

(1967) 03 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 12 of 1965

Narayan Hosabhayya Naik

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 08-03-1967

Acts Referred:

Mysore Government Servants (Seniority) Rules, 1957 — Rule 6
States Reorganisation Act, 1956 — Section 115, 115 (5), 116 (1)

Citation : AIR 1968 Kar 73

Hon'ble Judges : G.K. Govinda Bhat, J;B.M. Kalagate, J

Bench : Division Bench

Judgement

Govinda Bhat, J.

(1) In this writ petition preferred under Art. 226 of the Constitution of India, the petitioner has challenged the transfer to, and absorption in, of respondents 2 to 12 in the cadre of Assistants in the Mysore Government Secretariat Services, and giving them seniority and promotion over the petitioner. The facts so far as they are material may be briefly stated:

The petitioner who had entered service as an Assistant in the Bombay Secretariat Service on 17-10-1955, was allotted to the New State of Mysore consequent on the Reorganization of States and since then he has been serving in the Mysore Government Secretariat. Respondents 2 to 10 with exception of respondents 8 and 9 were serving in the Translation Department of the erstwhile State of Mysore, and respondents 8 and 9 are allottees from the erstwhile States of Hyderabad and Madras respectively, to the new State of Mysore u/s 115 of the States Reorganization Act, 1956, hereinafter called the Act. Respondent 1, the State of Mysore, prepared and published on 18th November 1957, under the directions of the Central Government, a Provisional Inter-State Seniority List of First Division Clerks in the Mysore Government Secretariat. The petitioner's ranking in the said list is serial No. 323. The said list was revised on 11th May, 1962 and 29th September 1962. The names of respondents 2 to 10 were not

included in the Provisional Inter-State Seniority List of the First Division Clerks in the Mysore Government Secretariat; but their names were included in the Provisional Inter-State Seniority List of the Department of Translation published on 23rd November, 1957. The names of respondents 11 and 12 were included in the Provisional Inter-State Seniority List of First Division Clerks in Mysore Government Secretariat, published on 18th November, 1957 and the subsequent revised lists. In the first list, their ranking was Nos. 259 and 260 respectively. In the remarks column No. 7, it is stated that respondent No. 12 is on deputation from the Revenue Department.

(2) The office of the Kannada Translator to Government was reorganised by order of the Government made in GAD 13 TAR 57 dated 24th August, 1959. Consequent on the said Reorganization, there was surplus staff to one gazetted officer and 18 Class III officials. Respondents 2 to 10 who were First Division Clerks in the office of the Kannada Translator to Government, were transferred to the Mysore Government Secretariat against the existing vacancies and were directed to be absorbed there with effect from 1st October 1959. The petitioner having challenged the said order, it is necessary to set out the same. It reads:

"Reorganization of the office of the Kannada Translator to Govt.--Absorption and transfer of surplus staff.

GOVERNMENT OF MYSORE

General Administration Department (O, & M.) Read-

1. Government Order No. GAD 13 TAR 57, dated 24-8-1959, ordering the Reorganization of the office of the Kannada Translator to Government.
2. Correspondence ending with letter No. KTO 255 dated 19th September 1959 from the Kannada Translator to Government.

Government order No. GAD 13 TAR 57, Dated, Bangalore, the 30th Sep.1959/
Aswaja 8, Saka Era, 1881

Consequent on the Reorganization of the Office of the Kannada Translator to Government there will be surplus staff of one gazetted officer and 18 officials of Class III. The following officials are transferred to Mysore Government Secretariat against existing vacancies and will be absorbed there with effect from 1st October 1959:-

Sarvashri:--

1. V. Gururajan 1st Dn. Clerk OOD in Census Department till Feb. 1960
2. M. V. Govindaiah do
3. Lakshman Rao S. Jagirdar do
4. S.Ramachandrachar do

5. H. Venkateshiah do
6. B. C. Subbaraya Sastry do
7. H.M.R. Gowda do
8. B. Rami do
9. N. R. Balehosur do (already working in E.E.S)
10. K. Keshava Rao do

* * * * *

Sarvashri K. Keshava Rao, Anantapadmanabha Rao, Hanumanthachari and S. M. Kodakani, First Division Clerks, are also transferred to the establishment of Mysore Govt. Secretariat, but the transfer will take effect from 1-11-1959. Till then, they will continue as First Division Clerks on the establishment of the Chief Translator to Government. The creation of four supernumerary posts of First Division Clerks for a month from 1st Oct. 1959 for this purpose is sanctioned...."

