(1994) 11 KL CK 0073

High Court Of Kerala

Case No: O.P. No''s. 8596, 8693, 8697, 8709, 8738, 9254, 10107, 10334, 10895 and 12168 of 1994

The Kerala Panchayat Executive Officers Association and Others		APPELLANT
	Vs	
State of Kerala and Others		RESPONDENT

Date of Decision: Nov. 4, 1994

Acts Referred:

- Constitution of India, 1950 - Article 11, 14, 16, 19, 226
- Forest Service (Initial Recruitment) Regulations Rules, 1966 - Regulation 5, 5(1), 5(2)
- Kerala Panchayat (Amendment) Act, 1991 - Section 3
- Kerala Panchayat (Common Service) Rules, 1977 - Rule 3, 3(2)
- Kerala Panchayat Act, 1960 - Section 129(1), 39, 39(2)
- Kerala Panchayat Subordinate Service Rules, 1994 - Rule 1(2), 2, 2(2), 3, 3(2)
- Kerala Public Service Commission (Additional Functions as Respects the Services under Local Authorities) Act, 1973 - Section 3(1)
- Kerala Public Services Act, 1968 - Section 2(1)
- Travancore-Cochin Interpretation and General Clauses Act, 1125 - Section 23

Hon'ble Judges: T.V. Ramakrishnan, J

Bench: Single Bench

Advocate: T.P. Kelu Nambiar, S.M. Prem and K.S. Santhi, for the Appellant; A.G. and P.C. Sasiddaran, K.G. Pavithran, K. Ramakumar, Kurian George Kannanthanam, Pirappancode V. Sreedharan Nair, P. Sanjay, O.V. Radhakrishnan, N. James Koshy, M.V. Bose, P.K. Suresh kumar, K.P. Balasubramanian and V. Giri for Respondents 3 to 29, for the Respondent

Judgement

T.V. Ramakrishnan, J.

Validity of the Kerala Panchayats Subordinate Service Rules, 1994 (for short "the K.P.S.S. Rules") issued as per Notification dated 16th June 1994 but brought into force with retrospective effect from 1st January 1990 is under challenge in these

Original Petitions on Constitutional and other grounds. As per the Rules two groups of employees working in different posts forming two wings of the Panchayat Department, identified as Panchayat Department Employees and Panchayat Common Service Employees have been integrated into one service called the Kerala Panchayats Subordinate Service. The group of Department employees who feel aggrieved by the integration have challenged the K.P.S.S. Rules as illegal, beyond the powers of the Government, arbitrary and unconstitutional being violative of Articles 14, 16 and 19 of the Constitution of India. The main relief prayed for in all the O.Ps. is to declare the K.P.S.S. Rules as totally invalid and inoperative in law.

2. The State of Kerala, the common Respondent in all the O.Ps., have filed a common counter affidavit in O.P. No. 8596 of 1994 contending that the K.P.S.S. Rules are fully legal and constitutionally valid. Copies of the said counter affidavit have been filed in all other O.Ps. with a request to treat it as the counter affidavit in all the O.Ps. Panchayat Common Service employees impleaded as party Respondents in the O.Ps. and others who have got themselves impleaded in the various O.Ps. have also filed counter affidavits objecting to the reliefs prayed for in the O.Ps. and contending that the K.P.S.S. Rules are fully legal and valid in law.

3. Since the points arising for decision in all the O.Ps. are common I am disposing of all the O.Ps. by this common judgment. I may for convenient sake treat O.P. No. 8596 of 1994 as the main O.P. and refer to the relevant documents as they are marked in the said O.P.

4. Before dealing with the respective contentions of the parties I may briefly state some of the admitted or undisputed facts in the background of which the State has taken a policy decision way back in 1987 to confer the status of Government servants on the Common Service Employees working in the various Panchayats in the State and to treat the two wings of the Panchayat Department as two units for the purpose of promotion as part of a scheme for the formation of an integrated service, for the implementation of which the K.P.S.S. Rules have now been brought into force with retrospective effect. Though not to the foil extent such facts and circumstances have been referred to in the pleadings of the parties and I have only called them out from such pleadings in a summary manner.

