

(1964) 07 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No"s. 7 and 459 of 1963

Kunhikrishnan Nambiar

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-07-1964

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311
States Reorganisation Act, 1956 — Section 115, 117

Citation : (1964) KLJ 1120

Hon'ble Judges : M.S. Menon, C.J;P.T. Raman Nayar, J;P. Govindan Nair, J

Bench : Full Bench

Advocate : V.R. Krishna Iyer and V.M. Nayanar, Petitioner in O.P. 7 of 1963 and K.P. Ramunni Menon and K. Ramakumaran, Petitioner in O.P. 459 of 1963, K. Velayudhan Nair, for the Appellant; K.J. Joseph and M.C. Sen, 4th Respondent in O.P. 7/1963 and 3rd Respondent in O.P. 459/63 and V.P. Gopalan Nambiar, Advocate General, For State, M. U. Isaac, Central Government Pleader, for Central Government, for the Respondent

Judgement

1. The petitioner in O.P. No. 7-P.C. Kunhikrishnan Nambiar and the petitioner in O.P. No. 459-K.P. Radhakrishna Menon --are both Deputy Collectors in the service of the Kerala State. They were formerly Deputy Collectors in the Madras State and came to this State on its formation on 1st November 1956. Their main complaint, as it finally emerged at the hearing relates to their non-inclusion in the list of candidates eligible for selection to the Indian Administrative Service. The non-inclusion was on the ground that they did not possess the eight years" qualifying service required by regulation 4 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. Both the petitioners had requested that their full service, including "temporary" service as Deputy Collectors should be taken into account in the calculation of their qualifying service. (Temporary, in the special sense of the Madras rules, i.e., service rendered on appointment under rule 10(a) (i) (1) of Part II of the Madras State and Subordinate Services Rules before the regularisation of that service under

rule 23(a)). That request was rejected by the State Government by their memorandum No. 64977-(Special) 4-60-9-PD dated 17th December 1962, a copy of which has been marked as Ext. P.5 in O.P. No. 7. The memorandum says:

Sri P.C. Kunhikrishnan Nambiar and Sri K.P. Radhakrishna Menon have requested that their full service (including temporary service) as Deputy Collectors may be counted towards eligibility for selection to the I.A.S. Cadre. According to the decisions of the Government of India provisional and emergency service rendered by Travancore-Cochin or Madras personnel prior to 1st November 1956 should be taken into account for purposes of fixation of rank only if such service is regularised or if it is in a time-scale of pay and is reckoned for grant of increments and is continuous. The above decisions have been accepted by this Government- Vide G.O. M.S. 290 Public (Integration) Department, dated 16th May 1962. In the circumstances the request of the petitioners cannot be granted.

2. The relevant portion of regulation 4 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, runs as follows:

4. Conditions of eligibility for promotion : Each committee shall meet at intervals ordinarily not exceeding one year and consider the cases of all substantive members of the State Civil Service who on the first day of January of that year, had completed not less than eight years of service (whether officiating or substantive) in a post of Deputy Collector or any other post or posts declared equivalent thereto by the Government.

Both the petitioners had completed eight years of service (counting also their temporary service) in the post of Deputy Collector before the end of 1961 and were, by then, substantive members of the State Civil Service both having been confirmed on 1st November 1956. (It might be that the confirmation was ordered only later with effect from that day. The order of confirmation is not before us, nor is its date available from the record, and we are assuming that it was made before the end of 1961). It will be noticed that the regulation prescribes only two conditions for eligibility. First, the candidate concerned must be a substantive member of the State Civil Service, and, second, that on the first day of January of the year in question he must have completed not less than eight years of service in the post of Deputy Collector. All candidates satisfying these two conditions are entitled to consideration and no question of rank or seniority arises, although, in the actual selection for inclusion in the list of suitable candidates, seniority comes into play under regulation 5. If therefore the petitioners had satisfied these two conditions by the end of 1961 they were entitled to consideration in the selections made from 1962 onwards.