(3) By order no. GAD 38 ASA60 dated 11th April 1960, the seniority of respondents 2 to 10, among others, was fixed in the Cadre of First Division Clerks (Assistants) of the Mysore Government Secretariat. The said order reads:

PROCEEDINGS OF THE GOVERNMENT OF MYSORE

READ:

1. G. O. No. GAD 13 TAR 57 dt. 24.8.1957
2. G. O. No. GAD 13 TAR 57 dt. 30.9.1959
3. G. O. No. GAD 13 TAR 57 dt. 29.10.1959
4. Letter No. S. 3639/59-60/PSC. dated 8.3.60, from the Secretary Public Service Commission.

ORDER NO. GAD 38 ASA 60 DATED BANGALORE THE 11th April 1960

Saka Era 1881

In G. O. dated 24.8.1957 read at (1) above the office of the Kannada Translator to Government was reorganised and in the G. O.s dated 30.9.59 and 29.10.1959 read at (2) (3) above, the marginally noted 1st Division Clerks of the Kannada Translator's Office consequent on its Reorganization were ordered to be absorbed in the Mysore Govt. Secretariat.

Sriyuths:-

1. V. Gururajan.
2. M. V. Govindiah
3. Lakshmanrao, S. Jagirdar

4. S. Ramachandrachar
5. H. Venkateshiah
6. B. S. Subbraya Sastry.
7. H. M. R. Gowda,
8. B. Ramu
9. N. H. Balehusur
10. K. Keshavarao
11. V. Ananthapadmanabha Rao
12. V. S. Joshi, and
13. Hanumanthachari.

Of the above 13, 1st Division Clerks, Sri V. Gururajan is now O. O. D. in the office of the Census Commissioner.

This other 12 joined duty and are now working in the Mysore Govt. Secretariat. The seniority list of these First Division Clerks has to be fixed in the Inter-State Seniority List of Assistants of the Mysore Government Secretariat.

In accordance with Rule 6 of the Seniority Rules issued in Notification No. GAD (O. & E.) 15 GRR 57, dated 7-2-1958 and on the basis of the date of their promotion to the grade equated to First Division the ranking of these officials in the Inter-State Seniority List of First Division Clerks (Assistants) of the Mysore Government Secretariat will be as noted below:--

Serial Name of Asst. Date of Entry Date of S. No. to be assigned in the
No. into service promotion I.S.S list of 1st Dn. Clerks
to the grade of M. G.S.

equated to

1st Division

1 2 3 4 5

1. S. Ramachandrachar 20-3-50 20-3-50 Below Serial No.240 as 240 (a)
2. V. S. Joshi 14-10-47 14-10-47 do 165 as 165 (a)
3. N. R. Balenosur 19-2-51 19-2-51 do 255 as 255 (a)
4. H. Venkateshiah 26-8-52 26-8-52 do 269 as 269 (a)
5. B. S. Subbaraya Sastry 21-11-53 21-11-53 do 261 as 261 (a)
- 3-1-54

6. B. Ram 10-2-54 10-2-54 do 284 as 284 (a)
7. H. M. R. Gowda 15-2-54 15-2-54 do 284(a) as 284(b)
8. Hanumanthachary 2-3-54 2-3-54 do 284(b) as 284(c)
9. Keshava Rao 7-8-54 7-8-54 do 291 as 291(a)
10. Lakshman Rao S. Jagirdar 1-10-54 1-10-54 do 300 as 300(a)
11. U. Ananthapadmanabha Rao 20-12-54 20-12-54 do 301 as 301(a)

Sri M. V. Govindiah, joined service on 11-9-1944 as Head Clerk on Rs. 40-2-50 in office of the Amildar, Chikkanayakanahalli. Subsequently he was appointed as IInd Division Clerk on Rs. 30-3-60-5-100 in the office of the Kannada Translator to Government on 10-5-1946. Since the grade of IInd Dn. Clerk in M.G.S. during that period, i.e., in 1946 was Rs. 30--3--60--5--100, i.e., higher than that in subordinate offices, the seniority of Sri M. V. Govindiah has to be reckoned (a) with reference to the date of his entry into service in the Kannada Translator's office, viz., 10-5-1946 and also with reference to the date of his promotion as First Division Clerk, viz., 1-1-1947. In accordance with the above principles, Sri M. V. Govindiah has to be ranked below the last person who entered service in Mysore Government Secretariat on 10-5-1946 and who was promoted as First Division Clerk on 1-1-1947. On this basis Sri M. V. Govindiah has to be ranked below Sl. No. III in the Inter-State Seniority List of First Division Clerks (Assistants) of the Mysore Government Secretariat.

The Secretary, Public Service Commission, in his letter dated 8-3-1960 read at (4) above has communicated the concurrence of the Commission to the fixation of the seniority of the above First Division Clerks as indicated above.

Sanction is therefore accorded to fix the seniority of the above First Division Clerks in the Inter-State Seniority List of First Division Clerks (Assistants) of Mysore Government Secretariat as noted below:-

No. Name Rank assigned in the I.S.S. List of the 1st Dn.

