

(1957) 07 MAD CK 0002
In the Madras High Court

A. Sambandhan

APPELLANT

Vs

Regional Traffic Superintendent (Personnel) Southern Railway
and Others

RESPONDENT

Date of Decision : 03-07-1957

Acts Referred:

Government of India Act, 1935 — Section 241(2)

Citation : (1958) ILR (Mad) 295 : (1957) 70 LW 948 : (1957) 2 MLJ 541

Judgement

1. The petitioner, an Assistant Station Master in the Southern Railways applied under Article 226 of the Constitution for the issue of a writ of

mandamus or other appropriate writ, to avoid the effect of the order, dated 25th April 1952, issued by the first respondent, which, the petitioner

complained, adversely affected his seniority in his cadre and was contrary to the rules in force governing seniority of the employees of his class in

the State Railways .

2. It was common ground that the conditions of service of railway employees like the petitioner were governed among other things by the statutory

rules in the Indian Railway Establishment Code, to which I shall refer hereafter as the Code. These rule were originally promulgated in exercise of

the power vested in the Governor-General-in-Council by Section 241(2) of the Government of India Act, 1935, the provisions of which were

analogous to those of Article 309 of the Constitution, Under Article 313 of the Constitution these statutory rules continued in force after the

commencement of the Constitution.

3. Under Rules 156 and 157 of the Code there was a further delegation of power to frame rules. Rule 156 ran:

The Railway Board have full powers to make rules of general application to

nongazetted railway servants under their control.

Rule 157 ran:

The General Managers of Indian Railways have full powers to make rules with regard to non-gazetted railway servants under their control

provided they are not inconsistent with any rules made by the President or the Railway Board.

(Indian Railway Establishment Code, Vol. 1, 1952 Edn. page 22).

Rule 10 in Appendix II-A of the Code specifically dealt with the question of seniority. Rule 10 ran:

10. Seniority.--(i) The seniority of subordinate staff shall be determined in accordance with the rule perscribed by the General Manager....

(2) Seniority lists of the staff shall be made up in accordance with the instructions issued under (1) above.

(3) Staff may be permitted to see these seniority lists in which names are placed, if this cannot conveniently be arranged, they may be informed, on

request, of their place on the seniority list.

It was in exercise of these powers that the General Manager, South Indian Railway, issued Circular No. 343, dated 11th August, 1949. The

relevant portion of the circular ran:

Except as provided for below the provisions of Appendix II-A State Railway Establishment Code, Volume I, will apply to promotion of Class III

staff in all other respects.

2. (a)(1) Seniority shall be based on the date of confirmation in grade.

(ii) In cases in which the dated of confirmation in grade is the same, seniority obtaining prior to the date of confirmation in grade shall stand....

10. (a) The new procedure will come into force with office form 16th August 1949. promotions made or ordered prior to 16th August 1949, in

accordance with the approved procedure in force from time to time shall not be reopened.;

4. The petitioner claimed that his seniority as an Assistant Station Master should be regulated by these rules and with reference to the date of his

confirmation in that class, 2nd November, 1949. To appreciate the scope of that contention it is necessary to set out the circumstances under

which the petitioner was recruited and was eventually confirmed in his post.

5. It should be borne in mind that the petitioner was recruited for appointment when the South Indian Railway was a separate unit of administration

and before it was integrated with other units to constitute the Southern Zone of the Indian Railways. That integration created problems of its own,

with which, however, I need not concern myself in these proceedings.

6. The posts of the Assistant Station Masters constituted a "class" within a "group" as defined by Rule 2 in Appendix II of the Code. The Assistant

Station Master's was classified as a non-selection post. It was common ground that the normal method of recruitment to that class of post was by

promotion from the clerical and other subordinate services. The petitioner, however, along with some others was recruited direct to fill the post of

an Assistant Station Master. The validity of that recruitment was never in issue in these proceedings; but it is necessary to explain what led to that

recruitment, which brought in its wake certain administrative problems.

7. To comply with the terms of the award of the adjudicator, who had been appointed by the Government, it was necessary to increase to a

considerable extent the strength of the cadre of Assistant Station Masters and Signallers. The Administration apparently felt that depletion of the

clerical and other services all of a sudden by selecting from among them alone candidates for appointment as Assistant Station Masters should be

avoided to the extent possible. Recourse was therefore had to direct recruitment, and in September, 1948, the Administration of the South Indian

Railway asked for the recruitment of about 300 candidates. The petitioner was one of those selected, and he was eventually appointed along with

others after the preliminary period of training. The petitioner was appointed on 25th August, 1949; and the scale of pay of the post to which he

was appointed was Rs. 64--4--170.

8. The Administration was, however, all along of the view, that the normal channels of promotion from the clerical services should not be blocked,

and that their interests should not suffer, as it was really on administrative grounds that recourse was had to direct recruitment. That was also the

claim of the clerical services. On 5th September, 1949, the representatives of the clerical services submitted as one of their requests:

This Council requests that, when direct recruitment is made for Station Masters a certain percentage to be decided by the General Manager should

be reserved for the existing clerical staff of the Traffic Department by virtue of their seniority. It is also requested that the District Officers may be

advised to relieve as many of the staff as possible who are willing to go as Station Masters." On this the note of the Administration was:

According to the present avenue of promotion, Station Master and Signaller Trainees are recruited directly to fill up the vacancies of Station

Masters arising out of the implementation of the Adjudicator's award. It has since been decided that when other categories of staff who qualify to

Station Masters' duties are absorbed as Station Masters they will be given due seniority over the direct recruits in accordance with the date of

passing the examination. The other categories of staff have made representations against the direct recruitment of Station Master and Signaller

Trainees and the decision on the representation is not yet arrived. All the District Officers have already been advised to send not more than 15 men

from each district for qualifying in Station Masters Refresher Course.

