

(1967) 08 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 214 of 1965

K. Ananthan Pillai

APPELLANT

Vs

The State of Kerala and Another

RESPONDENT

Date of Decision : 17-08-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Travancore Service Regulations — Article 25

Citation : AIR 1968 Ker 234 : (1968) 2 LLJ 657

Hon'ble Judges : P.T. Raman Nayyar, J; M.U. Isaac, J; K. Sadasivan, J

Bench : Full Bench

Advocate : V.K.K. Menon, M. Ramachandran and C.J. Balakrishnan, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar J.

1. In October 1946, the petitioner, a law graduate, who was a clerk in the Travancore Secretariat acting in the grade Rs. 100-125 was, on his own application (Ext. R-2 dated 16-3-1946), appointed as a Second Class Magistrate, a post carrying a fixed pay of Rs. 150 and at that time attached to the Revenue Department. It was then usual for clerks in the Secretariat to improve their prospects by securing appointment by transfer to higher posts in other departments, especially the Revenue Department. Those with law Qualifications found it easy enough to secure appointment to posts requiring such Qualifications, and generally speaking, they were able to secure promotion to the post of Assistant Peishkar or Deputy Collector borne on the same cadre as the post of Assistant Secretary, before they would have become Assistant Secretaries in the ordinary course had they remained in the Secretariat. But there was no rule (at any rate none has been brought to our notice -- Article 101A of the Travancore Service Regulations to which reference has been made concerns itself with service in one post counting for increment in another on the same scale of

pay to which an officer may be transferred, and not with promotion in the parent department while serving in another) like for example rule 3 of the General Rules in Part II of the Kerala State and Subordinate Services Rules which expressly protects the prospects of promotion in his service of a member absent from duty therein, or like rule 50 (b) of the Bombay Civil Services Rules (corresponding to rule 33fb) of Part I of the Kerala Service Rules) which the Supreme Court has held in *State of Mysore Vs. M.H. Bellary*, to have a like effect. On the contrary, in 1943, and again in 1947, Government had issued circulars warning persons securing transfers from one department to another for improving their prospects that they could not have the best of both worlds. Ext. R-3, the circular issued in 1947, said that a person so going from one department to another did so at his own risk and would not be "permitted to keep a lien on his original post or reserve any claim for a return to the original department or for rank or position there." It pointed out that no one could have a career in two departments simultaneously and went on to say that the rule laid down therein should always be maintained and that no exception should be allowed in any circumstances. It seems to us meaningless to suggest that the rule was with reference to permanent transfers, for, on a permanent transfer, a person ceases to have any connection whatsoever with his original department. The rule could have reference only to transfers which have not become permanent by reason of the confirmation of the person concerned in the new department. Subsequently, while still continuing as a Second Class Magistrate -- the petitioner never reverted to the Secretariat -- the petitioner was confirmed as a clerk in the Secretariat on Rs. 100-125 and was promoted to act in the grade, Rs. 125-165, both with effect from 17-8-1948, a date prior to his going out as a magistrate. In March 1949, he was promoted to act as Tehsildar/First Class Magistrate in the Revenue Department in the Grade. Rs. 175-225. Then, on 23-11-1949, at a time when the integration of the Travancore and Cochin services consequent on the formation of the Travancore-Cochin State on 1-7-1949 was under consideration, the petitioner was, the rule in Ext. R-3 notwithstanding, provisionally confirmed as a Secretariat clerk on Rs. 125-165 with effect from 6-6-1949. However, on 31-7-1954, he was confirmed as a Second Class Magistrate on a fixed pay of Rs. 150 with effect from 9-9-1951. All this while he was continuing as a Tahsildar.

2. On 25-1-1957, the petitioner was promoted to act as Deputy Collector, a post then on the scale of Rs. 300-500 but subsequently raised to Rs. 475-700 with effect from 1-4-1958. On 8-8-1960, he was appointed on deputation as Private Secretary to the Chief Minister and he held that post till 8-4-1962.