5. In 1960 with a view to unify and consolidate the law relating to Panchayats in the State, the Kerala Panchayats Act, 1960 was enacted. Thereafter as per Ext. P-1 G.O. dated 18th January 1962 the Government have created for the first time the Department of Panchayats. On the formation of the Department of Panchayats certain posts were created to form a subordinate service in the Department on the basis of the executive orders and appointments were made to the posts upon selection made by the Kerala Public Service Commission. The Petitioners in the O.Ps. as already indicated belong to subordinate service so formed. Later as per Government Order, dated 13th December 1963 a new service was constituted by name Kerala Panchayats service to comprehend all the employees then working in

the various Panchayats in the State. However, till 1977 the various Panchayats of the State were recruiting and appointing their own employees. In 1977 all the employees of the Panchayats in the State were constituted into a common service. In exercise of the powers conferred by Sub-section (2) of Section 39 and Sub-section (1) of Section 129 of the Panchayats Act Government of Kerala framed the Kerala Panchayats (Common Service) Rules, 1977 which came into force with effect from 1st April 1977. As per Rule 3 of the Common Service Rules, the regular full time employees of Panchayats other than Executive Officers and those paid from contingencies were constituted into a common service for each District. The power of appointment to the common service was taken away from the Panchayats and was conferred on the District Panchayat Officer of the respective Districts. The recruitment of the Panchayat employees was entrusted to the P.S.C. However, the employees in the Common service continued to receive their emoluments from the Panchayat funds. On and after the introduction of the Common Service Rules and the entrustment of the duty of selection to the P.S.C., the qualification fixed for selection of (1) Clerks in the Panchayat Department and (2) the Bill Collectors and Panchayat Assistants in the Panchayat Common Service was the same. The number of persons joining as members of the ministerial staff of the Panchayat Department were far smaller than the number of members joining as members of the Panchayat Common Service. However, once they join to these two branches their prospects in the respective branches were widely different or at any rate different. The members of the Panchayat Common Service were persistent in complaining that on joining the Panchayat Common Service they had to lag far behind their counterparts in the Panchayat Department. As such the Panchayat Common Service employees were demanding absolute parity with the staff of the Panchayat Department and full recognition as Government servants. In the light of the demand so made by the Panchayat Common Service emplyees, Government as per G.O.(Rt.) 1681/85/L.A. and S.W.D., dated 28th May 1985 appointed a committee of officers having the Commissioner and Secretary to Government in-charge of Panchayats as Chairman, the Director of Panchayats as Convenor and representatives of Finance and General Administration as members to examine the question whether the Panchayat Common Service employees may be made Government servants just like the Panchayat Executive Officers and at the same time allowing them to draw their emoluments from the Panchayat funds. The committee after long delibrations has submitted a report to the Government containing their recommendations. Government after a detailed examination of the recommendations of the committee decided to accept them in principle and issued Ext. P-2 G.O. dated 3rd February 1987 referring to the main recommendations of the committee which are as follows:

(i) The Panchayat employees may hereafter be made Government servants but may continue to draw their emoluments from the Panchayat Funds.

(ii) In future, only contingent employees may continue as Panchayat employees.

(iii) The Public Service Commission may be informed that future recruits for Panchayats Service shall be Government servant; and they may be recruited accordingly.

(iv) In future, there should be no distinction between Panchayat employees and Panchayat Department employees; they should be recruited by the Public Service Commission from a common selection list and they may be fully interchangable.

(v) Those who are already in service-(a) in the Panchayats Department and (b) in the Panchayats Common Service may be treated as two units for purposes of promotion and may be promoted on the basis of a suitable ratio fixed by the Government-since there are several practical difficulties in preparing an integrated seniority list of the two categories.

(vi) Rules may be framed for the promotion of the Panchayat Contingent employees (having sufficient service and educational qualifications) into suitable posts in the Panchayats Department.

(vii) Necessary amendments may be introduced in the Kerala Panchayats Act and Rules for implemending the above recommondations.