9. In due course a large number of candidates were also recruited from the clerical services. They were trained and they were eventually appointed

to the posts included in the class of Assistant Station Masters.

10. The next problem that arose was that of confirmation of the candidates who had been selected for appointment by direct recruitment, and also

by promotion. It is not clear from the material made available to me whether any thought was given at that stage by the Administration to the further

problem of seniority that was bound to arise, if confirmations were ordered. Steps were, however, taken to order confirmation of candidates who

had been selected, trained and appointed.

* * *

[After setting out the representations made to the Administration by the clerical services and the office notes made thereon and the instructions of

the Railway Board, His Lordship continued:-]

11. The final decision of the Administration was embodied in the communication, dated 25th April, 1952, addressed on behalf of the Commercial

Operating Superintendent, Madras, to the Operating Superintendents in charge of the districts. The relevant portion of this order ran:

The principles on which the seniority of Station Masters promoted from the ranks of Station Clerks inter se and visa vis directly recruited

Probationary Station Masters is to be fixed have received careful consideration and the decisions as given hereafter have been taken in this regard.

2. Station Masters whose seniority is to be fixed fall into the following seven categories:

(i) Staff in Service other than War Service candidates, who qualified as Station Masters in the normal course.

(ii) Staff in service who qualified as Station Masters in the interim training courses in connection with the implementation of the Adjudicator's award.

(iii) War Service candidates recruited as Probationary Relieving Clerks and subsequently qualified as Station Masters.

(iv) War Service Candidates directly recruited as Probationary Station Masters.

(v) Grainshop surplus staff absorbed as Station Masters.

(vi) Surplus staff from other departments absorbed as Station Masters, including surplus Relieving Clerks.

(vii) Directly recruited Station Masters other than those coming under item (iv).

* * *

Category (vii) : Directly recruited Station Masters other than those coming under item (iv), but including surplus Relieving Clerks:

These staff will also be junior to items (i) to (v) but their seniority inter se will be according to their date of qualifying as Station Masters. Their

seniority inter se in each batch will be according to date of appointment, and the date of birth where the dates of appointment are the same.

A combined seniority of Station Masters and of all those qualified as Station Masters should be drawn up on the above basis and necessary

adjustments should be made in the matter of promotions in accordance with the seniority. In cases where juniors have been confirmed as Station

Masters but seniors have not been promoted, no reversions need or can be made, but the staff who are seniors in the combined list will have their

seniority protected when subsequently they are promoted as Station Masters.

12. With reference to these orders, dated 25th April, 1952, which were in due course given effect to the petitioner averred in paragraphs 7 and 8

of his affidavit:

7. On 25th April, 1952, the Regional Traffic Superintendent (Personnel),

Trichinopoly, issued an order to all District Traffic Officers, ordering that all directly-recruited Station Masters should be placed junior to the clerical staff who had passed "their Station Master's examination prior to 31st March, 1951.

8. As a result of the above order, I was reverted from the post of Relieving Station Master to that of a Clerk in charge on 9th May, 1952....

Consequent on this, my scale of pay too was reduced to Rs. 60--4--150. Before reversion, I drew a salary of Rs. 72 a month; and after reversion my basic pay was Rs. 68 .

13. Thus one of the results of the order, dated 25th April, 1952, was that the petitioner among others dropped from Rs. 64--4--170 scale of pay

to Rs. 60--4--150. In paragraph 11 of his affidavit the petitioner alleged that, though subsequently orders were passed that the petitioner should be

restored to the old scale of pay Rs. 64--4--170, these orders had not been given effect to. This was, however, rectified by the Administration in

December, 1954. The relevant portion of that order ran:

In accordance with the decision of the Railway Board. . . . directly recruited Probationary Station Masters are allowed to retain their designation as

Assistant Station Master in scale of Rs. 64--170 but switched on to the duties of Clerks-in-charge. Accordingly the Probationary Station Masters

working as C.N.Cs. are designated ""Assistant Station Master"" (Working as C.N.C. 1 or 2) and this designation should be adopted in all future

correspondence with this office to avoid confusion.

14. Thus the loss in pay resulting from the order dated 25th April, 1952, was rectified.

15. With reference to the loss of seniority which the petitioner suffered under the order dated 25th April, 1952, the petitioner averred in paragraph

13 of his affidavit:

Pursuant to the order of 25th April, 1952, about 800 clerks, who were junior to us but who had passed the Station Masters' Examination before

31st March, 1951, were placed above us in the seniority list.

16. Representations continued to be made to the higher authorities by both sets of appointees, those directly recruited and those who were

promoted. On 29th July, 1955, the Railway Board stated:

I am directed to refer to your letter addressed to the Ministry of Railways, regarding the grievances of the directly recruited Station Masters on the

Southern Railway in the matter of their seniority, and to state that the matter has been carefully looked into by the Board and they are satisfied that

no injustice is involved in the seniority fixed by the Railway Administration.

The petitioner challenged the validity of the orders embodied in the communication, dated 25th April, 1952. The relief he asked for was

the issue of a writ of mandamus or any other appropriate writ, order or direction calling for the records relating to the order of the first respondent

herein in E. 2178/Misc/V, dated 25th April, 1952. modified by the Circular No. 6 of the DTS/PTJ, dated 5th March, 1954, and directing the

respondents to forbear from enforcing the order in so far as it involves the reduction in rank of the petitioner herein....

The petitioner of course could only assert his individual rights in these proceedings he initiated under Article 226 of the Constitution. It was really

as a test case that the proceedings were conducted both on behalf of the petitioner and on behalf of the third respondent. The third respondent was

representing the "Association of Clerk-promoted Station Masters" and he was permitted to bring himself on record as a contesting respondent.