3. That the petitioners had satisfied the first condition is not disputed and that they had satisfied also the second seems to us beyond doubt. They were continuously serving as Deputy Collectors from 1953 onwards, and, as we have said; had completed eight years of such service by the end of 1961. Under the regulation, what is required is actual service in the post, and questions such as

whether that service counts for purposes of fixation of rank in the seniority list, or whether it is what is called regularised service, or whether it is in a time scale of pay and is reckoned for grant of increments, are entirely irrelevant considerations. In rejecting the so-called temporary service of the petitioners for purposes of eligibility under regulation 4 on these altogether irrelevant considerations, the State Government was clearly in error. That the Government of India thought, at any rate that according to the State Government they thought that this temporary service should not be taken into account for purposes of fixation of rank in the integrated Kerala Service was for the State Government sufficient reason for thinking that the service should not count for purposes of regulation 4 of the Regulations, whereas, in fact, it was no reason at all.

4. It is said that regulation 4 requires that the service should be either officiating or substantive and that since the service in question was neither and was only temporary it cannot be taken into account. The fallacy in this argument is similar to the fallacy in the reasoning of the State Government in Ext. P. 5- because the service does not count for fixation of rank in the integrated Kerala Service it cannot count for eligibility for selection to the Indian Administrative Service; because service rendered by a person who has been temporarily appointed under rule 10 of the Madras State and Subordinate Services Rules until such date as his probation commences as determined by rule 23(a) (in official parlance, until his service is regularised) is for convenience called temporary service-the rules themselves do not describe such service as temporary service excepting that the heading of rule 23(d) calls it so-such service cannot be officiating service within the meaning of regulation 4.

5. Whether service rendered in a post is officiating or substantive for the purposes of the regulation will depend on the sense in which the words, "officiating" and "substantive" are used in the regulation, not on the labels given (if given at all) to the several kinds of service rendered by members of the Civil Services of the several States in the State Service Rules governing them. The words "officiating" and "substantive" are not defined in the Regulations, nor in the Indian Administrative Service (Recruitment) Rules, 1954 the definitions in which are attracted by reason of regulation 2 (2) of the Regulations. Nor have we been referred to any definition that has been made applicable. Hence the words have to be construed in their ordinary sense, and if the State Service Rules by which a particular candidate is governed uses these words in a different or in a special sense-as for example F. R. 9 (19) of the Madras Fundamental Rules seems to define the word "officiate"- that would be altogether irrelevant even though the question whether the service rendered by him is officiating or substantive within the meaning of the Regulation must depend on orders made in accordance with the Service Rules governing him. In the ordinary sense of the words in the context of service, "to officiate" is to "perform the duties of an office", and "substantive" means "permanent". Substantive service therefore means service as a permanent holder of an office, and, in contradistinction,

officiating service means service rendered as a non-permanent holder. In fact, all service which is not substantive is officiating, and it seems clear that the words, "whether officiating or substantive" are used in the Regulation to mean "whether substantive or not". The word "service" by itself without any qualification would ordinarily comprise all service and the words "whether officiating or substantive" are put in brackets after the word "service" only in order to emphasise that all service, of whatever kind, counts. The regulation divides service into two categories, officiating and substantive, and does not contemplate a third, and what it says, is that all service, whether officiating or substantive, counts. It was necessary to clarify that all service, whether officiating or substantive, counts lest it be thought, in view of the fact that only substantive members of the State Civil Service are eligible, that the eight years of qualifying service should also be substantive. The purpose of the regulation is obviously that a candidate, in order to be eligible, must have a certain status and a certain experience. He must be a substantive member of a State Civil Service-that must be his status-and he must have eight years experience as a Deputy Collector. And, for the purpose of that experience, it is sufficient that he should have performed the duties of the post-it does not matter whether or not he performs them in a substantive capacity.

6. Supposing the service rules by which a candidate is governed do not use the words "officiating" and "substantive" but use instead the words "temporary" and "permanent", could it be said that the candidate would never be eligible because his service rules do not describe any part of his service as either officiating or substantive? Or supposing that the regulation had said-as it well might- "whether temporary or permanent" and not "whether officiating or substantive": would the State Government then say that, while the so-called temporary service rendered by the petitioners would count for eligibility their service between the date of its regularisation and the date of their confirmation would not, because their service rules do not call that service either temporary or permanent?

