

(1992) 07 KL CK 0017

In the High Court Of Kerala

Case No : O.P. No. 3996/92A and 5078 of 1992

Raghavan Nair

APPELLANT

Vs

S. PadmaKumar and Others

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Administrative Service (Cadre) Rules, 1954 — Rule 3, 4, 4(1), 8
All India Services Act, 1951 — Section 2, 2A, 3, 3(1)
Constitution of India, 1950 — Article 226, 309, 312, 32
Industrial Disputes Act, 1947 — Section 33B(1)

Citation : (1992) 07 KL CK 0017

Hon'ble Judges : Varghese Kalliat, J; Balasubramanian, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; T.P. Kelu Nambiar, for Respondent No. 1, M.B. Kurup, General for Respondent Nos. 2 and 4 and N.N. Sugunapalan, Sr. Central Government Standing Counsel, for the Respondent

Judgement

Varghese Kalliat, J.—A learned Single judge of this Court has referred O.P. No. 3996 of 1992. O.P. No. 5078 of 1992 was directed to be posted along with O.P. No. 3996/92 by the same learned Judge. The facts and reliefs claimed in both the Original Petitions are identical; but Petitioners are different. The same council appeared for the Petitioners in the two original petitions. In fact, learned Counsel did not advance any specific argument in O.P. No. 5078 of 1992. Learned Counsel only argued O.P. No. 3996/92. All the references in this judgment will be only from O.P. No. 3996/92 unless specifically mentioned, for the obvious reason that O.P. No. 5078/92 has not been argued. It is so done since the result of O.P. No. 3996/92 will dispose of O.P. No. 5078/92.

2. The learned Single Judge referred O.P. No. 3996/92 observing that a contention was raised by the Addl. Advocate General who appeared before the learned Single Judge for Respondents 2 and 4 and Central Government Standing Counsel who appeared for the third Respondent that this Court has no jurisdiction to issue a writ of quo warranto in relation to the office held by the

first Respondent-a member of the Indian Administrative Service. The learned Single Judge felt some doubt and so, adjourned the cases to be heard by a Bench. As we said earlier, the other O.P. was posted by the same Judge along with the referred O.P., O.P. No. 3996/92. Thus, both the cases are now before us.

3. Learned Counsel for the Petitioner, learned Advocate General, learned Counsel for the first Respondent and learned Senior Central Government Standing Counsel agreed that this Court has got jurisdiction to issue a writ of quo warranto in respect of the office held by the first Respondent, and so, the Original Petitions are perfectly maintainable. In the light of the clear and specific sub-missions made by the Counsel appearing for all the parties, we do not propose to examine the question whether a petition to issue a writ of quo warranto will lie with respect to the office held by the first Respondent.

4. 1st Respondent is the Chief Secretary to Government of Kerala. The first prayer in the O.P. is to issue a writ of quo warranto calling upon the first Respondent to show under what authority he is occupying the post of Chief Secretary to the Government of Kerala from the 1st March, 1992 and thereafter.

5. Under Sub-rule (1) of Rule 16 of the All India (Death-cum-Retirement Benefits) Rules, 1958, hereinafter referred to as the D.C.R.B. Rules, the first Respondent shall be required compulsorily to retire from the service with effect from the afternoon of 29th February, 1992. But, on 7th February 1992, the State Government ordered by G.O. (Ms) No. 97/92 GAD. that the first Respondent, Chief Secretary to Government, who is to retire on superannuation on 29th February 1992 will be retained in service for a further period of one year; the retention beyond six months from the date of superannuation viz. from 31st August 1992 A.N. to 28th February 1993 being subject to the sanction of the Central Government. Copy of the Order is Ext. P-I. It is issued by order of the Governor.

6. Petitioners in both the O.Ps. are public spirited citizens of India. According to the Petitioners, the first Respondent is an usurper of the High Office of the Chief Secretary to Government after the date of superannuation -29th February 1992- and that he has no entitlement to hold that office and so they wanted the interference of this Court by issuing a writ of quo warranto to call upon, the first Respondent to satisfy this Court under what authority and entitlement he was and is holding the office of the Chief Secretary to Government of Kerala. Of course, the Petitioners also prayed for a writ of certiorari, for quashing Ext. P-1 order and also writ of mandamus for bearing the 2nd and 3rd Respondents from granting "any extension in office" either under Rule 16 of the D.C.R.B. Rules or any other Rules.

7. First Respondent is an officer in Indian Administrative Service. He is required compulsorily to retire from service on the afternoon of 29th February, 1992. Obviously, by Ext. P-I order, he has been retained in service as stated in Ext. P-1 order for a period of six months from the date of superannuation and Anr. period

from 31st August 1992 A. N. to 28th March 1993 "being subject to the sanction of the Central Government. Petitioner submits that Ext. P-1 is void, being against the mandatory provisions of Rule 16(1) of the D.C.R.B. Rules. It is also submitted that Ext. P-1 order is void, since the order has been issued by the State Government without satisfying the conditionality required under Rule 16(1) of the D.C.R.B. Rules. It is pointed out that Rule 16(1) though empowered the State Government to retain in service an officer, after the last day of the month in which he attains the age of 58 years on public grounds in the case, the Petitioner contended that no public ground exists and so, there is plain infraction of a vital compulsion, "necessity's sharp pinch" of that rule granting the power to the State Government. Further, it is contended that the rule enjoins the "public ground" shall be recorded in writing and in this case it has not been done and, it is a fatal non-compliance of the provisions of the rule which renders the order Ext. P-1 void. Further, it was contended that the order is a composite order, taking in both the periods mentioned in Clauses (a) and (b) of the first proviso to Rule 16(1), viz., retention in service for an aggregate period not exceeding six months by the State Government and for any period beyond six months, with the sanction of the Central Government and that Ext. P-1 order directed retention of the officer for one year, without prior sanction of the Central Government though the period beyond six months is prefixed with a condition in the following words: "being subject to the sanction of the Central Government".

8. Petitioners in both the O.Ps. emphatically submit that the order Ext. P-1 is assuredly silent and resolutely refuses to disclose the public grounds required under the proviso to Rule 16(1) of the D.C.R.B. Rules. Counsel also submitted that the files relating to Ext. P-1 order do not disclose any, public grounds required under Rule 16(1). In this content, we may mention that on the very day the hearing commenced, as per our instructions, the Advocate General made available the files relating to Ext. P-1 order and the files were ordered to be kept in safe custody by us. Though the file contains the Chief Minister's Note and the decisions of the Cabinet and subsequent correspondence between the Chief Minister and Prime Minister relating to Ext- P-I , and is one which, we feel, could claim utmost confidentiality, the Advocate General very fairly agreed to our suggestion that Counsel for Petitioners should be allowed to peruse the file so that the Petitioners and their Counsel should not have a feeling that they missed any point which could be highlighted on the basis of the file. Accordingly, the file was placed in the hands of Counsel for Petitioners. He has perused it and advanced arguments based on the files also.

9. As a supportive and ancillary submission to the main grounds, Counsel for Petitioners submitted that in the v. matter of ordering the retention of the first Respondent by Ext. P-I, the State Government has not adhered to the departmental instructions of Government of India in the form of official memorandum, concerning Rule 16(1) of the D.C.R.B. Rules.

10. It was submitted that even though the Petitioners are seeking the remedy of

writ of quo warranto, and the first Respondent can hold out and set forth Ext, P-1 as his title to hold the office, the Court has power and obligation to examine Ext. P-1 and to see whether it is a valid title, so shall it be issued complying with the mandatory requirements envisaged under the statutory provisions, which enable the State Government to allow retention of an officer in service after superannuation. Citing the decision reported in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, Counsel submitted that the jurisdiction to issue a writ of quo warranto implicits and confers power and authority on the judiciary to control executive action in the matter of making appointments in public office against the relevant statutory provisions. Writ of quo warranto proceedings should be understood in the wider perspective that it tends to protect the public from Usurpers of public office and in some cases persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of connivance of the executive or with its active help and in such cases, if the jurisdiction of the Courts to issue writ of quo warranto is properly invoked, the usurper can be ousted. Counsel made it clear that the jurisdiction to issue writ of quo warranto extends to oust an usurper of an office without legal authority and that necessarily leads to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.

11. Petitioner braced his submissions of lack of public ground on certain allegations of facts. Petitioner has averred in the petition to the effect that the first Respondent's past history of service would only reveal the astounding fact that he is having only a record of "blemishfull service". Petitioner has averred certain allegations shedding light on the fact that the record of service of the first Respondent was not all praise-worthy. He has also produced Ext. P-2, a representation submitted to the Governor of Kerala, by one Krishnan Nair, President, Citizens' Protection Forum, Padma Nagar, Thiruvananthapuram.

12. Petitioner has also submitted that the order has been passed with mala fides and to unduly favour the first Respondent and to deprive of the legitimate claims of other competent I.A.S. Officers in the State cadre. Petitioner has referred to by an amendment of the petition, certain facts regarding an alleged "Palmolein Scandel", which, according to the Petitioner, has resulted in the loss of crores of rupees to the State. Petitioner has alleged that the first Respondent had active role in causing the loss to the State Government in a deal for import of Palmolein. This aspect the Petitioner has highlighted to say that the first Respondent can never be considered as an outstanding officer, who has to be retained even after superannuation.

13. First Respondent in his counter affidavit has submitted that a. writ of quo warranto is purely a discretionary writ and no grounds exist in this case for the Court to exercise the discretionary remedy of issuing the writ of quo warranto. The personal allegations made by the Petitioner against the first Respondent regarding his conduct and record of his service, are even according to the

Petitioner, not from his personal knowledge. It is stated in the counter that the Petitioner is personally ignorant of the facts constituting the allegations he has made in the petition, as he is in no way, connected with the subject of the allegations. It is submitted that the Petitioner cannot rely on the allegations made against the first Respondent in a petition alleged to have been sent to the Governor by a third party and certain reports in news magazines and newspapers. It is submitted that from the petition itself, it is clear that the Petitioner knows nothing personally about the allegations. Counsel submitted that the wild stigmatising, scrubby and shoddy allegations are made to cast a slur upon the first Respondent, without any evidence and without an averment of personal knowledge of the Petitioners.