The Railway Administration, represented by respondents 1 and 2, placed all the available material before the Court, but it virtually left the

questions at issue to be argued by counsel for the petitioner and the third respondent.

17. The main contention of Mr. Nambiar, the learned Counsel for the petitioner, that the regulation of a seniority by the impugned order, dated

25th April, 1952, contravened Rule 2 embodied in Circular No. 343, dated 1st August, 1949, is in my opinion well-founded. That was the only

rule which regulated seniority of non-gazetted railway servants, of whom the petitioner was one, to which my attention was drawn. It was no doubt

a rule framed by the General Manager, South Indian Railway, but the validity of that rule could not be challenged and in fact was never assailed.

Under Rule 157 of the Code read with Rule 10 of Appendix II-A of the Code, the General Manager had the requisite authority to frame rules to

determine the seniority of the members of the railway staff. It is equally true that that rule was promulgated when the South Indian Railway was an

independent unit of administration and before that unit was integrated with the Southern Railway. That integration left unaffected the seniority of the railway servants inter se within the old units; and it is only that seniority that is in issue now in these proceedings. It was not the case of anyone that Rule 2 of Circular No. 343 stood abrogated on the integration of the railways. Rule 2 categorically stated that the only factor that determined seniority as amongst those who had been confirmed in a given grade or class was the date of confirmation. In these proceedings I am concerned only with the class of Assistant Station Masters. The directions given in the impugned order, dated 25th April, 1952, were obviously inconsistent with Rule 2 of Circular No. 343. Whatever was the channel of recruitment to the class of Assistant Station Masters, under Rule 2, only the date of confirmation regulated the seniority.

18. Mr. Bhashyam, counsel for the third respondent, urged that the directive principles embodied in the impugned order, dated 25th April, 1952, should themselves be viewed as rules issued by the General Manager, Southern Railways, in exercise of the rule making power undoubtedly vested in him by Rule 157 of the Code read with Rule 10 in Appendix II-A. There was no basis in fact for that argument. The General Manager himself never purported to issue the impugned order as containing a fresh set of rules applicable only to the class of Assistant Station Masters among the non-gazetted staff of the railways. It was never the claim of the administration represented by respondents 1 and 2 in these proceedings that the order, dated 25th April, 1952, promulgated any "rules", in effect superseding Rule 2 of Circular No. 343. In paragraph 10 of the counter affidavit filed on behalf of respondents 1 and 2 the stand taken was:

The Chief Traffic Manager, South Indian Railway, after consulting the recognised Trade Unions of South Indian Railway, viz., The South Indian Railway Employees' Association and the South Indian Railway Workers' Union, arrived at the formula for fixing up the order of preference among the seven categories of staff mentioned above and this is embodied in the order, dated 25th April, 1952, in question and which had the approval of the General Manager.

Whether the General Manager could promulgate a rule on 25th April, 1952, to determine the seniority of Assistant Station Masters and direct that

retrospective effect be given to the operation of that rule does not arise for determination. Factually he did not do so.

19. A question of comparatively minor importance can be disposed of at this stage. In form the order, dated 25th April, 1952, was one issued not

by the General Manager but by the Commercial Operating Superintendent, an Officer subordinate to the General Manager. Apart from the specific

averment in paragraph 10 of the counter-affidavit filed by respondents 1 and 2 which I have extracted above, from the papers produced by the

Administration it should be clear that prolonged consideration of the proposals culminated in the order, dated 25th April, 1952, and it had the

specific approval of the General Manager, That order was one authorised by him, though apparently in the usual course of administrative routine

the order itself issued in the name of the Commercial Operating Superintendent.

20. The real bar to the acceptance of the plea of the learned Counsel for the third respondent, that the order, dated 25th April, 1952, should be

viewed as promulgating a fresh set of rules applicable to Assistant Station Masters, is not the fact that the order was issued in the name of the

Commercial Operating Superintendent, but that factually the rule making power vested in the General Manager by Rule 157 and Rule 10 in

Appendix II-A of the Code was not invoked or exercised. It is true that the General Manager was specified by the statutory rules as the authority

competent to frame rules to determine seniority. It was the same authority that authorised the issue of the impugned order, dated 25th April, 1952.

I have already pointed out that the order, dated 25th April, 1952, obviously conflicted with the requirements of Rule 2 of Circular No. 343. The

conflict between the rule and the order, dated 25th April, 1952, cannot obviously be resolved on any assumption, that the impugned order could

proprio vigore operate as a rule framed by a competent authority. Such a contention is untenable in view of the pronouncement of a Full Bench of

this Court in Nagarathnammal v. Ebrahim Saheb (1955) 2 M.L.J. 49 : I.L.R (1955) Mad 460

We are unable to subscribe to the view that where a rule already exists and provides for any specific matter, still when an individual case comes up

before the Board, it is open to the Board, notwithstanding the existence of that rule, to decide that case in any manner it thinks fit, even in

contravention of the existing rule, in other words, the Board cannot ignore the existing rule by treating the order made in that particular case as an amendment of the rule. That the Government or the Board has the power to amend the rule should make no difference; both are bound to dispose of the matters that come up before them in accordance with the rules at the time in force on the subjectThe Board possesses both the power to frame rules and the power to pass orders in individual cases. But when a case comes up, for which provision already exists under the rules in force, that case must be disposed of in accordance with the rules. No doubt, it is open to the Board to revise or amend the rules it has framed. But till the rules are revised or amended, the existing rules must be honoured and given effect to. We wish to emphasise the position, that the decision in any given case must be in accordance with the rules in force on the date of the decision. Otherwise, the difference between what may be by way of analogy be called its legislative (Rule making functions of the Board) and its judicial and quasi-judicial functions would be blurred and the door thrown open to charges of arbitrariness.