7. It does not appear from regulation 4 that the State Governments have anything to do in respect of that regulation. But it is obvious that the selection committee must depend on the State Governments to get the list of candidates entitled to consideration under the regulation. And it is apparent from the impugned order Ext. P. 5, that, from 1962 onwards, the State Government has stood in the way of the petitioners' names being considered although the petitioners were fully entitled to consideration.

8. Both the petitioners have complained against Ext. P. 5, but, while the petitioner in O.P. No. 7 has sought the quashing of that order (by no means an adequate or effective remedy), the petitioner in O.P. No. 495 has not expressly asked for any relief in regard to this matter. His petition has however been heard on the footing that he has asked for relief, and we have not insisted upon a formal amendment. The two petitions have been heard together; both the petitioners are in a like position; and it is obvious that we should not deny the petitioner in O.P. No. 459 any relief which he is entitled and which we are

granting to the petitioner in O.P. No. 7, merely because he has not expressly asked for it.

9. As we have observed, the petitioners were clearly entitled to have their names considered for selection from 1st January 1962 onwards. Whether they would have been, or will be, selected or not is, of course, another matter with which we are not concerned. Even on the mistaken view taken by the State Government, the petitioners are entitled to consideration at least this year, the regularisation of their service being with effect from December 1955.

10. The immediate cause for moving this Court appears to be the orders, Exts. P.1 and P. 2 in O.P. No. 459 by which the petitioner therein and the order Ext. P. 2 in O.P. No. 7 by which the petitioner in that petition were reverted as Deputy Collectors.

11. The petitioner in O.P. No. 459 was appointed as Special Officer in charge of eviction of encroachments in project areas. This was pursuant to Ext, P. 8 dated 12th January 1962 by which order the 1st respondent inter alia sanctioned the creation of a temporary post of Special Officer in the senior time-scale of the Indian Administrative Service for a period of six months. The 1st respondent also directed under the second proviso to sub-rule (2) of rule 4 of the Indian Administrative Service (Cadre) Rules, 1954, that the post of Special Officer be temporarily encadred as a senior post in the Indian Administrative Service Cadre of Kerala, and appointed the petitioner as Special Officer. The petitioner in O.P. No. 459 took charge of this post on 18th January 1962. Later, the period was extended by order dated 23rd October 1962 till 17th January 1963. It is thereafter that Ext. P. 1 order reverting the petitioner as Deputy Collector was passed on 4th January 1963. The representation of the petitioner against the reversion was rejected by Ext. P. 2 order.

12. The petitioner in O.P. No. 7 was provisionally appointed as District Collector, Palghat, by order dated 22nd June 1962, Ext. P.1, in that original petition. He was reverted by order dated 29th December 1962, Ext. P.2 in O.P. No. 7.

13. These orders, Ext. P. 1 in O.P. No. 459 and Ext. P. 2 in O.P. No. 7 are challenged on the ground that they are violative of Art. 311 of the Constitution. And it was further urged that the two petitioners who have been selected on the ground of merit and experience and appointed to cadre posts cannot be reverted.

14. The 1st respondent has detailed in the counter-affidavits filed in these cases the circumstances under which the petitioners have been appointed to what are termed "cadre posts". In the case of the petitioner in O.P. No. 459, according to the 1st respondent, it was to a temporary post that was in existence till 17th January 1963 that he was posted. That was not an appointment by promotion as envisaged by the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. The State, the 1st respondent, would have it that it was an appointment of a non-cadre officer to a cadre post as envisaged by rule 9 of the Indian Administrative Service (Cadre) Rules. It is also stressed that the post

itself ceased to exist from 17th January 1963. And it was further pointed out that there was no place available in the cadre posts in the State to absorb the petitioner.

15. Similar contentions have been raised in the case of the petitioner in O.P. No. 7. It is said that he was appointed as Collector because no cadre officer was available and that he was reverted as soon as one was available.

16. In the above circumstances and in view of what is stated in the counter affidavits, we do not think that this Court can interfere with the order, Ext. P.1, in O.P. No. 459 or with the order, Ext. P. 2 in O.P. No. 7.

