

(1979) 06 KL CK 0005

In the High Court Of Kerala

Case No : O.P. No"s. 3026, 5356, 5357, 5537 and 5704 of 1975 and 750 of 1977

M.V. Vasudevan Nair and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 11-06-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Kerala Public Services Act, 1968 — Section 2, 2(1), 3
Kerala State and Subordinate Services Rules, 1958 — Rule 39

Citation : (1979) 06 KL CK 0005

Hon'ble Judges : V. Balakrishna Eradi, J;K.K. Narendran, J

Bench : Division Bench

Advocate : S. Eswara Iyer, V. Sivaraman Nair, V. Bhaskaran Nambiar, P.C. Balakrishna Menon, K. Chandra Sekharan, T.V. Viswanatha Iyer, P. Ramakrishnan Nair, K.P. Dandapani and Sumathi Dandapani, for the Appellant; C.K. Sivasankara Panicker, General, for the Respondent

Judgement

Balakrishna Eradi, J.—The challenge in these writ petitions is directed against the legality and validity of the Special Rules issued by the State Government in respect of the posts of Head Clerks including Head Accountants, Upper Division Clerks and Lower Division Clerks borne on the establishment of the Land Revenue Department of the State Government as per G.O. (P) No. 413/RD., dated 14th May 1975.

2. In Rule 1 of the impugned Rules it is stated that the Rules shall be deemed to have come into force on the 1st November 1956 except to the extent otherwise provided for therein. The provisions of the impugned Rules are intended to govern the personnel working in the categories aforementioned in the Land Revenue Department of the Kerala State. They consist mainly of three groups, viz., those who were originally borne on the Travancore-Cochin cadre and have been allotted to the Kerala State, those who came over to Kerala State Service from the erstwhile composite Madras State consequent on the reorganisation of States, and lastly those who were recruited in the Kerala State on or after 1st

November 1956. Until the date of the issue of the impugned Rules, the personnel in groups 1 and 3 were not governed by any statutory Rules in respect of the matters now dealt with in the Special Rules whereas the personnel in group No. 2 were governed by the provisions contained in the Madras Ministerial Service Rules. It is specifically recited in the preamble to the impugned Rules that the Special Rules are issued in supersession of all the pre-existing rules and orders on the subject. The result is that the Madras Ministerial Service Rules stand repealed by the Special Rules with effect from 1st November 1956.

3. Subsequent to 1st November 1956, totally divergent qualificatory requirements were being insisted upon by the State Government for purposes of promotion in respect of the personnel allotted to Kerala from the Madras State and the personnel who belonged to the erstwhile Travancore-Cochin State cadre as well as those recruited in Kerala subsequent to 1st November 1956. In respect of the former class of persons, viz., those allotted from Madras State, the requirement contained in the Madras Ministerial Service Rules regarding the passing of Chain Survey Training and possession of experience gathered by functioning as Firka Revenue Inspector at least for a period of one year were insisted upon as qualifications mandatorily required for eligibility for promotion as Upper Division Clerks and to further higher posts. In respect of personnel allotted from Travancore-Cochin State as well as those recruited in Kerala subsequent to 1st November 1956, they were treated as eligible for promotion as Upper Division Clerks and above in case they had passed the Account Test (Lower) and the Secretariat Manual Test/District Office Manual Test. Another disparity of treatment as between these two groups was that in respect of the personnel allotted from Madras promotions to the category of Upper Division Clerks were made by selection based on merit and ability whereas in the case of personnel who came over from the Travancore-Cochin area as well as those recruited in Kerala subsequent to 1st November 1956 Such appointments were made by promotion based on seniority subject to the requirement regarding the acquisition of test qualification.

4. The circumstances that led to the filing of the present writ petitions may now be briefly indicated:

In a Government Order dated 25th February 1957 Government directed that until common service rules applicable to all the officers of the Kerala State are framed and issued, officers allotted to Kerala from the erstwhile States of Travancore-Cochin and Madras will continue to be governed by the service rules of the state to which they belonged prior to 1st November 1956. It was further provided by the said order that persons who were only appointed into Kerala Government service on or after 1st November 1956 will be governed by the Travancore Service Regulations till unified rules are framed. The Travancore Service Regulations do not contain any provisions laying down the qualifications for promotion from the category of lower division clerks to that of upper division clerks. The resultant position was that the lower division clerks recruited in the

revenue establishment after 1st November 1956 were not governed by any specific rules or orders laying down qualifications for promotion to the upper division.