Clerks of M.G.S.

1. M. V. Govindiah Sl. No. 111(a)
2. V. S. Joshi 165 (a)
3. S. Ramachandrachar 240 (a)
4. N. R. Balehosur 259 (a)
5. H Venkateshaiah 269 (a)
6. B. S. Subbaraya Sastry 281 (a)
7. B. Ramu 284 (a)

8. H. M. R. Gowda 284 (b)
9. Hanumanthachar 284 (c)
10. K. Keshava Rao 291 (a)
11. Lakshman Rao S. Jagirdar 300 (a)
12. U. Ananthapadmanabha Rao 301 (a)

The seniority of Sri V. Gururajan who is O.O.D in the office of the Census Commission will be fixed separately,

By order and in the name of the Governor of Mysore, (Sd.) Khaja Gulam Gehar Ali Khan, Under Secretary to Govt. (G.A.D.) (Adm. 2)

On 10th November 1964, in their proceedings No. GAD 139 ASA 64 (I), respondent 1 promoted respondents 2 and 11 temporarily to officiate as Senior Assistants in the scale of Rs. 200--400 on the basis of the seniority-cum-efficiency. The relevant portion of the said order reads:

GOVERNMENT OF MYSORE NO. GAD 139 ASA 64 (1) Mysore Government Secretariat "Vidhana Soudha" Bangalore, Dt.10th Nov. 1964 OFFICIAL MEMORANDUM

Sub: promotion as Senior Assistants, Mysore Government Secretariat

Ref: 1. Notification No. GAD 34 ORR 63, dated 13-4-1964

2. G. O. No. GAD 53 SSR 64, D/- 20-4-64

3. G. O. No. GAD 55 SSR 64, D/- 29-9-64

4. O. M. No. GAD 139 ASA 64 (1) dt/- 8-10-64

5. O. M. No. GAD 207 ASP 64 D/- 13-10-64

Pending finalisation of the Inter-State Seniority Lists of Class III Staff in the Mysore Government Secretariat, the Assistants shown in the Annexure to this order, are promoted temporarily to officiate as Senior Assistants in the scale of Rs. 200--10--280--15--400 on the basis of Seniority-cum-efficiency in accordance with the Mysore Secretariat Services (Recruitment) Rules, 1957, as amended in Notification No. GAD 34 ORR 63, dated 13-4-1964.

2. The promotions ordered herein are purely provisional subject to review after finalisation of the Inter-State Seniority List".

On 17th December 1964, the petitioner filed the above writ petition challenging the above orders.

(4) Since the names of respondents 11 and 12 are included in the Provisional Inter-State Seniority List referred to above, and they have been ranked above the petitioner in all the lists, Sri Datar, the learned counsel for the petitioner, did

not press his petition against the said respondents 11 and 12.

(5) The learned Government Pleader raised a preliminary objection that the petitioner is guilty of serious laches in challenging the impugned orders dated 30-9-1959 and 11-4-1960 and that on that ground alone, his petition should fail. The petitioner has explained in his affidavit that the said orders of 1959 and 1960 were not published, that he had no knowledge of the same, and that it was only when respondent-2 was promoted by the order made on 10-11-1964, on the basis of the Provisional Inter-State Seniority List ranking respondent-2 as serial No. 240(a) that the petitioner came to know of the impugned orders and he filed the writ petition on 17th December 1964. Respondent-1 the State, has not filed any counter-affidavit. of the respondents 2 to 10 who have filed counter-affidavits, respondent No. 8 alone contended that the petition is highly belated, but he has not stated in his affidavit that petitioner had knowledge of the impugned orders dated 30-9-1959 and 11-4-1960 when they were made. The reason for the delay, in our opinion, has been satisfactorily explained and therefore, we overrule the preliminary objection.

(6) The transfer to, and absorption in the Mysore Government Secretariat Service, of Respondents 2 to 10 and giving seniority and promotion to them over the petitioner, by the orders dated 30-9-1959, 11-4-1960 and 10-11-1964 referred to above, were challenged on the following grounds as formulated by his learned counsel:

I. The impugned order dated 30-9-1959 absorbing respondents 2 to 10 in the Mysore Government Secretariat Service contravened the Mysore Secretariat Services (Recruitment) Rules, 1957 and Rule 16 of the Mysore State Civil Services (General Recruitment) Rules, 1958.

II. The order dated 11-4-1960 determining the seniority of respondents 2 to 10 vis-à-vis the Assistants shown in the Provisional Inter-State Seniority List, is illegal, because Rule 6 of the Mysore Government Servants (Seniority) Rules, 1957 on the basis of which the said order has been made, does not govern their case.