17. The petitioners also complain about an order of the 1st respondent, the State of Kerala, dated 16th May 1962, which lays down that service pursuant to provisional or emergency appointments of the Travancore-Cochin or Madras personnel prior to 1st November 1956 before regularisation of their appointments by the competent authorities should be taken into account for purposes of deciding the inter-State seniority only if such service is either regularised or was in a time scale of pay and was reckoned for grant of increments in the time scale and was continuous. The order-marked as Ext. P. 4 in O.P. No. 7 and as Ext. P. 9 in O.P. No. 459-was in supersession of earlier orders passed by the State Government dated 29th December 1956 (Ext. P.3 in O.P. No. 459) and 2nd April 1958 (Ext. P. 4 in O.P. 459) as well as an order, dated 16th August 1961 (Ext. P. 7 in O.P. No. 459); and it is stated therein that it was issued by the State Government on the basis of a letter, No. F. 8/3 (23)/61-SR (S), from the Government of India, Ministry of Home Affairs, dated 1st March 1962.

18. The grounds on which Ext. P. 9 in O.P. No. 459 (Ext. P. 4 in O.P. No. 7) are questioned in these writ applications can be formulated as follows:

(i) Ext. P.3, P.4 and P.7 reckoned seniority from the date of commencement of continuous service and, therefore, enabled the petitioners who are allottees from the State of Madras to get the benefit of their service under rule 10(a) (i) (1) of Part II of the Madras State and Subordinate Services Rules. So the petitioner in O.P. No. 459 could claim service from 7th August 1953 and the petitioner in O.P. No. 7 from 5th September 1953. On the basis of this a provisional integrated gradation list as on 1st November 1956 was prepared and published in Kerala Gazette (No. 9, Part I) dated 3rd March 1959 along with the order of Government, dated 16th February 1959 which is Ext. P. 5. Promotions and appointments have been made pursuant to the list appended to Ext. P. 5 and as far as it is known to the petitioners, no appeals were taken either against the rule reckoning seniority from the date of commencement of continuous service or against the list on other grounds.

These have, therefore, become final and the State Government or for that matter the Central Government have no jurisdiction to change the rule or the gradation list prepared pursuant to the rule that has been settled.

(ii) In any view of the matter, before changing that rule, an opportunity should have been afforded to the petitioners who stood to benefit by such rule to place their case. This not having been done, there has been violation of the principles of natural justice.

(iii) Temporary service of Travancore-Cochin personnel has been recognised for purposes of seniority. The petitioners who have also been discharging the duties of Deputy collectors have been denied this benefit. This is clearly a violation of the principles of equality guaranteed by Arts. 14 and 16 of the Constitution.

19. Ext. P. 9, is not final. So also the order, Ext. R. 2, dated 10th May 1963, it is admitted, is not final and a list said to have been prepared pursuant to Ext. P. 9, on 31st December 1962, it is said, will have to be published and after its publication in accordance with the directions of the Central Government contained in Ext. R. 6, review petitions/counter-representations will be entertained in accordance with the procedure laid down in the Government of India, Ministry of Home Affairs letters, dated 25th January 1960 and 28th March 1960. These letters have been produced and marked as Exts. R. 6(a) and R. 6(b).

20. In view of the above position, the contentions raised on the basis of Arts. 14 and 16 (Paragraph 19 (3)) were not mooted as it was realised that it is open to the petitioners to file review petitions or make counter-representations after the publication of the finalised list by the state Government. In Ext. R.6 the Central Government has directed that it is not necessary for the state Government to invite fresh appeals before publishing the final gradation list drawn up in accordance with the directives of the Central Government. In view of the above position it was only urged that a direction must be issued by this Court to the 1st respondent to publish the final gradation list and that a further direction be issued to the state Government to adhere to the list appended to Ext. P. 5 pending the ultimate decision of the Government of India.

21. The two other grounds, grounds (1) and (2), mentioned in paragraph 19 above have been controverted on behalf of the 1st respondent. It has to be mentioned here that notice was also issued to the Central Government and the Central Government is represented by counsel before us. That counsel stated that the Central Government fully supports the interpretations given by the state Government to the directives issued by the Central Government as evidenced by the letter, dated 1st March 1962 by the Government of India which is referred to in Ext. P. 9 as one of the documents read in passing that order. It is also the stand of the Central Government that the directions contained in Ext. R.3, which is the fifth paper read in Ext. R.2 too, have been properly interpreted by the state Government.