14. First Respondent highlighted that Ext. P-1 order is one issued admittedly by an authority, who has got the competence to issue such an order. This submission was made to spotlight that the Petitioner is only relying on the irregularities in passing the order Ext. P-1 by not conforming to the rule under which the order was issued. It is emphatically submitted that the first Respondent has been retained in service on public grounds and that the public grounds have been recorded in writing and the order was issued after considering the public grounds. The first Respondent submits in his counter affidavit that he has been retained in service after the age of 58 years and that the State Government had taken a decision on public grounds that the first Respondent may be retained in service for a period of 6 months and beyond six months with the sanction of the Central Government. According to the first Respondent, the public grounds on which the first Respondent is retained are evident from the files relating to the proceedings. It is submitted that the rule does not bear an interpretation that the public grounds should be stated in the order issued by the Government.

15. First Respondent has highlighted the point that Ext. P-1 is only an executive order. It is not an administrative order involving civil consequences to the Petitioner or to the public and that it is not an adjudicatory order; it is an order based on a Cabinet decision and the proceedings of the Cabinet would disclose all the materials to satisfy the public grounds, required under the first proviso to Rule 16(1) of the D.C.R.B. Rules.

16. The first Respondent further submitted that it is nowhere stated in the rule that public ground shall be part of the order allowing retention of the officer in service after superannuation. It is unnecessary to record reasons in the order issued for the retention of the officer. The rule only envisages that the public grounds required as per the rule should be discernible from the files relating to the order issued and this position is well settled in law.

17. The first Respondent also contended that there is absolutely nothing wrong in the order on the ground that prior sanction has not been obtained before issuing Ext. P-1 order. It was contended that it is specifically stated in the order itself that the retention of the first Respondent in the office of the Chief Secretary

beyond the period of six months is subject to obtaining the sanction of the Central Government, which would make it expressly clear that the first Respondent could continue in the office on the strength of the order of retention only for six months after retirement, without obtaining sanction of the Central Government and retention beyond six months only with sanction. Further it is stated that in regard to the requirement of public grounds envisaged under the proviso, the State Government has taken a decision that there are public grounds to retain the officer for a period of one year. But, the order Ext. P-1, which is the end result of the proceedings makes it clear that the second half of the one year retention requires sanction by the Central Government before that period commences. It was contended that the Petitioner cannot urge before this Court that the first Respondent is continuing without the authority of law. Further, it was highlighted that a writ of quo warranto, in any event is not maintainable before the expiry of six months. After emphasising that the order is quite legal, the first Respondent has stated that even if any irregularity is to be spelled out, it is only a curable irregularity and in that case, this Court will not be justified in issuing a writ of quo warranto. The first Respondent submits that he has got a valid title to hold the office and the Petitioner cannot validly challenge the continuance of the first Respondent in the office invoking, the quo warranto jurisdiction of this Court.

18. We are also of opinion that the authority who took the action can by placing the entire file before the Court satisfy the Court that the authority has applied its mind to the relevant statutory provisions and if the Court finds from the files that it is possible to discern proper application of the mind and advertence to the relevant requirements of the rules for taking up the action, the fact that these facts have not been stated in the order may not be a ground to fault the order and render the order void. We will give reasons for this view.

19. On behalf of the State Government, a Deputy Secretary has filed a counter-affidavit, justifying the order Ext. P-1. In the counter-affidavit, certain facts are revealed as regards the service conditions and service details of the first Respondent. It is stated that the order has been passed after proper application of mind by the appropriate authority. There is no illegality attached to the order Ext. P-1, since there is no violation of Rule 16 of the D.C.R.B. Rules. In the counter it is stated that the first proviso to Rule 16(i) of the D.C.R.B. "Rules is clear that an officer "In the Indian Administrative Service can be retained in service, after the last day of the month in which he attains the age of 58 years on public grounds and the order passed in this case is in accordance with the provisions of the relevant rule-Rule 16. The State Government also takes the view that the public ground need not be recorded in the order itself or that it should form part of such order. It is stated in the counter that in several instances where officers in the Indian Administrative Service and Indian Police Service were retained in service beyond the age of superannuation, public grounds have never been explained in the order. The State Government is the authority, who can retain the first Respondent after superannuation. It is

explained that the power of State Government to issue orders for retention of an officer in service beyond the date of superannuation upto the period of six months on public grounds is exclusive and no concurrence or sanction is required as per the provisions of the rule. Only before the State Government retains an officer beyond the period of six months after superannuation, the sanction of the Central Government is required. It is made clear, that by virtue of Ext. P-1 order, the first Respondent cannot continue in service beyond 31st August-1992 if the Central Government does not grant sanction. That is why it has been positively stipulated in Ext. P-1 order that the retention of the first Respondent in service beyond six months is subject to the sanction of the Central Government.

20. The State Government in the counter-affidavit has taken the stand that no previous sanction of the Central Government is contemplated as contended by the Petitioner. We are not giving the further details of the counter-affidavit, since we feel that we have to advert to the counter-affidavits of the State Government and the first Respondent when we discuss the different controversial questions raised in the petition. In general, the counter-affidavits of the State Government and the first Respondent take the stand that :

(a) the first Respondent is not an usurper of the office of the Chief Secretary. He has got the entitlement by virtue of Ext. P-1 order.

(b) Ext. P-1 order is an order issued by a competent authority. Ext. P-1 is valid in so far as it is issued satisfying all the requirements of Section 16 of the D.C.R.B. Rules.

(c) The retention for six months immediately after the superannuation requires no sanction from the Central Government and the sanction requires is only for retaining the officer beyond the period of six months.

(d) The order Ext. P-1 has been passed on public grounds. The public ground need not be stated in the order itself. The rule only requires that public grounds should be discernible in the files and that the files contain the public grounds, which persuaded the competent authority the State Government to pass the order Ext. P-1.

(e) The order has been passed in public interest with utmost bona fides. The allegations made by the Petitioner against the first Respondent to persuade the Court that it is impossible to hold that the first Respondent is an officer of outstanding merit are baseless and those allegations are made without any evidence and even without any personal knowledge.

(f) The writ of quo warranto jurisdiction is purely discretionary and no circumstances are before the Court to exercise that jurisdiction.

21. Having given a resume of the factual format disclosing the rival contentions of the parties, now we proceed to consider as a prelude to assess the merits of the contentions, the width and scope of the jurisdiction we are exercising in a writ of quo warranto proceedings. We do it, since we feel that to do justice in the

case, we must be informed of the correct bounds of our jurisdiction.

22. The literal meaning of quo warranto is "where is your warrant of appointment"? It is a remedy or proceeding initiating an enquiry into the legality of the claim which a party asserts to an office or franchise to oust him from his continuance or enjoyment if the claim be not well founded. Vide *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, and *Hamid v. Banwari* AIR 1947 P.C. 90 .

23. We should tell in brief what we understand to be the sphere of action and the whip hand of a writ of quo warranto. In fact, this prerogative writ in its pristine form is now obsolete in the country of its origin. But, in India, Article 226 of the Constitution specifically provides that every High Court shall have power to issue to any person or authority.....Writs including writs in, the nature of habeas corpus, mandamus prohibition, quo warranto and certiorari. As we said earlier, a writ of quo warranto postulates an answer to a query to the holder of a public office. The query in plain language is, where is your warrant of appointment by which you are holding this office? In short, it is an enquiry as to under what authority, the person in question is holding his office, franchise or liberty as the case may be.

24. Halsbury's Laws of England, 3rd Edition, Vol II para 281 contains a succinct summary of the decisions of English Courts with regard to the discretion of the Court in issuing a writ of quo warranto. It runs thus :

An information in the nature of a quo warranto was not issued, and an injunction in lieu thereof will not be granted as a matter of course. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case.....the Court might in its discretion decline to grant a quo warranto information where it would be vexatious to do so, or where an information would be futile in its results, or where there was an alternative remedy which was equally appropriate and effective.

The judgment of Lord Reading C.J. in *R. v. Speyer* (1916) I.K.B. 595, contains a kaleidoscopic, valuable historical material showing the evolution of the old writ of quo warranto into an information in the nature of quo warranto. The decisions given by Courts became difficult to reconcile. Therefore, in *Darley v. R.* (1846)12 Cl. And F 520, the House of Lords summoned the Judges to give their opinion. The House of Lords adopted the opinion delivered by Tindal, C.J. It reads thus :

Whereas formerly a quo warranto was held to lie only where there was an usurpation of a prerogative of the Crown or of a right of franchise, a proceeding by information in the nature of quo warranto has long since been extended beyond that limit and is a remedy available to private persons within the limits stated by Tindal, C.J., and subject always to the discretion of the Court to refuse or grant it.

In *R. v. Speyer* (1916) I.K.B. 595, a rule nisi was issued calling upon Sir Edgar

Speyer and Sir Ernest Joseph to show cause why information in the nature of a quo warranto should not be exhibited against them to show by what authority they were or claimed to be, members of His Majesty's Privy Council for Great Britain. *Rex. v. Stacey* (1785) 99 E.R.938, holds" that a writ of quo warranto is not a motion of course and it is in the discretion of the Court to issue it considering the circumstances of the case. The Canadian view as stated in *The King ex rel Beudret v. Johnston* (1923) 2 D.L.R. 278, is that the Court has to take into consideration public interest, the consequences to follow the issue of a writ of quo warranto and all the other circumstances of the case. Unlike the other prerogative writs, the issue of writ in the nature of quo warranto was purely a discretionary writ. There was a little controversy about this aspect of the matter.....S.A. de Smith in his book *The Judicial Review of Administrative Action* (2nd Edition) at page 371 says thus :

The fact that some of the prerogative writs were discretionary came to be directly linked with their designation as prerogative writs. Thus, in one case, it was said: "An application for mandamus is an application to the discretion of the Court; a mandamus is a prerogative writ and is not a writ of right". But although none of the prerogative writs is a writ of course, not all are discretionary. Prohibition, for example, issue as of right in certain cases, and habeas corpus and sub-judicium the most famous of them all, is a writ of right which issues ex debito justified when the applicant has satisfied the Court that his detention was unlawful. These two writs, therefore are not in the fullest sense writ of grace.

