true fact until by this order dated April 29, 1966, the Commissioner distributed two permanent posts of Aval Karkuns to Dhulla. The Government's case that, under the service Rules 291 and 266, notice of 3 months was necessary for discharging Government servants on the ground of abolition of posts, and that, under the relevant rules and sections of the (Zilla Parishad Act, Government servants were entitled to a period of one month for exercising option of accepting allotment to services of Zilla Parishads and/or to retire from service, is well founded. As the whole work of retrenchment and allotment was intended to be and was bound to be completed before August 16, 1966, the Government's case that no time was left to make confirmations in the additional permanent posts of Aval Karkuns distributed by the Commissioner by order dated April 29, 1966, is correct. If any persons were confirmed in these additional unfilled posts, the Government was not in a position to serve them with the requisite notice of 3 months for discharge or to afford them the requisite option of one month to accept allotment to Zilla Parishad and/or to retire from service.

40. It is, therefore, clear that the default in not confirming Moidekar and Choudhary in the

permanent posts is accidental and is an insufficient basis for finding that petitioners Nos. 2 and 3 have been unequally treated or discriminated against. As already discussed above, provisionally substantively confirmed and/or temporary and/or officiating Aval Karkuns could justifiably be treated as belonging to a separate class for the twin objects of retrenchment and allotment. In this connection, it is relevant that Moidekar and Choudhary were not confirmed in the two unfilled permanent posts, because these two additional posts resulted from the distribution made as late as April 29, 1966. Retrenchment from these posts could not be carried out, because, after April 29, 1966, no adequate time was left for the Collector of Dhulia to issue fresh notices of discharge against these two employees who were due for confirmation and hence due for final allotment. In fact, administrative difficulties arose in all the districts in the Bombay Division, because 14 posts of Aval Karkuns came to be distributed by the Commissioner, Bombay Division as late as April 29, 1966, to different districts. It appears that this distribution of additional posts of Aval Karkuns, was made at a late date and it had administratively become difficult to fill in these posts for purposes of retrenchment from the Government service and allotment to Zilla Parishads. Accidentally, the fact of the distribution of additional posts on April 29, 1966 thus left in all districts unfilled permanent posts of Aval Karkuns to a certain extent. Some of these unfilled posts also required to be abolished. In these unfilled posts, the seniormost provisionally confirmed Aval Karkuns could have been confirmed and thereupon could have been retrenched from Government service and allotted to Zilla Parishads. The failure of the Collectors in making confirmations and retrenchment in the above manner in respect of unfilled posts is rightly stated to have arisen by reason not of any different classification or of the scheme of retrenchment and allotment contained in the resolution dated March 18, 1966. It arose merely because some Collectors defaulted in carrying out instructions for confirmations into permanent posts or because, in other cases, adequate time was not available for the Collectors to issue fresh notices of discharge to persons who were due for confirmation.

41. It is rightly pointed out that, under the schemes in the impugned resolution and the two clarificatory letters, all the holders of permanent posts have been treated on an equal basis and without any discrimination inter se. The same is the case in respect of all the holders of temporary and officiating posts in the same cadre.

42. On behalf of the petitioners, reliance has been placed on default made by the Collector at Ratnagiri in not carrying out instructions for substantive confirmations of provisionally substantively confirmed Aval Karkuns who, like the petitioners, were working in the vacant permanent posts of Aval Karkuns and the fact that, in the result junior-most Aval Karkuns have not been retrenched. In pursuance of instructions contained in the two clarificatory letters dated April 16, 1968, the juniormost temporary Aval Karkuns have been retrenched. Now, admittedly, Class III services at Dhulia are a distinct separate unit from similar services at Ratnagiri and, therefore, the facts of retrenchment at Ratnagiri or in any other district are irrelevant on the question of discrimination at Dhulia. Retrenchment at Ratnagiri was not carried out in accordance with the scheme in the impugned resolution only because of administrative default of

the main officers to enforce the scheme, and arguments on this question cannot be justifiably based on such defaults. The Advocate-General is also right in his submissions that similar schemes of retrenchment were directed to be enforced at Dhulia and Ratnagiri and in all the districts in respect of unfilled permanent posts rendered surplus and to be abolished. These facts, therefore, do not help the petitioners in any manner

43. On this question, certain authorities were cited. The question is of facts and in arriving at our findings, we have borne in mind the principles enunciated in these authorities which we do not find it necessary to discuss.

44. The third ground is accordingly rejected.

45. The fourth ground is that the impugned notice of discharge dated April 5, 1966 is in violation of Rule 3 of the Maharashtra Zilla Parishad (Appointment, Seniority and Pay Allowances) Rules, 1962. The contention is that, under the above Rule, upon allotment to the Zilla Parishad, the petitioners were to be provided with posts equivalent to the posts held by them in Class III Government services at the date from which the allotment became effective. In this connection, it requires to be noticed that, by the impugned notice dated April 5, 1966, upon discharge from the Government services as from August 16, 1966, the petitioners were informed that it was proposed to provide them with appointments to the posts of Senior Assistants in the District Service, Class III, under the Dhulia Ministerial Zilla Parishad and finally to allot them under Section 242 of the Act to the said District Service. Admittedly, at the date of the above notice and up to August 16, 1966, the petitioners were holding permanent posts of Aval Karkuns and the officiating posts of Mamlatdars in the Government service. The petitioners had been so officiating since 1965. The pay-scale of the petitioners in the above posts of Officiating Mamlatdars was Rs. 300-15-420- E. B. -15-450-20-550. The petitioners were getting in April 1966 and would have continued to get up to August 16, 1966, the basic salary of Rs. 315 plus dearness allowance of about Rs. 35 per month in the said scale. During this period, the pay-scale applicable to the petitioners' permanent posts of Aval Karkuns was Rs. 145-8-185-10 -215. In fact, the petitioners had, as provisionally confirmed Aval Karkuns, reached the maximum of Rs. 215 per month long prior to the date of the impugned notice of discharge. Under the proposed allotment of the petitioners to the Zilla Parishad, the pay-scale applicable to their posts of Senior Assistants in the District Service, Class III, admittedly was Rs. 135-5-145-6-175- E. B. -8-215 plus allowances as admissible in the District Service. The contention is that, under Rule 3, the petitioners were bound to be allotted and appointed in the Zilla Parishad to equivalent posts, thereby meaning posts with same financial benefits and scale of pay, as on the date of their transfers. These benefits and scales of pay - according to them were the benefits and scales of pay available to them as officiating Mamlatdars. As such equivalent posts had not been proposed to be provided to the petitioners by the impugned notice, the same violates Rule 3 of the said Rules.

46. In this connection, reliance has been placed on the definitions of phrases "allocated employee", "appointed day", "equivalent post" and "officiating" as contained in Rule 2 and also on the provisions in Rules 3, 5 and 8 of the Rules. Reliance has also been placed on the scheme of allotment contained in the impugned resolution dated March 18, 1966. In this connection, reference has also been made to the contents of Sections 242 and 242-A of the Act, Rule 3, inter alia, provides as follows :

> "Every allocated employee holding a corresponding post immediately before the appointed day shall be appointed to the equivalent post.

It an equivalent post is not available * * * * or if any equivalent post is not determined in respect of any post held by an allocated employee immediately before the appointed day, the person holding such post may be appointed to any post not lower in status than the post held by such person immediately before the appointed day in the District Service as the State Government may direct."

In clause (c) of Rule 2, "equivalent post" is defined to mean-

> "post in a District Service which the State Government may by order determine to be generally corresponding to a post held by an allotment employee immediately before the appointed day ***** having regard to the pay-scale, the minimum educational and other qualifications prescribed for the equivalent post and the corresponding post and the nature and magnitude of duties and responsibilities attached to such post."

Clause (g) of Rule 2 defines "officiating" to mean-

> "In relation to any period during which an allocated employee has officiated in any post means the period of service during which such employee has actually officiated in that post * * * * *."

The phrase "appointed day" in clause (c) defining "equivalent post" was amended on April 8, 1966, by substituting the words "the date of transfer". That phrase was thus, by the amendment, defined to mean the day on which an employee becomes an officer or servant of a Zilla Parishad under the provisions of section 241 or is (allocated and) transferred to District Service under section 242 or 242-A of the Act. In this connection, it is emphasized that, under paragraph 3 (4) of the impugned resolution dated March 18, 1966 in connection with the substantive holder of a permanent post and officiating for the time being in a temporary post in another (higher) cadre, action is directed to be taken for the purpose of allotment to Zilla Parishad so as to allot him for appointment to a post equivalent to his officiating post with a lien to be established on a post in the Zilla Parishad equivalent to his substantive post. In that connection, in the above sub-paragraph (4), reference is specifically made to Rules 3 and 5. Under section 242, it is directly provided-

> "Members of service allotted to District Service are directed to be taken over by the Zilla Parishad on such tenure and terms and conditions as may be prescribed by the State Government."

By the proviso to this section, it is directed that the terms and conditions of service applicable immediately before the appointed day to any person allotted to any of the District Services shall not be varied to his dis-advantage except with the previous approval of the State Government.

47. As already noticed above, on the basis of the above provisions in the Rules and the proviso in section 242 and the scheme for allotment as contained in the impugned resolution, the petitioners' case is that their proposed allotment to the District Service in the pay-scale and cadre of Rs. 135 - 5 - 145 - 6 - 175 - E. B. -8 - 215 plus admissible allowances is not to a post which is equivalent to the officiating post of Mamlatdar held by them at the date of their proposed transfer (August 16, 1966) to the Zilla Parishad. Now, prima facie, there is substance in these submissions. The reply of the Government to these contentions is in paragraph 10 of their affidavit in reply where it is denied that the petitioners were entitled to be appointed to posts equivalent to those of Mamlatdars held by them at the date of their transfer. It is contended that the petitioners did not hold substantively the post of Mamlatdars but they held substantively the posts of Aval Karkuns. The plea is –

> "Consequently, the petitioners were rightly and properly proposed for appointment to the equivalent posts of Aval Karkuns under the Zilla Parishads."