III. The ranking of respondents 3 to 10 in the Inter-State Seniority List of First Division Clerks (Assistants) in the Mysore Government Secretariat as shown in the Government Order No. GAD 38 ASA 60, dated 11-4-1950 is ultra vires of the powers of the State Government and the order dated 10-11-1964 promoting respondent-2 on the basis of his seniority in the Inter-State Seniority List is illegal.

(7) The first ground as elaborated in Para 9 of the petitioner's affidavit reads:

"..... that under the Mysore Secretariat Services Recruitment Rules of 1957, the post of Assistants can be filled either by Direct Recruitment or by promotion of Jr. Assistants. None of these respondents are appointed to these posts by direct recruitment or were they Jr. Assistants so that they could be promoted as

Assistants. Therefore, these respondents could not have been appointed as Assistants at all. Further if in any case the Government proposes to relax the rules regarding appointment, under Rule 16 it is clearly provided that the Government may, for reasons to be recorded in writing, transfer the officials. It is submitted that there has been no order passed recording the reasons in writing exempting the application of the rules, further even in such a case, the transfer can only be of an officer holding a post of an equivalent grade. As the post of the 1st Division Clerk and of the Sr. Assistants are of different grades, having different duties etc., the transfer and appointment is invalid"

The Mysore Government Secretariat Services (Recruitment) Rules, 1957 made by the Governor in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, regulate the method of recruitment to the Secretariat Services. Under the rules, the method of recruitment for the posts of Assistance is 50 percent by direct recruitment and 50 percent by promotion from the Cadre of Junior Assistants. The next promotional post above Assistants is that of Senior Assistants, and the basis of promotion to the said post is Seniority-cum-merit. Transfer is not one of the methods of recruitment for the post of Assistants, but Rule 16 of the Mysore State Civil Service (General Recruitment) Rules, 1957 confers on the Government the power to relax the Rules of Recruitment in respect of any service or post, and make appointment to a post by transfer from any other service of the State, of an officer holding a post of an equivalent grade. The relevant portion of the said rule reads:

Notwithstanding anything contained in these rules or in the rules of recruitment specially made in respect of any service or post, the Government may for reasons to be recorded in writing,

a) appoint to a post

(i) x x x x x x x

(ii) an officer holding a post of an equivalent grade, by transfer, from any other service of the State;

x x x x x".

In exercise of the power vested under R. 16 (a)(ii), the Government, by the impugned order dated 30-9-1959 transferred respondents 2 to 10 from the office of the Kannada Translator to Government and appointed them to the posts of Assistants which is the designation for First Division Clerks--in the Mysore Government Secretariat Service. The said order has been challenged not on the ground that the Government lacked power to order transfer, but on the grounds that the order does not disclose reasons for absorption in the Secretariat Service, and that the posts of First Division Clerks in the office of the Kannada Translator to Government, were not of an equivalent grade. In Para 9 of the petitioner's affidavit, though he has stated that the posts of First Division Clerks and the Senior Assistants are different grades having different duties, and therefore, the

transfer and appointment is invalid, what was intended was that the posts of First Division Clerks and the Assistants are different grades and the reference to Senior Assistant is an apparent mistake. Respondents 2 to 10 were not appointed by transfer to the posts of Senior Assistants, but only to posts of Assistants.

(8) The post of Assistants in the Secretariat Service was originally designated as First Division Clerks in the Provisional Inter-State Seniority List published by the Government on 18th November, 1957. The list of called "the Provisional Inter-State Seniority List of First Division Clerks of Mysore Government Secretariat". The designation of First Division Clerks in the Secretariat and allied offices as sanctioned for the re-organized Mysore State, under G. O. No. F-1 (B) 14034-14133 Bud. 119-36-3 dated 25th January, 1957, is Rs. 80--5--100--8--140--10--200. The scale of pay for the cadre of First Division Clerks in the office of the Translator to Government is the same, as was verified by us from the Service Registers of Respondents 2 to 10 and from G. O. No. GAD 13 TAR 57.

(9) The impugned order, after referring to G.O.D. No. GAD 13 TAR 57, states that consequent on the re-organization of the Office of the Kannada Translator to Government, there will be a surplus staff of one Gazetted officer and 18 Officials of Class III and the Officials mentioned in the order are transferred to the Mysore Government Secretariat against the existing vacancies and they will be absorbed there with effect from 1st October, 1959, G. O. No. GAD 13 TAR 57 dated 24-8-1959 sanctioned the re-organization of the Office of the Kannada Translator to Government, Para 7 of the said order states that the Staff then working in the office was in excess of the requirements fixed by the said order and Chief Translator to Government should make proposals immediately about the staff which will be to be absorbed in other Departments or retrenched, if any persons are holding appointments only on temporary or acting tenure, (vide pages 89-92 of Important Orders of Government issued during the year 1959). On a perusal of the above referred orders, it is clear that the reasons for transfer of respondents 2 to 10 to the Mysore Government Secretariat Service and absorption therein are recorded in writing.