22. As regards the first point, it is urged by the 1st respondent that the orders, Ext. P.3, P. 4, P.5 and P.7 have been passed at the instance of the State Government and not pursuant to any statutory directions from the Central Government as envisaged by section 117 of the States Reorganisation Act. No

doubt, the recommendations of the Chief Secretaries" Conference held in New Delhi as also the report of what is termed the "Chatterjee Committee" have helped the State Government to settle the principles of integration. These, it is pointed out, have been settled purely on a provisional basis. Reliance was also placed on a communication, Ext. R.5(a) from the Central Government to the 1st respondent, dated 11th March 1959 wherein it is stated that confirmations, promotions and reversions made by the State Government will be subject to such orders as may be passed by the Government of India in consultation with the Central/State Advisory Committee on the representations of the officers affected and till then those orders may, therefore, be held to be provisional and liable to revision. In fact it is stated in Ext. P.5 order that the list published along with it is a provisional list and that appeals or representations may be made by those who feel themselves aggrieved and it is the case of the State Government that representation were actually made.

23. In the above circumstances, it is urged on behalf of the 1st respondent that there was nothing wrong in the 1st respondent having complied with the directions given by the Central Government contained in their letter, dated 1st March 1962 referred to in Ext. P. 9. According to the 1st respondent, the State Government is bound to carry out the directives of the Central Government. That is the provision contained in section 117 of the States Reorganisation Act and what they have done, therefore, was only to carry out the statutory obligation. This cannot be said to be illegal or an act without jurisdiction.

24. It is also stressed that there has been no violation of the principles of natural justice. The directives of the Central Government are not final. It is open to the Central Government to come to provisional conclusions. They have made it clear by Ext. R.6 that review petitions/counter-representations will be entertained after the publication of the final list by the State Government. The petitioners are, therefore, not prejudiced. And it was also urged that no writ applications would lie for quashing provisional decisions.

25. Relating to the first ground mentioned in paragraph 19 above, we are of the opinion that there is no lack of jurisdiction on the part of the Central Government to give the directions contained in their letter, dated 1st March 1962 and Ext. R.3. We are further of the view that the State Government is bound to carry Out the directions. That being so, the only aspect to be considered is about the request referred to in paragraph 21 for the issuance of necessary directions. We consider that in the interests of justice, a direction has to be issued that the list said to have been prepared on 31st December 1962 pursuant to Ext. P. 9 and which is stated by the State Government to be in accordance with the directives of the Central Government must be finalised and published as early as possible. It is only after the finalisation and publication of the list will it be possible for the petitioners and others, if they are aggrieved, to file any review petitions/counter-representations. This being so, it is imperative that the list should be published as early as possible.

26. It remains to be considered as to whether there should be any further direction relating to the procedure to be followed till the list is finalised and published. This leads us to the questions formulated as ground No. (2) in paragraph 19 above, as to whether there has been violation of the principles of natural justice.

27. The petitioners urge that there should be a direction to adhere to the list appended to Ext. P.5. If such a direction is issued, it amounts to nullifying the statutory direction issued by the Central Government contained in their letters, dated 1st March 1962 and Ext. R. 3. These directions the State Government are bound to follow. It does not seem to be proper or expedient or necessary that this Court should interfere at this stage. From the date of Ext. P. 5 it was the provisional list then published along with that order that governed the matter of promotion. If that be so, there is no reason why another provisional basis should not be adopted in regard to promotions pending finalisation of the list.

28. It was, however, urged that the letter, dated 1st March 1962 was issued by the Central Government on the basis of representations made by persons aggrieved by the principles accepted in Ext. P. 5 and P. 7, that those representations are akin to appeals to the Central Government, that those appeals were decided without affording any opportunity to the petitioners and those similarly placed, to urge their case and therefore have been decided in violation of the principles of natural justice. In that light, it is contended that those orders can have no effect whatever.