48. Though apparently the above submissions made on behalf of the petitioners appear to be well founded, it requires to be noticed that the power for allotment of Government servants in Class 3 and 4 to Zilla Parishad is contained in sections 242, 244, 242-A and 253-A of the Act. On a reading of the previous sections 239 and 240 along with these sections, it is clear that Government officers belonging to Class 1 and 2 Services are not liable to be allotted but are required to be sent on deputation to Zilla Parishads. In contrast, under sections 242 and 242-A, Government servants in Class 3 and 4 Services can be allotted to and are liable to be taken over by the Zilla Parishads in the District Services, Class 3 and 4. It is clear that, under the proviso to section 242 referred to above, the terms and conditions of service applicable immediately before the appointed day to the staff allotted to District Services, are not liable to be varied to its disadvantage except with the previous approval of the State Government. The Scheme under Rule 3 is also that the allocated employee is to be appointed to an "equivalent post" held by him on the date of his transfer. Even if an equivalent post is not available, he is liable to be appointed to any post not lower in status than that of the post held by such employee immediately before the date of his transfer to the District Services. Having regard to the scheme of sections 242, 244 and 242-A, it is abundantly clear that the allocation and allotment that can be made under those sections is not in respect of members of the services belonging to Class 1 and/or 2 but only in respect of members of services belonging to Class 3 and 4. The officiating posts of Mamlatdars

held by the petitioners at the date of their transfers (August 16, 1966) formed part of Class 2 Service. Even so, under the sections, the petitioners were liable to be allotted to Zilla Parishad, because they held permanent posts in Class 3 Service as Aval Karkuns. The sections and the rules made in respect of matters arising under these two sections must be held to deal with allotment of Class 3 and Class 4 Services to equivalent posts in the District Services, Class 3 and Class 4. The sections and the Rules do not relate to allotment to any posts and Services higher than Class 3 and Class 4. These sections and the Rules, therefore, must be held not to provide for allotment of members of Class 3 and Class 4 Services to any posts higher than the equivalent posts in Class 3 and Class 4 of the District Services. It is clear that the petitioners have not contended in the whole of their petition that they did not belong to Class 3 Service and were not liable to be allotted under sections 242 and 242-A to Zilla Parishad as belonging to Class III Service. Having regard to the provisions of sections 242, 244 and 242-A, it appears to us that the contention of the Government that the petitioners were liable to be appointed to posts equivalent to the permanent posts of Aval Karkuns in the District Services, is correct. The petitioners were under the sections and the rules - not entitled to be appointed to posts equivalent to those of Mamlatdars, which are Class II posts. This would be so, also because, in Class III Services in the Government and Zilla Parishads at no relevant time there were any posts equivalent to the posts of officiating Mamlatdars in Class II.The highest benefits available to Class III Service have been made available to the petitioners in their proposed allotment to Zilla Parishads. The allotment is accordingly not in, violation but in pursuance of the provisions, of sections 242, 244 and 242- and the relevant Rules. In spite of the fact that the petitioners would, by their transfers, suffer disadvantage inasmuch as their remuneration would be reduced to Rs. 215 and their status would not be equivalent to that of officiating Mamlatdars, we are unable to accept this contention made on behalf of the petitioners.

49. The fifth contention is that the scheme of retrenchment and allotment to Zilla Parishads as contained in the impugned resolution dated March 18, 1966 and the impugned notices in Form 3 is a fraud on the statute and has been made with an oblique motive to compel the petitioners and other officiating Mamlatdars to join Zilla Parishads. In the first place, we are constrained to state that the contention has not been specifically raised in the petition. Even so, having regard to the general importance of the question involved, we have been asked to examine this contention on behalf of the State Government.

50. In support of this contention, the facts on which reliance has been placed are as follows. The national extension schemes and block development projects were commenced in 1952. In respect of the work of these schemes and projects, additional permanent and temporary posts were created since 1952. The Act came into force as from May, 1, 1962. Under the Act - and particularly section 242 - as from the appointed day (May 1, 1962), members of services allotted to Zilla Parishads were liable to be taken over by the Zilla Parishads. In fact, two orders dated April 12, 1962 and May 1, 1962 were enacted. The first order was the Maharashtra Zilla Parishad and Panchayat Samiti (Removal of Difficulties) Order No. 1. By the second order, all the posts

existing for the implementation of works and schemes transferred to Zilla Parishads were sanctioned for a period of six months from the appointed day, and it was directed that allotment of officers and servants holding posts in Class 3 and Class 4 categories should be made by the Collector of the disrict concerned in accordance with the provisions of the order. In fact, administrative difficulties continued to arise and were from time to time dealt with. Ultimately, in connection with representations made by allotted Government servants of Class 3 and Class 4 requesting the Government to repatriate them to their parent departments, the Government issued a circular letter dated December 3, 1962. In paragraph 2 of that letter, it was stated :

> "Government servants have been allotted to Zilla Parishad in pursuance of the provisions of section 242 * * *. Their reversion to Government department is now not possible as they belong to District Services of the Zilla Parishad concerned. An only option left to them will be * * * * * * they may be permitted to retire."

The submission is that the Government made it clear to Class 3 and Class 4 (initially) allotted employees that their allotment to Zilla Parishad had become final. The allotments thus described to be final were challenged on behalf of two Government servants in special Civil Application No. 13 of 1963 instituted in the High Court on December 3, 1963. The Government issued a circular letter dated January 24/25, 1964 in connection with their previous letter dated December 3, 1962, and clarified that the statements in paragraph 2 of that letter related to cases of Government servants whose orders of allotment had become final by reason of the orders passed by the Government abolishing the posts held by them permanently and all temporary Government servants holding posts which had not been continued were to be considered as under provisional allotment and would continue to hold a lien on the Government posts held by them permanently until an order abolishing the posts held by them was passed as being surplus as a result of the implementation of the Act. The clarification, therefore, is not helpful to the petitioners. As the validity of allotments already made was challenged and considerable difficulties arose on August 27, 1964, Ordinance 4 of 1964 was promulgated to amend the Act. By section 23 of amending Act 43 of 1964, section 253-A was enacted in place of the Ordinance. The section empowered the Government to temporarily provisionally allot Government servants to Zilla Parishads. By sub-section (2), it was provided that allotted staff shall not have any right to revert to service under the State. The section also provided that all allotments previously made be deemed to be provisional. By a further circular letter dated October 8, 1964, the Government stated-

> "The number of Government servants on deputation does not correspond to the strength of the cadre from which they are deemed to be on deputation. In order, therefore, to maintain correspondence between Government servants on deputation and the strength of the cadre from which they have been treated to be on deputation, it is necessary to revive temporary posts which have either been discontinued or allowed to lapse retrospectively from the date from which they have been so discontinued or allowed to lapse."

By the circular, directions were given to revive all temporary posts as were discontinued or allowed to lapse and to continue them for such time as Government servants on deputation were finally allotted to Zilla Parishads. It was further directed that all the posts revived should be kept vacant whilst the incumbents on deputation continued to be on temporary allotment. By a further clarificatory letter, dated October 8, 1964, it was directed that 80 per cent, of the (temporary) posts in continuous existence for five years or more as were required on a permanent or long term basis should be allowed to be made permanent. In fact, in pursuance of the above letters, the Government sanctioned revival of the temporary posts retrospectively from March 1963 till the incumbents who held those posts and who were deemed to be provisionally allotted were finally allotted to Zilla Parishads. The Government directed that all the posts revived should be kept vacant, while the incumbents deemed to be on provisional allotment to such posts continued to be on temporary allotment to Zilla Parishads. In further pursuance of the above letters, by the resolution, dated April 19, 1965, the Government notified that the temporary posts shown in the statement accompanying the resolution were made permanent with effect (retrospectively) from July 1, 1962. The Collectors of all districts including Dhulia, were directed to take further action and to order confirmations in these permanent posts of holders of temporary posts in accordance with the existing procedure. The result of the above resolution was that the temporary posts, inter alia, of 8 Aval Karkuns at Dhulia were converted into permanent posts retrospectively from July 1, 1962.

51. Having regard to all the above facts, the submission was that the Government, having known that certain works of national extension service and block development projects had been transferred to Zilla Parishads, initially treated Class 3 and Class 4 servants working for those schemes as permanently allotted to Zilla Parishads under section 242 of the Act as from the appointed day i.e. May 1, 1962. That was the effect of the order, dated May 1, 1962. The Government was thereafter faced with representations made by incumbents of those posts for repatriation who challenged the validity of their permanent allotment to Zilla Parishads in Special Civil Application No. 13 of 1963 in this High Court. The Government was aware that the then incumbents of the posts relating to the transferred works had been finally allotted to Zilla Parishads. The Government had, in fact, abolished and allowed to lapse the posts of these incumbents so far as their Government services went. Even so, the Government revived all the temporary posts in October 1964 and January 1965 and made these posts permanent as late as on April 19, 1965. Thus, for the first time, the Government then created 8 additional permanent posts of Aval Karkuns at Dhulia. This was done with the knowledge that these very posts would be surplus posts and that some of the personnel confirmed in these permanent posts would be found to be surplus. The Government acted in the above manner and directed confirmations into additional permanent posts only with intent that experienced and senior officials being provisionally substantively confirmed Aval Karkuns then officiating as Mamlatdars could be first confirmed permanently into permanent posts of Aval Karkuns and then found to be surplus so as to be allotted to Zilla Parishads in accordance with the provisions in sections 242 and 242-A of

the Act. Each of the above steps was taken by the Government with the ulterior motive of transferring and allotting experienced officiating Mamlatdars to Zilla Parishads. This, it is submitted with some emphasis, is fraud on statute and, by itself was a fraudulent action to deprive, inter alia, the petitioners of their continuance in the Government service as provisionally substantively confirmed Aval Karkuns and as officiating Mamlatdars. The submission is that the scheme in the impugned resolution was a device to supply senior experienced personnel to Zilla Parishads and the scheme of retrenchment therein is not genuine. Thus under the scheme confirmations were made as late as in April 1966 in 8 permanent posts of Aval Karkuns. It was ascertained that 4 permanent Aval Karkuns were rendered surplus. The petitioners were the last to be confirmed in these posts and were then served with impugned notices for discharge from Government service for allotment to the District Service of the Zilla Parishad at Dhulia. If these confirmations had not been brought about, the juniormost temporary (or officiating) Aval Karkuns would have been retrenched as surplus.