(10) Sri Datar, the learned counsel for the petitioner, argued that the recorded reasons only show why the officials were transferred from the Office of the Kannada Translator to government but not the reason for absorption in the Secretariat Service. There is no substance, in our opinion, in this contention. Consequent on the re-organization of the Office of the Kannada Translator to Government, some of the First Division Clerks working in that office were found in excess of the requirements fixed by the Government Order; such excess staff had to be absorbed in other Departments by transfer and there were vacancies existing in the Mysore Government Secretariat Service and consequently respondents 2 to 10 were transferred to and absorbed in the Mysore Government Secretariat Service. It is not the case of the petitioner that the Government had no power to appoint by transfer respondents 2 to 10 in the Secretariat Service.

the exercise of the power under Rule 16 by the Government is of an administrative character. When the Government is doing an administrative act, the fact that it has to form an opinion that the posts are of equivalent grade, does not make it any the less administrative in character; the Court cannot scrutinise the order to determine whether the two posts are of an equivalent grade and whether the reasons recorded for the transfer are sufficient to justify the order, as if it was a judicial or quasi-judicial determination.

(11) The second ground relates to the challenge of the Order No. GAD 38 ASA 60 dated 11-4-1960, which we have set out above. This ground as elaborated in Paras 8 and 10 of the petitioner's affidavit reads:

"8..... that the Government is clearly incompetent to apply Rule 6 of the Mysore Government Seniority Rules and given seniority to the officials on the said basis. In the Mysore Government Servants (Seniority) Rules, 1957, Rule 9 provides that these rules are not to apply for determination of initial seniority in the State, of persons who are allotted u/s 113. Therefore, it is clearly erroneous to have applied R. 6 of the Mysore Government Seniority Rules and granted seniority to these officials in the I. S. S. list on this basis.

10. That the petitioner further submits that in any event, Rule 6 of the Mysore Government Servants Seniority Rules is inapplicable, as there is no transfer of a person in "public interest". In the present case there is no "public interest" achieved by the transfer of these officials and that is not even alleged. Therefore, it is submitted that Rule 6 has been wrongly applied. It may further be noted that even after the order of absorption, some of them were sent back to the Translator's Office. This shows that there is no public interest service".

Rules 6 and 9 of the Mysore Government Servant's (Seniority) Rules 1957 reads:

"6. The transfer of a person in public interest from one class or grade of a service to another class or grade carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of a person so transferred shall be determined with reference to his first appointment to the class or grade from which he was transferred:

Provided that, where the transfer is made at the request of the officer, he shall be placed in the seniority list of the class or grade of service to which he is transferred below all the officers borne on that class or grade of service on or before the date of the transfer

x x x x x

9. These rules shall not apply to the determination of initial seniority in the State, of persons who are allotted or are deemed to have been allotted to serve in connection with the affairs of the State of Mysore in pursuance of Section 115 of the State Reorganization Act, 1956. The seniority of such persons shall be as determined in accordance with the provisions of the said section and the orders issued in pursuance thereof".

The first part of Rule 6 states that where an official is transferred in public interest from one class or grade of service to another class or grade carrying the same pay or scale of pay, his appointment by transfer shall not be treated as first appointment for the purpose of the seniority; the second part states that seniority of such an official shall be determined with reference to his first appointment to the class or grade from which he was transferred. An official transferred at his own request, however, has to be placed in the Seniority List of the class or grade of service to which he was transferred, below all the officers borne on that class or grade of service on or before the date of transfer. In other words, under Rule 6, where a transfer is made at the request of an official, he ranks below all officers borne on that class or grade of service on or before the date of transfer, but when transfer is made in public interest, his transfer shall not be treated as first appointment in the new department and his seniority has to be determined with reference to his first appointment to the class or grade from which he was transferred.

(12) Rule 6 has been made for determination of seniority of officials transferred from one class or grade to another class or grade either in the public interest or at the request of the concerned officials. The rule governs determination of seniority of officials transferred by the reorganised State of Mysore, after it came into existence on 1st November 1956. Rule 9 has been made to leave no doubt as to the legal position that the Mysore Government Servants (Seniority) Rules, 1957, shall not apply to the determination of initial seniority in the State, of officials allotted or deemed to have been allotted to the State u/s 115 of the Act. The determination of initial seniority in the State, of officials allotted to serve in the new State is part of the process of integration of services which is within the exclusive jurisdiction of the Central Government under sub-section (5) of Section 115 of the Act. When officials of the reorganised State are transferred after 1st November, 1956 from one department to another in the State, the transfer is not made by the Central Government but by the reorganised State Government and such transferred officials are not officials affected by the provisions of Section 115 of the Act. Their initial seniority i.e., seniority at the commencement of service in the reorganised State as on 1st November 1956, alone forms part of the process of integration of the services u/s 115(5) of the Act. Seniority determination in the new department to which officials are transferred is within the exclusive jurisdiction of the State and that has to be determined under Rule 6. Therefore, R. 9 does not exclude the application of R. 6 by Respondent-1 to the case of respondents 2 to 10 on their transfer to the Mysore Government Secretariat Service.