3. Meanwhile, the integration of the Travancore and Cochin Secretariat services was effected as on 19-11-1953 by Ext. R-4 dated 31-7-1954 in accordance with the principles of integration laid down in Ext. P-1 of the former date. Paragraphs 3(e) and 4 of Ext. P-1 are relevant. Paragraph 3(e) set out with reference to particular cases the principles to be followed with regard to Superintendents of the Secretariat who were working in other departments. And paragraph 4 said, "The principle as laid down in paragraph 3(e) above with regard to retention of

lien in the Secretariat will apply likewise to all categories of staff who were on other duty in permanent departments outside."

4. Paragraph 3(e) referred to six Superintendents of the Secretariat who were working in other departments and said that these six officers alone "need be provided with lien in the Secretariat with right to revert." Five of them were working in temporary departments and there was therefore no prospect of their being permanently absorbed elsewhere than in the Secretariat. The sixth had been sent out of the Secretariat to some other department "in the exigencies of service without his request." With regard to the remaining officers who were on other duty in permanent departments it was ordered that they should continue in the respective departments. It was further ordered, "Their lien in the Secretariat will be retained till such time when they get confirmation in the present department, but they will on no account be allowed to come back to the Secretariat on the strength of their lien in the Secretariat."

5. The principles so laid down, although with reference to particular cases, is perfectly clear and is completely in accord with that laid down in the circular of 1943 and repeated in the circular, Ext. R-3, of 1947. Persons who had gone out of the Secretariat to other departments at their own request in order to improve their prospects would have to remain in those departments and could not look to the Secretariat for preferment. They would have to be content with promotions in their new departments in which they would be absorbed permanently as a matter of course. But, persons who had gone out to temporary departments in which, of course, they could not be permanently absorbed, and persons sent out, not at their own request but in the exigencies of public service, were to be regarded as still belonging to the Secretariat and were to be given promotions and other service benefits accordingly. This, it seems to us, although we are not called upon to pronounce on it, was fair, and sound in principle, although we appreciate that it is open to the criticism that it was conceived by those who had stayed behind in the Secretariat and wanted to safeguard their own prospects.

6. Ext. R-4 dated 31-7-1954 which effected the actual integration of the Secretariat services went one step further than Ext. P-1. Ext. P-1, it will be recalled, had said that persons who had gone out of the Secretariat would be allowed to retain their lien in the Secretariat until such time as they got confirmation in their new department although they would, on no account, be allowed to go back to the Secretariat on the strength of that lien. But Ext. R-4, in pursuance of the policy underlying both Ext. R-3 and Ext. P-1, suspended the lien of such persons in the Secretariat under the provisions of Article 71 of the Travancore Service Regulations and Article 28A of the Cochin Service Regulations -- since there was no prospect of these persons reverting to the Secretariat the suspension was in accordance with those rules. However, no question of suspension of lien arose so far as the petitioner was concerned since, by his confirmation as a Second Class Magistrate, he lost his lien in the Secretariat.

7. The integration of the Revenue services of the two States was also effected by

an order of the 31st July 1954. In that order, the petitioner was shown as a permanent Second Class Magistrate, confirmed as on 9-9-1951 -- it would appear that there was no separate order of confirmation -- and naturally his name was not shown in Ext. R-4 in the Secretariat establishment.

8. The petitioner and many others similarly circumstanced felt that they would be better off in the Secretariat than in the Revenue Department Hence they appealed against their omission from the Secretariat list consequent on thfir confirmation in the Revenue Department and claimed the promotions they would have got had they remained in the Secretariat -- Ext. R-5 dated 7-8-1954 is the petitioner's appeal. All these appeals, were dismissed on 20-7-1955 in similar terms. Ext R-1, the order issued in the case of the petitioner, reads as follows; --

"One of the principles adopted for the purpose of integration of services of the Secretariat was that persons in the Secretariat who are on other duty in permanent departments will not be taken back to the Secretariat. The petitioner's prayer is against the above principle and so it is not admisible. The petition is recorded "