52. Now, it is true that initially Government formed the view that Government servants who were working in the national extension schemes and block development projects (transferred to Zilla Parishads) became permanently allotted to the District Service of Zilla Parishads as of and from the appointed day. Consequently, permanent and temporary posts which these incumbents held were to a certain extent abolished or allowed to lapse. These facts are all correct. It appears to us that the Government had the right to decide that allotment initially made must be treated as provisional, in view of contentions made in Special Civil Application No. 13 of 1963 in the High Court. That decision was, in fact, approved of by the Legislature by enacting section 253-A and by providing therein that all previous allotment shall "be deemed' to be provisional. To fulfil the objects of the Act, it was necessary that experienced Government staff should he allotted to Services of Zilla Parishads in accordance with the general policy of the Act.

53. The scheme in the impugned resolution must be held to have been made with the avowed purpose of allotting incumbents of surplus posts to be abolished to the District Service of Zilla Parishads. The result of the scheme was that, in Dhulia District, the juniormost incumbents of the 4 surplus permanent posts being experienced officers were liable to be allotted to the Zilla Parishad. Similar was the case in respect of 26 temporary posts of Aval Karkuns, 12 permanent posts of Clerks and 50 temporary posts of Clerks which had been determined to be surplus and due for abolition. The question is whether this scheme which resulted in the junior-most officers holding permanent posts of Aval Karkuns and officiating as Mamlatdars being allotted to Zilla Parishads was a fraud on the statute and whether it was made with an oblique motive to compel the petitioners and permanent Aval Karkuns similarly situated in all the districts to join Zilla Parishads. Now, it is clear that Sections 242 and 242-A as also other sections up to Section 253-A of the Act were enacted for the avowed purpose of enabling and authorising the Government to allot members of Class III and Class IV services of the State Government to Zilla Parishads. The provisions in these sections envisage framing of an administrative scheme for ascertaining

and determining the surplus permanent and temporary posts in different cadres of Class III and IV Services due for abolition and for allotment of incumbents of such surplus posts to Zilla Parishads. That (to repeat) is the avowed purpose and intent of the provisions of these sections of the Act. It is for this reason that, under Section 242, it is provided that members of State Services as are allotted to District Services Class III and IV shall be taken over by the Zilla Parishad" on tenure and terms and conditions of service prescribed by the Government. For the same reason, in Sections 253-A and 242-A, transitional and permanent provisions are made in connection with temporary and permanent allotment of members of Class III and IV Services of the State Government to Zilla Parishads. Thus Section 242-A makes specific provision that –

> "Where consequent on the transfer of entrustment of powers and functions by or under this Act to Zilla Parishad there is found to be surplus staff in Government offices, the State Government may within a period of three years from the appointed day allot officers or servants from such staff to District Services".

and it also makes a provision for compulsory taking over of such staff by the Zilla Parishad. In view of the above scheme in the Act itself for determination of surplus staff and allotment of such staff to Zilla Parishads, it is clear that the Government was entitled to devise a scheme for effectively carrying out the work of ascertainment of surplus staff and allotting the same to Zilla Parishads for enabling Zilla Parishads to carry out works transferred to them in accordance with the Act. The scheme in the impugned resolution for ascertainment of surplus staff and allotment thereof to Zilla Parishads was in pursuance of and in accordance with the intent and purpose of the provisions in the above sections of the Act. The scheme was, therefore, not a fraud on the statute nor was it made with an oblique motive as contended on behalf of the petitioners. This contention, therefore, fails.

54. The sixth contention was that the provisions in Sections 242 and 242-A are ultra vires Articles 14 and 16 of the Constitution. The contention is that members of services of the State Government allotted under Section 242 of the Act are protected in respect of the terms and conditions of their service with Zilla Parishads. The protection is contained in the 1st proviso to the section which is as follows :

> ""Provided that the terms and conditions of service applicable immediately before the appointed day to any person allotted to any of the services aforesaid, shall not be varied to his disadvantage ....."

The protection thus is that the members of the staff allotted under Section 242 are entitled to have in their service with Zilla Parishads the same terms and conditions of service as applicable to them at the date of their transfer and allotment to Zilla Parishads, the date being the appointed day i. e. May 1, 1962. The contention is that, as regards allotments made subsequent to the appointed day i. e. May 1, 1962 under Section 242-A of the Act, similar protection is not given.

Now the relevant provisions in Section 242-A are as follows :

> "* * * * The State Government may within a period of three years from the appointed day * * allot any of the Government officers or servants * * to District Services and Zilla Parishads * * * shall take them over and thereupon the provisions of Section 242 shall apply in relation to Government officers or servants taken over * * *".

The contention is that, as regards the staff allotted at much subsequent dates and within the period of three years from the appointed day under Section 242-A, the protection under the section is that the terms and conditions of service applicable immediately before "the appointed day" (May 1, 1962) to such staff cannot be varied to their disadvantage. The result is that the benefits and promotions accrued due to such staff between the appointed day and much subsequent dates of allotment are lost to them. Protection is not given to such staff in respect of the terms and conditions of service as of the date of their transfer to Zilla Parishads. Thus the staff allotted on May 1, 1962 gets better protection, and the staff allotted at much subsequent dates under Section 242-A is given lesser protection and discriminated against. Equality has not been maintained as regards the protection of the terms and conditions of service between all the allotted staff to Zilla Parishads.

55. The reply of the Advocate General is that if we find that the allotment of the petitioners could only be made under Section 242-A and the power to allot under that section had become exhausted on May 1, 1965, this question does not arise for decision. He has further rightly pointed out that the contention is contrary to the terms of services offered under the impugned notices. Under the notices and the Maharashtra Zilla Parishads (Appointment, Seniority, Pay and Allowances) Rules, 1962, the petitioners will be entitled to be appointed to posts equivalent to the posts corresponding to their posts as permanent Aval Karkuns in the Government service. Their tenure under Rule 4 will be the same as their tenure in the Government service on the date of their transfer (August 16, 1966). The scale of pay and seniority will be also determined in the same manner as in the Government service. This is the true effect of the rules mentioned above in relation to the petitioners. Though Section 242 has used the words "appointed day" in connection with protection of terms and conditions of service, by the rules, the relevant date has been changed to the date of the transfer of the services of the allocated employees to the Zilla Parishads. That being the true position, this contention is without any substance. The petitioners have not been discriminated against. All the allocated employees in the services of Zilla Parishads have been given protection as regards terms and conditions of their services as of the dates of their allotment to Zilla Parishads and have been treated similarly under the above rules. The contention, therefore, fails.

56. The seventh ground was that section 242 of the Act is ultra vires the power of the State Legislature. Mr. Singhvi informed us that he was not in a position to give up the contention but was not inclined to advance any arguments in support of the same. The contention is, therefore,

not accepted.

57. Mr. Bhokarikar who intervened on behalf of the petitioners in certain other petitions argued that sections 242 and 242-A empowering the Government to transfer and allot Govt. servants to the services of Zilla Parishads and the rules in respect of allotment framed under the Act are ultra vires the Constitution. In his submission the Government had no legislative power to enact the above sections. In support of this contention, he has relied upon the provisions in Articles 309, 310 and 311 of the Constitution. He submits that, under the first two Articles, rules in respect of services could be enacted only for Government servants and not for servants of Zilla Parishad. In his submission, a law providing for transfer of the Government staff to public corporation contravenes terms and conditions of services prescribed under the Article 309 and the tenure of service fixed under Article 310. The Legislature had no power to alter these terms and conditions of services.

58. It appears to us that there is no substance in these contentions. Entry 41 in List II in the Seventh Schedule to the Constitution enables State Legislatures to enact laws regarding State Public Services. Entry 5 in the same List enables the Government to make laws regarding the constitution and powers of local authorities for the purpose of Local Self-Government or Village Administration. The State Legislature had, therefore, power to enact the Zilla Parishads and Panchayat Samitis Act (5 of 1962) to provide for the establishment in rural areas of Zilla Parishads and Panchayat Samitis for the purposes mentioned in the preamble. In that connection, the Legislature had the right, inter alia, to enact Chapter XIV relating to "provisions as to services". The Legislature was thus entitled to authorise the Government to constitute services for each Zilla Parishad in the manner mentioned in Section 239 and also to provide for recruitment to those services in the manner fixed by the relevant provisions in Sections 240 and 253-A. These sections create enforceable obligations against Zilla Parishads to accept allotted Government servants on terms not disadvantageous to such allocated servants. It is difficult to see why the power could not be conferred having regard to the contents of the above entries in List II in the Seventh Schedule. It is in this connection relevant to bear in mind that, under Section 246, the allocated employee has been given option to retire from service with terminal benefits. The contentions made by Mr. Bhokarikar therefore, are not accepted.

59. The eighth ground was that the terms and conditions of service applicable to the petitioners upon their allotment to the District Services with Zilla Parishad are not in accordance with and violate the provisions in Section 242 read with Section 242-A of the Act and, therefore, the allotment is invalid. In support of this contention, it is pointed out that, under Section 242, a clear provision is made that the terms and conditions of service of the allotted staff as at the appointed day shall not be varied to their disadvantage. It is pointed out that, under Section 242-A, the terms and conditions of service of the allotted staff are similarly not liable to be varied to their disadvantage. Admittedly, the petitioners were working as Officiating Mamlatdars on the appointed day i. e. May 1, 1962 as also on the proposed date of their allotment i. e. August 16,

1966. The salary which the petitioners, in fact, are drawing and would be drawing on August 16, 1966 is Rs. 315 plus about Rs. 35 as admissible allowances. The petitioners have chances of being promoted under the Classification and Recruitment Rules to the posts of District Deputy Collectors and Collectors in Class II and I services.