5. For a considerable period after 1st November 1956 the District Collectors of Palghat, Kozhikode and Cannanore prepared annually select lists of Lower Division Clerks suitable for promotion to the Upper Division and appointments were made on the basis of these lists. Such lists were prepared till 1966 by the Collector of Palghat and till 1965 by the Collectors of Kozhikode and Cannanore. While drawing up those lists persons recruited into service after 1st November 1956 had not at all been considered for selection by the three District Collectors. Many seniors amongst the allotted Lower Division Clerks had been denied the opportunity to acquire the requisite qualification of one year's service as Firka Revenue Inspector on account of the fact that the principle of seniority had not been observed in the matter of posting persons to work as Firka Revenue Inspectors and such postings had been made purely on a consideration of administrative convenience. A further complication was created by the fact that all the post of Firka Revenue Inspectors were upgraded to the level of Upper Division Clerks by G.O. MS. 311/Revn., dated 16th June 1966 and as a result thereof it became impossible thereafter to post any of the Lower Division Clerks to work as Firka Revenue Inspectors. Taking note of this difficulty the Government issued G.O. MS. 578/67/RD., dated 22nd November 1967 whereby it was ordered that the provision contained in the Madras Ministerial Service Rules prescribing one year's service as Firka Revenue Inspector as a necessary qualification for promotion to the upper division grade will stand relaxed in respect of all the Lower Division Clerks allotted from Madras and who still remained to be promoted to the upper division on a regular basis. This G.O. was, however, declared to be invalid by a Full Bench of this Court -- Sreedharan Pillai and Ors. v. State of Kerala 1973 KLT 151 on the ground firstly that it was not legally open to the Government to amend or repeal the provisions contained in the Madras Ministerial Service Rules by a mere executive order, and secondly that it was not also competent for the State Government in the exercise of its power under Rule 39 of the Kerala Subordinate Service Rules to grant a general relaxation of the provisions of a statutory rule in favour of an undefined group of persons governed by the said rule.

6. While matters stood thus the Government in a letter dated 13th March 1970 addressed to the Secretary Board of Revenue, Trivandrum informed the letter that after the issue of G.O. Ms. No. 903/ Public (Rules) Department, dated 19th October 1959 all promotions to the upper division grade had to be made only on the basis of seniority-cum-fitness of the candidates irrespective of whether they were allotted officers or officers appointed subsequent to 1st November 1956. The basis on which the Government had issued the said direction was that with the passing of the aforementioned G.O. dated 19th October 1959 the Madras Ministerial Service Rules had automatically ceased to be in force. Pursuant to the said directive given by the Government, the Board of Revenue by its letter dated

2nd April 1970 issued instructions to the District Collectors of Kozhikode, Palghat, Cannanore and Malappuram to review all the promotions of Lower Division Clerks to the Upper Division which were made after 19th October 1959 and to prepare fresh lists of Upper Division Clerks subject to their seniority, qualification and fitness by adopting the principles laid down in the Government Order dated 19th October 1959. The validity of the aforesaid directions given by the Government and the Board of Revenue was called in question before this Court in O.P. Nos. 3020 and 3021 of 1970. These writ petitions were filed by some of the allottees from Madras who had obtained promotion to the upper division category by virtue of their inclusion in the select lists drawn up by the District Collectors during the period from 1961 to 1965 in accordance with the provisions contained in the Madras Ministerial Service Rules. Another writ petition -- O.P. No. 3104/70 -- was also filed by a Lower Division Clerk appointed after 1st November 1956 praying that the Board of Revenue should be compelled by a writ of mandamus to implement immediately the directions given in its letter dated 2nd April 1970.

7. When the aforesaid writ petitions came up for hearing on 14th July 1971 the Government Pleader appearing in the case submitted to the court that he had been instructed by the State Government to represent to the court that as a result of a full examination of the whole question the Government had arrived at the view that G.O. Ms. 903/PB., dated 19th October 1959 being only an executive order could not in any way modify or affect the operation of the Madras Ministerial Service Rules and that hence the Government proposed to issue revised orders in the matter, after consultation with the Public Service Commission, in modification of the instructions issued in the impugned letter dated 13th March 1970. In view of the said representation made by the Government Pleader that the Government would be passing revised orders in the (matter, counsel appearing for the Petitioners in O.P. Nos. 3020 and 3021/70 stated that the Petitioners did not wish to prosecute the writ petitions any further at that stage. On the basis of the submissions so made by the counsel appearing on both sides O.P. Nos. 3020 and 3021 were dismissed, by this Court after recording these submissions. As regards the grievance put forward by the Petitioner in O.P. 3104/70 that all the promotions to the upper division grade in Kozhikode District had been confined exclusively to the clerks allotted from Madras and that persons who had joined service subsequent to 1st November 1956 had been totally excluded from consideration, the Government Pleader submitted to the court that the said matter will be looked into by the Board of Revenue and appropriate orders will be passed thereon as expeditiously as possible. The above submission made by the Government Pleader was also recorded and O.P. 3104/70 was dismissed.