25. In England, in 1938, all informations in the nature of quo warranto were abolished, and it was provided that in any case where a person acted in an office for which he has no entitlement, the High Court might, at the instance of any person who would have been able to apply for an information, grant an injunction restraining the former from so acting and might, if the case required, declare the office to be vacant. Vide *Administration of Justice (Miscellaneous Provisions) Act, 1938* (1 and 2 Geo. 6 c. 63). What is seen is that in England the writ of quo warranto was replaced first by information in the nature of quo warranto and then by an injunction accompanied, if necessary, by an order declaring the office vacant.

26. We may here refer to the American Law in regard to the nature of this writ-*American Jurisprudence* (Vol. 65) Notes 5 and 10.

Quo warranto is an extraordinary, prerogative writ and as such is administered cautiously in accordance with certain well-defined principles. Although the ancient writ of quo warranto was an original one issuing out of chancery, the remedy is now of legal, rather than of equitable, cognizance. Inquiry in quo warranto proceedings into the regularity of a judgment has been ordinarily, although not invariably, regarded as a collateral attack on the judgment.

The reason for this cautious applicaiton of this jurisdiction is stated thus :

This approach has been justified on the ground that the writ, or a judgment or

ousting thereunder, may have drastic consequences affecting the public welfare (Vide Note 10).

Quo warranto is addressed to preventing a continued exercise of authority unlawfully asserted, not to a correction of what has been done under it or to a vindication of private rights. vide *Johnson v. Manhattan R. Co.* (1932) 289 U.S. 479.

27. The principles stated in the English decisions and epitomised in Halsbury's Laws of England broadly indicate and throw sufficient light on the path the Courts have to take before issuing the writ of quo warranto. In short, the English principles which govern the writ still apply in India, particularly, in view of the fact that the writ of quo warranto as referred to is expressly provided in Articles 32 and 226 of the Constitution of India. The decided cases of the Supreme Court testify that the formulation of the writ of quo warranto given in Halsbury's Laws of England has been frequently cited with approval (see *University of Mysore v. Govinda Rao*). The quotations we have referred to are those most frequently quoted in Supreme Court decisions on the subject.

28. An applicant for a writ of quo warranto can ask the Court to examine whether a person holding public office has been validly appointed under charter, but the applicant will not be permitted to challenge the validity of the charter. *R. v. Speyer* (1916) I.K. B.595 has been cited with approval and followed in several Indian cases. Since *R. v. Speyer* (1916) I.K. B.595 is a case, the principles of which have been followed by the Supreme Court and other Courts in India, we feel that it is profitable to spotlight the important questions decided in that case. They are: (i) a stranger whose motives were not improper could apply for a writ of quo warranto; (ii) a quo warranto will lie if there is a public office of a substantive character even if such office is held at pleasure; (iii) even if an appointment, to the office is made by the Crown, and the Court cannot, even in appearance, command the Crown, the writ of warranto operates on the holder of the office; (iv) it is not to be supposed that the Crown would reappoint a person to an office from which he has been ousted on a writ of quo warranto on the ground that his appointment was illegal because

This is the King's Court; we sit here to administer justice and to interpret the laws of the realm in the King's name. It is respectful and proper to assume that once the law is declared by a competent judicial authority, it will be followed by the Crown.

29. We may also refer to *P.L. Lakhanpal Vs. A.N. Ray and Others*, wherein it was held that on a review of the authorities, the scope of the High Court's power to issue a writ of quo warranto was not wider than it was in England, and Indian Courts had followed the principles governing the issue of a writ of quo warranto, including the limitations, which had been well established in England.

30. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*,

the Supreme Court held that the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. It also protects a citizen from being deprived of public office to which he may have a right. Further, it has been held that the proceedings are adopted subject to the conditions recognised in that behalf to protect the public from usurpers of public office. It has also been held that in some cases, persons who are not entitled to public office may be allowed occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, the Court has got jurisdiction to issue a writ of quo warranto, if properly invoked to oust the usurper and to allow the person entitled to the post to occupy it. It is clear that the quo warranto jurisdiction exercised by this Court extends to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.

31. In this context, we have to bear in mind the confines of the enquiry as to the legality of the appointment of the alleged usurper in the office. We are now proceeding to enquire into the alleged legal infirmities of the entitlement claimed by the first Respondent to hold the office, viz. Ext. P-1 . We have to examine this question treating Rule 16 of the D.C.R.B. Rules, as the tholepin, point d'appui. But, to understand that rule and the contention raised by learned Counsel for Petitioner on the content of that rule, we have to make a deeper examination of certain other statutory provisions also.

32. Admittedly, the first Respondent is holding the office under the Indian Administrative Service. Let us understand the genesis of the rule-rule 16 of the D.C.R.B. Rules. Part XIV of the Constitution of India deals with services under the Union and the States. Article 309 "provides for recruitment and conditions of service of persons serving the union or a state and Article 312 provides for creation of one or more all India service common to the Union and the States, and to regulate the recruitment, and the conditions of service of persons appointed to any such service.

33. In 1951, Parliament enacted the All India Services Act, 1951, Section 2 of this Act gives the definition that the expression "an All Indian Service" means the service known as the Indian Administrative Service or the Indian Police Service (or any other service specified in Section 2A). Section 2A provides that the Central Government may by notification in the Official Gazette, constitute certain All India Services. Section 3 provides that the Central Government may, after consultation with the Governments of the States concerned (including the State of Jammu and Kashmir), (and by notification in the Official Gazette) make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All India Service. By virtue of the power conferred u/s 3 of the All India Services Act, 1951, the Central Government has made certain rules. For the present, we are not concerned with all the rules, but we would refer to certain rules, which have got some bearing in considering the confines and width

of the D.C.R.B. Rules; framed u/s 3 of All India Services Act, 1951. The Indian Administrative Service (Cadre) Rules, 1954: These rules provide for constitution of cadre under Rule 3. It is provided that there shall be constituted for each State or group of States an Indian Administrative Service Cadre, and the cadre so constituted for a State or a group of States is referred as a "State Cadre" or, as the case may be, a "Joint Cadre". Rule 4 deals with strength of cadre. The strength and composition of each of the cadre constituted under Rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made, shall be as in force immediately before the commencement of the rules. By virtue of Sub-rule (1) of Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954, the Central Government has made the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955. In these Regulations, the Central Government in consultation with the Governments of the State concerned, has made for each State Senior posts, Central Deputation Reserve posts to be filled by promotion and selection under Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, deputation reserve, leave reserve, junior posts, training reserve. As far as Kerala is concerned, certain number of posts are reserved as Senior Posts and in the Senior Posts the first post is the post of Chief Secretary to Government. In fact, from these rules, it is possible to note that the posts borne on the strength and composition of the cadre of the Indian Administrative Service of the various States are specified in the schedule to the regulations and further it can be seen that a percentage of posts is reserved for Central Deputation as Central Deputation Reserve. The importance of these rules, as far as this case is concerned, is that by these Rules and Regulations, the cadre strength is with respect to each state and the regulation is made in consultation with the Governments of the States.

34. The D.C.R.B. Rules, as we said earlier, are made by the Central Government exercising the powers conferred by Sub-section (1) of Section 3 of the All India Services Act, 1951. These rules are also made, after consultation with the Governments of the States concerned.

35. Now, we may straightaway consider the particular provision-rule 16 of the D.C.R.B. Rules, which enabled the State Government to retain a member of service after his superannuation. We feel that it is advantageous and profitable to quote the relevant parts of Rule 16.

16. Superannuation gratuity or pension.-(1) A member of the service shall be required compulsorily to retire from the service with effect from the afternoon of the last day of the month in which he attains the age of 58 years :

Provided that he may be retained in service after the last day of the month in which he attains the age of 58 years on public grounds which shall be recorded in writing-

(a) for an aggregate period not exceeding six months by the State Government;

and

(b) for any period beyond six months, with the sanction of the Central Government :

Provided further that a. member of the Service shall not be retained in service beyond the age of 60 years except in very special circumstances.

Explanation.-For the purposes of this sub-rule, a member of the Service whose date of birth falls on the 1st day of any month shall have attained the age of fifty-eight years on the afternoon of the last day of the preceding month.

* * * *

36. The order Ext. P-1 admittedly finds its source of power in Rule 16 of the D.C.R.B. Rules. It is undisputed that the repository of the power given under Rule 16 is the State Government. The principal attack on Ext. P-1 by the Petitioner is that Ext. P-1 has been issued not in accordance with and not in compliance with the conditions engrafted in Rule 16 and as such the order is illegal and void. The net result, according to the Petitioner is that the first Respondent loses his entitlement to hold the office with void title because he can exhibit only Ext. P-1 as his entitlement to hold the office, which is a void order. Exhibiting a void order will not be a proper answer to the query as to the title of the person who is holding the office. We feel that the proposition of law is a settled proposition in view of the clear pronouncement on this aspect of the matter in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, .

37. Counsel for Petitioner submitted that in order to satisfy the requirements of Rule 16, the State Government has to make it clear in the order itself that the first Respondent is retained in service after the last day of the month in which he attains the age of 58 years on public grounds. Counsel submits that the retention of the first Respondent after superannuation is not on public grounds. Further, it is contended that the other important requirement under Rule 16 is that the public ground on which a member of the service is retained after superannuation, would be recorded in writing. In this case, according to the Petitioner, assuming that public grounds exist, those grounds are not recorded in writing. It is a grave and serious irregularity in so far as a mandatory requirement under Rule 16 is not complied with in issuing Ext. P-1 order, which makes the order void and inoperative. Further, the Petitioner contended that the order Ext. P-1 allows retention of the first Respondent for a period beyond six months. The rule requires in such cases, the sanction of the Central Government. Since the order manifests itself as one ordaining retention of one year after superannuation obviously it is beyond six months and so before issuing such an order, the State Government ought to have issued it with the sanction of the Central Government.

38. We will examine these points in seriatim. The first requirement to be complied with to exercise the power under Rule 16 is that the order under Rule

16 should be on public grounds. As regards the content of public grounds it is possible to hold that public grounds has to be understood, as a term which is usually used in similar enactments. Counsel for Petitioner submitted that the general tenor of Rule 16 has to be kept in mind when considering the purport and content of public grounds. He submits that the general tenor of Rule 16 is that a member of the service shall be required compulsorily to retire from the service when he attains the age of 58 years. The proviso allowing retention is an exception and when it is an exception to the general rules, naturally that provision has to be interpreted in a restrictive and incite manner and any kind of shortfall in the matter of compliance of the conditions for giving effect to the exception will faultier the order and render it void.