9. The petitioner was dissatisfied with this order, and he filed a writ application, O. P. No. 35 of 1955 complaining against Ext. P-I and Ext. R-1 on the ground that they infringed the service rules by which he was governed. He alleged that his confirmation in the lower post of Second Class Magistrate on the fixed pay of Rs. 150 when he had already been confirmed in the higher "" post of Secretariat clerk on Rs. 125-165 and was entitled to a pay of Rs. 165 in that scale was wrong. Among the many grounds on which this writ application was resisted by the State Government was the ground that the petitioner had left the Secretariat for the Revenue Department at his own request in order to improve his own prospects and that, in accordance with the principles laid down in Exts. R-3 and P-I, he was not entitled to be regarded as a member of the Secretariat establishment or to claim promotion or other benefit therein. The writ application was dismissed on 16-10-1956. It was held that there was no violation of any service rule and that the confirmation of the petitioner as a Second Class Magistrate was proper since his confirmation in what he called the higher post of clerk on Rs. 125- 165 was statedly only provisional. Further, that even if Ext. P-1 was opposed to any service rule, it was valid. Government being entitled to frame principles of integration contrary to such rules. It was also pointed out that the Travancore Service Regulations had no statutory basis.

10. For four long years there the matter rested. But, after he became Private Secretary to the Chief Minister, the petitioner lost little time in seeking once again the very reliefs which he had been denied by Ext. R-1 and by the decision in O. P. No. 35 of 1955. This he did by the petition Ext. P-3 dated 22-12-1960, and if the petitioner is to be believed, the Chief Minister directed the Chief Secretary to look into the matter himself and submit his recommendation. However that might be, within a month of his presenting Ext. P-3, the petitioner got the order Ext. P-4 dated 20-1-1961. giving him all the reliefs he had sought.

by that order, the petitioner's confirmation as Second Class Magistrate was set aside on the ground that it was irregular since the pay of the post was only Rs. 150 whereas the petitioner was already substantively holding a post on the scale of Rs. 125-165. The petitioner was restored to what was called his proper place in the Secretariat Establishment and was given all the promotions he could possibly have got had, it remained in the Secretariat and never gone out although with no right to arrears of pay. The result was that the petitioner found himself a Deputy Secretary on Rs 475-700 plus a special pay of Rs. 200 with effect from 4-11-1959, although the post of Deputy Secretary had been declared a selection post on 19-10-1959 and there was no question of anybody getting that appointment merely on the strength of seniority and therefore not knowing that, if the petitioner had remained in the Secretariat, he would have been promoted to that post. And, in the course of the year, by Ext. P-5 dated 31-10-1961, the petitioner was promoted to officiate as Joint Secretary in the scale of Rs. 800-1000 while continuing on other duty as Private Secretary to the Chief Minister.

11. Three persons who, like the petitioner, had gone from the Secretariat to the Revenue Department (two of them, unlike the petitioner, not at their own request) and who like the petitioner had unsuccessfully appealed against their exclusion from the Secretariat establishment by Ext. R-4, all senior to the petitioner in the Secretariat and all of whom had been confirmed as Second Class Magistrate on the fixed pay of Rs. 150 while substantively holding posts on the scale of Rs. 125-165, petitioned Government for like treatment as was accorded to the petitioner by Ext, P-4. Their petitions were dismissed. Thereupon they filed writ applications, O. P. Nos 619, (520 and 644 of 1962, for the same relief. These applications were allowed by a learned single Judge of this court who, proceeding on the assumption that Ext, P-4 was a valid order, that indeed was the common case of all the parties could find no ground for differentiating the case of the three petitioners before him from that of the present petitioner (who was the 2nd respondent in each of those applications) and consequently held that the less favourable treatment meted out to those three petitioners was violative of article 16 of the Constitution. This was on 19-10-1962. The State Government, which was the 1st respondent in those applications, as also the petitioner who, as we have seen, was the 2nd respondent, filed separate appeals and these appeals were disposed of by a Division Bench of this Court on 29-10-1963. By that time, the petitioners in O. P. Nos. 619, 620 and 644 of 1962 had retired, and so, as the judgment in the appeals shows, the only relief they pressed was "as to the quantum of their pension". This it was held was a matter essentially for the Government to consider, and, with the observation that that matter would surely receive the careful and sympathetic consideration of the Government, the appeals were allowed and the writ applications, O. P. Nos. 619, 620 and 644 of 1962 dismissed. There was no consideration of the case on the merits.