60. Now, the terms and conditions of service applicable to the petitioners upon their allotment to Zilla Parishad are the following. The petitioners will belong to Class III District Service in the pay-scale of Rs. 135 -5-145-6-175- E. B. -8-215 with admissible allowances. The petitioners will thus get the basic salary of Rs. 215 with admissible allowances per month. Admittedly, there is no cadre higher than Class III Service available or in existence for the employees of Zilla Parishads. It is thus abundantly clear that, at the date of the proposed allotment of the petitioners to the Zilla Parishad i. e. on August 16, 1966, the petitioners upon their joining the District Services with the Zilla Parishad will have lost opportunity of future prospects of promotion. They will have lost opportunity to acquire status of Class II and I Services and of posts similar in status to those of Mamlatdars, District Deputy Collectors and Collectors. We were, therefore, of the view that the petitioners were entitled to succeed on this contention. The learned Advocate-General has, after the hearing had continued from July 20, 1966 produced on August 5, 1966, the notification dated July 30, 1966, whereby, in pursuance of proviso 1 to Section 242, the Government approved of all variations in the terms and conditions of service, including future chances of promotion of all allotted Government servants. In view of the notification, we are now unable to make a finding on this contention in favour of the petitioners.

61. Mr. Singhvi contended that the notification in terms recites that the terms and conditions of service of allotted persons "may have been varied". This statement discloses that the Government was not sure of the fact. In the operative part of the order, the Government has approved "all variations made by the rules in the terms and conditions of service". Mr. Singhvi submitted that this discloses that the Government has not considered any specified variations for approval. The notification should be struck down as having resulted from non-application of mind. In our view, this submission is without substance. The circumstances leading to the issuance of the notification are that in numerous petitions filed in this Court, the allotments made to Zilla Parishads were challenged on the above eighth ground. The ground was mentioned at the hearing of this petition on July 21, 1966, and arguments in support thereof were made on July 25 and 26, 1966. Discussion in Court was instructive and enlightening. The learned Advocate-General's arguments in reply commenced from the evening of July 26, 1966. He developed his reply in respect of this ground in the evening of August 4, 1966 and produced the notification on August 5, 1966. The main disadvantageous variation in the conditions of service was "loss of chances of future promotions". The contentions were not desired to be admitted and yet the doubts arising were intended to be met with. By the notification, the Government approved all variations "in the terms and conditions of service (including any future chances of promotion) even though they may be disadvantageous" to allotted employees. The use of the word "may" in the recital was justified, as no admission was intended to be made. The above quoted portion of the notification

discloses clear application of mind to the questions which had arisen. This contention, therefore, is not tenable.

62. The ninth ground is that, before the petitioners were permanently confirmed in the posts of Aval Karkuns in April 1966, they were entitled to an opportunity to submit that their confirmations should not be made. There seems to be no substance in this contention. The petitioners were seniormost provisionally substantively confirmed Aval Karkuns in April 1966 and also for a considerable number of years prior thereto. The holders of 4 permanent posts of Aval Karkuns had lost their suspended lien on the posts and/or had otherwise ceased to be incumbents of the 4 posts of Aval Karkuns. These posts had become vacant and remained to be filled. The petitioners were rightfully entitled to be declared as occupants of these four permanent posts for a considerable time before April 1966. Their confirmation was due long prior to April 1966 but had remained to be made by reason of administrative delays. Having regard to the scheme of Sections 242 to 253-A of the Act, surplus personnel in respect of permanent and temporary posts had to be ascertained and the Government was, therefore, entitled to confirm the petitioners in their permanent posts. Nothing as been shown as entitling the petitioners to a hearing in respect of their confirmations in the permanent posts to which they had become entitled long prior to April 1966. This contention, therefore, fails.

63. The tenth ground is that the petitioners had been appointed to their posts of Officiating Mamlatdars by orders passed by the Commissioner, Bombay Division, and the Commissioner was the only competent authority to discharge the petitioners from service. The impugned notices of discharge having been issued by the Collector, Dhulia, are invalid and not binding. Mr. Singhvi for the petitioners did not advance any argument in support of this contention and did not press the same.

64. The last contention is that the impugned notice contravenes the provisions in Rule 230 of the Service Rules. In view of the statement made by the Advocate-General in writing as regards the availability of the terminal benefits to the petitioners and others similarly situated and marked Exhibit 2, this contention is not pressed.

65. Having regard to the finding made by us in favour of the petitioners on the second ground, the allotment of the petitioners to the Zilla Parishad, Dhulia, as of and from August 16, 1966, being in contravention of the provisions of Section 242-A of the Act, is without the authority of law and, therefore, invalid. The question is what is the result of the above finding.

66. The learned Advocate-General had at first submitted that if the Court upholds the order for termination of service, a finding that the Government had no power to make allotments of Government servants under Section 242 or 242-A should not be made. He had also submitted that, under Section 246, an allotted Government servant had an option to intimate the Government within one month of his allotment that he would prefer to retire from the

Government service and not to accept allotment to Zilla Parishad, and that the extraordinary jurisdiction to issue writs of mandamus should not be exercised where the remedy was in the hands of the petitioners. He had further submitted that the orders of termination of the petitioners' services by the impugned notices were severable from the orders of allotment of the petitioners by those notices to Zilla Parishad, and for that reason, the question of the Government having no power to allot the petitioners to Zilla Parishad under Sections 242 and 242-A should not be decided. After Mr. Singhvi addressed us on these points, the Advocate-General informed us that if we were of the view that the allotment of the petitioners to Zilla Parishad was invalid, we should give relief to the petitioners on that footing.

67. On the question of severability of the orders for discharge and termination of service and the orders for allotment of Government servants in Class III and IV to Zilla Parishad, Sections 241, 242, 242-A, 246 and 253-A are relevant. Under Section 241, every person employed by an existing Board immediately before the appointed day shall an from that day be appointed to be a member of the District Technical Service, Class III, District Service, Class III, or, as the case may be, of the District Service, Class IV, and shall become an officer or servant of and hold office under a Zilla Parishad. The direct effect of the provision in the section is that employees of the existing Board cease to be in service of the Board and become employees of the Zilla Parishad. Their services with the Board become terminated. Under Sections 242 and 244 the Government has the absolute right to allot Government servants in Classes III and IV to the District Services in Classes in and IV with Zilla Parishad. The right is in respect of initial appointments and allotments to be made on the appointed day. The exercise of that right would necessarily involve termination of Government services of the allotted employees. Under Section 242, the Zilla Parishad is under an absolute obligation to take allotted employees in its service. The allotted employees have no choice in the matter of allotments. Under Section 246, the allotted employees have the right to retire from Government service or their employment under the existing Board with title to terminal benefits as compensation, pension and gratuity or the like as may be prescribed by the State Government under the rules made under the Act. In fact, on December 18, 1963, the Government has framed the Maharashtra Zilla Parishad (Allocated Servants) Premature Retirement Rules, 1963. Under Rule 3, every allocated servant not desiring to continue as an officer or servant of Zilla Parishad is required to send a notice in Form 'A' prescribed by the rules within a period of one month from the date prescribed by the rule. Under Rule 4, the prescribed authority receiving the notice is directed to take steps for sanctioning payment of pension and gratuity to the allocated retiring servant or officer. Rule 5 provides that the retiring Government servant shall be granted pension, gratuity and other terminal benefits and the amount standing to his credit in the account of Contributory Provident Fund, if any, in accordance with rules regulating the Terms and Conditions of his service immediately before appointed day as if such allocated servant had retired on superannuation. In the impugned discharge notices, reference is made to the above Rules 3 and 4, and the impugned discharge notices are in printed Form No. 3 administratively prescribed for allotment of Government Servants to Zilla Parishad under Section 242. The form and the notices provide for termination of

Government Service and corresponding allotment to Zilla Parishad as of and from August 16, 1966. The form and the notices state that the Government servant was intended to be finally allotted under Section 242 to Zilla Parishad. They also refer to Section 246 and the option to retire from service of Zilla Parishad with terminal benefits available under Rules 4 and 5 mentioned above. Now, having regard to the above relevant provisions in the Act and the rules made thereunder and the above contents of the printed form for notices for discharge and allotment and the contents of the impugned notices, it is clear that the act of termination of service was intended to co-exist with the allotment of the concerned employees to the Zilla Parishad. It was for the purpose of allotment of Government servants to Zilla Parishads for works transferred to Zilla Parishads that provision was made in Sections 241, 242, 242-A and 244 for allotment of Government servants to Zilla Parishad. The main purpose of these sections was to get Government servants allotted to Zilla Parishads with the incidental consequence that their services with the Government would get terminated. The allotted Government servant was compelled to accept allotment and was thereafter left with the choice to retire from service under Section 246. The scheme in the impugned resolution for retrenching and discharging Government servants was not for bringing about termination of the services with the Government except for the main purpose of allotting the concerned Government servant to Zilla Parishads. The termination of service with the Government was inseparably connected with the allotment to Zilla Parishads on the terms available under Section 242 read with Section 246. The termination simpliciter without consequent allotment was impossible and unauthorised, having regard to the above provisions in the Act. In this connection, Mr. Singhvi has relied upon the observations of the Supreme Court in the case of 1957 SCR 930, at p. 950 : (AIR 1957 Supreme Court 628 at p. 636). He is right in his submission that the scheme of termination of service and allotment as contended in the impugned resolution would not have been enacted if Sections 242, 242-A and 244 of the Act had not required the Government to allot Government servants to Zilla Parishads. He is right that the scheme of the termination of service and allotment as contained in the impugned resolution and the notices is so mixed up that one cannot be separated from the other. If the orders of allotment are held invalid, the orders of termination of service would fall as being inseparable from the orders of allotment. As the allotment orders are invalid and the termination of service for that purpose has failed, the Government is bound to retain the petitioners in Government service and, therefore, bound to forbear from enforcing the impugned notices of discharge and allotment against the petitioners.

68. In the result, the petitioners are entitled to reliefs claimed in prayers (A) and (B) of the petition. The notices of discharge and allotments dated April 5, 1966 are set aside as against petitioners 2 and 3. The notice having been withdrawn against petitioner No. 1 he does not need any relief. Respondents to pay costs, fixed at Rs 500.