21. To appreciate a further contention of the learned Counsel for the third respondent it may be desirable to set out over again Rule 10 in

Appendix II-A of the Code

10. Seniority.--(1) The Seniority of subordinate staff shall be determined in accordance with the rules prescribed by the General Manager....

(2) Seniority lists of the staff shall be made up in accordance with the instructions issued under (1) above.

22. The learned Counsel submitted that whether they were called rules or instructions made no difference, and instructions issued by the General

Manager to determine seniority would have the same force as rules framed by him. As I understand Rule 10, the "instructions" which the General

Manager is authorised to issue under Rule 10(2) have to be in conformity with the rules, no doubt framed by him under the authority vested in him

by Rule 10(1). Rule 10(2) did not, in my opinion, authorise the issue of instructions contrary to an existing rule which governed seniority. Rule 2 of

Circular No. 343 was a valid rule in force, and the only valid rule in force on 25th April, 1952, to determine seniority. The order, dated 25th April,

1952, viewed even as instructions within the meaning of Rule 10(2) in Appendix

II-A was certainly not in conformity with Rule 2 of Circular No.

343.

23. When the impugned order, dated 25th April, 1952, did not have the force of a rule issued by a competent authority under Rule 157 read with

Rule 10 of Appendix II-A of the Code, there can be no basis for the argument of the learned Counsel for respondent 3, that by necessary

implication the order, dated 25th April, 1952, abrogated rule 2 of Circular No. 343 issued in 1949.

24. Rule 2, it should be remembered, regulated the seniority of those who had been confirmed in their posts, and it is only that seniority of the

petitioner, who was confirmed in his class, with which I am concerned. Rule 2 did not for instance determine in what order railway servants of that

class should be confirmed. Anything in the impugned order which dealt with the questions of seniority for purposes of promotion and appointment

are outside the purview of my discussion in these proceedings.

25. The whole basis of the claim of the petitioner was that he had been confirmed, on 12th May, 1951, with effect from 2nd November, 1949.

The learned Counsel for the third respondent urged that the confirmation of the petitioner in his class as Relieving Station Master must be viewed

as non set in law. No such specific plea was taken even by respondent 3 in the counter-affidavit he filed. Nor did the Administration ever advance

such a plea or argument. The contention has no real basis either. There was no real basis for the plea of the learned Counsel for respondent 3, that

the confirmation of the petitioner ordered on 12th May, 1951, was in contravention of any orders in force on that date.

26. The next contention of the learned Counsel for respondent 3 was that the confirmation of the petitioner was irregular, as he was confirmed

even before he had completed the probation period of one year, which the instructions issued by the Railway Board prescribed. The petitioner was

appointed on 25th August, 1949. He was confirmed as Relieving Station Master only on 22nd May, 1951, though effect was given to that

confirmation from 2nd November, 1949. My attention has not been drawn to any rule or direction which forbade retrospective effect being given

to confirmation, when the confirmation itself was ordered after the period of probation had been completed". I should also observe that this plea,

that the confirmation was irregular, was not one formulated by the third respondent in the counter-affidavit.

27. Thus there is no scope in these proceedings to ignore the factum of the confirmation of the petitioner or to challenge its validity.

28. My conclusion on this portion of the case is that the impugned order, dated 25th April, 1952, contravened Rule 2 of Circular No. 343 issued

in 1949, which as I said, was the only rule in force that determined the seniority of the petitioner as a confirmed member of the class of Assistant

Station Masters.

29. The next question is whether the petitioner should be denied any relief in these proceedings, despite the finding I have recorded above, that the

impugned order was in contravention of a rule in force governing seniority.

30. The learned Counsel for the third respondent pointed out that the South Indian Railway has been integrated with other railways to form the

Southern Zone, and the Railway Board has settled the principles to govern the seniority subsequent to the date of integration, 14th April, 1951. He

urged that any consideration of the seniority the petitioner was entitled to in the South Indian Railway could at best be of academic interest now.

31. The principles for determining the seniority of staff on the integrated railways were formulated by the Railway Board and published in the

Supplement to the Southern Railway Gazette, dated, 25th November, 1954 and again in the Supplement to the Southern Railway Gazette, dated

10th March, 1956.

32. As I have already pointed out earlier/the question before me is not what seniority the petitioner should be assigned in the combined seniority

list, should one be prepared for the intergrated Southern Railways. In the notification published on 25th November, 1954, principle 4 specifically

provided "" the inter se seniority in the several intergrating units will not be disturbed."" In the counter-affidavit filed by respondents 1 and 2 it is made

clear that the combined seniority lists for which the notification of the Railway Board provided have not yet been prepared. The contention of the

learned Counsel for the petitioner that the rules framed by the Board to determine seniority in the intergrated railways in no way cures the invalidity

of the impugned order, dated 25th April, 1952, is in my opinion, well-founded.

33. The next contention of the learned Counsel for the third respondent was that

even if the letter of the rule, Rule 2 of Circular No. 343, was violated by the impugned order, that merely, gave effect to a policy which the administration had all along intended to adopt. It is not necessary for me to decide, nor is there sufficient material to embark upon a discussion, whether the impugned order was just and equitable. It is not on such considerations that relief can be denied to the petitioner in these proceedings if otherwise he is entitled to it.

34. The next contention of the learned Counsel for the third respondent was that the petitioner had estopped himself by his conduct from challenging the validity of the order, dated 25th April, 1952.

35. It is not a case of an unqualified acquiescence in the order, dated 25th April, 1952, there is the additional factor, to which I have already adverted, which I have to take into account, that this has been really fought out as a test case. The questions at issue have had to be investigated, and even if the plea of estoppel had been well-founded--I have pointed out it was not--this is not a case in which my discretion ought to be exercised against the grant of the relief to which the petitioner is entitled.