39. In the petition, the Petitioner has submitted that allowing retention of a member of service after superannuation will normally, not advance any public interest. It will create only discontentment, uneasiness and discomposure among the members of service. True, the power of allowing a member of service to be retained after his superannuation has to be exercised, we would say, sparingly with utmost caution and for good reasons. We may also add that in a quo warranto writ proceedings, this Court may not be justified in making an invasive, intrusive or obtrusive enquiry and investigation as to the acceptability or tolerability of circumstances and necessariness for allowing retention of a member of service after superannuation, if it has been done by the competent authority. Of course, the matter has to be decided, taking into account how far the public interest will be served by retaining a member of the service after superannuation. This has to be done by the Government. We do not think that the Court has no power at all to examine how and on what basis the authority has found public grounds in a writ of quo warranto proceedings but the power is circumscribed and limited to examine whether the decision of the competent authority is in accordance with law or is blatantly perverse. Whenever a rule predicates and posits that reasons or public grounds are to be recorded as a conditionally to the exercise of discretion, the intention or purpose is to open a window to a higher authority or to a Court which is constitutionally empowered and obliged to review the decision or the order, to oversee the order to satisfy itself as to the compliance of the conditions of the rules, in the order passed, even if the order is purely an administrative order. Whatever their source, powers which are defined either by reference to their object, or by reference to procedure for their exercise, or in some other way, and whether the definition is expressed or implied, are in our opinion, normally subject to judicial control to ensure that they are not exceeded. We are conscious of the fact that we are dealing with a very crucial and important power of the State Government. Certainly it is a discretionary power. We feel that this power can be exercised only objectively. We may say that the objective assessment of the conditionality of Rule 16 of the D.C.R.B. Rules is absolutely by the authority which exercises the power given under Rule 16.

40. Even in the matter of exercise of discretionary power where subjective

assessment alone is required, the Supreme Court had occasion to say that the authority is not completely free, the decision though discretionary and can be taken on subjective satisfaction is not totally immune from the power of judicial overseeing constitutionally conferred in the exercise of the power of the High Court and the Supreme Court under Articles 226 and 32 of the Constitution. In a case dealing with preventive detention under the Maintenance of Internal Security Act, 1971, the Supreme Court had occasion to consider the area of power in the matter of exercise of discretionary power exercisable on the subjective satisfaction of the public authority empowered to take action. *Vide Khudiram Das Vs. The State of West Bengal and Others*, .

41. Reviewing a long array of decisions of the Supreme Court, various High Courts, English Courts and American Supreme Court, Bhagwati, J. as he then was, observed that "there is nothing like unfettered discretion, immune from judicial review ability. The truth is that in a Government under law, there can be no such thing as unbelievable discretion".

42. It has to be remembered that "this observation was made certainly in a case where the Government has been given a discretionary power of detention on a subjective satisfaction of the authority concerned.

43. It is profitable to note that the genesis of this theory that the subjective satisfaction reached by an authority can successfully be challenged is discernible from an old decision of Lord Halsbury in *Sharpe v. Wakefield* 1891 A.C.173. His Lordship said that "when it is said that something is to be done within the discretion of the authorities... that something is to be done according to the rules of reason and justice, not according to private opinion.... according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular". In this area Courts in United States have gone much farther than the Courts in England. The Courts in United States are prepared to review administrative actions which are not supported by substantial evidence, that is by "such relevant findings" as a reasonable man may accept adequate to support a conclusion. Bhagwati, J. observed that "in England and in India, the Courts stop-short at merely inquiring whether the grounds on which the authority has reached its subjective satisfaction are such that any reasonable person could possibly arrive at such satisfaction". Lord, Greene, M. R. in *Associated Provincial Picture House Ltd. v. Wednesbury Corporation* (1948) 1 K.B. 223, which found approval of the House of Lords in *Smith v. Rest Ellor Rural District Council* 1956 A.C. 736. *Fawoect Properties Ltd. v. Buckingham County Council* 1961 A.C. 636 and (1984) 3 All E.R. 935 (*Council of Civil Service Unions and Ors. v. Minister for the Civil Service*) observed that "the authority has come to a conclusion so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere". Further, it is said that in such a case, it is possible to make a legitimate inference that the authority did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts.

44. Prof. Wade says a "judicial decision is made according to law. An administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice- Administrative Law, H.W.R. Wade 6th Edn. pp. 46-47.

45. After referring to *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, *Swadeshi Cotton Mills Vs. Union of India (UOI)*, *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*, *Shetty, J. in Neelima Misra v. Harinder Kaur Paintal (1990) 2 S.C.C. 746*, observed that "the shift now is to a broader notion of "fairness" or "fair procedure" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly. For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have *lis inter parties*. There need not be any struggle between two opposing parties giving rise to a "*lis*". There need not be resolution of *lis inter partes*. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non- adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept."

46. We do not want to discuss the jurisdictional aspect of the overseeing power any more except saying that we are conscious that the bounds of judicial intervention over administrative action are steadily and fastly widening. We stop this discussion with the quote of Justice Douglas in *United States v. Wunderlich (1951) 342 U.S. 98* : "Law has reached its finest moments, when it has freed man from the unlimited discretion of some ruler, some official, some bureaucrat. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions."

47. Counsel for Petitioner wanted to rely on certain official memoranda which prescribe the criteria and procedure in the matter of exercise of the power under Rule 16. We will deal with the importance of the official memoranda separately at a later stage.

48. Petitioner submitted that considering the past history of the first Respondent and also considering the fact that the post of Chief Secretary is perhaps the top most post in the cadre of administrative" service in the State, the action of retaining the first Respondent would only promote dissatisfaction and disquiet

among the members of the Service which is not a public interest. Further, he highlighted relying on certain official memoranda issued by the Central Government that the overriding consideration for the grant of extension of service/re-employment should be clearly in the public interest and in addition satisfy one of the following two conditions :

- (i) That the other officers are not ripe enough to take over the job, and
- (ii) That the retiring officer is of outstanding merit.

49. In the counter-affidavit filed by the State, it is stated that in passing Ext. P-1 order, the Government has taken note of the general consequences on the administrative service and they were not obvious of the importance of the matter, It is stated that the first Respondent was a senior officer of 1957 batch and that two of the officers of 1957 batch alone were available in the State since 5 senior officers were on the central deputation-The names of those officers are given in the counter-affidavit. Further, it is stated that as a matter of fact, the officers working as Secretary to Government of India do not come back to the cadre in the normal course, unless they are sent back to the State or on personal grounds. One of the officers of 1957 batch, Sri Zacharia Mathew assumed charge as a member of the Kerala Public Men's (Corruption Investigation and Inquiry) Commission on 11th March 1992, retired on 30th April 1992 and Anr. officer Mr. M.S.K. Ramaswamy of 1958 batch, who was working as First Member, Board of Revenue, Kerala, would have retired on 30th September 1992. It is explained that the first Respondent was appointed as Chief Secretary to Government on 1st August 1991 and his normal retirement date was 29th February 1992. The next senior officer who was available on 29th February 1992 was Shri Zacharia Mathew, who would have been retired on 30th April 1992, assumed charge as Member of Kerala Public Men's (Corruption Investigation and Inquiry) Commission. The other senior officer Shri M.S.K. Ramaswamy has to retire on 30th September 1992 and has seven months of service from the crucial date, viz. 29th February 1992. It is stated that the retirement of the first Respondent would have resulted in four different Chief Secretaries functioning within a short span of less than one year and the State Government felt on an application of mind the need for reasonable continuity in the top executive post, particularly so, because the Chief Secretary is the Secretary to the Cabinet and his continuity is found necessary in public interest. It is also stated that the Government considered the first Respondent as an officer of outstanding merit and that the Government has taken into consideration in answering the question of public interest the first Respondent's outstanding services, the full trust and confidence of the Cabinet on him. As regards, the public grounds, this is the averment in the counter-affidavit filed by the State. We have to define and find out bounds of examination of the correctness and acceptability of the desiderata evolved by the competent authority to answer the question of the existence of public grounds. We will be doing it when we consider the question of the existence of public grounds.

50. Counsel for the Petitioner invited us to probe into the past services of the first Respondent and also certain allegations and complaints made by one Krishnan Nair, before the Governor of Kerala. Copy of the complaint is Ext. P-2. Of course, we feel that we are not expected to investigate the allegations in the complaint, obviously for reasons more than one. First of all, it is a complaint filed by a person, who is not before us. The Petitioner has not taken the responsibility of vouchsafing the correctness of the complaint, since it is a complaint filed by a third party. It is true that the Petitioner has filed an affidavit with an application to receive the affidavit after the commencement of the argument stating that on enquiries, he understood that on a complaint against the first Respondent submitted by Col. Gopinath, the uncle of the first Respondent, alleging corruption, a vigilance enquiry had been ordered on 18th September 1987. According to him, the enquiry was continuing till 1st August 1991, when the first Respondent became the Chief Secretary. Further, it is said that the first Respondent with his influence got some orders passed, overruling the orders of the Hon"ble Minister for Vigilance. Petitioner submitted that the additional information was obtained only after the argument in the case was commenced. This application is filed on 25th June 1992.

51. Petitioner wanted to produce an additional document as Ext. P-3 with an affidavit. Ext. P-3 is the copy of the complaint of Col. Gopinath referred to earlier. Along with the additional exhibit, Petitioner has filed an affidavit, wherein it is stated that the Hon"ble Minister for Vigilance has on 18th September 1987 made an order to the effect :

1 Vig. /87 18-9-1987

Home Secretary please inquire through Vigilance.