29. As long as those are only tentative decisions and since against those decisions the right to file review petitions/counter-representations is reserved, as soon as the list is finalised pursuant to those decisions and published by the State Government, these decisions can only be provisional and there is nothing in the States Reorganisation Act which prevents such tentative decisions being taken. On the other hand, such tentative decisions are necessary as it is extremely impracticable to hear every employee that may be affected before reaching a provisional conclusion. The exigencies of the situation demand such decisions. As long as those decisions are made known and the right reserved to persons affected to question those decisions, it is not for this Court to anticipate the final conclusions, necessarily on insufficient material, and come to its own conclusion on a matter which it is for the State Government and the Central Government to decide. This Court, after all, can only interfere where there has been a violation of the provisions of the Constitution-in matters pertaining to service where there has been a violation of Article 14 and/or Article 16 or Article 311-and perhaps in extreme cases where injustice has been done and that by violating statutory provisions or rules. The question of infringement of the constitutional provisions, in the light of what is already stated, does not arise in these writ applications, and we have not been told that there has been infringement of any statutory provisions or rules.

30. In the light of the above we hold that the order, Ext. P. 5 in O.P. No. 7 is not

sustainable. The petitioner in O.P. No. 7 and for that matter the petitioner in O.P. No. 459 are eligible for being considered to be included in the list to be prepared under regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. That Regulation reads as follows:

5. Preparation of a list of suitable officers:-(1) The Committee shall prepare a list of such members of the State Civil Service as satisfy the condition specified in regulation 4 and as are held by the Committee to be suitable for promotion to the Service.

(2) The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.

(3) The names of the officers included in the list shall be arranged in order of seniority in the State Civil Service:

Provided that any junior officer who in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him.

(4) The list so prepared shall be reviewed and revised every year.

(5) If in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession".

31. It is clear from sub-regulation (2) that seniority is one of the factors to which due regard has to be given in selecting candidates for inclusion in the list of candidates suitable for promotion. And sub-regulation (3) directs that the names of the officers included in the list shall be arranged in the order of seniority in the State Civil Service. Therefore in the matter of selection of candidates suitable for promotion and in the matter of arranging them in the list, seniority plays a part.

32. The question of seniority as among the Deputy Collectors in the State has necessarily to depend on the final view the Central Government takes on the review petitions/counter-representations that may be taken by members aggrieved by the decision contained in Ext. P.9 and the finalised list published pursuant thereto by the State Government. If before this decision is known, the selection of candidates from the group of Deputy Collectors for promotions, is to take place, the selection will have to be based on either the list published along with Ext. P. 5 or the list to be published pursuant to Ext. P. 9. These two lists are provisional, Ext. P, 5 was and Ext. P.9 is subject to final orders on review petitions/counter-representations. We do not think it is either desirable or just that selection should be made for promotion for the year 1964, (we are informed that no selections have been made for this year yet) on the basis of either of these lists. One group or other will be prejudicially affected if this is permitted. Any alteration in the list, after selection and posting to cadre posts in the Indian Administrative Service may not affect that selection or the posting. In any case any upsetting of the selection and posting to such a post must be avoided.

33. In the result we direct that the list dated 31st December 1962 be finalised and published forthwith. Further we quash Ext. P.5 in O.P. No. 7 and declare that the petitioners in the two writ applications are eligible to be considered for inclusion in the list of members for the year 1964 suitable for promotion to the Indian Administrative Service and were so eligible from the year 1962 onwards. But the actual selection of such candidates for the year 1964 and subsequent years will be deferred till finalisation of the integrated list pursuant to final directions from the Central Government. Since valuable rights are involved in the matter of selection and considering the time that has elapsed after the integration, we direct that the integrated list should be finalised within six months from today.

34. The petitions are allowed as above. No costs.

Raman Nayar, J:--

35. I am tempted to add a few words of my own to what has been said on behalf of the bench because it seemed to me from the numerous orders and the correspondence referred to in the course of the hearing that there has not been a sufficient appreciation of the issues that are really involved.