36. The next ground of objection advanced by the learned Counsel for the third respondent to the grant of relief to the petitioner deserves more serious consideration. The learned Counsel for the third respondent pointed out that it was only the infringement of a rule governing seniority, made by the General Manager, of which the petitioner complained. The learned Counsel urged that the right, if any, the petitioner could claim on the basis of the rule, contravention of which he complained, was not justiciable, in the sense that the Court cannot grant any relief even if the contravention of a rule regulating one of the service conditions was established. Rule 2 of Circular No. 343, contravention of which I have held was established, was one framed by the General Manager under the delegated power vested in him by Rule 157 read with Rule 10 in Appendix II-A of the Code. The Rules in the Code were themselves promulgated under delegated authority, a delegation u/s 241(2) of the Government of India Act, 1935. There was a further delegation of powers by the Central Government under Rule 157 of the Code. The validity of that delegation was not in issue, and the arguments proceeded on the basis, that Rule 2 of Circular No. 343 was a rule validly promulgated. It was one of the rules

that regulated the conditions of service of the civil servants of the railway staff. Whether the contravention of such a rule is justiciable is the question

for determination.

37. The recent decision of Rajagopala Ayyangar, J., in W.P.Nos. 487, 1131, etc., of 1956 is directly in point, and if the principle laid down there

is to apply, the question has to be answered in the negative. After a detailed discussion, the learned Judge recorded his conclusion, that

independent of any violation of the, constitutional guarantees embodied in Article 311 of the Constitution, a breach of service rules regulating

conditions of service would not by itself furnish a civil servant wronged by such a contravention with a cause of action or empower the Court to

grant redress. , That would appear to be the logical result of the application of the doctrine, that a civil servant in India holds office during the

pleasure of the Executive, represented by its titular head, which is explicitly laid down in Article 310(1) of the Constitution.

38. It is true that the principle, that a civil servant holds office during the pleasure of the Executive (it was the Crown at one time) is not so absolute

in its operation as it once was. Constitutional limitations were imposed on the exercise of that pleasure by the Executive successively by Section

96-B (1) enacted in 1919, amending the Government of India Act of 1915, by Sub-sections (12) and (3) of Section 240 of the Government of

India Act, 1935, and by Clauses (1) and (2) of Article 311 among other provisions of the Constitution.

39. It is also true that Section 96-B (2) as enacted by the 1919 Act, then Section 241(2) of the 1935 Act and finally Article 309 of the

Constitution made specific provision for the Executive to frame rules regulating the conditions of service of civil servants. That could hardly be

viewed as constituting by itself a limitation on the exercise of the pleasure of the Executive. They were enabling provisions. Regulation of the several

conditions of service of one or more classes of civil servants by "service rules" framed by the Executive Government was a familiar feature even

before 1919. In my opinion, even had there been no such express provision in the successive constitutional enactments, the power to regulate

conditions of service from time to time by rules framed by the Executive would have been incidental and ancillary to the well recognised and

exclusive right of the Executive of the State to employ its civil servants at its pleasure. The specific provisions made first by Section 241(4) of the 1935 Act and then by Article 309 of the Constitution for the appropriate Legislature to enact laws to regulate conditions of service of civil servants would appear to stand on a different footing. Confining myself to the provisions of the Constitution, had there been no such express provisions as in Article 309, the effect of Article 310(1) would have been to allot to the exclusive domain of the Executive, the right to employ civil servants at its pleasure, subject of course, to any other express provisions made in that behalf by the Constitution itself. Legislative competence to legislate on that subject had to be specially conferred. It was conferred by Article 309 of the Constitution. Item 70 of List I and Item 41 of List II of the Seventh Schedule were in conformity with the provision made in Article 309. Had Article 309 and the entries in the Seventh Schedule consistent therewith not been part of the Constitution, there would have been an absence of legislative power to regulate conditions of service of a civil servant who could hold his post only at the pleasure of the Executive. But even without the provision made in the Proviso to Article 309, the Executive would have had the power to regulate conditions of service by rules made by it from time to time.

40. It may not be necessary to examine in these proceedings whether violations of limitations imposed by a valid enactment of the appropriate Legislature on the exercise of the pleasure of the Executive would constitute actionable wrongs, which could be redressed by a Court of law. Much would depend on the provisions of the enactment. The statute itself might prescribe the form for redress and exclude expressly or by necessary implication recourse to Courts to enforce what would be only statutory rights. There was no enactment to regulate the seniority of the petitioner. It is well-settled now that violation of the guarantees afforded by Article 311 is actionable, in the sense that recourse can be had to Courts to redress the wrong. No such question however arises for consideration in these proceedings. The question for consideration is, whether violation of a service rule, by which the seniority of the petitioner as a civil servant as one of the conditions of his service was regulated, is justiciable.

41. It is beyond controversy now that the Court could give no redress for the violation of one of the service rules as such so long as the

Government of India Act as amended in 1919 was in force, despite the specific reference to the statutory rules in Section 96-B, to regulate

conditions of service. See Rangachari v. Secretary of State (1937) 1 M.L.J. 515 : L.R. 64 IndAp 40 : ILR (1937) Mad. 517 and Venkata Rao v.

Secretary of State (1937) 1 M.L.J. 529 : L.R. 64 IndAp 55 : ILR (1937) Mad. 53 . The position remained the same under the Government of

India Act, 1935. It is true there is nothing in the Constitution analogous to Section 241(5) of the 1935 Act. That would, however, appear to make

no difference in determining the question at issue, whether under the provisions of the Constitution a right of action can be claimed by a civil

servant, who holds office only at the pleasure of the Executive, to enforce observance of a rule framed by it to regulate the conditions of service of

that civil servant. Did the Constitution effect such a fundamental change in the position of the civil servant ?