Anyhow, in the affidavit filed on 25th June 1992, the Petitioner himself has said that the order for vigilance enquiry was dropped. Anyhow, we do not think that we must be persuaded by this affidavit, which does not vouchsafe for the correctness of it and which indicates only that the Petitioner has got some information regarding a vigilance enquiry; for formulating any conclusion. Considering the limited scope of enquiry under the quo warranto proceedings, we think that a probe into these matters is beyond the jurisdiction we are now exercising. The materials before us are thoroughly insufficient to invite a probe into the correctness of the opinion of the Government expressed in the counter-affidavit that the first Respondent is an officer of outstanding merit. This does not mean that we are accepting the statements in the counter-affidavit as a substitute for the public grounds to be recorded as per Rule 16 of the D.C.R.B. Rules.

52. Counsel for Petitioner submitted that if a rule provides that reasons have to be recorded in writing, the non-compliance of that requirement shall not be cured or remedied by statements in the counter-affidavit. Counsel submitted several decisions in this point. We feel no doubt about it. Nevertheless, since

Counsel has referred to several "decisions, some of the important decisions we propose to advert to on this aspect of the matter.

53. It is obvious, plain and clear that Ext. P-1 does not mention anything about public grounds. So long as it has not been done in the order, as we said earlier, this irregularity as to the non-conformity of the requirement of the rule cannot be cured by the averments in the counter- affidavit. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, following *Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , Krishna Iyer, J.* has said very clearly that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. This proposition has been made very clear as early as 1952 by Bose, J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, thus :

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Krishna Iyer, J. in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, commented thus :

Orders are not like old wine becoming better as they grow older. A Caveat.

54. In *S.N. Mukherjee Vs. Union of India*, a Constitution Bench was considering the question of the necessity for recording reasons. It was a case of Court-martial. The question was considered under two broad heads :

(i) Is there any general principle of law which requires an administrative authority to record the reasons for its decisions; and

(ii) If so, does the said principle apply to an order confirming the findings and sentence of a Court-martial and post-confirmation proceedings under the Act?

After stating that on the first part of the question, there is divergence of opinion in the common law countries and that the legal position in the United States is different from that in other common law countries, and after referring to several English decisions and decisions of other countries, the Supreme Court observed thus :

In India the matter was considered by the Law Commission in the 14th Report relating to reform in Judicial Administration. The Law Commission recommended :

In the case of administrative decisions provisions should be made that they

should be accompanied by reasons. The reasons will make it possible to test the validity of these decisions by the machinery appropriate writs.

The Supreme Court also observed that there is no general law imposing such a duty to record reasons for administrative decisions, though the requirements to give reasons are found in some statutes.

55. We are now concerned with a law which mandates public grounds to be recorded in writs-Rule 16 of the D.C.R.B. Rules. Of course, the case *S.N. Mukherjee Vs. Union of India*, was a case where the aggrieved Petitioner was before the Court and in that contest the Court- said that if the executive authority dismisses the complaint of an aggrieved party without a reasoned order, it would prima facie seriously prejudice the rights of the aggrieved party and it will amount to a negation of the rule of law.

56. As regards the necessity to record reasons in quasi- judicial proceedings and in certain administrative and executive orders affecting the rights of a party, there cannot be any doubt that reasons, though not as expected in a decision of a Court, but in a succinct manner should be given. But, it has to be remembered that one of the purposes of insisting reasons to be stated is to enable a higher authority or a reviewing authority to examine the fact whether the authority has applied its mind and also to ensure that the decision is reached according to law and "is not a result of capricious whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal". In many cases, the reviewing authority may not have jurisdiction to go into the adequacy of the reasons or the reasonableness of the reasons but, nevertheless the reviewing authority should be in a position to examine the application of the mind of the authority and also to see whether the reasons if any, stated are totally irrelevant in the sense that the decision is perverse.

57. Sreedharan, J. in 1990 (2) KLT 841 (*Gopalakrishnan v. District Collector*) observed that when the validity of an order is questioned before Court, the validity or otherwise of that order is to be tested on the facts stated therein. Grounds for issuance of that order are not to be stated or supplied in the affidavit filed in the case. If the validity of an order is to be tested on the basis of the averments made in the affidavit, then no order will be open to challenge because reasons can be supplied later.

58. What is stated by Sreedharan, J. is the second part of that rule that a reasoned order is necessary. Lack of reasons in the order, certainly, cannot be supplied at a later stage when it is challenged by filing an affidavit. The reason for not accepting such a position is also clear because it is possible to manufacture reasons or to make after thoughts, to sustain the order. This we emphasize for the reason that it is not always necessary that the reasons should find a place in the order or orders, not subject to appeal or orders not affecting adversely the party against whom the order is passed. If an order is passed in favour of a party giving a privilege or a power or some advantage, it is not always necessary to

state in the order itself the reason for doing so. But, if the law says that reasons have to be recorded for such an action, the authority should have recorded those reasons or the grounds when he was dealing with the question before the order was passed. The grounds for the order should not be post- grounds in the sense that the order proceeded without grounds should not be clothed with grounds when a challenge comes. But it is within the right of the statutory authority to establish before the Court that the authority has applied its mind and passed the order specifying that grounds are available in the file though those grounds have not been stated in the order itself. If the files disclose and record the application of mind by the authority concerned before the order is passed in regard to the question of public grounds, certainly the Court can look into it and if the Court is satisfied that though the order does not contain the grounds, there are grounds recorded in the file, it will satisfy the requirement under the rule. It has to be noted that the rule does not say in clear terms where the public grounds have to be recorded.

59. In this context, we may refer to a Division Bench decision of this Court reported in 1983 KLT 1105 (State of Kerala v. Sundaram Iyer). The Court observed thus:

It is not the function of this Court to insist upon a disclosure of all information from the executive when the validity of an order is questioned especially when it is not tainted with mala fides. We do not feel it will be proper to extend the jurisdiction under Article 226 to such an extent as to call upon the executive to justify its acts. Files may not contain all the various aspects of discussion in a particular matter. While dealing with orders emanating from the Heads of Departments, the usual inference that all the necessary aspects of case had been taken into account will have to be drawn. The extent of scrutiny on such cases should be limited to a reasonable appraisal of the facts and circumstances of the case And the Court should not undertake a search for reasons to fault the order. If with reference to the files and other materials the Court could be satisfied that the order was passed in public interest, the Court should normally stay its hands and not try to probe into it incisively to discover invalidating circumstances.

(emphasis added)

60. It has to be remembered that the Division Bench made the above observation when considering an order passed under Rule 60(a) of Part I of the Kerala Service Rules, which deals with the power of Government to grant extension of service. The language used in Rule 60(a) is almost identical. Rule 60(a) of Part I of the Kerala Service Rules reads thus:

60(a) Except as otherwise provided in these rules the date of compulsory retirement of an officer shall take effect from the afternoon of the last day of the month in which he attains the age of 55 years. He may be retained after this date only with the sanction of Government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except

in very special circumstance.

(emphasis added)

61. It has to be remembered that the Division Bench was considering the order of extension under Rule 60(a) of Part I of Kerala Service Rules, at the instance of an aggrieved party, who lost his promotional chances and in a proceedings for a writ of certiorari. In view of the clear observations of the several decisions of the Supreme Court and this Court, we have no hesitation to hold that it is not permissible for us to postulate that reasons or public grounds to be recorded as per the provisions of the statute need be contained in the counter-affidavit, when the order or the file does not disclose the reason or public grounds as the case may be. Vide 1992 (2) KLT 95 (Cannanore Shop v. Regional P.F. Commr.) 1990 (2) KLT 841 : 1992 (1) KLT 420 (State of Kerala v. Balakrishnan) 1952 S.C. 16 : 1978 S.C. 851 and S.N. Mukherjee Vs. Union of India, We have no hesitation to say that it is impermissible that reasons or public grounds to be recorded in writing for an action, if postulated in the statutory proviso can be satisfied by stating the reasons or public grounds in the affidavits filed before the Court when the action is challenged. It is so since such a practice would invite to protrude and bristle up positive dangers. Reasons or public grounds should precede the order and the reviewing authority should be positive and certain about that fact. It is sufficient that the file disclose the public grounds or the reasons to be recorded in writing. We are also of opinion that the authority who took the action can by placing the entire file before the Court satisfy the Court that the authority has applied its mind to the relevant statutory provisions and if the Court finds from the files that it is possible to discern proper application of the mind and compliance of the relevant requirements of the rules for taking up the action, the fact that these facts have not been stated in the order may not be a ground to fault the order and render the order void.

62. Now we have to consider the question whether the files relating to the order disclose the public grounds that is required under Rule 16(1) of the D.C.R.B. Rules. In this context, we would like to repeat one pertinent Observation of the Division Bench reported in 1983 KLT 1105. It is said thus :

Files may not contain all the various aspects of discussion in a particular matter. While dealing with orders emanating from the heads of Departments, the usual inference that all the necessary aspects of the case had been taken into account, will have to be drawn.

63. Before referring to the file, we would say in dealing with a question of public grounds relating to retention of a member of Indian Administrative Service by the State, the jurisdiction of this Court as to the extent of scrutiny should be limited to a reasonable appraisal of the facts and circumstances of the case and the Court should not undertake an invasive and investigating search for reasons to fault the order. The decision taken to Retain the first Respondent after superannuation is a decision of the Cabinet. The file does not disclose the

discussion as to the-desirability or the necessity of retaining the first Respondent in service after superannuation exercising the power under Rule 16. It is seen from the file that the question of retention of the first Respondent in service after superannuation emanated from the Chief Minister himself whose note is seen in the file. The note is dated 3rd February 1992. In the note it is said that "Public grounds such as the short further periods left for Shri Zacharia Mathew and Shri M.S.K. Ramaswamy, the need for reasonable continuity in the post and the outstanding services of the present incumbent have to be considered".

64. The consideration of this note with details of the discussion of Cabinet members are not seen in the file submitted before us. Nevertheless, the conclusion discernible is a clear acceptance of the public ground stated by the Chief Minister and by the Council of Ministers. In the light of the note of the Chief Minister, we presume that there should have been a discussion by the Members of the Cabinet and Council of Ministers has taken a decision accepting the note as the ground for the decision. The decision is that the services of Shri S. Padmakumar, I.A.S. who is due to retire on 29th February 1992 are extended for a period of one year as Chief Secretary to Government. We feel that it will not be wrong if we read the decision as the operative part of a discussion initiated by the Chief Minister stating the grounds in the note and so, we have to read the" decision along with the note containing the grounds. This we say so, on the basis of the principle laid down by the Division Bench in 1983 KLT 1105 wherein Khalid, J. as he then was, said that the files may not contain all the various aspects of discussion in a particular matter, and that while dealing with orders emanating from the Heads of Departments, the usual inference that all the necessary aspects of the case had been taken into account, will have to be drawn. The Court further said that in that case, the impugned order has to be viewed against the said setting.