(13) The next argument of Sri Datar was that since the order of transfer dated 30-9-1959 does not state that the transfer was ordered in public interest, Rule 6 is not applicable to the case of respondents 2 to 10. The order of transfer was made in the exercise of the powers conferred by Rule 16 of the Mysore State Civil Service (General Recruitment) Rules, 1957. That rule does not state that the order ought to mention that the transfer is ordered in public interest. It is not

petitioner's case that respondents 2 to 10 were transferred on their own request. Government orders sanctioning the re organization of the office of the Kannada Translator to Government and the consequence appointment by transfer which we have set out above, show that there was excess staff who had to be provided by transfer and absorption in other departments in existing vacancies. Therefore, respondents 2 to 10 are officials transferred from one department to another in public interest and they do not fall within the category of officials transferred on their own request.

Sri Datar next argued that in order to apply Rule 6, it has to be shown that the posts of First Division Clerks in the Office of the Kannada Translator to Government and the posts of Assistants in the Secretariat Service carry the same pay or scale of pay; that respondent No. 8 an allottee from the erstwhile Hyderabad State on the date of his transfer was on the pay scale of Rs. 135-200, which is not the pay scale of Assistants in the Secretariat Service. In the petitioner's affidavit, there is no allegation that posts of First Division Clerks in the office of the Kannada Translator to Government, were not carrying the same pay or scale of pay on the date of transfer. The scale of pay of First Division Clerks (Assistants) in the Secretariat Service for the re-organized Mysore State as per Government Order dated 25-1-1967 was Rs. 80--5--100--8--140--10--200. It was left to the option of the allottee officials either to opt for the scale of pay of the new State of Mysore or to the pay scale of their parent States; that is a protection afforded to the officials affected by Section 115 of the Act, and the pay scale of the allottee official not opting for the scale of the new State, is in the nature of his personal pay scale. the scale of pay sanctioned for the First Division Clerks in the office of the Kannada Translator to the Government and First Division Clerks (Assistants) in the Mysore Secretariat Service, is identical as already stated and therefore there is no substance in the contention of the learned counsel for the petitioner.

(14) The last ground urged on behalf of the petitioner was, that by the impugned order dated 11-4-1960, the names of respondents 2 to 10 were included in the Provisional Inter-State Seniority List of Assistants as on 1st November, 1956, which the State Government has no power to include. The said ground has been elaborated in paragraph 7 of the petitioner's affidavit thus:

"..... that it is incompetent for the State Government to order inclusion of these Respondents 2 to 10 in the Provincial Inter-State Seniority List of Assistants as on 1-11-1956. It is submitted that the Provisional Inter-State Seniority List of Assistants as on 1-11-56 can consist only of those officials who are working in the post equated with those posts of assistants. Other officials who are working in their departments and who are transferred to the secretariat subsequently, cannot at all be included in the Provisional Inter-State Seniority List.....".

It is common ground that the names of respondents 2 to 10 have not been shown in the three Provisional Inter State Seniority Lists of First Division Clerks (Assistants) of the Mysore Government Secretariat, published on 18-11-1957,

11-3-1962 and 29th September 1962. During the pendency of the writ petition, the State Government on 12th March 1965, is stated to have published a list incorporating the decision of the Central Government and that in the said list also, the names of respondents 2 to 10 are not included. Therefore, factually it is not correct to state that the names of respondents 2 to 10 have been included either in the Provisional Inter State Seniority list or in the List published in accordance with the decision of the Central Government. Neither the petitioner nor the respondents have contended before us that names of officials transferred from one department to another department by the new State have to be included in the Inter State Seniority List of the transferee department.