42. The basic principle embodied in Article 310(1) of the Constitution is that, except as expressly provided by the Constitution, a civil servant

holds office during the pleasure of the Executive. The tenure as well as other conditions of service are determined at the pleasure of the Executive. I

have already pointed out that the Proviso to Article 309 cannot by itself constitute a limitation on the power of the Executive in the exercise of its

pleasure; it does not fall within the scope of the saving clause in Article 310(1) "" except as expressly provided by the Constitution."" The Proviso to

Article 309 in effect recognised the power of the Executive to regulate conditions of service by rules framed at its discretion from time to time, and

provided for it. The Constitution itself placed certain limitations on the exercise of the pleasure of the Executive. Obviously no rule framed by the

Executive, with or without an express provision therefore as in the Proviso to Article 309, could prevail against the provisions of the Constitution.

Having specifically conferred on the Legislatures power to enact laws to regulate conditions of service of civil servants, the Constitution further

provided that no rule framed by the Executive should be in conflict with any statutory provision. Article 309 and the Proviso thereto thus

established the supremacy of the Legislature over the Executive in that specific field. In the absence of any express provision in the Constitution or

in any enactment passed by the appropriate Legislature, the power of the Executive to frame rules at its discretion and pleasure, to regulate conditions of service of civil servants, remains unfettered. Such rules do not create what might be called constitutional rights, despite the Proviso to Article 309, rights which the Courts are bound to enforce when called upon to do so. Those rules do not establish any statutory rights, which could be enforced by the Courts in the absence of any express or implied provision in the statute to bar the jurisdiction of the Courts. The Rules certainly do not create any common law rights, which could be enforced by Courts. There never was, nor is there, any Common Law right now which could prevail against the principle enshrined in Article 310(1) of the Constitution that a civil servant holds his office during the pleasure of the Executive.

43. The question is not whether the appropriate Governmental authority, i.e., the Executive is as much bound by the rules it has made as the civil servants to whom the rules primarily relate. Rules are made to be enforced; they are not made to be violated at the caprice of the Executive authority concerned. The rules constitute a solemn assurance by the Executive that its pleasure would be exercised in accordance with those rules. The real question for determination now is, whether Courts can enforce adherence to the rules, that is, whether the rights and obligations arising under those rules, even if they are called such, can be enforced by Courts. That the Executive is bound to honour its obligations under the rules it has framed, to avoid any charge of arbitrariness, does not necessarily involve that the Courts can interfere to enforce such obligations. The rules constitute a solemn assurance : they do not bring into existence rights and obligations enforceable in a Court. A civil servant is entitled to expect that he would be dealt with fairly and justly by the Executive, and to expect from the Executive a scrupulous adherence to the rules it has framed for the guidance of itself, its subordinates and its civil servants, whose service conditions the rules regulate. The wrong suffered by a civil servant by any contravention of the rules has to be redressed by the Executive itself, to whose pleasure the Constitution has committed him. Courts can have no jurisdiction to intervene to direct the Executive that its pleasure should be signified only in accordance with the rules in force, rules framed and

alterable by the Executive at its pleasure.

44. That was what their Lordships of the Privy Council pointed out in AIR 1937 31 (Privy Council) . After quoting the dicta of Lord Hobhouse in

Shenton v. Smith L.R. (1895) A.C. 229:

They (Their Lordships) consider that, unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the

pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well

understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law suit, but by

an appeal of an official or political kind... As for the regulations, their Lordships again agree with Stone, J., that they are merely directions given by

the Crown to the Governments of Crown Colonies for general guidance, and that they do not constitute a contract between the Crown and its

servants.

Lord Roche observed:

Section 96-B (of the 1919 Act), in express terms, states that office is held during pleasure. There is, therefore, no need for the implication of this

term and no room for its exclusion. The argument for a limited and special kind of employment during pleasure but with an added contractual term

that the rules arc to be observed is at once too artificial and too far reaching to commend itself for acceptance. The rules are manifold in number

and most minute in particularity and are all capable of change .

45. I may be permitted to add that they are capable of change at the pleasure of the executive. Apart from the question of construction of the terms

of Section 96-B, one of the considerations which led the Privy Council to the "" irresistible conclusion "" that no right of action existed was:

... It is at least worthy of consideration and it can hardly be doubted that the suggested procedure of control by the Courts over Government in the

most detailed work of managing its services would cause not merely inconvenience but confusion.

46. With reference to the provision for making service rules u/s 96-B, Lord Roche observed:

They regard the terms of the section as containing a statutory and solemn assurance that the tenure of office though at pleasure will not be subject

to capricious or arbitrary action but will be regulated by rule. The provisions for appeal in the rules are made pursuant to the principle so laid down.

47. It was another aspect of the same problem that Balakrishna Ayyar, J., referred to in the passage from the decision of the Full Bench in

Nagarathnammal v. Ebrahim Saheb (1955) 2 M.L.J. 49 : ILR (1955) Mad. 460 which I have set out earlier, when in effect he pointed out that the

fact that the power to frame rules and the power to administer them are both vested in the same authority made it all the more necessary for the

executive authority to adhere strictly to the rules in force. But the enforcement of the rules has to be by the executive hierarchy itself.

48. That still continues to be the position under Articles 309 and 310(1) of the Constitution and the fact that the Executive has framed rules to

regulate the conditions of service does not by itself clothe the civil servant with a right to seek the aid of the Court, when he has been wronged by

violation of any of those rules. To hold that the Court has that jurisdiction would, it appears to me, constitute an inroad on the concept, that the civil

servant holds office during the pleasure of the Executive, not warranted by the terms of the Constitution.