12. There again the matter rested for over a year, until, on 18-1-1965, four years after it had made the order Ext. P-4, Government passed the order. Ext. P-12,

cancelling Ext. P-4 with the result that the petitioner found himself once again a Deputy Collector on a pay of Rs. 700 plus allowances amounting to Rs 225 in the scale of Rs. 475-700, whereas, as a Joint Secretary on other duty, he was drawing a salary of Rs. 1000 in the scale of Rs. 800-1000 plus allowances amounting to Rs 300. It is this order that the petitioner now impugns on the ground that it is violative of his service rules as also of the principles of natural justice and of article 311 of the Constitution -- admittedly the petitioner was not heard before the order was made.

13. When a person is overnight, as it were, pushed down to a lower post from a higher post he has been holding for over three years and suffers as a consequence a loss of emoluments (in this case, amounting to as much as Rs. 375 per mensem) hardship is necessarily involved even if it be that he had been overnight, and undeservedly, pushed up to the higher post. But there is here no question of a reduction in rank attracting Article 311 of the Constitution since the reduction was not by way of penalty and did not cast the least aspersion on the petitioner. The reduction was only a consequence of an order, whether right or wrong, fixing the petitioner's proper place in the service in accordance with the service rules. It might perhaps be desirable, as a matter of policy, that, even a purely administrative authority should give a person against whom an order entailing serious consequences, such as a termination of employment or reversion to a lower post, is being made, an opportunity to represent his case if the order depends on an assessment of facts that might be disputed or on rules and orders that might be lost sight of or misinterpreted. But, we do not think that this is required by law unless the order involves some stigma on the person concerned or an adjudication of disputed facts the determination of which, if wrongly made, would have the effect of violating his service rules and therefore of infringing his civil rights, it is only in such cases that an administrative authority and it is not disputed that in making the order, Ex. P-12, Government acted purely as an administrative authority -- is under a duty to act judicially so as to attract the rule of natural justice embodied in the maxim *audi alteram partem*. None of the decisions cited on behalf of the petitioner, namely, *Ridge v. Baldwin*, 1964 AC 40; *Shri Bhagwan and Another Vs. Ram Chand and Another*, , *Durayappah v. Fernando* 1967 2 All ER 152 and *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , goes to the extent of saying that in a case like the present where the impugned order involves no stigma, and, as we shall presently show, involves no breach of any service rules, the principles of natural justice are attracted. *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, which goes the farthest was a case where a stigma was involved in that there was a charge that the officer concerned had given a false date of birth: and it also involved an adjudication on the disputed fact of the date of birth, the decision on which, if wrong, affected the officer's tenure of service under the service rules.

14. We have already indicated that. In our opinion. Ext P-12 was a proper order and was not violative of any service rule. Indeed, no attempt has been made to tell us what rule the order is supposed to have violated. Ext. R-1 was, as we have

shown, a proper order completely in accord with the principles laid down in Ext. R-3 and Ext. P-1, and Ext. R-4 was, in our view, an order that is entirely insupportable. Ext. P-12 which cancelled Ext. P-4. and. in effect, restored Ext. R-1, was therefore a perfectly correct order. Indeed, we would go further and say that Ext. P-4 was a piece of rank favouritism which could not have been entirely unconnected with the circumstance that the petitioner was. at the time, occupying the position of Private Secretary to the Chief Minister. In this context, the petitioner's statements in his affidavits dated 12-10-1965 and 4-6-1966, that the Chief Minister directed the Chief Secretary to look into the matter himself and scrutinise the files and relevant records and put up his recommendation, and that on the recommendation so made by the Chief Secretary the Chief Minister himself passed the order. Ext. P-4. assumes some significance As we shall presently show, there were many impediments to be overcome before Ext P-4 could be passed. They were overcome, and Ext. P-4 sustained in the writ applications, O. P. Nos. 619, 620 and 644 of 1962 of this court, by barefaced resort to both suppressio veri and suggestio falsi. The process by which Ext. P-4 was secured by the petitioner has been aptly described in the counter-affidavit dated 18-9-1965 filed on behalf of the State Government as "procuring" -- it says, and rightly says, "in procuring Ext. P-4 order the petitioner is guilty of suppression of facts" -- although we are constrained to observe that this engaging piece of self-denigratory candour would have come with better grace had it come before the petitioner ceased to be the Private Secretary to the Chief Minister and before the Chief Minister and the Chief Secretary who were responsible for the order had ceased to hold those offices The petitioner's conduct has certainly been such that, whatever sympathy one might feel for a person who suddenly finds himself substantially reduced from a position he has been occupying for over three years, it disentitles him to invoke the extraordinary jurisdiction of this court.