69. Rule absolute.

Chandrachud, J.

70. I agree respectfully with the judgment of my learned brother, but as the case before us involves important issues, I would like to add a few words.

71. The petitioners are officiating as Mamlatdars since about the year 1965. They were confirmed in the posts of Aval Karkuns in what is technically known as "provisional-substantive vacancies". The scale of pay fixed for the cadre of Aval Karkuns is Rs. 145-8 -185-10-215 plus admissible allowances. As officiating Mamlatdars, the petitioners are holding posts to which is attached the scale of pay of Rs. 300-15-420- E. B. -15- 450-20-550. In April 1966, the petitioners were drawing a basic salary of Rs. 315 and were entitled to allowances which come roughly to Rs. 45 per month.

72. In about the year 1952, the State Government launched a programme of Community Development with the object of bringing about a multi-lateral development of rural areas. Persons occupying the posts of Aval Karkuns were, amongst others, drafted for such development work. In 1961, the State Legislature passed the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter called "the Act"). This Act was passed in order to provide for the establishment of Zilla Parishads and Panchayat Samitis in rural areas, to assign to them local Government functions, and to entrust the execution of certain works and development schemes to these bodies and to provide for the decentralisation of powers and functions under certain enactments for the purpose of promoting the development of democratic institutions and for the purpose of securing a greater measure of participation by the people in the State Five-Year Plans and in local Governmental affairs. Under a notification dated the 26th of March 1962 the Act came into force on the 1st of May 1962 which is briefly referred to as the "appointed day".

73. The First Schedule to the Act enumerates as many as 123 items under different heads, which broadly cover the sphere of activity of the Zilla Parishads established under the Act, under Section 100 of the Act, the Zilla Parishads are charged with the duty to make reasonable provision regarding all or any of the subjects enumerated in the First Schedule and to execute or maintain works or development schemes relating to such subjects. Section 102 of the Act enables the Zilla Parishads to undertake the construction, maintenance or repair of any work or the managements of any institution on behalf of the Central or State Governments, amongst others. Section 103 empowers the State Government to transfer to a Zilla Parishad with its consent, the execution of any works or development schemes prompting the welfare of the residents of the District.

74. Since the 1st of May 1962, the appointed day, the State Government has transferred the execution of several works and development schemes to the different Zilla Parishads established under the Act. An inevitable consequence of the transfer of these functions was that the posts which were created in order to facilitate the Community Development Schemes and the National Extension Service were rendered surplus. A thorny question which the Act posed before the State

Government was the retrenchment of the personnel which was rendered surplus. As a mere employer, the State Government might have been within its rights in abolishing the posts which were rendered surplus and in retrenching employees whose services were no longer required. The Government however took the view that employees in the position of the petitioners whose services were no longer required should be given an option of accepting service under a Zilla Parishad. It was necessary that the Government should have the power to offer such an option and accordingly, a provision was made in section 244 of the Act that the initial appointment of officers and servants under a Zilla Parishad or allotment to the District Service of a Zilla Parishad shall be made by the State Government or by such officer as the Government may appoint. Section 242 of the Act imposes an obligation on the Zilla Parishads to take over such members of the services of the State Government as are allotted by it to the District Technical Service (Class III), the District Service (Class III) and to the District Service (Class IV) on such tenure, terms and conditions of services as may be prescribed by the State Government. These three cadres may be described as subordinate cadres, for section 239 of the Act which by clause (b) empowers the State Government to constitute these three services, requires it by clause (a) to post under every Zilla Parishad a sufficient number of officers from Class I and Class II Services of the State and from two other State Cadres. The appointed day came and passed but the District Services contemplated by section 239 (b) remained to be constituted. This situation was sought to be remedied by passing "Removal of Difficulties" orders. One such order dated the 12th of April 1962, which was passed in relation to the affairs of the Dhulia Zilla Parishad, contains a provisional sanction of the State Government for a period not exceeding six months from the appointed day to post mentioned in sub-clauses (a) and (b) of clause (2) of the Order. On the 1st of May 1962, a further step was taken by the State Government to remedy the situation by issuing an order providing that in addition to the posts which were provisionally sanctioned under the Removal of Difficulties Order, all posts existing for the implementation of certain works and development schemes shall be sanctioned for a period not exceeding six months from the appointed day. The object of these two orders was to continue the transfer or allotment of certain Government servants to the Zilla Parishads pending constitution of the District Services.

75. Persons who were transferred or allotted to the Zilla Parishads without the District Services being constituted asked for repatriation to the State Service, but the Government took the view, which is expressed in a circular letter dated 3rd of December 1962, that the reversion of such persons to the State Services was not possible as they were members of the District Services of the Zilla Parishad concerned. This led to the filing of Special Civil Application No. 13 of 1962 by certain Class III Government servants who contended that the orders finally allotting them to Zilla Parishads were invalid. Presumably, as a result of this petition the State Government issued a circular letter dated the 24th/25th of January 1964 stating that except in two cases, all other Government servants were to be considered as being provisionally allotted to Zilla Parishads and would, therefore, be entitled to hold a lieu on the posts held by then permanently under the Government until an order abolishing the posts held by them was passed. The Special Civil Application which was filed under Article 226 of the Constitution came for hearing before the

Nagpur Bench of this Court and was disposed of by a consent order on the 26th of February 1964. The Government accepted the position that the petitioners therein continued to remain in the services of the State with the same rights and privileges as they had as State Government servants and that the orders of allotment of petitioners Nos. 2 and 3 therein were not passed under Section 242 or section 244 of the Act.

76. The consent order furnished an adequate basis to several Government servants who were transferred or allotted to the Zilla Parishads to ask for repatriation to the State Service. On the 27th of August 1964, the Government promulgated an Ordinance introducing section 253-A into the Act. The Ordinance was subsequently replaced by Act No. 43 of 1964. Section 253-A empowers the Government with retrospective effect from the appointed day to make temporary allotment of its employees to Zilla Parishads, amongst other things. This power could be exercised within a year from 27th of August 1964 when the Ordinance came into force or within such extended period not exceeding a year as the State Government may-specify. It may be mentioned that the Government has issued a notification on the 20th of August 1965 extending this period till the 27th of August 1966. Sub-section (2) of section 253-A provides that no mempur Bench of this Court and was disposed of by a consent order on the 26th of February 1964. The Government accepted the position that the petitioners therein continued to remain in the services of the State with the same rights and privileges as they had as State Government servants and that the orders of allotment of petitioners Nos. 2 and 3 therein were not passed under Section 242 or section 244 of the Act.

76. The consent order furnished an adequate basis to several Government servants who were transferred or allotted to the Zilla Parishads to ask for repatriation to the State Service. On the 27th of August 1964, the Government promulgated an Ordinance introducing section 253-A into the Act. The Ordinance was subsequently replaced by Act No. 43 of 1964. Section 253-A empowers the Government with retrospective effect from the appointed day to make temporary allotment of its employees to Zilla Parishads, amongst other things. This power could be exercised within a year from 27th of August 1964 when the Ordinance came into force or within such extended period not exceeding a year as the State Government may-specify. It may be mentioned that the Government has issued a notification on the 20th of August 1965 extending this period till the 27th of August 1966. Sub-section (2) of section 253-A provides that no member of the services of the State Government who is allotted to a Zilla Parishad shall have a right to revert to the State Service during the aforesaid transitional period of one year or two years as the case may be.

77. On the 8th of October 1964, the Government issued two circular letters. The first f allotment of petitioners Nos. 2 and 3 therein were not passed under Section 242 or section 244 of the Act.

76. The consent order furnished an adequate basis to several Government servants who were transferred or allotted to the Zilla Parishads to ask for repatriation to the State Service. On the

27th of August 1964, the Government promulgated an Ordinance introducing section 253-A into the Act. The Ordinance was subsequently replaced by Act No. 43 of 1964. Section 253-A empowers the Government with retrospective effect from the appointed day to make temporary allotment of its employees to Zilla Parishads, amongst other things. This power could be exercised within a year from 27th of August 1964 when the Ordinance came into force or within such extended period not exceeding a year as the State Government may-specify. It may be mentioned that the Government has issued a notification on the 20th of August 1965 extending this period till the 27th of August 1966. Sub-section (2) of section 253-A provides that no member of the services of the State Government who is allotted to a Zilla Parishad shall have a right to revert to the State Service during the aforesaid transitional period of one year or two years as the case may be.

77. On the 8th of October 1964, the Government issued two circular letters. The first of these letters says that in order to maintain correspondence between Government servants allotted to Zilla Parishads and the strength of the cadre to which they belong it was necessary to revive temporary posts which were either discontinued or allowed to lapse. The letter directs the revival of such temporary posts and the continuance of the posts until orders of final allotments were made. By the second letter, the Government directed that all temporary posts sanctioned for Governmental activities, which were transferred to Zilla Parishads and which would have been required by Government on a permanent or long term basis but for the transfer of such activities to Zilla Parishads, should be included in the proposal for conversion of temporary posts into permanent ones. On the 15th of April 1965, the Government passed a resolution directing that eighty per cent of the temporary posts which were in continuous existence of five years or more and which were required on a permanent or long term basis should be converted into permanent ones. In accordance with this decision, eight temporary posts of Aval Karkuns in the District of Dhulia were converted into permanent posts, with the result that forty-six instead of thirty-eight permanent posts came into existence in the cadre of Aval Karkuns in the District of Dhulia.

78. The petitioners are now officiating as Mamlatdars in the District of Dhulia but they hold substantive posts of Aval Karkuns in which they were retrospectively confirmed. It follows that they hold liens on the substantive posts of Aval Karkuns in which they are confirmed and not on the posts of Mamlatdars. In April 1966, the three petitioners before us occupied the three juniormost posts of substantively confirmed Aval Karkuns at Dhulia.