49. It should be quite clear that service rules promulgated under Article 309 of the Constitution do not of their own force become part of the

Constitution to come within the scope of the expression "" except as expressly provided by the Constitution "" in Article 310(1). There can be no

question either of the rules being viewed as terms of any contract between the civil servant and the Government What was pointed out by their

Lordships of the Privy Council in AIR 1937 31 (Privy Council) with reference to the analogous provisions of Section 96-B of the 1919 Act

applies equally well to the rules framed under Article 309 of the Constitution. So there is no basis for a claim, that, when the condition? of service

of a civil servant are altered contrary to the service rules in force, an actionable wrong has been committed, or that an actionable right has accrued

to the aggrieved civil servant.

50. Is the position any different, if the rules in form are not those framed under Article 309 after the Constitution came into force, but rules framed

under earlier enactments but continued in force under the terms of Article 313?

It is true that service rules framed u/s 241(2) of the 1935 Act--as in the present case--and continued in force by Article 313 have been comprehended within the scope of the expression "" laws in force "" in Article 313 of the Constitution. If Article 309 read with the principle enshrined in Article 310(1), that a civil servant holds office during the pleasure of the Executive, drives one to borrow language of Lord Roche to the irresistible conclusion, that a violation of the service rules is not justiciable, it would be difficult to hold that Article 313 read with Article 310(1) drives one to the irresistible conclusion, that the Constitution makers intended to place the service rules issued after the commencement of the Constitution on a footing so totally different from those promulgated before the Constitution and continued in force under the terms of Article 313 and make any violation thereof justiciable by the simple expedient of labelling them "" laws in force"". The analogous provisions of Section 96-B (3) of the 1919 Act and Section 276 of the 1935 Act, which also provided for the continuance in force of the pre-existing service rules, did not by themselves confer right on the civil servants, who held his office at the pleasure of the Executive (Crown), to seek redress in a Court of law for any violation of these rules. It was a familiar statutory device; and Article 313 was obviously designed to guard against any possible contention, that otherwise a vacuum would be created. Violation of the rule of seniority, even as a law in force"" within the meaning of Article 313, is not enough to make it justiciable. No more than Article 309 did Article 313 abridge the power of the Executive granted to it by Article 310(1). It was still the exclusive domain of the Executive to grant of redress.

51. It may not be necessary to refer to all the cases cited during the arguments before me. As I have pointed out, the decision directly in point is that of Rajagopala Ayyangar, J., in W.P. Nos. 487, 1131, etc., of 1956. I find myself in respectful agreement with his analysis and with his final conclusion, that a violation of a rule framed by the executive authority to determine seniority as one of the conditions of service of a civil servant, is not an actionable wrong for which the Court could grant redress.

52. In Dr. M. Krishnamoorthy Vs. The State of Madras and Another, which was a judgment of the Chief Justice and Panchapakesa Ayyar, J., the learned Chief Justice pointed out that there was no real basis for the argument

that a statutory service rule had been violated; the learned Chief

Justice observed:

Learned Counsel for the petitioner also contended that the appeal was not properly disposed of because it was disposed of not by the Governor

personally but by the Secretary to the Government, Public Health Department. Here again we should mention that the petitioner is not entitled

under any statute or any statutory rule to a right of appeal.

Dealing with the case of a violation of a statutory rule, the learned Chief Justice observed:

The fact that rules are made to safeguard the rights of civil servants in matters of disciplinary action does not mean that this Court has jurisdiction to

quash orders of Government dismissing a civil servant because one or other of the rules has been contravened. So far as there is no contra-

vention of Article 311 of the Constitution which corresponds to the provisions of Section 240 of the Government of India Act, 1935, this Court

would have no jurisdiction to quash an order of dismissal by the Government.

53. In *C. Sambandam Vs. The General Manager, South Indian Railway, Tiruchirapalli*, a Division Bench of this Court consisting of the Chief

Justice and Venkatarama Ayyar, J., reiterated the principles laid down in *Shenton v. Smith* L.R. (1895) A.C. 229 and applied by the Privy Council

in AIR 1937 27 (Privy Council) and AIR 1937 31 (Privy Council) and observed:

It will follow from the above that the Government has a right to terminate the services of a civil servant at will and the only restrictions on this

power are those expressly enacted in the Constitution. There is accordingly considerable force in the argument of the respondent that he has a right

to terminate the services of the employee under Rule 148 of the Indian Railway Establishment Code and that there is nothing in the Constitution

which restricts such a right

54. After pointing out that in fact the power conferred by Rule 148 had not been availed of, the learned Judges observed:

We are of opinion that the order... is one of compulsory retirement falling within Rule 3 of the Safeguarding of National Security Rules and as the

procedure prescribed in Rule 4 has not been followed, it is illegal and inoperative.

55. The learned Judge finally held:

As the question involved is one of right procedure to be followed in exercise of the powers conferred under the Safeguarding of National Security

Rules and as the rights of the petitioner have been clearly infringed, this is a fit case in which the writ must issue .

56. I am unable to see any indication in this judgment of an intention to depart from the principles laid down earlier in Dr. M. Krishnamoorthy Vs.

The State of Madras and Another, .

57. Mr. Nambiar relied on a passage in the judgment of Mahajan, C.J., in the State of Bihar v. Abdul Majid⁶:

It follows therefore that whenever there is a breach of restrictions imposed by the statute by the Government or the Crown, the matter is justiciable

and the party aggrieved is entitled to suitable relief at the hands of the Court.

58. I have already pointed out that no question of violation of any of the provisions of the Constitution or even of any violation of the provisions of

any statute arises. for consideration in this case. Besides, Mahajan, C.J., had in view only the statutory restrictions imposed by Section 240 of the

Government of India Act, 1935, since replaced by Article 311 of the Constitution, as would be obvious when a fuller extract is set out from his

judgment. After referring to the rule of English Law, that a civil servant holds office at the pleasure of the Crown, Mahajan, C.J., observed:

This rule of English Law has not been fully adopted in Section 240. Section 240 itself places restrictions and limitations on the exercise of that

pleasure and those restrictions must be given effect to. They are imperative and mandatory. It follows therefore that whenever there is a breach of

restrictions imposed by the statute by the Government or the Crown the matter is justiciable and the party aggrieved is entitled to suitable relief at

the hands of the Court.