8. In the light of the categorical assurance given to this Court on behalf of the State Government that revised orders would be passed in the matter by the State Government it was to be expected that all aspects of the matter would be carefully examined by the Government in consultation with the Public Service Commission and that comprehensive instructions on the subject would be issued

by the Government in order to effectively untangle the knotty problems which had arisen. It was also clear that such instructions could have been issued only in the form of statutory rules since it had been specifically conceded before this Court on behalf of the Government that the provisions contained in the Madras Ministerial Service Rules being statutory in origin they could not be modified by executive orders.

9. But, unfortunately, instead of the Government considering the matter and issuing appropriate statutory rules, what transpired was that the Board of Revenue issued an order dated 12th May 1972 purporting to lay down the principles to be followed in the matter of promotion of Lower Division Clerks to the upper division grade in the Revenue Department. In issuing that order the Board of Revenue had proceeded on the basis that the Lower Division Clerks appointed after 1st November 1956 were governed by the Travancore-Cochin Rules in view of the direction contained in the order of the Government dated 25th February 1957. Another assumption made by the Board in issuing those instructions was that by virtue of G.O. Ms. 378/67/RD., dated 22nd November 1967 the Madras Rule prescribing one year's experience as Firka Revenue Inspector as a necessary qualification for promotion to the upper division has been validly relaxed in favour of Lower Division Clerks allotted from Madras who remained to be promoted as Upper Division Clerks on a regular basis. The Board had also treated the said relaxation as having retrospective operation from 13th June 1966 even though the Government had not purported to give any retrospective effect to its order G.O. Ms. 578/67/RD., dated 22nd November 1967.

10. The validity of the order so passed by the Board of Revenue was challenged before this Court in O.P. Nos. 3158, 3699, 3798 of 1972 and 1803/73. Those writ petitions were allowed by a Division Bench of this Court consisting of Govindan Nair, Chief Justice and one of us (Eradi, J.) as per judgment dated 29th March 1974. This court held that the Board of Revenue was totally wrong in assuming that the clerical staff recruited in Kerala after 1st November 1956 were governed by the rules applicable to the Travancore-Cochin personnel in the matter of qualification, etc., for promotion to upper division grade and pointed out that the legal position that actually obtained in regard to the post integration recruits was that they were not really governed either by the rules applicable to the Travancore-Cochin personnel or by the Madras Ministerial Service Rules. There were also no separate orders passed by the Government laying down the qualifications, etc., to be possessed by such persons for promotion to the upper division. It was found by this Court that the further assumption made by the Board of Revenue that G.O. Ms. 378/67/Rd., dated 22nd November 1967 had the effect of relaxing the provisions contained in the Madras Ministerial Service Rules prescribing one year's experience as Firka Revenue Inspector as a mandatory qualification for promotion as Upper Division Clerk was also wholly erroneous. The State Government itself had conceded before this Court that this assumption was directly contrary to the submission made before this Court by the State at

the time of disposal of O.P. 3020 and 3021/70 that the Madras Ministerial Service Rules being statutory in origin there could not be any valid relaxation of any of the provisions thereof by an executive order issued by the State Government. While quashing the impugned order dated 12th May 1972 passed by the Board of Revenue this Court pointed out in its judgment that the strict implementation of the Madras Rule insisting on one year's service as Firka Revenue Inspector had become inequitable and impracticable for more than one reason. Firstly it was observed that the principle of seniority had not been followed while posting persons to work as Firka Revenue Inspectors and, consequently, several senior Lower Division Clerks had been denied the opportunity to acquire the requisite qualification of one year's service as Firka Revenue Inspector for no fault of theirs, while juniors who were posted as Firka Revenue Inspector had been able to acquire the said qualification. Secondly it was noticed that all posts of Firka Revenue Inspectors had been upgraded and brought to the level of Upper Division Clerks by G.O. Ms. 311/Revn., dated 16th June 1966 and as a result thereof it had become impossible to post any of the Lower Division Clerks to work as Firka Revenue Inspectors so as to enable them to acquire the mandatory qualification prescribed under the Madras Rules, It was observed by this Court that this anomalous situation required to be remedied by proper modification of the statutory rule. Accordingly, in allowing the writ petitions, this Court directed that the Government should examine the matter in all its aspects and take a final decision. Since it pertained to the claims of clerical personnel for promotion into vacancies which had arisen from 1961 onwards, a time limit of six months was fixed by this Court, within which time the Government was directed to take its final decision. It was further ordered that till such final decision was taken and announced by the Government by framing appropriate rules governing the subject, the status quo as it then obtained should be maintained. The time limit of six months fixed by the judgment was later got extended more than once by applications filed before this Court on behalf of the State Government. Ultimately, the impugned special Rules dated 14th May 1975 were issued in purported compliance with the direction contained in the judgment.