79. On the 18th of March 1966, the Government passed a resolution framing a scheme under which to make final allotments of Government servants to Zilla Parishads. Clause (2) of the scheme contains instructions for the computation of posts which were rendered surplus to the Government as a result of the transfer of Government activities to Zilla Parishads. Clause (3) of the scheme contains instructions for the final allotment of Government servants to Zilla Parishads from amongst the members of Class III and Class IV Services under the State Government. Paragraph 3 of clause (3) provides that every Government servant due to be finally allotted to a

Zilla Parishad should be served with a notice giving him an opportunity to exercise an option within a period of three months. The scheme envisages that a Government servant proposed to be finally allotted to a Zilla Parishad could either elect –

> (1) to have his services terminated, in which case he would be entitled under section 246 of the Act to the terminal benefits mentioned in Rules 4 and 5 of the Maharashtra Zilla Parishads (Allocated Servants) Premature Retirement Rules, 1963, which would not be less favourable than benefits available under Rule 266 of the Bombay Civil Services Rules, 1959, or
> (2) to accept an appointment under a Zilla Parishad to a post equivalent to the substantive post held by him under the State Government, or
> (3) to be retained in the State Government service in the officiating post on a purely temporary basis forfeiting unconditionally all the claims to the permanent post held by him.

80. The scheme formulated in this resolution is assailed on behalf of the petitioners on several grounds.

81. The Collector of Dhulia found under the scheme that 4 permanent posts of Aval Karkuns, 12 permanent posts of clerks and 50 temporary posts of clerks on his establishment were rendered surplus and had therefore to be abolished. The three petitioners, being the junior-most holders of permanent posts of Aval Karkuns, were chosen for retrenchment along with one other person called Sali who was the senior-most amongst the four due to be retrenched. On the 5th of April 1966 the Collector of Dhulia issued notices to the petitioners in accordance with the scheme contained in the resolution of the 18th of March 1966. The last paragraph of the notices says that if no communication was received from the petitioners on or before the 15th of July 1966 it would be presumed that they had accepted the appointment under the Zilla Parishad. The date, we are informed has been extended to the 15th of August 1966. The notices which contain an order of discharge coupled with the options envisaged by the scheme of the 18th of March 1966 are challenged by the petitioners as being discriminatory and as being in excess of the powers possessed by the State Government under the Act. The notices are also challenged as violating Article 311 (2) of the Constitution.

82. Mr. Singhvi who appears on behalf of the petitioners, has raised many questions but considering the concessions made by him and the points which were not seriously pressed by him, it would be possible to classify his argument under four heads :

> (1) The termination of the services of a person holding a civil post under a State amounts to removal from service within the meaning of Article 311 (2) of the Constitution even in those cases in which the services are terminated on account of abolition of the post held by the person concerned, and therefore, a reasonable opportunity of showing cause

against the action proposed to be taken must be afforded to such person.

(2) That after the appointed day, the power to allot the petitioners to a Zilla Parishad could be exercised under Section 242-A and not under section 242. As the power under section 242-A must be exercised within a period of three years from the appointed day, that is to say before the 1st of May 1965, the notices dated the 5th of April 1966 discharging the petitioners from services and alloting them to the Zilla Parishad are beyond the powers of the State Government.

(3) The notices dated the 5th of April 1966 are violative of Articles 14 and 16 of the Constitution as they deny to the petitioner equality before the law and equality of opportunity in the matters relating to employment under the State.

(4) The allotment of the petitioners to the Zilla Parishad offends against the first proviso to section 242, which applies to allotments under section 242-A, and under which the terms and conditions of service applicable to a Government servant before the appointed day cannot be varied to his disadvantage after the allotment, except with the previous approval of the State Government. Such an approval is said to be wanting.

83. The first point has in my opinion, the support neither of text nor of authority. Under Article 310 (1) of the Constitution the members of the services mentioned therein hold their office during the pleasure of the President or the pleasure of the Governor of the State as the case may be. As observed by the Supreme Court to a recent decision to which I will call attention immediately, the field covered by Article 311 is excluded from the operation of the absolute doctrine of pleasure. In other words in regard to cases falling under Article 311 (2), the pleasure mentioned in Article 310 (1) has to be exercised in accordance with the provisions of Article 311.

84. Article 311 provides by clause (2) that no person mentioned in clause (1), as for example a person holding a civil post under the State, "shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him". If the termination of the services of the petitioners amounts to their removal within the meaning of Article 311 (2) of the Constitution there can be no doubt that a reasonable opportunity would have to be afforded to them of showing cause against the action proposed to be taken in regard to them. Looking at the language of Article 311 (2), it seems to me plain that it contemplates removal from service and not a termination of service or discharge from service on account of abolition of the post held by the person concerned. It assumes the existence of the post and the removal of a person from that post. It is conceded before us that the Government, like any other employer, has the right to abolish a post even if it be permanent. It is undisputed that the petitioners are proposed to be discharged from service not by way of punishment but because the posts held by them are found to be surplus and are therefore required to be abolished. In my opinion, therefore, the text of Article 311 (2) does not support the submission that the petitioners are entitled to be heard before their services are terminated.

85. It is however urged on behalf of the petitioners that there is clear authority for the proposition

that Article 311 (2) applies to cases where the services of a civil servant are terminated on account of the abolition of the post held by him. In support of this submission Mr. Singhvi strongly relies upon the judgment of Subba Rao, J., as the learned Chief Justice then was, in, AIR 1964 Supreme Court 600. In that case, Rules 148 (3) and 149 (3) contained in the Indian Railway Establishment Code, 1951, Vol. 1, were challenged as unconstitutional on the ground that they violated Article 311 (2) of the Constitution. Stated briefly, the services of even permanent servants could be terminated under these rules by a simple notice. These rules were struck down by the Supreme Court on the ground that a servant who substantively holds a permanent post has a title to hold the post to which he is substantively appointed and if that right is invaded, the termination of his service is in the nature of a penalty and would amount to his removal from service.

86. In Moti Ram Deka's case, AIR 1964 Supreme Court 600 the judgment of the majority was delivered by Gajendragadkar J., Subba Rao J. agreed with the majority that the impugned rules violated Article 311 (2), but on the impact of those rules on Article 311, he has stated his own reasons. It is on these reasons that strong reliance is placed by Mr. Singhvi in support or his submission, that even if services are terminated on account of the abolition of a permanent post, Article 311 (2) is attracted. Now it does appear that Subba Rao J. has expressed the view in his judgment that a person who is removed from service on account of the abolition of the post held by him is entitled to a reasonable opportunity to show cause against the action proposed to be taken in regard to him, under Article 311 (2) of the Constitution. This would be clear from the following passage towards the end of paragraph 65 of his judgment:

> "Reasonable opportunity given to a Government servant enables him to establish that he does not deserve the punishment, because he has not been guilty of misconduct. That apart, a Government servant may be removed or dismissed for many other reasons, such as retrenchment, abolition of post, compulsory retirement and others. If an opportunity is given to a Government servant to show cause against the proposed action, he may plead and establish that either there was no genuine retrenchment or abolition of posts or that others should go before him".

87. In my opinion, however, this is not the view of the majority and that perhaps is one of the reasons why Subba Rao J. gave a separate judgment while concurring in the conclusion to which the majority had come. If one turns to the judgment of the majority, it would be clear that it was not prepared to accept the view of Subba Rao J. on the impact of discharge on account of abolition of a post, on Article 311 of the Constitution.

88. One of the decisions examined by Gajendragadkar J., who delivered the judgment of the majority, in AIR 1958 Supreme Court 36. In para. 41 of his judgment Gajendragadkar J. has reproduced the following passage from Dhingra's case AIR 1958 Supreme Court 36 :

> "It has already been said that where a person is appointed substantively to a permanent

> post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311 (2). Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment".

The question which was specifically considered by the majority was whether this passage contained a correct exposition of Article 311 (2). The majority held that two significant additions which were made in this passage, namely, that a permanent servant could be asked to retire in pursuance of a contract, express or implied, or that his services could be terminated in pursuance of a service rule so providing, were unwarranted. The entire passage, except for these two "significant additions" was approved by the majority and was held to lay down the correct law. In my opinion, therefore, the opinion of Subba Rao J. that termination of the services of a permanent servant on account of the abolition of the post held by him would attract the application of Article 311 (2) of the Constitution does not reflect the view of the majority.

89. The view which the majority has taken on this aspect of the matter is also clear from paragraph 33 of the judgment of the majority, in that paragraph Gajendragadkar J. deals with the argument advanced by the learned Additional Solicitor General that the impugned rules proceeded on administrative grounds or considerations of exigencies of service and as the rules permitted, for example, the post held by a permanent servant to be abolished or entire cadre to be brought to an end, they should not be struck down. This argument was negatived by pointing out that the rules authorize the Railway Administration to terminate the services of all permanent servants. In other words, if the construction canvassed by the learned Additional Solicitor General could be reasonably put on the impugned rules, the majority would have accepted the argument that the rules should not be struck down. That emphasizes that termination of service on account of the abolition of the post held by the person whose services are terminated does not attract the application of Article 311 (2) of the Constitution.

90. The majority has also held in paragraph 22 of its judgment that the word 'removal' like the two other words 'dismissal' and 'reduction in rank' used in Article 311 (2) refer to three major penalties and that this view was concluded by the decisions of the Supreme Court. In a case in which the very post held by a permanent servant is abolished, his discharge from the service casts no reflection on him and cannot amount to a penalty per se or otherwise. It has to be borne in mind that Article 311 (2) speaks of the action proposed to be taken in regard to him, that is to say, in regard to the person who is proposed to be dismissed, removed or reduced in rank. The discharge of a civil servant on account of the abolition of the post held by him is not, in my opinion, an action which is proposed to be taken in regard to an individual but is an action which

concerns the policy of the State whether a certain permanent post should continue or not.

91. In support of his submission, Mr. Singhvi has placed great reliance on the following passage in paragraph 26 of the judgment of the majority :

> "A person who substantively holds a permanent post has a right to continue in service, subject, of course, to the rule of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must, per se amount to his removal, and so, if by Rules 148 (3) and Rule 149 (3) such a termination is brought about, the Rule clearly contravenes Article 311 (2) and must be held to be invalid".