65. In the file, a reference to the first proviso to Rule 16(1) of D.C.R.B. Rules is seen and a note that the extension of service beyond six months requires the sanction of the Central Government in view of the Council of Ministers decision and that order may be issued for retention of the first Respondent in service for one year, the retention beyond six months is subject to sanction of Central Government and the Central Government may be moved for sanction. A draft of the order Ext. P-1 is also seen in the file and also the correspondence between the Chief Minister and Prime Minister for obtaining sanction of the Central Government as envisaged under Rule 16 of the D.C.R.B. Rules. In the letter to the Prime Minister also, there is some reference to the necessity of retaining the first Respondent in service as unavoidable and that the services of the first Respondent have been outstanding. We note that the letter of the Chief Minister to the Prime Minister is dated 9th April 1992 and it may not be of much relevance, since the letter is written after the filing of the Original Petition. Nevertheless, we cannot totally ignore this letter, where there is a re-iteration of the public grounds which induced the Government to take a decision to retain the services of the first Respondent.

66. In view of the discussion we have made, we feel that the attack made on Ext. P-1 that the public grounds for retention of the first Respondent has not been recorded in writing is not sustainable and on that reason, we feel that it may not be justifiable for us to say that the order Ext. P-1 is liable to be declared void.

67. Having found that there is no irregularity of non-recording of public grounds, we feel that we are bound to consider the question whether public ground exists for justifying the order Ext. P-1. Before examining the question we must be informed of our limited jurisdiction of the examination of the correctness of the holding of the authority that public grounds exist in the case. We have to remember that we are examining the public grounds found by the competent authority to nourish Ext. P-1 order in the context of a writ of quo warranto and that too at the instance of a person not directly aggrieved by Ext. P-1 order. No officer who could have a legitimate expectation to hold the high post of Chief Secretary has challenged Ext. P-1 order. The authority has found public grounds exist. The Chief Minister and the Council of Ministers are the most competent persons to decide this question. Nevertheless, we feel that in extraordinary circumstances, if the finding that public grounds recorded for the retention of a particular officer under Rule 16 of the D.C.R.B. Rules, are so ill-conceived and illogical, it may be open to this Court to exercise power of judicial review and fault the order. We may say that the finding of public grounds must bear the "seal of unreasonableness" in the *Wednesbury*'s sense. In *C.C.S.U. v. Minister for Civil Service* 1984 (3) All E.R. 935, considering the grounds for judicial review under the head irrationality. Lord Diplock observed:—"By irrationality, I mean what can by now be succinctly referred to as "*Wednesbury* unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the Court's exercise of this role, resort I think is today no longer needed to Viscount Radcliff's ingenious explanation in *Edwards (Inspector of Taxes) v. Bairstow* (1953) 3 All E.R. 48 of irrationality as a ground for a Court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker."

68. Counsel for Petitioners submitted that in no sense it is possible to hold that the retention of the first Respondent would promote public interest and that Ext. P-1 order is devoid of that material requirement of public grounds. Counsel reiterated that the past history of the services of the first Respondent would manifest that the retention of the first Respondent will be against all public grounds, he also submitted that the retention of the first Respondent will only promote discontentment among the top administrative officers who can only expect a short term to hold the high office of Chief Secretary. Further, he submitted that this Court must examine on the basis of the facts alleged in the

Original Petitions whether the retention of the first Respondent can have any semblance of public grounds involved in it. Counsel referred us to certain decisions where the Court enquired into a question similar to the existence of public interest and submitted that even though we are exercising a power under writ of quo warranto proceedings, such an approach is permissible. Of course, in a case where an order is challenged by an aggrieved party, the considerations and the limits and bounds of examination of the overseeing power will be a little deeper than in a case where an order which is exhibited as his title to hold an office to be examined as a valid order in a, writ of quo warranto proceedings.

69. Counsel referred us to certain Supreme Court decisions highlighting the long range of judicial review, power. He has referred us to the following decisions: Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, , Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, and A.L.R. 1991 S.C. 101 (Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors.).

70. In Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, the Supreme Court has observed that the reasons would be the life of the decision. Failure to give reasons or giving reasons not germane would be fatal to the decision. The case arose u/s 33B(1) of the Industrial Disputes Act, 1947. The general principle that in the modern administrative set up what is important is the fairness of procedure with elimination of element of arbitrariness is highlighted in the decision. The State functionaries must act fairly and reasonably. Of course the Supreme Court has observed that to act fairly and reasonably is not the same thing as that the State functionaries must act judicially or quasjudicially. Further it is emphasised that fairness is a rule to ensure that the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes.

71. Sawant, J. in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, observed that "there is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on, the good sense of the individuals, however, high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with, the posts, however, high they may be. There is only a complainant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it. Reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law."

72. Counsel also invited our attention to paragraph 243 of the same decision where Ramaswamy, J. has observed that "law is a social engineering to remove

the existing imbalance and to further the progress, serving the needs of the Socialist Democratic Bharat under rule of law. The prevailing social conditions and actualities of life are to be taken into account to adjudging whether the impugned legislation would sub serve the purpose of the society. The arbitrary, unbridled and naked power of wide discretion to dismiss a permanent employee without any guidelines or procedure would tend to defeat the constitutional purpose of equality and allied purposes referred to above. Courts would take note of actualities of life that persons actuated to corrupt practices are capable to maneuver with higher echelons in diverse ways and also camouflage their activities by becoming sycophants or chronics to the superior officers". We do not think that the above quote has much relevance in this case, since circumstances and facts of the case referred and the case we are considering are not similar.

73. Counsel again invited our attention to certain observations in the decision reported in Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, . It was a case under Rule 56(j)(i) of the Fundamental Rules, compulsory retirement in public interest. It was found that a public servant was ordered to be retired prematurely in public interest. The relevant record of the public servant, however, did not reveal that the compulsory retirement was in public interest, and this fact was conceded by the Government Counsel. In that context, the Supreme Court held that the order of compulsory retirement amounted to abuse of the power which was vested in the authority concerned and thus was liable to be set aside.

74. Counsel wanted to rely on an observation of Lord Goddard, C. J. in Pilling v. Abergele Urban District Council (1950)1 K.B. 636, which is quoted in Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, , to the effect that "where a duty to determine a question is conferred on an authority which states their reasons for the decision, and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the Court to which an appeal lies can and ought to adjudicate on the matter."

75. The above quote is a well known proposition. Counsel wanted to buttress this proposition by stating that public grounds stated by the Chief Minister in his note that the requirement of continuity of Chief Secretary's service and that the first Respondent enjoys full confidence of the Cabinet are not matters, which ought not have taken into account to determine the public grounds envisaged in Rule 16 of the D.C.R.B. Rules. We feel that we cannot in these proceedings say that the said considerations are matters which ought not have considered in determining the question of public grounds under Rule 16 of the D.C.R.B. Rules. We are of opinion that it is a matter for the State Government to determine the various elements for satisfying the requirement of public grounds under Rule 16 of the D.C.R.B. Rules. We cannot say that the matters considered by the State Government for determining the question of public grounds are something which

is outrageous in its defiance of logic or that no sensible person would take those matters to determine the public grounds that is contemplated under Rule 16.

76. 1976 K.L .T. 594 (Sreedharan v. State of Kerala) is a Full Bench decision of this Court. It considered the requirements of Rule 60A(1) of Part I of the Kerala Service Rules. Rule 60A allows the Government in the public interest to order that an officer shall compulsorily retire at any time after he has attained the age of 58 years. The Full Bench was considering the limit of scrutiny of the Court in respect of public interest, for which an officer has been ordered to compulsorily retire under Rule 60A(1). This Court observed that "the scrutiny by Courts in regard to action, under Rule 60A is very limited. Any action under the rule A by a State Government must be in accordance with law and there must be some grounds on the basis of which it is possible to the conclusion that it is in the public interest and the action must be bona fide after application of the mind to all relevant factors". It was also observed that omission to consider relevant material will therefore be a valid ground for interference with an order purporting to be under Rule 60A of the Kerala Service Rules. The action under Rule 60A is possible only if the action is in the public interest. Public interest is therefore a condition precedent in order that justifiable and valid action may be taken under Rule 60A. This means that there must be some material however slight that material may be which is relevant and which would point to the fact that it is not in the public interest to continue the Government servant in service. At times, this relevant material or alleged material may be so flimsy or so unsubstantial as to amount to no material at all. In such circumstances, the action will be taken for no reason and therefore will not be in public interest."

77. So in a case where an officer may compulsorily be retired on the ground of public interest, what is required is that there must be some material, however slight that material may be, which is relevant and which would point to the fact that it is not in the public interest to continue the Government servant in service. We do not think that there is any scope for invalidating the order on the ground that there is no public ground to support the order Ext. P-1. As we said earlier, our scrutiny is a limited scrutiny. In the Full Bench case, the aggrieved party challenged the order and in that context also, the Full Bench said that the scrutiny of public interest envisaged under the statutory provisions under Rule 60A is very limited.

78. We may make it clear that we are not making an indepth investigation of the public grounds discerned from the files since we are exercising a, power under the quo- warranto writ proceedings. We have got Anr. reason also to decline an indepth investigation apart from the limit of our overseeing power that is that the continued retention of the first Respondent in office beyond the period of six months of his superannuation, is a matter which necessarily has to be examined by the Central Government when they consider the question of sanction sought for by the State Government.

79. At this point, we may also say that certainly the rule enjoins the Central

Government to examine all relevant matters including the question of public grounds and the necessity of retaining the first Respondent for a period beyond six months of his retirement and we are certain that the Central Government may have the opportunity even to examine the serious allegations made by the Petitioners in the Original Petitions before deciding the question of granting sanction, though before us there are no acceptable materials to substantiate the allegations. We do not want to discuss any further on the finding of existence of public grounds in passing the order Ext. P-1. We hold that the order cannot be invalidated on the ground that the finding of public grounds by the State Government in passing Ext. P-1 order is irrational, in the sense of "Wednesbury unreasonableness".