11. The main grievance put forward by the Petitioners is that by the provisions contained in Rules 2 and 8 of the impugned Special Rules, persons allotted from Madras to the Kerala State in the category of Lower Division Clerks have been arbitrarily subjected to unfair discriminatory treatment without there being no reasonable basis at all for such classification and differential treatment. In order to appreciate the contentions put forward by the Petitioners in respect of their plea of unfair discrimination it is necessary to extract in full the provisions of Rules 2 and 8 of the impugned special rules. Rule 2 (omitting the portions which are not relevant for the present purpose) of the Special Rules reads:

2. Appointment. -- Appoint to the categories of posts covered by these rules shall be made as follows. --

Categories of post Method of appointment (1) (2)

(1) Head Clerk/Head Accountant By promotion from the category of Upper Division Clerks (2) Upper Division Clerks (i) By promotion from Lower Division Clerks (ii) By transfer from among qualified Upper Division Typists and Stenographers.

Note 1. -- Upper Division Clerks may be posted as Revenue Inspectors in charge of Firkas or on other duty as Special Revenue Inspectors or as Revenue Supervisors to suit administrative convenience.

Note 2. -- Upper Division Typists and Stenographers with the qualifications prescribed in these rules and having not less than ten years of service shall be appointed in every sixth vacancy arising in the constituent unit on and after 26th September 1968. Such Upper Division Typist/Stenographers shall, however not be eligible for appointment as Upper Division Clerks unless they have put in the same length of service as the senior most lower Division Clerk awaiting promotion in the constituent unit. If eligible candidates from among Upper Division Typists and Stenographers are not available at the time of occurrence of the vacancy, the vacancy shall be filled up by promotion from qualified Lower Division Clerks.

Note 3. -- The appointment of Upper Division Typists/Stenographers as Upper Division Clerks shall be on the basis of total length of service as Typist/Stenographer, as the case may be, in the ratio of 1:1 between Typists and Stenographers, subject to the condition that a Typist with longer service shall not be superseded by a Stenographer with lesser service.

Note 4. -- In the case of Lower Division Clerks allotted from the erstwhile Madras State to Kerala consequent on the re organisation of States promotion to the category of Upper Division Clerks till 14th June 1966 shall be made on the basis of merit and ability, seniority being considered only when merit and ability are approximately equal.

Note 5. -- Promotion to the category of Upper Division Clerks in the district units in Malabar area shall be as specified below:

(i) Subject to the provisions in Note 4, in the case of Lower Division Clerks allotted from the erstwhile Madras State to Kerala consequent on the reorganisation of States, promotions to vacancies arising upto 14th June 1966, shall be from a list of approved candidates prepared by the appointing authority as on the 15th March of every year, from among members eligible for such promotion in accordance with the provisions in these rules. Persons included in the approved list shall be ranked in the order of their seniority in the lower category or grade and they shall be promoted in vacancies in Upper Division grade arising in each year according to their rank in the approved list. (ii) If the number of vacancies arising in a District Unit in Malabar area is in excess of the number of allotted officers included in each year's approved list as provided under item (i) above, persons appointed in the respective district units in the Malabar area on and after 1st November 1956 and who acquired the prescribed

qualifications as applicable to them at the time of occurrence of vacancies, shall be prompted to such remaining vacancies in each year on the basis of seniority, subject to the persons' fitness for promotion, after promoting all those allotted officers included in the approved list of the respective year.

* * * * *

Rule 8 of the Special Rules reads:

8. Special Qualifications. -- No candidate shall be eligible for appointment to any of the categories specified in column (1) of the table below unless he possesses the qualifications specified in the corresponding entry in column (2) thereof.

TABLE Category Qualifications (1) (2) Upper Division Clerks (i) All officers of the erstwhile Travancore-Cochin State allotted to Kerala and all officers appointed after first November 1956 shall have continuous service as Lower Division Clerk for a minimum period of three years in the case of graduates or seven years in the case of non-graduates till 26th April 1960; all Lower 3 Division Clerks appointed between 27th April 1960 and 5th May 1966 (both dates inclusive) shall have a minimum of two years of continuous service as Lower Division Clerks and all Lower Division Clerks recruited on and after 6th May 1966 as also Lower Division Clerks allotted from erstwhile Madras State to the Kerala State shall satisfactorily complete probation in the category of Lower Division Clerks. (ii) shall pass the following tests and shall undergo the following training: (1) Revenue Test (Travancore- Cochin or Madras) (2) Account Test (Lower) Provided that in respect of officers allotted from Madras the qualification under item (2) will be insisted only from the date of publication of these rules in the gazette.

Note. -- In the case of allotted officers from Madras, Account Test for Subordinate Officers Part I(Madras) shall be accepted as sufficient qualification in lieu of Account Test (Lower).