This passage, in my opinion, cannot be read in an isolated manner. In making these observations the Supreme Court was not considering a case of the present nature which was specifically discussed by Das C. J in his judgment in Dhingra's case, 1958 SCR 828 : AIR 1958 Supreme Court 36. As I have stated earlier, the approval by the majority, of the observations in Dhingra's case, 1958 SCR 828 : AIR 1958 Supreme Court 36, on the consequences of the abolition of a post, puts the matter beyond a doubt.

92. It might be useful in this behalf to draw attention to the decision of the Supreme Court in, AIR 1964 Supreme Court 1854. In paragraph 11 of the judgment Wanchoo J. who delivered the judgment of the Court, has discussed the law relating to disciplinary proceedings taken against public servants. It is observed in that connection that :

> "One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end. Similarly a Government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the Government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and/or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction which the work and/or conduct of a temporary servant may arise on complaint against him. In such cases two courses are open to Government. It may decide to dispense with the services of the servant or revert to him to substantive post without any action being taken to punish him for his bad work and/or conduct. Or the Government may decide to punish such a servant for his bad work or

misconduct, in which case even though the servant may be temporary he will have the protection of Article 311 (2)".

It is clear from this passage that if the services are terminated because the post is abolished, the provisions of Article 311(2) would not be attracted. The observations made by the Supreme Court in this case as regards the consequence of the abolition of a post cannot, on principle, be restricted to the case of a temporary servant and I see nothing in the judgment to justify such a restriction.

93. I therefore agree with my learned brother that the services of the petitioners having been terminated on account of the abolition of the permanent posts held by them, Article 311(2) of the Constitution is not attracted.

94. The second point raised by Mr. Singhvi concerns the power of the State Government to allot the petitioners to the Zilla Parishad. In this behalf two sections fall to be considered, namely, sections 242 and 242-A of the Act and they road thus :

"242. Subject to the provisions of this Chapter, such members of the services of the State Government as are allotted to the District Technical Service (Class III), the District Service (Class III) and to the District Service (Class IV) shall be taken over by the Zilla Parishad on such tenure, and terms and conditions of service as may be prescribed by the State Government.

Provided that, the terms and conditions of service applicable immediately before the appointed day to any person allotted to any of the services aforesaid shall not be varied to his disadvantage, except with the previous approval of the State Government :

Provided further that, any service rendered by him under the State Government shall be deemed to be service under the Zilla Parishad."

"242-A. Where consequent on the transfer of entrustment of powers and functions by or under this Act to Zilla Parishads and Panchayat Samitis, there is found to be surplus staff in Government offices throughout the State then notwithstanding anything contained in this chapter, the State Government may within a period of three years from the appointed day and with the consent of the Zilla Parishad concerned, allot any of the Government officers or servants from such staff to the District Technical Service (Class III), District Service (Class III), or, as the case may be, to the District Service (Class IV) and each of the Zilla Parishads to whom Government Officers and servants are allotted shall take them over, and there upon the provisions of Section 242 shall apply in relation to Government Officers or servants so taken, over, as they apply in relation to members of the services of the State Government allotted to the District Services aforesaid under that section".

95. It is urged by the learned Advocate General on behalf of the State that the power of allotment

possessed by the State Government under Section 242 is not limited by any period of time and therefore, it was open to the Government to allot the petitioners to the Zilla Parishad on the 5th of April 1966. Now it is true that Section 242 does not set a time limit for the exercise of the powers conferred by it on the State Government. But that, in my opinion is not the real question. The question is whether Section 242 can be invoked by the State Government after the appointed day as it is seeking to do in the present case. A clue to this question is furnished by Section 244 of the Act which, in my opinion, is the provision which confers a power on the Government to make the initial appointments of officers and servants under the Zilla Parishad or to make allotments to the District Services of a Zilla Parishad. Section 242 merely speaks of the consequences of an appointment or allotment made under Section 244. The 'initial appointment' contemplated by Section 244 of which the consequences are specified in Section 242 is an appointment which could only be made on the appointed day and cannot, in my opinion, be extended to cover a subsequent appointment.

96. On the day on which the Act came into force, namely, on the 1st of May 1962, Section 242-A was not on the Statute Book, for it was introduced subsequently by Section 21 of Maharashtra Act, No. 43 of 1962 which came into force on the 15th of December 1962. I have stated in the initial statement of facts that though the Legislature envisaged the exercise by the State Government of the powers conferred upon it by Section 242 on the appointed day, the very services contemplated by Section 242 had remained to be constituted. That is why Section 242-A had to be introduced authorising the State Government to make allotments after the appointed day. The provision contained in Section 242-A is a specific provision which would apply to the facts of the case and therefore, the power of allotment can be derived by the State Government under that provision in preference to Section 242 which is of a general nature. Section 242-A speaks of the transfer or entrustment of power and functions by or under the Act to Zilla Parishads, ascertainment of the surplus staff in Government offices and the consequent allotment of Government servants to the Zilla Parishad concerned with its consent. It is undisputed that every clause of Section 242-A comes into play in the present case and in that view, the conclusion is inescapable that the power of the State Government to allot its servants to the Zilla Parishad is subject to the conditions mentioned in that section. One of the outstanding conditions is that the power of allotment must be exercised within a period of three years from the appointed day, and since this period expired on the 1st of May 1965, the notices of the 5th of April 1966 containing the orders of discharge-cum-allotment are clearly in excess of the powers of the Government.

97. The true scope of Section 242 on which the State relies is partly evident from the language of the first proviso to that Section which says that the terms and conditions of service applicable immediately "before the appointed day" to any person allotted to the District Services of a Zilla Parishad shall not be varied to his disadvantage, except with the previous approval of the State Government. The reason why "the appointed day" was chosen as the dividing line is that the allotments spoken of in Section 242 and referable to the power conferred by Section 244 had to

be made on or before the appointed day. It seems to me difficult to appreciate that the first proviso of Section 242 would make the terms and conditions of service applicable immediately before the appointed day relevant if the appointments could be made without regard to considerations of time.

98. It is urged by the learned Advocate General that the initial appointments contemplated by Section 244 of the Act have not yet been made and therefore the power under Section 242 read with Section 244 is still available to the Government for being exercised. Now in view of the provisions of Section 253-A which came into force on the 27th of August 1964, it is clear that such appointments as were made initially were provisional or temporary and therefore, not referable to the power conferred by Section 244. That, however cannot justify the argument that the power under Section 244 is available to the Government at any distance of time. That the 'initial appointments' contemplated by Section 244 are not yet made would not justify an exercise of the power conferred by that section if the section is otherwise inapplicable. As I have stated earlier, what the Legislature conceived by the 'initial appointment' was an appointment on the appointed day and at no time thereafter. Therefore, the power under Section 244 is no longer available to the Government. It seems to me wholly unacceptable that the power make subsequent allotments under Section 242-A must be exercised within three years of the appointed day but that the initial power contemplated by Section 244 could be exercised untrammelled by consideration of time.

99. It is urged by the learned Advocate General that assuming' that the Government has now no power to make an allotment under Section 242-A, it would not be right to set aside the notices dated the 5th of April 1966, wholly, because the order of discharge contained in the notices is severable from the order of allotment contained therein. It is argued that such a severability would justify the orders of discharge being upheld even if the orders of allotment are required to be set aside. It is, in my opinion, difficult to accept this submission. The scheme of the Act shows unmistakably that a discharge simpliciter of surplus staff was never contemplated. It is undoubtedly true that an employer has the right of abolishing even a permanent post and the *bona fide* exercise of such a power may be incapable of being challenged. But the question before us is not of the power or jurisdiction of the State Government to abolish permanent post. The question is as to the tenor of the notices dated the 5th of April 1966 and what we have to find is whether in the first place the scheme under which the Government has acted envisages notices of discharge without more, and secondly, whether the orders of discharge contained in the notices are severable from the orders of allotment and the options made available to the proposed allottees.

100. On the establishment of the Zilla Parishads under the Act, several duties and functions of the State Government were transferred to them. On the transfer of such duties and functions, a portion of the Government staff was rendered surplus. For the successful working of the Act and in order that the Zilla Parishads should be able to discharge the functions assigned to them under

the Act efficiently, it was necessary that their services should be manned by an experienced staff. That is why the Act envisages the transfer or allotment of Government servants rendered surplus to the Zilla Parishads. Sections 244 and 242-A of the Act contemplate the allotment of Government servants to Zilla Parishads and it seems to me clear that the orders of discharge are merely incidental to such orders of transfer or allotment. A person cannot be a servant of two masters at one and the same time and since it became necessary for the State Government to allot its surplus' staff to the Zilla Parishads, it was inevitable that formal orders of discharge should be passed. It is, in my opinion, difficult to accept the argument of the learned Advocate General that orders of discharge should be treated on a separate footing from the orders of allotment contained in the notices of 5th of April 1966. To accept this argument is to hold that the orders of discharge could be within the contemplation of the State Government apart from considerations relating to the allotment of surplus staff. During the course of his argument, the learned Advocate General mentioned that a special meeting of the Cabinet was held to consider the question whether the Government would have passed orders of discharge simpliciter and the meeting decided that if it was known to the Government that it had no power to act under Sections 244 and 242-A of the Act, it would not have hesitated to pass simple orders of dischange. I am not impressed by this statement. In the first place, the statement proceeds on the view stated to have been taken by the Government on hypothetical considerations and secondly, I find it hard to appreciate that in face of the Directive Principles contained in Article 39 (a) and Article 41 of the Constitution, any Government in this country would choose to discharge or dismiss its servants when the Legislature itself enables it to find alternate employment for the surplus staff. Section 242 of the Act imposes an obligation on the Zilla Parishads to take over the Government servants allotted to them and Section 242-A also creates a similar obligation though it provides what is in this context an inconsequential variation, namely, that the allotment shall be with the consent of the Zilla Parishad concerned. In my opinion, therefore, it is not possible to hold that a benevolent Government would have acted in a capricious manner.