80. Now we turn to consider the attack made by the Petitioners on the basis that Ext. P-1 order is a void order, since without obtaining the prior sanction of the Central Government, the State Government has extended the services of the first Respondent for one year, that is for a period beyond six months, after retirement. It is plain and clear that by the order, the Government discloses its decision to retain the first Respondent for one year. But, the order itself makes it clear that the retention of the first Respondent beyond the period of six months is subject to the sanction of the Central Government. It was very seriously contended that since the order postulates a decision to retain the first Respondent for a period of one year without obtaining sanction, it is a plain violation of Rule 16 of the D.C.R.B. Rules. We feel that on a closer scrutiny of the order in the silhouette and profile of the provisions in Rule 16 of the D.C.R.B. Rules, the contention of the Petitioners has no force. It is for the State Government to decide whether an officer has to be retained in service for a period beyond six months, say for one year. The decision to retain an officer under Rule 16 for a period beyond six months is different from retaining the officer beyond six months. The State Government can request for sanction only after taking a decision that an officer has to be retained for one year. So even before the retirement, of the officer such a decision can be taken, but that the retention must be conditioned on obtaining the sanction from the Central Government to retain the person beyond the period of six months. In this case, the State Government has done nothing more than that.

81. Petitioners' contention that Ext. P-1 order is bad in toto even the retention of the first Respondent for six months after retirement is absolutely unsustainable. Certainly, the first Respondent can never be retained without obtaining the sanction of the Central Government contemplated under Rule 16 of the D.C.R.B. Rules beyond the period of six months. Serious arguments were advanced as regards the point of time the sanction has to be obtained under Rule 16(1)(b) of the D. C. R .B. Rules. , It was very seriously contended that the language used in Rule 16(1)(b) of the D. C. R. B. Rules "that an officer may be retained for any period beyond six months with the sanction of the Central Government" contemplates prior sanction, before putting into action the power under Rule 16(1)(b).

82. The learned Advocate General contended that since the words used "beyond six months with sanction of the Central Government" indicate that there is no peremptory mandate that the sanction must be a previous sanction or a prior sanction. The learned Advocate General submitted citing several provisions of the rules framed under the All India Services Act where the language used is explicit in the sense that in certain rules, prior sanction is the word used" in certain other rules, previous sanction, yet in certain other rules except with sanction and so, when in Rule 16(1)(b) the phraseology adopted is with the sanction of the Central Government it is not justifiable for this Court to say that the sanction required under Rule 16(1)(b) is prior sanction. We are of opinion that if we hold that no prior sanction of the Central Government is required for the retention of an officer beyond six months of his superannuation the Rule 16(1)(b) of the D. C. R. B. Rules itself will be unworkable in, the sense that retention can be allowed without sanction in a case where the sanction is sought and refused at the fag end of the one year period; it sounds illogical and may lead to an absurdity. We make it clear that the content of the provision for sanction is that retention requires prior sanction. But, to take merely a decision that an officer has to be retained for one year, no prior sanction is required, because only after taking decision to retain for one year, sanction can be sought for.

83. In view of what we have discussed above, we hold that there is no impropriety in taking a decision by the Cabinet before 1st Respondent's retirement to retain him for one year and making it explicitly clear that he will be retained only after obtaining sanction of the Central Government for a period beyond six months of his superannuation.

84. Counsel for Petitioners submitted that on the allegations made in the petition, it is difficult to hold that the first Respondent is an officer of outstanding merit. Petitioners have relied on Exts. P-2 and P-3 to say that against the first Respondent there had been serious complaints and there is lack of bona fides on the authorities for holding that the first Respondent is an officer of outstanding merit. Counsel submitted that public grounds alone is not sufficient and that in addition, the state should satisfy, one of the following two conditions, viz: (i) that other officers are not ripe enough to take over the job; or (ii) that the retiring officer is of outstanding merit. This submission is made on certain official memoranda of the Central Government. We are obliged to consider the point raised by Counsel for Petitioners that the official memoranda of the Central Government are binding on the State Government and retention under Rule 16(1) should be in conformity with the relevant official memoranda of the Central Government.

85. Counsel referred us to the Official Memorandum D.P. and A.R.O.M. No. 25011/42/78-A.I.S. (II) dated 29th August, 1978 wherein it is stated "that the criteria and procedure laid down in the Ministry of Home Affairs O.M. No. 26/11/68-Estt. B, dated the 17th June, 1969 (since replaced by the D.P. and A.R.O.M. No. 26011/1/77-Estt. B., dated the 18th May, 1978) are strictly

followed while granting, re-employment/extension of service to All India Service officers under the Central Government. It is suggested that these instructions may be kept in mind by the State Government while deciding cases of re-employment/extension of service to All India Service officers under them. Counsel further referred to Anr. official memorandum Department of Personnel and A.R.O.M. No. 26011/1/77-Estt. B., dated 18th May, 1978, and spotlighted certain relevant paragraphs of this official memorandum. He has referred to the criteria for extension re-employment and pointed out that the guidelines contained in the official memorandum make it clear that the "overriding consideration for the grant of extension of service/re-employment is that it must be clearly in public interest and in addition it should satisfy one of the following two conditions :

- (i) that other officers are not ripe enough to take over the job; or
- (ii) that the retiring officer is of outstanding merit.

Counsel also pointed out that no extension of service/ re-employment should be considered on the ground that a suitable successor is not available unless it is established that action to select a successor had been taken well in advance, but the selection could not be finalised in time for justifiable reasons. It was also pointed out that while making proposals for extension of service/re-employment in higher posts, it is all the more necessary to apply higher standards of efficiency to persons whose appointments to the higher posts are recommended for approval of an Appointment Committee of the Cabinet. The number of top posts is bound to be very limited and a few persons should not have them for too long.

86. Before considering the mandate of these official memoranda we shall now consider the submissions based on the official memoranda and the non-compliance of the instructions in the official memoranda by the State Government in passing Ext. P-1 order. When we consider this aspect also, we have to bear in mind our own limitations. The files disclose that the first Respondent is an officer of outstanding merit. It is the opinion of the Chief Minister. This opinion must have been the subject-matter of discussion of the Council of Ministers when they took the decision to retain the first Respondent for one year after retirement. We do not think that on the scanty materials placed before us by the Petitioners and that too, materials for which the Petitioners are not taking up any responsibility, it is proper for us to make a re-assessment, particularly, when we are exercising the jurisdiction in a proceedings for writ of quo warranto. We cannot substitute our views. We may here repeat again that the Central Government can certainly consider whether the instructions and guidelines given in the official memoranda of the Central Government are being adhered to by the State Government in the matter when they deal with the question of granting sanction under Rule 16(1)(b) of the D.C.R.B. Rules. We feel that it is not necessary for us to decide the question whether the official memoranda are binding on the State Government or not, though, Counsel on

both sides argued this matter very elaborately before us. Deference to Counsel, we refer to some of the important decisions cited by Counsel on both sides on this point :

1. AIR 1959 S.C. 896 (R. Abdulla Rawther v. State Transport Appellate Tribunal, "Madras)
2. K.M. Shanmugam Vs. The S.R.V.S. (P) Ltd. and Others,
3. Union of India (UOI) Vs. K.P. Joseph and Others,
4. The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others,) and
5. 1991 Supp. (2) SCC 151, Union of India v. R. S. Saini

87. In Union of India (UOI) Vs. K.P. Joseph and Others, , Mathew J. observed that "generally speaking, an administrative order confers no justifiable right, but this rule, like all other general rules, is subject to exceptions. Further, it was observed that the Supreme Court in Shri Pandurang Dnyanoba Lad Vs. Shri Dada Rama Methe and Others, had held that although Government cannot supersede statutory rules by administrative instructions yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service. In the same decision, in paragraph 11, His Lordship observed that "we should not be understood as laying down any general proposition on this question. But we think that the order in question conferred upon the first Respondent the right to have his pay fixed in the manner specified in the order and that was part of the conditions of his service. We see no reason why the Court should not enforce that right".

88. It is important to note the context in which the Supreme Court has said that the order called official memorandum which is nothing but instructions is part of the conditions of service, since that order provided for certain benefits to ex-military personnel on re-employment on the basis of their length of actual service. This peculiar feature made the order binding on the authority who has issued it and constituted impliedly a right relating to conditions of service and so the Court can enforce that right. It has to be understood that administrative orders which are guidelines or instructions can under certain circumstances confer rights and impose duties". Mathew, J: relied on a passage from John Chipman Gray on The Nature and Sources of the Law. "The above passage reads thus: "Let us take one of Mr. Harrison's instances, a regulation from the British War Office that no recruit shall be enlisted who is not five feet six inches high. Suppose a recruiting officer musters in a man who is five feet five inches only in height and pays him the King's shilling; afterwards the officer is sued by the Government for being short in his accounts; among other items he claims to be allowed the shilling paid to the undersized recruit. The Court has to consider and

apply this regulation and, whatever its effect may be, that effect will be given to it by the Court exactly as effect will be given to a statute providing that murderers shall be hanged, or that last wills must have two witnesses.

89. In 1991 Supp. (2) SCC 151, *Union of India v. R. S. Saini* the Supreme Court was directly dealing with an official memorandum issued by the Government of India in the matter of disposal of disciplinary actions against Government servants. The Central Administrative Tribunal quashed certain orders on a very short ground. The memorandum referred was issued by the Government of India on January 8, 1971, according to which the disciplinary authority should take a final decision on the enquiry report within a period of three months at the most. Treating this as a mandatory time-limit for the passing of the order of punishment, the Tribunal set aside the orders. Finding that the memorandum is only a guideline to ensure that the disciplinary proceedings are completed as expeditiously as possible the Supreme Court said that it cannot be treated as a condition, non-compliance of which will invalidate the order of punishment of the disciplinary authority.