(3) Secretariat Manual Test up to 20th February 1958 and District Office Manual Test thereafter.

(4) Chain survey training for a period of not less than four weeks.

(5) Service as Revenue Inspector in charge of a firka for a period of not less than one year.

Note. -- The qualifications referred to as (4) and (5) under item (ii) shall cease to exist with effect from 15th June 1966.

Category Qualifications (1) (2) Provided that allotted officers who have completed 45 years of age on 14th January 1963 shall be exempted from passing the tests mentioned as (2) and (3) under item (ii) above: Provided further that in the case of those who have passed Revenue Test Part I (Madras) which includes test in district office manual also, the requirement of a pass in Secretariat Manual Test or District Office Manual Test referred to as (3) under

item (ii) shall not be insisted on: Provided further that in the case of those to whom probation rules are applicable in the lower division cadre, a pass in District Office Manual Test shall be insisted on for declaration of satisfactory completion of probation in the lower division cadre: Provided further that the qualifications referred to as (4) and (5) under item (ii) above shall not be applicable in the case of officers to whom Madras Ministerial Service Rules were not applicable: Provided also that the qualifications prescribed as item (1) shall not apply to the case of Upper Division Typists and Stenographers for appointment by transfer.

12. The Petitioners contend that Note 4 to Rule 2 of the impugned Special Rules, wherein it is laid down that "in the case of Lower Division Clerks allotted from the erstwhile Madras State to Kerala consequent on the reorganisation of States, promotion to the category of Upper Division Clerks till 14th June 1966 shall be made on the basis of merit and ability, seniority being considered only when merit and ability are approximately equal, "operates as a grossly unfair discrimination against the personnel allotted from Madras. It is argued on behalf of the Petitioners that inasmuch as the persons allotted from Travancore-Cochin and Madras States as well as those recruited in the State of Kerala were all merged into one common pool and a single category, viz., the category of Lower Division Clerks of the Revenue Department of this State and since the Madras Ministerial Service Rules have been superseded with effect from 1st November 1956 itself by Rule 1 of the impugned Special Rules read along with the preamble, there is absolutely no valid basis or justification for any kind of differential treatment as between groups of personnel working in the said category of Lower Division Clerks. It is contended that the consequence of the implementation of the provision in Note 4 of Rule 2 will be that while personnel allotted from Madras have to go through a selection based on merit and ability for promotion as Upper Division Clerks the rest of the personnel working in the category of Lower Division Clerks are entitled to be promoted as Upper Division Clerks on the basis of mere seniority alone provided they possess the requisite test qualification. Another point urged is that there is absolutely no justification in arbitrarily fixing the date 14th June 1966 and laying down the principle that for promotion to the category of Upper Division Clerks till 14th June 1966 the persons allotted from Madras State will be eligible only in case they are selected on the basis of merit and ability.

13. Likewise, in regard to the provision contained in Note 5 of Rule 2 also it is contended that discrimination is writ large as between persons allotted to the State of Kerala from the Madras State and the rest of the persons in the category of Lower Division Clerks. By Note 5 it is provided that in the case of Lower Division Clerks allotted from the erstwhile Madras State to Kerala, promotions to vacancies arising upto 14th June 1966, shall be from a list of approved candidates prepared by the appointing authority as on the 15th March of every year, from among members eligible for such promotion in accordance with the provisions in the impugned Rules, and that if the number of vacancies arising in

a District Unit in Malabar area is in excess of the number of allotted officers included in each year's approved list, persons appointed in the respective District Units in the Malabar area on and after 1st November 1956 and who acquired the prescribed qualifications, shall be promoted to such remaining vacancies on the basis of seniority subject to fitness. It is pointed out that the consequence brought about by this provision is that over the heads of senior allotted personnel, whose names are not included in the approved list of the particular year, persons directly recruited as Lower Division Clerks in the concerned district in Malabar area subsequent to 1st November 1956, who will necessarily be their juniors in service, will be promoted on the basis of mere seniority-cum-fitness. It is also pointed out that in subjecting the allotted personnel from Madras to a process of selection based on merit and ability and simultaneously granting promotions to their juniors directly recruited in Kerala State subsequent to 1st November 1956 on the basis of mere seniority-cum-fitness, there is gross discrimination against the former group, for which there is absolutely no rational basis whatever.