101. A strange consequence would ensue if the notices dated the 5th of April 1966 are treated as notices of discharge simpliciter. Clause (3) of those notices gives an option to the proposed allottees not to accept employment under the Zilla Parishads and to retire from Government service. If such an option is exercised, the clause itself provides that terminal benefits would be available to the employee under Rules 4 and 5 of the Maharashtra Zilla Parishads (Allocated Servants) Premature Retirement Rules, 1963. An 'allocated servant' is defined by Clause (2) (b) of those Rules to mean, in so far as is material, a servant of the State Government allotted or proposed to be allotted and taken over under Sections 242 or 242-A by the Zilla Parishads. If the notices of the 5th of April 1966 are treated as simple notices of discharge and if the options contained in the notices are ignored, the petitioners would not be entitled to claim the terminal benefits, because they cannot answer the description of "allocated servants".

102. On the question of severability, Mr. Singhvi has drawn our attention to a decision of the Supreme Court in 1957 SCR 930 : AIR 1957 Supreme Court 628. At page 950 (of SCR) : (at p.

636 of AIR) of the report Venkatarama Aiyar J., who spoke for the Court, has formulated certain rules of construction in cases in which the question of severability is involved. The second rule formulated by his Lordship reads to say that if the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, the invalidity of a portion must result in the invalidity of the whole. The third rule which is more directly applicable in this case reads to say that even when the provisions which are valid, are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, the invalidity of the part will result in the failure of the whole. The fourth rule, which also is relevant for the purposes of the present petition, says that if the valid and invalid parts are independent of each other and do not form part of the scheme, but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the Legislature, the whole must be rejected.

103. In my opinion, the orders of discharge contained in the notices of the 5th of April 1966 are merely incidental to the orders of allotment contained therein and the options made available to the proposed allottees. The two portions are therefore inextricably mixed up and cannot be separated from each other. Secondly the notices have been served on the petitioners in pursuance of a scheme envisaged by the Legislature itself and formulated by the State Government in its Resolution of the 18th of March 1966. The notices of the 5th of April 1966 are in terms of the resolution of the 18th of March 1966 and since the various clauses of the notices are knit together as parts of a single scheme which is intended to be operative as a whole, the invalidity of the orders of allotment must result in the failure of the whole. Thirdly, to strip the notices of the 5th of April 1966 of the orders of allotment is to leave something so thin and truncated as to be different from what was intended. A mere order of discharge is in form and substance an entirely different conception from an order of discharge coupled with the offer of an alternate employment.

104. In my opinion, therefore, the several clauses of the impugned notices must be read together and as a whole. So read, the clauses are unseverable and therefore it would not be right to uphold the notices of the 5th of April 1966 as containing mere orders of discharge.

105. For these reasons, I agree with my brother that Sections 244 and 242 of the Act are no longer available to the Government in order to be able to exercise the power of initial appointment. Further, the period stipulated under Section 242-A having expired, the power under that section is also incapable of being exercised. The notices of discharge-cum-allotment, dated the 5th of April 1968 must therefore be set aside.

106. On the third point riod stipulated under Section 242-A having expired, the power under that section is also incapable of being exercised. The notices of discharge-cum-allotment, dated the 5th of April 1968 must therefore be set aside.
106. On the third point raised by Mr. Singhvi that the notices violate Articles 14 and 16 of the

Constitution, the relevant facts have been set out fulces of discharge-cum-allotment, dated the 5th of April 1968 must therefore be set aside.

106. On the third point raised by Mr. Singhvi that the notices violate Articles 14 and 16 of the Constitution, the relevant facts have been set out fully by my learned brother. Those facts will show that there is no scope for the allegation that persons similarly situated are Mr. Singhvi that the notices violate Articles 14 and 16 of the Constitution, the relevant facts have been set out fully by my learned brother. Those facts will show that there is no scope for the allegation that persons similarly situated are treated differently. It must be borne in mind that the State Government did not initially adopt a different standard for retre learned brother. Those facts will show that there is no scope for the allegation that persons similarly situated are treated differently. It must be borne in mind that the State Government did not initially adopt a different standard for retrenching surplus personnel. The resolution of the 18th of March 1966 as clarified by two Circular Letters each dated the 16th of April 1966 contains directions for ascertaining the extent of surplus posts and their abolition. The third paragraph of the resolution directs that on the abolition of the posts, persons occupying the posts should be finally allotted in order of their inter se juniority amongst substantive holders of posts if permanent posts were abolished, and in order of inter se juniority in the whole cadre if temporary posts were abolished. The classification of surplus staff into temporary and permanent servants is based on a differentia which is reasonably related to the object of the Act and the object of the scheme envisaged by the Act. If permanent posts are abolished, the junior most amongst the holders of such permanent posts are directed to be discharged and allotted. If temporary posts are abolished, the junior most in the entire cadre are directed to be discharged and allotted, I am unable to appreciate how this part of the scheme can be assailed as being violative of Article 14 of the Constitution. If an authority were required, the Supreme Court has held in AIR 1964 Supreme Court 1854, that classification of Government servants into temporary and permanent servants is reasonable and cannot be said to be discriminatory.

107. It is urged by Mr. Singhvi that the two clarificatory letters of the 16th of April 1966 contain the seeds of discrimination and must therefore be struck down. Under the first clarificatory letter it was directed that on abolition of surplus posts from a concerned cadre which could not have been substantively filled in, final allotment of Government servants to Zilla Parishad or discharge from Government service should be made in the order of inter se juniority in the whole cadre. The argument is that the resolution of the 18th of March 1966 and this clarificatory letter adopt two different standards for allotment and are therefore discriminatory. It is said that whereas under the resolution of the 18th of March 1966 if permanent posts which are filled in are abolished, the junior most amongst those who are confirmed in those posts are required to be discharged and allotted, under the clarificatory letter if the posts have not been filled in, the discharge and allotment is on the basis of inter se juniority in the whole cadre. Now there can be no doubt that different standards are prescribed for discharge and allotment by the resolution of the 18th of March 1966 and the clarificatory letters. But it must not, be overlooked that the two

sets of instructions are intended to apply to two different situations. Therefore, it would be wrong to say that persons similarly situated are treated differently. The State Government had issued instructions to the Collectors of the various Districts that a certain percentage of temporary posts which were in existence for a certain number of years should be made permanent. Instructions were also given to pass orders of confirmation of the persons concerned in those posts. These instructions were either overlooked by some Collectors or were, for a fortuitous reason, not implemented. This led to the creation of two distinct situations, one in which the permanent posts were filled, as for example in the District of Dhulia and another in which the permanent posts remained to be filled in, as for example in the District of Ratnagiri. These situations which clearly are not of the making of the Government are basically different and had to be treated differently.

108. One of the basic differences in the two situations is that in cases, for example, where permanent posts of Aval Karkuns had remained to be filled in, those officiating as Mamlatdars would have no lien at all on the post of an Aval Karkun. By its very definition in Rule 9 (31) of the Bombay Civil Services Rules, 1959, a lieu can be exercised only on a permanent post, including a tenure post, by the substantive holder of the post. For want of orders of their confirmation in the Class III posts of Aval Karkuns, those officiating in the Class II posts of Mamlatdars would have been required to be discharged simply. As indicated by me while dealing with the severability of the notices, dated the 5th of April 1966, such a consequence namely, a discharge not coupled with an option of allotment to a Zilla Parishad, is contrary to the very postulate of the Act, especially in regard to persons who were confirmed or who were entitled to be confirmed in permanent posts. It consequently became necessary to provide that in exceptional class of cases in which permanent posts were not filled in, the discharge-cum-allotment shall be on the basis of inter se juniority in the whole cadre. The circumstance therefore that different standards were adopted to meet the two situations cannot justify the conclusion that the instructions are discriminatory. If anything, the two contrary sets of instructions made different rules applicable to those differently situated. The challange to the resolution of the 18th of March 1966 and the two clarificatory letters of the 16th of April 1966 on the ground that they are discriminatory must, therefore, fail.

109. The fourth point appeared attractive, because the allotment of the petitioners to the Zilla Parishad deprived them of a reasonable chance of promotion in the services of the State Government. A Division Bench of this Court consisting of Tarkunde and H. R. Gokhale JJ, has taken the view in Special Civil Applications Nos. 966 and 1265 of 1965 decided on 21st of April 1966 (Bombay), that a reasonable prospect of promotion is a condition of service. The first proviso to section 242, which applies to allotments under Section 242-A also, says that the terms and conditions of service applicable immediately before the appointed day to any person allotted to the Zilla Parishad shall not be varied to his disadvantage, except with the previous approval of the State Government. Such an approval was lacking. But during the course of his argument, the learned Advocate-General placed before us a notification issued by the State Government in the

Gazette, dated the 30th of July 1966 providing that the Government gave its approval to all variations made in the terms of conditions of service, including any future chances of promotion of persons intended to be allotted to the Zilla Parishads. In view of this notification, the point raised by Mr. Singhvi does not survive. An attempt was made to challenge the notification of the 30th of July 1966 which was issued during the hearing of this petition, on the ground that it contains a blanket approval and furnishes intrinsic evidence of non-application of mind, I see no substance in this criticism. The peculiar language of the notification proceeds on the assumption which the State Government was not prepared to concede, that the terms and conditions of service applicable to the allottees were varied to their disadvantage. Secondly, the failure to set out separately all possible variations in the terms and conditions of service cannot necessarily furnish evidence of non-application of mind. An enumeration of specific terms and conditions in the notifications would have merely facilitated an exercise of ingenuity on the part of allottees. It is to meet such limitless ingenuity that the notification advisedly contains what is described as a blanket approval. The fourth point, therefore, fails.

110. In the result, I agree with the order proposed by my learned brother.

111. Before parting with this matter, I would like to draw the attention of the Government to a statement made by Mr. Singhvi on behalf of the petitioners and on behalf of many others who are stated to have instructed Mr. Singhvi to file similar petitions in this Court. The learned Counsel said, on instructions, that the employees of the State Government who were intended to be allotted to Zilla Parishads would have been willing to accept such service, if only their present scale of pay were protected. One hoped that the Government was able to find a workable formula in order to reduce appreciably the hardship which the orders of allotment involve, especially in the matter of pay.
Petition allowed.