15. We have seen how both Ext. R-3 and Ext-P 1 laid down the rule that a person who had left the Secretarial Service at his own request, and joined some other department should look for preferment to that department and not to the Secretariat It is said that under Ext. P-1 the lien of Such a person in the Secretariat was to be preserved until his confirmation in his new department and that all that it forbade was his going back to the Secretariat It is pointed out that the petitioner does not seek to go back to the Secretarial He is quite content to remain outside the Secretariat so long as he gets the salary which he would have got had he remained in the Secretariat and had he been promoted there in accordance with seniority irrespective of merit. Now, that is possible only if there is a rule that such a person would, while working in his new department and until he is confirmed therein, thereby severing all his connection with the Secretariat, get all the promotions which he would be entitled to get had he remained in the Secretariat. As we have already observed, there is no such rule. There is no such thing as a lien on a service as such. A lien is always on a post so that by saying that the petitioner had a lien in the Secretariat it can in no way be

implied that he had a general lien entitling him to such promotions as he would have got had he remained in the Secretariat, A lien is defined in Article 25 of the Travancore Service Regulations as the right of an officer to resume, on return to duty, a substantive or acting appointment from which he is relieved. So, at best, the petitioner's lien, even assuming that his confirmation as a Second Class Magistrate was wrong, could only have been on a post to which he had been appointed in a substantive or officiating capacity and not on a post to which he had never been appointed. There is therefore no substance in the petitioner's contention that, but for his confirmation as a Second Class Magistrate, he would have been entitled to be not merely regarded as a member of the Secretariat Service but also to get all the promotions which he would have got had he remained in the Secretariat Service.

16. Had the petitioner not been confirmed as a Second Class Magistrate, his stay in the secretariat would have been suspended and validly suspended by reason of the order in Ext R-4. Therefore, in any view of the matter, Ext. R-1 was, as we have already remarked, a perfectly correct and valid order, in no way at variance with any service rule, Indeed, in view of the decision in O. P. No. 35 of 1955, a decision rendered as between the petitioner and the State Government, the very parties to the present petition, it is not open to the petitioner to attack either Ext. P-1 or Ext. R-1, both of which were upheld in that proceeding. And, if Ext. R-1 was correct, it follows that Ext. P-4 was wrong and that Ext. P-12 in turn, was correct.

17. We shall now revert to a matter to which we have already referred and state briefly how the many impediments in the way of making the order, Ext. P-4, reversing the decision in Ext. R-1 were overcome. In the first place, the petitioner stated in his representation, Ext. P-3 dated 22-12-1960, that he had been sent out to the Revenue Department in view of his law qualifications and that his appointment in the Revenue Department was not one of his choice. He added, echoing Ext. P-1 that it was only just and proper that those who had been sent out from the Secretariat to the Revenue Department without their consent should be given the option to go back to the Secretariat. In his earlier appeal, Ext. R-5 dated 7-8-1954, he had not gone so far but had only said that his appointment as a Magistrate was made as a matter of routine as he was the seniormost clerk in the particular grade in the Secretariat possessing the requisite law qualifications and he had rested his case mainly on the statement that it was unfair to confirm him as a Second Class Magistrate on a pay of Rs. 150 when his permanent pay was already Rs. 165. With his application, Ext R-2, for appointment as a Magistrate, only eight years old and with no guarantee that it would not be forthcoming he was content to suggest, while taking care not to assert that he had left the Secretariat not of his own choice. But. when it came to Ext. P-3, he was emboldened to make the false statement -- and it must have been false "o his knowledge, for it is hardly likely that he would have forgotten all about his application. Ext, R-2 dated 16-3-1946 -- that his appointment in the Revenue Department was not one of his choice. He thought it as well to say