14. Rule 8 deals with special qualifications to be possessed by candidates for promotion to the category of Upper Division Clerks. Qualifications numbers (4) and (5) under item (ii) prescribed by the said Rule are, Chain Survey Training for a period of not less than four weeks and service as Revenue Inspector in charge of a Firka for a period of not less than one year. The 5th proviso to Rule 8 lays down that the afore-mentioned qualifications numbers (4) and (5) under item (ii) shall not be applicable in the case of officers to whom Madras Ministerial Service Rules were not applicable. The 2nd Note under the 1st proviso to Rule 8 lays down that "the qualifications referred to as (4) and (5) under item (ii) shall cease to exist with effect from 15th June 1966." The position under Rule 8 can be summed up thus: In order that a person allotted to Kerala from the Madras State in the category of Lower Division Clerk should be eligible for promotion to the Upper Division, he should possess in addition to qualifications numbers 1 to 3 specified in the said Rule, Chain Survey Training for a period of not less than 4 weeks and service as Revenue Inspector in charge of a Firka for a period of not less than one year, in case he is to be promoted to any of the vacancies of Upper Division Clerks which arose up till 15th June 1966. As regards others, namely, personnel allotted to Kerala from Travancore-Cochin State and those recruited as Lower Division Clerks in Kerala State after 1st November 1956, they are required to possess only qualifications numbers 1 to 3, namely, a pass in the Revenue Test, Account Test (L), and the Secretariat Manual Test/District Office Manual Test, and they are totally exempted from the requirements contained in Clauses (4) and (5) relating to the possession of Chain Survey Training and Service as Revenue Inspector in charge of a Firka for a period not less than one year. The Petitioners contend that the principle of equality of opportunity in matters of employment enshrined in Article 16 of the Constitution is clearly violated by the discriminatory treatment meted out to one section only of personnel comprised in the single category of Lower Division Clerks of the Land Revenue Department

of the State of Kerala, and that there is no valid ground whatever for singling out that section for such differential treatment. It is submitted on behalf of the Petitioners that the classification is, arbitrary and unfair and is grossly violative of Articles 14 and 16 of the Constitution of India.

15. Another point urged on behalf of the Petitioners is that the rule-making authority acted wholly without jurisdiction in declaring as per Rule 1 of the impugned Rules, that the provisions contained in the Rule shall be deemed to have come into force on the 1st November, 1956. Learned Counsel pointed out that the impugned Rules have been framed in exercise of the powers conferred on the Government by Sub-section (1) of Section 2 of the Kerala Public Services Act, 1968 (hereinafter referred to as the Act), and inasmuch as the said parent Act itself came into force only on 17th September 1968 it was not competent for the State Government to have issued the Rules with effect from any date anterior to the date of commencement of the parent Act. On this ground also it was contended on behalf of the Petitioners that the provisions contained in the impugned Rules laying down that vacancies that arose till 14th June 1966 should be filled up by treating them as selection posts as far as allottees from Madras are concerned and that the qualification in Clauses (4) and (5) in Rule 8 shall be applied in respect of the allottees from Madras in respect of the vacancies that arose till 15th June 1966 are ultra vires and void.

16. These writ petitions had originally come up for hearing on 13th November 1978. After arguments had been heard for some time, it was submitted before us by the learned Government Pleader that though the State Government had filed a counter-affidavit supporting the validity of the impugned Special Rules, it was having second-thoughts on the matter and that urgent action was being taken to remedy the defects contained in the impugned Rules and a high level conference had also been convened to a very near date for the said purpose. The Government Pleader requested that a short adjournment of these cases may be granted in order to enable the Government to take its decision regarding the matter and to make its further submissions before this Court in the light thereof, so that administrative chaos and confusion which may result from the quashing of the Rule may be avoided. We considered that the said request made by the Government Pleader deserved to be granted subject to the imposition of adequate safeguards to ensure that the legitimate rights of the writ Petitioners before us in relation to their chances for promotion will not be jeopardised in the mean time. We accordingly directed that all further promotions to the categories of Deputy Tahsildar and Tahsildar in the State should thereafter be made only on a provisional basis until disposal of these writ petitions and that the claims of the writ Petitioners for the grant of such promotions should be considered and allowed on the basis of their seniority in the category of Lower Division Clerks untrammelled by anything contained in the impugned special rules. Subject to the said direction, we allowed the request of the Government Pleader for adjournment of these cases and directed these writ petitions to be posted for further hearing on 18th December 1978.

17. Subsequently, further adjournments were requested for by the Government Pleader on the representation that the matter was under active consideration of the State Government and accordingly on 18th December 1978 we adjourned the cases to 8th January 1979 and again an adjournment for two months was granted on 10th January 1979. Thereafter when the matter came up for hearing on 12th March 1979, it was again adjourned to 2nd April 1979 on a representation being made by the Government Pleader that steps were under way for amending the special rules by deleting the offending Notes. But, surprisingly when the matter was posted before us on 2nd April 1979, it was stated before us by the Government Pleader that the Government had not been able to take its final decision and that the court may dispose of the case on the merits. Since the vacation thereafter intervened the further hearing of the case could be taken up only today. It is extremely unfortunate that the hearing of these cases got unnecessarily protracted by the series of adjournments so taken on behalf of the State Government.