In apt wording of the impugned Government Order dated 11-4-1960 while determining seniority of respondents 2 to 10 under Rule 6 of the Seniority Rules consequent on their appointment by transfer in the Mysore Government Secretariat, has given scope to the contention of the petitioner that respondents 2 to 10 have been included in the Inter-State Seniority List of first Division Clerks of the Mysore Government Secretariat. After referring to the transfer of the officials, the order stated that "the seniority of those First Division Clerks has to be fixed in the Inter-State Seniority List of the Assistants of the Mysore Government Secretariat, "and that" in accordance with Rule 6 of the Seniority Rules issued in Notification No. GAD (O and M) 13 ORR 57, dated 7-2-1958 and on the basis of the date of their promotion to the grade equated to 1st Division the ranking of these officials in the Inter-State Seniority List of 1st Division Clerks (Assistants) of the Mysore Government Secretariat will be as noted below:

Serial Name of Asst. Date of Entry Date of S. No. to be assigned in the
No. into service promotion I.S.S list of 1st Dn. Clerks
to the grade of M. G.S.

equated to

1st Division

1. xx xx xx xx

2. V. S. Joshi 14-10-47 14-10-47 Below Serial No. 165 as 165 (a)

3. N. R. Balehosur 19-2-51 19-2-51 Below Serial No. 255 as 255 (a)

4. H. Venkateshiah 28-8-52 28-8-52 Below Serial No. 269 as 269 (a)

5. B. S. Subbaraya Sastry 21-11-53 21-11-53 Below Serial No. 281 as 281 (a)
8-1-54

6. B. Ramu 10-2-54 10-2-54 Below Serial No. 284 as 284 (a)

7. H. M. R. Gowda 12-2-54 12-2-54 Below Serial No. 284 (a) as 284(b)

8. Hanumanthachar 2-3-54 2-3-54 Below Serial No. 284(b) as 284 (c)

9. K.Keshava Rao 7-8-54 7-8-54 Below Serial No. 291 as 291 (a)

10. xx xx xx xx

11. xx xx xx xx

Annexure to the impugned order of promotion dated 10-11-1964 of respondent-2 refers to his ranking in the Inter-State Seniority List.

(15) The respondents did not contend that the names of respondents 2 to 10 could be included in the Inter-State Seniority List. Respondent-1 the State has not filed any counter affidavit; but respondents 2 to 10 have filed counter-affidavits wherein they have explained the impugned order of the Government dated 11-4-1960 by stating that the State Government adopted the Provisional Inter-State Seniority List as the State Gradation List for purposes of seniority of Assistants (First Division Clerks) pending finalisation of the said list by the Central Government, and that in exercise of the powers conferred by Rule 6 of the Seniority Rules, the State Government determined the seniority of the transferred officials with reference to their first appointments to the grade from which they were transferred. The petitioner joined service as Assistant in the Bombay Government Secretariat on 17-10-1955; Respondents 2 to 10, it is not disputed, were either appointed or promoted to the grade of First Division Clerks in the Department of Translation on the dates mentioned under Column 4 of the impugned Government Order, and if their seniority is determined with reference to their first appointment or promotion to the grade of First Division Clerks in the Translation Department, all of them have to be ranked above the petitioner as has been done by the State Government.

(16) Though the Government Order D/- 11-4-1960 states that the ranking of respondents 2 to 10 has been fixed in the Inter-State Seniority List at the serial numbers given in the said order, that order has to be construed merely as an order determining the seniority of the said respondents vis-a-vis the First Division Clerks (Assistants) borne on that grade of service on the date of transfer. That was also the intention of the State Government and how they construed that order is clear from the fact that in the revised Provisional Inter-State Seniority Lists published on 11-3-1962 and 29-9-62 and in the list published on 12-3-1965 incorporating the decision of the Central Government, the names of respondents 2 to 10 have not been included. What was intended by the impugned order was merely to determine the seniority of respondents 2 to 10, who were transferred to the Mysore Government Secretariat as Assistants (First Division Clerks), under Rule 6 of the Seniority Rules, and that the serial numbers in the Provisional Inter-State Seniority List of the Officials borne on that class was noted only for purpose of convenience and the ranking in the Provisional Inter-State Seniority list was adopted as the State Gradation List.

(17) It was argued by Sri Datar, the learned Counsel for the petitioner, that the seniority of the respondents who were transferred from other department could be determined only after the Inter-State Seniority List of First Division Clerks or

Assistants is finalised by the Central Government u/s 115(5) of the Act. His argument was, that since the position of the petitioner and other assistants has not been finally fixed by the Central Government as on 1-11-1956, the seniority of the respondents brought by transfer on a date subsequent to 1-11-56 cannot be determined under Rule 6. In support of the said argument, the learned counsel sought support from certain observations made by Tukol J. in W. P. No. 736 of 1964 (Mys). The relevant passage in the judgment reads:

"As regards respondents Nos. 3, 4 and 6 it is common ground that they were working in the Police Department on 1-11-1956. They were, however, brought to the Finger Print Bureau in 1958. In that view, it would not be correct to include them in the Inter-State Seniority List among the officials of the Finger Print Bureau, because they were not in that Bureau on the date of the States Reorganization. What is however contended on behalf of these respondents is that, in the old State of Mysore the Sub-Inspectors were interchangeable between the regular Police Department on the executive side and the Finger Print Bureau Branch on the technical side. If that were so, it would follow that these officials who were borne on the regular list of Sub-Inspectors of Police, would have either inter-se seniority determined as on 1-11-1956 in the regular cadre of the executive branch of the Police Department. Nothing prevents the State Government from having or establishing such inter-changeable posts, "but if officers who were not in the particular branch on 1-11-1956 are brought on a subsequent date to such department their positions will have to be determined only after the seniority of the persons working in the department on 1-11-1956 is first determined by the preparation of the final Inter-State Seniority List and these officials are given their due promotions as on the date on which outsiders are brought into the department. After determining the position of the officials in the department on such date in such final list, the seniority of the officials brought from the outside will have to be determined." Underlining (here in " ") is ours.

(18) The only question for decision in the said case was whether officers not in a particular branch on 1-11-56, but who were brought by transfer on a subsequent date to such department, can be included in the Inter-State Seniority List. The said decision does not lay down that until the Central Government finalises the Inter-State Seniority Lists the State is deprived of its power to transfer an official from one department of the Government to another department and determine his seniority under Rule 6 of the Seniority Rules in relation to officials already borne on that class or grade of service on the date of transfer. The question of determination of seniority of a transferred official under Rule 6 did not arise for consideration in the said case.

(19) Preparation of Inter-State Seniority Lists by the Central Government, constitutes part of the function of division and integration of services vested in the Central Government by virtue of Section 115(5) of the Act. It is no part of the function of integration of services u/s 115(5) to determine the seniority of an

official transferred from one class or grade of service made by the reorganised State Government after 1-11-1956. Officials belonging to various services, bearing different designations and having different terms and conditions of service, by virtue of their allotment to the service of the reorganised States under the States Reorganization Act, are deemed to have been appointed to the service of the new State as on 1-11-1956, by virtue of the sub-section (1) of Section 116 of the Act. Sub-section (5) of Section 115 vests in the Central Government the power of integration of the services affected by the provisions of the said section.

(20) The process of integration commences with the allotment of official personnel affected by provisions of Section 115 to a reorganised State, and would cover the determination of equivalence of posts, absorptions of officials in the equivalent posts, and the determination of their inter se seniority. The completion of the work of integration, having regard to the complexity and hugeness of the problem, may take several years; but notwithstanding the time taken by the Central Government and the date of its decision, the integration is done with reference to the date on which the officials are deemed to have been appointed to the services of the re-organized State. In other words, the decision regarding integration, relates back to the "Appointed Day" under the Act. The exclusive power of the State vested by the Constitution under Entry 41 of List II of Schedule VII on the subject of "State Public Service", has been curtailed only to the limited extent of the power of integration conferred by the Parliament u/s 115(5) on the Central Government. The power of appointment of an official by transfer from one department to another and absorption therein, is not any part of the process of integration; all other powers of the State with respect to its Public Services, including appointment by transfer from one department of the State to another, remain unaffected by the Act. The transfer of respondents 2 to 10 from the office of the Kannada Translator to the Government to the Mysore Government Secretariat was made in exercise of the power of the re-organized State which has not been affected by the Act and the exercise of that power naturally is not dependent on the completion of the work of integration by the Central Government.

The integration of First Division Clerks (Assistants) in the Secretariat Service affected by the provisions of Section 115 of the Act, is made by the Central Government and in that process, the inter se seniority of the integrated personnel as on the 1st November 1956 requires to be determined. The seniority of respondents 2 to 10 vis-a-vis Assistants already borne on the cadre of First Division Clerks (Assistants) on the date of appointment by transfer has been determined in accordance with the provisions of Rule 6 and for the purpose of determination of their relative seniority, the gradation of the Assistants in the Provisional Inter-State Seniority List was adopted for the purpose of convenience. If in the final Inter-State Seniority List prepared and published in accordance with the decision of the Central Government, any alteration is made in the ranking of the petitioner and others, who were borne on that cadre on the

date of transfer of respondents 2 to 10, the State Government has to re-adjust the seniority of respondents 2 to 10 in the State Gradation List by application of Rule 6 of the Seniority Rules.

(21) If the order of appointment by transfer of respondents 2 to 10 and the determination of their seniority under Rule 6 is not open to challenge on any of the grounds urged by the petitioner, as held by us, the challenge to the order of promotion of respondents 2 to 10 has also to fail since it is not disputed that respondents 2 to 10 had completed five years of service when their promotions were ordered and they are seniors to the petitioner.

(22) In the result, all the contentions urged by the learned counsel for the petitioner fail and consequently, the writ petition fails and is dismissed with costs--one set. Advocate's fee Rs. 100/-

(23) Petition dismissed