nothing about his confirmation as a Second Class Magistrate although it is clear from Ext. R-5 that he knew that that would be a hurdle. He made no specific reference either to his appeal Ext. R-5. or to its rejection by Ext. R-1 although he did, in passing, remark that he had submitted a complaint against his omission from the Secretariat list but that his representation was not favourably considered by Government He made no reference whatsoever to the fact that he had unsuccessfully challenged Ext. P-1 and Ext. R-1 in court in O. P. 35 of 1955. In short his petition, Ext. P-3, contained a false representation regarding a very vital matter; and it suppressed much that was material to a right decision therein.

18. What did the Government do on this petition? We are asked to believe that the file containing the petitioner's application. Ext. R-2, for appointment as a Second Class Magistrate, was not forthcoming. And, although the note put up by the Superintendent of the section concerned referred to the fact that the petitioner had unsuccessfully challenged Ext. R-1 in writ proceedings, the file relating to those proceedings, was likewise not forthcoming. It was also beyond the resources of Government to obtain a copy of the order passed by this court in those proceedings, or even to discover the necessary particulars for obtaining a copy Had the proceedings in O. P. No- 35 of 1955 been referred to, two impediments would have emerged in the way of making the order. Ext. P-4. In the first place, it would have been apparent that the petitioner had gone to the Revenue Department at his own request. In the second, that the very relief which the petitioner was seeking had been denied to him by the High Court which had upheld the case of the Government that Ext. P-1 and Ext. R-1 were valid. Not that any principle of res judicata would apply so as to preclude Government from reviewing Ext. R-1 and favouring the petitioner with something that that decision had denied him. But, if it had appeared that the petitioner had challenged Ext. R-1 before a court of law and that Government had successfully vindicated that order, it would have been very difficult for any person, however favourably inclined towards the petitioner, to make an order cancelling Ext. R-1. As it is, what with Ext R-2 and the file regarding the writ proceedings O. P. 35 of 1955, not being available, the then Chief Secretary found it possible to put up the following note;

"The reason for keeping Shri Ananthan Pillai (the petitioner) out of the Secretariat appeal's to have been that he possesses certain extra qualifications such as B. L. This therefore, appears to be a case where an officer is being penalised for higher qualifications and viewed from this angle, this is an appropriate case where Government should order a revision "

And Government, in turn, found it possible to say in Ext. P-4 that the petitioner had pointed out that his appointment in the Revenue Department was in view of his law qualifications and was not of his own choice, that no records were forthcoming to show that he was sent out to the Revenue Department as a Magistrate on his application, and that it was probable he was appointed as a Magistrate in view of his law qualification and in accordance with the policy then

followed by the Travancore Government. It was very important to say so, for, it was only on this ground that the rule laid down in Ext. R-3 and repeated in Ext. P-1 could be surmounted. The setting aside of the petitioner's confirmation as a Second Class Magistrate -- this first hurdle was got over by saying that the confirmation was irregular although it had been held in O. P. No. 35 of 1955 that it was not -- would not otherwise have had the effect of restoring him to his "proper place" in the Secretariat and giving him all the promotions which he would have got had he remained there. For, in terms of Ext. R-4, his lien in the Secretariat would have stood suspended. It was only if it was shown that the petitioner had been sent out in the exigencies of the public service and not at his own request that the exception permitted by Ext. P-1, that such a person would be regarded as belonging to the Secretariat and would get his promotions there, could be applied