36. In the first place I think it necessary to emphasise that Part X of the States Reorganisation Act charges the Central Government with the duty of sitting in judgment over the State Government in matters like the present. The Central Government's powers in this regard are both appellate and revisional-in theory they are even wider since the Central Government can give directions beforehand and need not wait for the State Government to err, though in practice it would appear there has been no occasion for such an exercise. u/s 115 of the Act, it is for the Central Government to make the final allotment of persons serving in an existing State for service in a successor State, to see to the division and integration of the services among the new States (of which Kerala is one) and the States of Andhra Pradesh and Madras, to ensure fair and equitable treatment to all persons whose services have been transferred from one State to another, and to consider any representations made by such persons. Such representations, when directed against decisions of the State Governments, are really appeals and indeed have been rightly called so, and on such appeals or otherwise, the Central Government can, u/s 117, give directions to the State Governments which the latter are bound to obey. Therefore, anything that the Central Government asks the State Governments to do in relation to the division and integration of the services is really a statutory direction, and, when it has the effect of altering a decision of the State Government to the disadvantage of any person, especially when it is in consequence of an appeal, it is a quasi-judicial decision. That being so, persons adversely affected have a right to be heard before a final decision is taken; they have a right to know what that decision is; and the decision itself must, apart from being supported by reasons, give clear directions (not presenting the State Governments with choices attracting further representations against the choice made), and must be

attended with a certain degree of formality (not informal or secret).

37. The effect of the impugned order, Ext. P.9, dated 16th May 1962, made by the State Government in pursuance of a direction given by the Central Government on 1st March 1962 on appeal to it by persons who considered themselves aggrieved by the State Government's Order, Ext. P.7, dated 16th August 1961, which allowed persons like the petitioners who were allotted from the Madras State to count their "temporary service" (i.e., service rendered by a person first appointed temporarily under rule 10 of Part II of the Madras State and Subordinate Services Rules until such date as his probation commences as determined under rule 23(a), or, in common official parlance, his service is regularised) for purposes of seniority in the integrated Kerala Service is at any rate as the State Government construes that order, to deprive the petitioners of over two years of service for those purposes. In the seniority list prepared on 16th February 1959 (and published in the Gazette, dated 3rd March 1959) in accordance with the previous orders, the petitioner in O.P. 459 was No. 20 and the petitioner in O.P. 7 was No. 24 among Deputy Collectors and would, (by reason of promotions and retirements that have occurred meanwhile) have now been among the seniormost Deputy Collectors. It is said that a seniority list has been prepared on 31st December 1962 on the basis of Ext. P. 9. That list has not been published and it is not before us but it is not disputed that the petitioners have lost several places. Thus, there is no denying that the petitioners have been prejudiced by the direction of the Central Government, and, were that the final decision in the matter, I would have had no difficulty in quashing the order, Ext. P.9, which embodies that decision, as offending the principles of natural justice in that the petitioners were not given an opportunity of being heard. The previous orders were in their favour and therefore they had no occasion to make any representation with regard to them. Of the appeals which resulted in their being deprived of the benefit of those orders they had no notice, and no opportunity of showing cause.

38. It is true that appeals are bound to be numerous, that the decisions thereon will, as a rule, affect a large number of persons in different services, and that it will be impossible to predicate who are the persons likely to be affected and give them notice and hear them. But, it should not be beyond human ingenuity to devise some means of affording an opportunity of showing cause which would, in the circumstances be regarded as a sufficient compliance with the requirements of natural justice. One way of doing so would be to formulate and publish the points taken in the appeals and invite representations with regard to them from all whom it may concern and consider those representations before taking a decision. Another-and that is what we have found it possible to discover was adopted in this case would be to take a tentative decision, publish it, and then receive and consider representations before a final decision is taken. In this view then, the impugned order (Ext. P.9) and the seniority list prepared in pursuance thereof are like the previous orders and seniority lists, only tentative or provisional and are subject to the final orders yet to be passed by the Central

Government as a result of any "review petitions/counter-representations" that might be received. There is thus, as yet, no final decision to be challenged and the petitioners will have an opportunity of making representations both against the direction that has now been given by the Central Government and the way in which the State Government has construed and applied that direction to their particular cases. Meanwhile, it is doubtful whether the substitution of one provisional list by another can give them a cause of action to approach this court under Article 226 of the Constitution.