18. After a careful consideration of the arguments advanced by both sides, we have unhesitatingly come to the conclusion that the Petitioners are entitled to succeed in these writ petitions on all the grounds urged by them. We shall first take up the question of the retrospective effect of the impugned Special Rules. Admittedly these rules have been issued in exercise of the powers conferred on the State Government by Sub-section (1) of Section 2 of the Act. No doubt, Section 2 of the Act empowers the Government to make rules either prospectively or retrospectively. The extent of the Government's power for retrospective rule-making under this section has been examined and explained by three Full Bench rulings of this Court-Daniel v. Board of Revenue ILR 1975 Ker 434 State of Kerala v. Haridas 1978 KLT 238 and Sahadeva Kurup v. Board of Revenue ILR 1979 Ker 275. It is now well established by these pronouncements that except in cases where a pre-existing rule made under the proviso to Article 309 of the constitution is amended by a rule made under the Act, a rule framed under the Act cannot operate retrospectively from any point of time earlier than the date of commencement of the Act, namely, 17th September 1968. In other words, save in the matter of amendment of pre-existing rules framed under Article 309, including abrogation or supersession of such pre-existing rules, a rule framed under the Act cannot have retrospective operation beyond the date of commencement of the Act.

19. Dealing with the scope of Sections 2 and 3 of the Act the Full Bench in Sahadeva Kurup v. Board of Revenue ILR 1979 Ker 275 at pp. 293-294 observed:

This puts us on an enquiry about the purpose of the legal fiction. According to the learned Advocate General the only purpose of deeming the rules under Article 309 of the Constitution made by the Governor as rules under the Kerala Public Services Act is to enable the amendatory process under the Act to be applied to the existing rules made by the Governor. It was not necessary to make any provision merely for giving legal validity to the rules made by the Governor

by any provision such as that in Section 3 of the Act. They are operative by their own force and they continue to be operative until they are replaced by rules made in that behalf by the legislature or its delegate. There would be no meaning in deeming those rules as made under the Act merely to give validity, for, such validity there was even without the provision in Section 3 of the Act. Therefore to accept the arguments of counsel Sri Poti would mean that there was really no object sought to be served by the legal fiction. That may not be logical. On the other hand it appears to be rational to view the provision as serving the purpose of enabling amendment of such rules under the Act. By deeming the rules under the proviso to Article 309 of the Constitution as those made under the Act and by farther projecting the Act back to the respective dates on which those rules were made the amendment of those rules with retrospective effect from the dates on which the Act is deemed to have come into force for such limited purpose would be possible. There may be occasions for superseding certain of the rules made by the Governor and that could be done by framing rules u/s 2 of the Public Services Act purporting to supersede the existing rules. In such a case the rules which supersede the existing rules would be fresh rules and would continue to be operative as fresh rules made under the Act. In, such cases the fresh rule could be operative only from the date of commencement of the Act as we observed in the Full Bench decision adverted to.

20. In the preamble to the impugned rules it is clearly stated that the rules are in supersession of all the prior rules and orders on the subject. In the light of the above pronouncement by the Full Bench, the impugned rules being fresh rules framed on the subject after superseding the earlier rules and orders, can have operation only from the date of commencement of the Act" viz., 17th September 1968. But the provision in the preamble for supersession of all the earlier rules on the subject contained in the Madras Ministerial Service Rules will have retrospective effect from 1st November 1956. The rest of the provisions contained in the impugned Special Rules can have operation only from 17th September 1968, notwithstanding the statement contained in Rule 1 that the rules shall be deemed to have come into force on 1st November 1956 which must be held to be incompetent and void.

21. In the view that we have taken that the provisions of the rules other than that for the repeal of the Madras Ministerial Service Rules cannot operate with effect from any point of time anterior to 17th September 1968, it must necessarily follow that the provisions contained in Notes 4 and 5 appended to item 2 of Rule 2 and the 4th proviso to Rule 8 cannot be legally given effect to since those provisions are linked to the dates 14th June 1966 (Rule 2) and 15th June 1966 (Rule 8). It is therefore really unnecessary for us to go into the merits of the contention urged by the Petitioners that notes 4 and 5 to item 2 of Rule 2 and the 4th proviso to Rule 8 are unconstitutional and void on the ground of contravention of Articles 14 and 16 of the Constitution. However, since the matter has been argued fully before us we consider that it is only fair that we should briefly indicate our views on that point also.