19. Government's conduct of the defence in O. P. Nos. 619, 620 and 644 of 1962 seems to us even more reprehensible and we are constrained to observe that it fell little short of perjury. But for the circumstance that five years have elapsed, and the further circumstance that the counter-affidavits in those proceedings -- Ext. P-8 is the counter-affidavit in O. P. No. 020 of 1962 -- were sworn to by a subordinate who was probably acting under superior orders, we would have given very serious consideration to the Question initiating proceedings with regard to it. Not that either lapse of time for respondent superior would be a defence, but both are circumstances which we think can rightly be taken into account in considering the question whether it is expedient in the interests of justice to take such action. It is now admitted that, when those counter-affidavits were filed, Government was in possession of all the facts and knew that the petitioner's assertion in Ext. P-3 that his going to the Revenue Department from the Secretariat was not of his own choice was false, and that, consequently, the order Ext. R-1, was correct and the order, Ext. P-4 wrong. Yet it strenuously contended that Ext. P-4 was a correct order. We do not think that Government is in the position of an ordinary litigant, and even in the case of an ordinary litigant the morality of seeking to uphold what one knows to be wrong may be questioned. However that might be, it can perhaps be said that morality is a mere matter of policy which each man is at liberty to decide for himself. Government no less than a private citizen. But, what is not a mere matter of policy, is that the truth" should be stated in an affidavit filed in court. Knowing full well that the assertion of the petitioner in Ext. P-3 regarding the involuntary nature of his transfer to the Revenue Department was false, that assertion was repeated in the counter-affidavits, no doubt, taking care to ascribe it to the petitioner, but without the least demur. Not merely that, there was a reference, again without demur, to the fact that in Ext. P-4 Government considered that it would not be proper to deny the petitioner herein (the 2nd respondent therein) the right to revert to the Secretariat especially when it was seen that, he was sent to the Revenue Department by the Travancore Government in view of his law qualifications. Even if the counter-affidavits did not expressly state that the

assertion of the petitioner was true, the necessary implication was that it was, and, as the judgment Ext. P-7 shows, in two of the three cases, the case of the petitioner herein was sought to be differentiated by the Government on the ground that the petitioners therein had gone out of the Secretariat at their own request.

20. As we have already seen, it was the common case of all the parties before the single Judge who decided O. P. Nos. 619, 620 and 644 of 1962 that Ext. P-4 was valid and proper. On that assumption, the learned Judge held that there was no difference between the cases of the petitioners therein and the case of the 2nd respondent, the petitioner herein, and that the denial to the petitioners therein of the benefit, given to the petitioner herein by Ext. P-4, was violative of Article 16 of the Constitution. It was the common case, and it still is, that the crucial date for the purpose of determining whether persons like the petitioner herein and the petitioners in O. P. Nos. 619, 620 and 644 of 1962 should be counted as belonging to the Secretariat or to the other departments in which they were actually working, is 19-11-1953, the date of Ext. P-1. Government's case was that the petitioners in O. P. Nos. 619, 620 and 644 of 1962 had been confirmed, and validly confirmed, in the higher post of Tahsildar/ First Class Magistrate from dates anterior to 19-11-1953, that their connection with the Secretariat was thus completely severed before that date, and that their irregular earlier confirmation as Second Class Magistrate while substantively holding a post on a higher scale of pay was of no consequence. The learned single Judge found that the order confirming the petitioners therein as Tahsildars was made only on 31-7-1954 although with effect from dates prior to 19-11-1953 and that their actual position on this crucial date was the very same as that of the present petitioners and could not be altered by a subsequent order though made with retrospective effect. We are in respectful agreement with the view expressed by the learned single Judge that, on the assumption that Ext. P-4 is valid and proper, the denial of its benefits to the petitioners in O. P. Nos. 619, 620 and 644 of 1962 was a denial of the fundamental right under Article 16 -- as we have pointed out nothing was said in the appeals regarding the merits of the petitions -- and we might add that, if in the face of the view that we are taking that Ext. P-4 was not valid, we are to uphold that order by setting aside Ext. P-12, we would be perpetuating a violation of Article 16 which Ext. P-12 had abated.

21. In the result we dismiss this petition. We make no order as to costs, for, in our view, the conduct of both parties has been such that, whatever the result, neither deserves costs.