39. In deciding whether the "temporary" service of the petitioners should count or not for the purpose of determining seniority in the integrated service, the inquiry should be whether there is anything in the nature of that service or of the appointment under which it was rendered, as compared with the service and appointment of their Travancore-Cochin compeers (the whole of whose continuous service counts) which should disqualify it from counting. And yet this is, so far as I" am able to see, the one matter that has not received attention. Whether the service is rockoned for increments, or whether in their parent State, namely, the Madras State, such service is being counted for seniority as against persons allotted to that State from Travancore-Cochin, might perhaps be factors to be taken into consideration in deciding the question, but scarcely determining factors. Denial of increments might have no more than a pecuniary significance and no one I suppose claims that Madras is infallible. Nor, although, of course, it is necessary to ensure that persons similarly placed are similarly treated, is this a matter for reciprocity. The petitioners were at the time of their appointment as Deputy Collectors fully qualified for such appointment-according to them better qualified than their Travancore-Cochin compeers since their selection was unlike the latter"s, based on merit and not on mere seniority in the subordinate service-and it is their case they are suffering because of the adventitious circumstance (which is of no relevance in the matter of seniority) that, in the Madras State, there were service rules differentiating between what is called temporary and regular appointment whereas in Travancore-Cochin there were no service rules at all. If that be so, and there is really no difference in the quality of their "temporary" service as compared with the service of their Travancore-Cochin compeers, then to deny them the benefit of that service for the purpose of seniority while counting the entire service of the Travancore-Cochin personnel would, I think be violative of Art. 14 and 16 of the Constitution.

40. If it were possible to postulate that, in the ordinary course, the petitioners would not have secured appointment until the date on which their appointments were regularised, then, perhaps it would be reasonable to say that their services before that date (which was really in the nature of a windfall) should be eschewed." But there is nothing in the numerous affidavits filed on both sides or in the numerous orders to which we have been referred which tells us of the circumstances under which the petitioner"s first appointments were made temporary and continued to be temporary till 28th December 1955 when they were regularised also I could have thought that this was the first matter for

investigation. It was suggested at the bar that, among many others, one reason might have been that under the Madras rules vacancies had to be filled up in rotation by different methods and from different classes of persons. When an eligible candidate was not available for a particular vacancy that vacancy had to be reserved to be filled up in the future when an eligible candidate became available and the delay in appointment was not to affect his seniority. That meant that all vacancies arising till the appointment was made could be filled up only temporarily and, since under the Madras rules, seniority is determined by the date of first appointment counting for probation, the commencement of probation of the temporary appointees had necessarily to be postponed until a regular appointment was made to the reserved vacancy. And it was possibly to ensure that a junior did not receive a higher salary than a senior that increments were denied for temporary service though, that again, was by no means a uniform practice. But there is nothing on affidavit in support of all this, and there is no material before us on which we can decide whether the rejection of the petitioners' temporary service for purposes of seniority would offend Article 14 or Article 16 of the Constitution. I think it necessary to warn against the reasoning, facile but fallacious that seems to be tacit in the view that the petitioners should not be given the benefit of their temporary service, namely, that because that service did not count for seniority in their parent State of Madras it should not count here. In the different integrating units different rules prevailed for the purpose of determining seniority. In Madras, seniority was determined by the date of first appointment counting for probation so that not merely broken periods of service but even periods of reversion were reckoned. In Travancore-Cochin, as I believe in the old Travancore State, although there were no service rules as such, the principle followed was that the length of continuous service determined seniority so that broken service would not count. In the old Cochin State, it was the date of confirmation that determined seniority so that only substantive service counted. When such units, adopting different principles, are integrated it is necessary first to fix the principle on which seniority is to be determined in the integrated service. The criterion adopted in the present integration is the length of continuous service. (This is subject to the qualification that the seniority within each integrating unit should not be disturbed and, because in the Madras unit, there are instances of a senior having less service than a junior, this has necessitated a national exchange of service between the several members of each integrating unit, the K.L.M. principle or the principle of assigned dates as it has been called. With this however we are not concerned). My purpose in referring to all this is to emphasize, what it seemed to me was not clearly apprehended that once a particular criterion is adopted for the purpose, the question whether a person's service-as in this case the petitioners' temporary service-would count for seniority in his parent State is altogether irrelevant. This is best demonstrated by illustration. If it were relevant, then, in the Travancore-Cochin integration, the Cochin Officer's officiating service, though continuous would not count, however long it be, whereas such service of the Travancore Officer would. And if, as could well have been the case, the principle

adopted in the present integration were the date of first appointment, the Madras Officer could count the entire period from that date, including periods of reversion, whereas the Travancore-Cochin Officer could count only the period of continuous service