90. It may not be wrong for us to treat that the official memoranda placed before us by Counsel for Petitioners are only guidelines or instructions given by the Central Government in the matter of exercising the power under Rule 16 of the D.C.R.B. Rules. We do not want to discuss this question any further in view of the fact that we are of opinion that there is no acceptable material before us to find transgression of the guidelines contained in the official memoranda pointed out by Counsel for Petitioners in issuing Ext. P-1 order. We hope and believe that Counsel on both sides may not misunderstand us in taking this method of discussion on this point. It is not due to any lack of deference to the indepth study Counsel have made on this aspect of the case also.

91. The Senior Central Government Standing Counsel has filed a statement with an annexure, a letter from the Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, New Delhi. In the statement, the senior Central Government Standing Counsel has stated that under Sub-rule (1) of Rule 16 of the D.C.R.B. Rules, the State Government is competent to grant extension in service to a member of the service for a period of six months on public grounds to be given in writing if the State Government finds it expedient to extend service in public interest. In the annexure, it is made clear that the official memorandum referred to by Counsel for Petitioners pass not even circulated to the State Governments. Further, it is made clear in the annexure that earlier to the said official memoranda, a letter was sent to the State Government, vide Letter No. 15/16/74-AIS (II) dated 29th August, 1974, suggesting to the State Governments that the instructions circulated along with the said letter may be kept in mind while deciding the cases of re-employment of retired members of the All India Service. It is also stated in the annexure that the instructions make it amply clear that it is not obligatory for the State Governments to follow these instructions.

92. We find no merit in the submission made, by Counsel for Petitioners that the State Government has not adhered to the instructions given by the Central Government in the matter of retention/extension of retired officers after superannuation.

93. Counsel for Petitioners submitted that the action of the State Government is mala fide. Of course, he did not point out any personal mala fides other than stating that the first Respondent is the brother of a State Minister of the Central Government. It is not possible for this Court to see any mala fides in the action taken by the State Government on the basis of a Cabinet decision only because of the fact that the beneficiary of Ext. P-1 order happened to be the brother of a State Minister of the Union Government. The submission that the action is a mala fide action is only to be stated for its rejection. Further, the question of mala fides of the appointing authority is not a matter of relevance to test the entitlement of the person alleged to have usurped the office he is holding in quo warranto proceedings.

94. In A. Ramachandran Vs. A. Alagiriswami, Govt. Pleader High Court, Madras and Another, Jagadisan, J. observed that the question of alleged motive and purpose supposed to constitute the background for the order of appointment are wholly foreign to the scope of an enquiry in a writ of quo warranto proceedings. His Lordship has quoted what Lord Denning said in Hamlyn Lectures on Freedom under the Law:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do; and will not do things that they ought to do.

95. We have to remember what Lord Denning has said in regard to the executive power in relation to public good. The exercise of powers for the public good is not a judicial function but an administrative one: with which the Court will only interfere if the Minister acts in a disingenuous way, or, as the French put it, in a way that is cynical or maladroite. This is shown quite clearly by the famous Stevenage case Franklin v. Minister of Town Planning (1948)A.C. 87.

96. In P.L. Lakhanpal Vs. A.N. Ray and Others, Andley, C.J. disposing a quo warranto proceedings said that "acts of favouritism by way of back-door appointment and deviations from fair play and justice are not uncommon features in the administration of any Government, in any country. But the jurisdiction of the Courts is not the rule of a sentinel on the qui vive to guard against the vagaries of the State executive. Prerogative writs which this Court can issue under the terms of Article 226 of the Constitution have got their strict limits which have to be adhered to. The province of this Court in a quo warranto proceeding is to determine whether there has been usurpation of a public office and not to search the conscience of the appointing authority to ascertain his motive. It is, therefore, not necessary for us to say anything more than that the impugned order of the appointment of the first Respondent has not transgressed

any rule, regulation or law to afford a foundation for the issue of relief in a quo warranto proceedings".

97. In Vol. 74, Corpus Juris Secundum at page 265, the same proposition is reflected thus :

So also, where Respondent's title rests on an appointment, the Court will not go back of the power of appointment to inquire into... his reasons and motives for making the appointment....

98. It is not possible for us to say that the Supreme Court in AIR 1965 S.C. 591 when said that quo warranto proceedings also tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the Courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed, to occupy it" it would point out that question of mala fides and motive in the matter of appointment can be within the overseeing power of this Court. So long as the observation is not clear to hold that the motive and mala fides, are also elements to enquire into in a quo warranto writ proceedings, it is difficult for us to rely on that passage from the Supreme Court decision to hold that mala fides or motives in the matter of appointment also can be enquired into in a writ of quo warranto proceedings. It is clear that the Supreme Court was not considering the question of relevancy of mala fides. However, in this case, we have no acceptable material to hold that Ext. P-1 order was issued as a result of any bad motive of the appointing authority.

99. We would like to say our independent view on this question. It would be a mistake, however, to suppose that, this Court which is endowed with the reviewing power of executive's administrative action are left with no control over the abuse of power. Considering Stevenage Case, the House of Lords said significantly that the powers must be "genuinely" exercised. This requirement of genuineness brings back, to the principle of "detournement de pouvoir". In order that a power should be genuinely exercised, the administrator must have the proper state of mind-the state of mind which the Constitution or Parliament or Legislature expects him to have-the state of mind of an administrator who carefully investigates all the relevant considerations and rejects all irrelevant ones; who will fairly balance public interest and private right: and thereupon after due consideration come to an honest decision as to whether to exercise the power, or not, for the purpose authorised by Parliament. If this Court is satisfied that he did not bring that state of mind to bear on the matter or that his action was so unreasonable that he cannot have brought it to bear then this Court will interfere. This we say so for the simple reason that if this principle is infused in the power of review ability of this Court and the Supreme Court, certainly we can find the Court's protection against undue encroachment, excesses and abuse of the rights and liberties by the executive.

100. While declining to issue a writ of quo warranto we would like to express our strong faith and confidence that the Central Government will never fail to consider when exercising its high potential filtering power of granting its sanction envisaged under Rule 16 of the D.C.R.B. Rules, for retaining the first Respondent beyond the period of six months after superannuation, carefully, fairly, conscientiously and taking into account all the various aspects of the case and also the instructions and guidelines postulated by the Central Government.

101. We may express our regret over the prolix excursion of this judgment. We are not oblivious of the fact that brevity is the soul of wit. Piquant and pithy judgments command greater credibility. Then why this longiloquence : We justify the prolixity of this judgment thus: It is the polite commendation, the reward, prize and encomium we can offer for the learning and semantic arguments of all Counsel appeared in the case presenting an encyclopedic view of judicial thought on various aspects of the case from different sources. We confess that from the plentitude and frozen limit of rulings cited we skipped some of them here and there by a process of calculated riddance using utmost care not to omit more perspicuous distinct and relevant cases and statutory and other relevant references.

In the result, we find no merit in the Original Petitions and we dismiss the same. However, in the circumstances of the case, we order no costs.

Balasubramanyan, J.

102. I am in agreement with my learned brother that the Original Petitions are to be dismissed. But I think it appropriate to set down my views on one of the aspects arising in the case.

103. Rule 16(1) of the All India Services, (Death-cum-Retirement) Rules, 1958 provides that a member of the service shall be required compulsorily to retire from the service on attaining the age of 58 years. The date of retirement of Respondent No. 1 was 29th February 1992. Respondent No. 1 was appointed as Chief Secretary to the Government on 1st August 1991 when he had only six months to retire. The Chief Secretary's post being only one and being the highest post that an Indian Administrative Service Officer can aspire to hold in a State Service, this was not unusual. But this fact throws considerable doubt on one of the present reasons put forward in the note of the Chief Minister namely need for reasonable continuity in the post as a public ground. Assuming this is a relevant consideration, this should have weighed with the Government even at the time of the original appointment of Respondent No. 1.

104. The other grounds suggested in the note is the short periods available to two other officers named therein. One of them, Sri M.S.K. Ramaswamy did have a period till 30th September 1992 that is a period of seven months, one month more than the first Respondent himself had at the time he was appointed as Chief Secretary. There is no case that M.S.K. Ramaswamy was in any way unfit to hold the office. Moreover no effort was also made to find out whether a

suitable successor was available in the service in terms of the Memorandum issued by the Central Government stating :

No extension of service/re-employment should be considered on the ground that a suitable successor is not available unless it is established that action to select a successor had been taken well in advance, but the selection could not be finalised in time for justifiable reason.

The file does not disclose that this exercise was undertaken. There is also no case in the counter-affidavit that this exercise was undertaken at any time. The file also does not show why the other officers in the service were not suitable. The file also does not contain any material on the basis of which Respondent No. 1 was considered outstanding.

105. The Cabinet decision based on which Ext. P-1 is issued also does not even record the existence of any public ground. It is argued by Counsel for the Petitioner that a memo by the Chief Minister requesting that the matter which is outside the agenda may be considered by the Cabinet cannot satisfy the requirements of Rule 16(1) of the Rules. We have taken the view that it does. In view of the jurisdiction that is invoked by the Petitioner in this case this Court may not be in a position¹ to consider the sufficiency of the materials based on which the decision to grant the extension was taken by the Government. But it does appear to me that the reasons given in the note of the Chief Minister and the absence of any materials in the file relating to the decision to support such grounds could hardly be considered sufficient to support a departure from the normal rule that the officer has to retire compulsorily on reaching the age of superannuation. But as held "by my learned brother it is not for us to consider the sufficiency of the reasons that led to the decision for extension made by the Cabinet. But these aspects do leave room for an argument that Rule 16(1) of the Rules was not properly complied with.

106. In taking such a decision that could affect the morale of the entire Administrative Service, it would have been appropriate if the decision at least specifically referred to Rule 16(1) of the rules and the public ground or grounds on which the decision is taken. Specific reference to Rule 16(1) of the Rules finds a place in the file in the note made on 6th February 1992 after the decision of the Cabinet is taken on 5th February 1992. It would have been more fair and appropriate if the file had clearly disclosed that there was a clear application of mind to all the relevant aspects before the decision is taken. We have taken the view that the memo of the Chief Minister bearing the date 3rd February 1992 coupled with the decision dated 5th February 1992 satisfies the requirements of Rule 16(1) of the Rules and it is not for us to consider the sufficiency of the reasons that led to the decision. But I do believe that the real spirit of Rule 16(1) would have been better served by a decision that itself gave the reason for the extension.