22. The position that obtains under the impugned Special Rules is that the Madras Ministerial Service Rules stand repealed from 1st November 1956. As the provision contained in the preamble being legally valid and operative, all the personnel in the lower division cadre working in the Land Revenue Department of the State form one common pool or category. The historical fact that some of them were drawn from the service of the erstwhile Madras State that some others have come over from the service of Travancore Cochin State, and yet some others have come in by direct recruitment into the service of the Kerala State subsequent to 1st November 1956, will not furnish any valid ground for a differential classification of the personnel comprised in this common pool of lower division clerks of "the Land Revenue Department in relation to the applicability of common service rules framed from them by the Kerala State. Once they have all been observed into a single category no differentiation can be made as between them in respect of any matter pertaining to their vital service conditions such as seniority, promotion, etc., while making common service rules applicable to the personnel in the service in the concerned department of the Kerala State. In order to support a valid classification under Articles 14 and 16 of the Constitution there must be an intelligible differentiation which has a rational nexus with the object and purpose of the legislation or the rule. We fail to see how the fact that a particular person has been absorbed into the service of the Kerala State from the erstwhile Madras State or the erstwhile Travancore-Cochin State can furnish any valid ground whatever for meeting out differential treatment in the matter of fixation of qualification or specification of mode of appointment for purposes of promotion from lower division cadre to the category of upper division clerk. The object and purpose of the fixation of qualifications and mode of appointment is to ensure that only persons possessing the requisite minimal standard of efficiency and general equipment will be promoted to the higher posts. In regard to this crucial matter neither the historical geographical background pertaining to the source from which a person has been absorbed into the service of the Kerala State in the common cadre of lower division clerks has any rational bearing. What we have stated above applies in all its force in respect of the provision contained in Note 4 appended to item 2 of Rule 2 to the effect that in respect of vacancies of upper division clerks that arose till 14th June 1966, lower division clerks allotted from the erstwhile Madras State shall be entitled for promotion only on the basis of "selection based on merit and liability" whereas persons allotted from the Travancore-Cochin State as well as those recruited in the Kerala State after 1st November 1956 will be entitled to be promoted on the basis of seniority-cum-fitness. Equally obnoxious is the provision contained in Note 5 to the said item in Rule 2 that if the number of vacancies arising in a district unit in the Malabar area is in excess of the number of allotted officers included in each years approved list, junior hands appointed in Kerala State on and after 1st November 1956 possessing the test qualification shall be promoted in these vacancies.

23. We have no hesitation to hold that the provisions contained in Notes 4 and 5

appended to item 2 of Rule 2, the 4th proviso under item (ii) to Rule 8 and the Note thereto constitute arbitrary and unfair discrimination against the lower division clerks allotted to Kerala from the Madras State and that there being no rational basis whatever for supporting such a classification and differential treatment these provisions violate Articles 14 and 16 of the Constitution and are hence illegal and void.

24. Since it is manifest that Notes (4) and (5) and the impugned proviso to item (ii) to Rule 8 are integral parts of Rules 2 and 8 and they cannot be regarded as severable, we have to strike down Rules 2 and 8 of the Special Rules dated 14th May, 1975 as violative of Articles 14 and 16 of the Constitution of India.

25. The resultant position is that the impugned Special Rules have been found to be illegal except to the extent to which they have superseded the Madras Ministerial Service Rules as well as the prior orders of the Travancore-Cochin Government on the subject relating to the prescription of the qualifications and method of appointment in respect of the posts of Head Clerk/Head Accountant including upper division clerks and lower division clerks borne on the establishment of the Land Revenue Department. Unless fresh rules on the subject are immediately issued by the State Government in accordance with law, there is bound to be serious administrative inconvenience and confusion -- A consequence which we wished to avoid and for which purpose we adjourned the hearing of the writ petitions from time to time after our having found prima facie that the challenge raised against the special rules was possessed of merit. The Petitioners and persons situated like them have been compelled to approach this Court seeking reliefs against the withholding of promotions which they claim to be legitimately entitled to get. The interests of justice require that their just claims for promotion are not jeopardized by reason of the administrative delay on the part of the State Government in the matter of issuance of valid rules governing the subject. We, therefore, consider that the directions that had been issued by this Court as per the order, dated 13th November 1978 while adjourning the writ petitions for enabling the government to take its final decision in the matter should be kept in force until fresh rules or orders on the subject are issued by the Government in accordance with law. Hence, we direct that further promotions to the categories of Deputy Tahsildar and Tahsildar in the Revenue Department of the State should hereafter be made only on a provisional basis until fresh rules or orders are issued by the Government on the subject prescribing the mode of appointment and qualification, etc., to the categories covered by the impugned Special Rules, which we have now struck down, and that the claims of the writ Petitioners and also other persons similarly situated for the grant of such promotions should be considered and allowed on the basis of their seniority in the category of lower division clerks untrammelled by anything contained in the Special Rules which we have now declared to be illegal and void. The promotions that have been made on the basis of the impugned Special Rules should be reviewed and fresh promotions as aforesaid should be made in their stead within a period not exceeding three months from today.

The original petitions are disposed of as above. Parties will bear their respective costs.