59. There is another aspect of Abdul Majid's case (1954) S.C.R. 786 : 1954 S.C.J. 300 to which I would like to refer at this stage, though it was

not specifically referred to during the arguments before me. What was held in Abdul Majid's case (1954) S.C.R. 786 : 1954 S.C.J. 300 was that

the rule of English law, that a civil servant cannot maintain a suit against the State or against the Corwn for the recovery of arrears of salary, does

not prevail in this country. Mahajan, C.J., quoted with approval the principle laid down by Kania, J., as he then was, in Tara Chand Pandit's Case

1948 F.C.R. 89:

It seems to me therefore that the Imperial Parliament has not accepted the principle that the Crown is not liable to pay its servant for the period he

was in service, as applicable to British India or as forming part of the doctrine that service under the Crown is at His Majesty's pleasure .

And he proceeded to observe:

... we think that the rule of English Law that a civil servant cannot maintain a suit against the State or against the Crown for the recovery of arrears

of salary does not prevail in this country and that it has been negated by the provisions of the statute law in India.

60. Dealing with the argument--it was suggested that the true view to take is that when the statute says that the office is to be held at pleasure it

means at pleasure and no rules or regulations can alter or modify that nor can Section 60 of the CPC enacted by a subordinate legislature be used

to construe an Act of a superior legislature; it was further suggested that some meaning must be given to the words "" holds office during His

Majesty's pleasure "" as these words cannot be ignored and that they bear the meaning given to them by the Privy Council in I.M. Lal's Case

(1948) 2 MLJ. 55: 1948 F.C.R. 44 : L.R. 75 IndAp 225 the learned Chief Justice observed:

In our judgment, these suggestions are based on a misconception of the scope of this expression. The expression concerns itself with the tenure of

office of the civil servant and it is not implicit in it that a civil servant serves the Crown ex gratia or that his salary is in the nature of a bounty. It has

again no relation or connection with the question whether an action can be filed to recover arrears of salary against the Crown. The origin of the

two rules is different and they operate on two different fields.

61. That the English doctrine of bounty of the Crown no longer applies in India does not affect the operation of the other doctrine, that the civil

servant holds office during the pleasure of the Executive, which, as I have pointed out more than once, is made explicit in Article 310(1) of the

Constitution, subject as yet only to the restrictions imposed by the Constitution itself.

62. Mr. Bashyam, the third respondent's learned Counsel, referred among other cases to two judgments of Kapur, J., in Des Raj Kirpa Ram Vs.

Punjab State, and Ram Sarn Dass Ganda Mal Vs. Union of India (UOI), in which the learned Judge held that a breach of service rules could not be redressed by the Courts. Both were decisions in second appeals arising out of suits instituted by the aggrieved civil servants. The principle to apply should be the same, when the jurisdiction vested in this Court under Article 226 is invoked. As I said, the decision of Rajagopalan Ayyangar, J., is directly in point.

63. Mr. Nambiar sought to distinguish the decision of Rajagopala Ayyangar, J., on the ground, that, while the orders, the validity of which was challenged in W.P. Nos. 487, 1131 etc., of 1956 were those of the Government issued in the name of the Governor, the order in this case could at best be viewed as one issued under the authority of the General Manager, a subordinate executive officer, whose jurisdiction was strictly limited by the rules in force. There seems to be little substance in this line of distinction. It was still the pleasure of the President that the impugned order purported to signify. The power was exercised by the executive authority to whom it had been delegated.

64. The further contention of Mr. Nambiar was, if I understood him aright, that independent of the question, whether what was complained of by the petitioner was an actionable wrong, it is well within the jurisdiction vested in this Court by Article 226 of the Constitution to ensure that a statutory or a public authority acts only within the limits of the jurisdiction conferred upon it, whether it be by a statute or whether it be by rules issued by an authority empowered to do so. The learned Counsel contended that if that authority exceeded its jurisdiction, the person aggrieved was entitled to a writ of certiorari to set aside the order passed by the public authority in excess of its jurisdiction. Alternatively, the learned Counsel contended that a writ of mandamus could issue to direct the public authority, in this case the General Manager, to refrain from giving effect to an order, which was invalid because it was beyond its" jurisdiction to issue.

65. A similar contention was repelled by Rajagopala Ayyangar, J., in his judgment in W.P. Nos. 487, 1131 etc., of 1956 and I find myself in respectful agreement with him. We come back to the question, what is the right of the petitioner, infringement of which he complained of, to enable him to move the Court for redress. His right is to hold his office at the pleasure

of the Executive, and subject to the conditions of service which may be imposed on him from time to time at the pleasure of the Executive. There has been no infringement of that right. That his seniority, as one of the conditions of his service, was altered to his detriment, and in contravention of the pleasure of the Executive signified through the rule to regulate seniority, does not enable him to seek redress at the hands of the Court, either by an appropriately constituted action or by invoking the jurisdiction vested in this Court by Article 226 of the Constitution. It is not necessary for this purpose to go into the question, whether the order complained of was an administrative order, outside the purview of correction by the issue of a writ of certiorari, or whether it amounted to a quasi judicial determination of the right of the petitioner. Whatever his right was, it was not one enforceable by the Courts. No writ of mandamus can issue either, because the only duty of the General Manager was to employ the petitioner at the pleasure of the Executive. I have already pointed out that the Court cannot compel the General Manager to signify the pleasure of the Executive only in accordance with the rule framed earlier by him to regulate the seniority of the civil servants of the petitioner's class.

66. It is on this last ground that I have been compelled to rest my decision to discharge the rule nisi and to direct that the petition be dismissed.

67. No order as to costs.