As per Ext. P-2 Government declared the Panchayat Common Service employees of the State except the contingent employees as full scale Government servants with effect from the date of the order, namely 3rd February 1987. Government also directed steps to be taken to effect necessary amendments to the Panchayat Act and the Rules made thereunder in accordance with the provisions contained in Ext. P-2 order. Pursuant to the policy decision as indicated in Ext. P-2 and the direction contained therein, Government issued Ext. P-3 G.O., dated 14th August 1987 and Ext. P-4 G.O. dated 19th September 1987 and redesignated certain posts in the Panchayat Common Service to equate them with corresponding posts in the Government Departments. Thus as per Ext. P-3 the existing posts of Bill Collector/Panchayat Assistant Gr. II were equated to the post of Lower Division Clerk and were redesignated as such. Similarly Panchayat Assistant Gr. I and Head Clerk. Gr. II were equated to the post of Upper Division Clerk and were redesignated as such. It was also provided that "All the Lower Division Clerks of the Panchayats will be bound to do bill collection work as and when so directed by the superior authorities. To be eligible for promotion to supervisory posts from the post of U.D. Clerk, the incumbent should have done bill collection work for at least three years during the period of his previous service." As per Ext. P-4 the post of Managers in the Panchayat were abolished. All persons then working as Managers were absorbed as Junior Superintendents. The post of Head Clerk Gr. I was converted into that of Upper Division Clerk. As per Ext. P-5 G.O., dated 6th November 1987 Government have sanctioned the creation of 402 posts of Junior Superintendents and 594 posts of Head Clerks in the Panchayats consequent on the implementation of the pay revision orders issued in G.O. dated 16th September 1985 in the case of

Panchayat officers in the State.

6. While so alleging delay in issuing the Rules as contemplated in Ext. P-2 order the Kerala Panchayat Employees Association and certain others filed O.P. Nos. 4237 and 4636 of 1988 before this Court for appropriate directions to the Government to frame the said Rules in regard to the posts in Panchayat Department either by issuing fresh Rules or by amending the existing Rules. Thereupon this Court in its judgment dated 7th October 1988 rendered in O.P. Nos. 4237 and 4636 of 1988 and other connected cases has issued the following directions:

1. The State of Kerala is directed to issue the Special Rules in regard to all the posts in Panchayat Department or achieve the same result by amending the existing rules as expeditiously as possible and at any rate within one year from the date of receipt of a copy of this judgment. In doing so, the ratio for promotion referred to in Government dated 3rd February 1987 will be prescribed.

2. Till direction (1) is implemented, 5 percent of the vacancies in the cadre of Executive Officer Grade II will be filled up provisionally by provisional promotion of eligible members of erstwhile Panchayat Common Service.

3. It is further directed that till direction (1) is implemented, promotions effected for all the posts in all the grades of Executive Officer and Panchayat Inspector shall be purely provisional and subject to the ratio to be fixed and the provisions of special rules or amendments to special rules to be issued.

Later the time limit specified in the judgment was extended up to February 1991 as per an order passed by this Court observing that if special rules are not issued as directed by this Court, Government may have to be directed not to effect any promotion to any cadre in the Panchayat Department until the special rules are issued. Pursuant to the directions contained in the judgment draft special rules were framed by the Government in exercise of the powers conferred by Sub-section (2) of Section 39 of the Panchayat Act read with Sub-section (1) of Section 2 of the Kerala Public Services Act, 1968 and in supersession of all other relevant Rules in consultation with the Director of Panchayats and by considering all the relevant facts. Thereafter as stated in O.P. No. 8596 of 1994 the service organisations including the Petitioners made representations to Government requesting to rectify the anomalies and to revise the draft rules so as to strike a balance in the process of equation and integration of the categories of posts both in the Panchayat Common Service and in the Department of Panchayats. Accordingly, Government invited the representatives of the Service Organisations including the Petitioners for discussions to sort out the issues and to find solutions for the same. The Petitioner Associations made many positive suggestions before the Government at the time of discussions. On framing the K.P.S.S. Rules the same were forwarded to the P.S.C. for their opinion taking a tentative decision to give the K.P.S.S. Rules retrospective effect from 7th October 1988, the date on which this Court has pronounced its judgment

in the connected O.Ps. It is relevant to note in this connection that the Panchayat Common Service employees were strongly demanding that the K.P.S.S. Rules be given restrospective effect from 3rd February 1987, the date on which Ext. P-2 order was issued by the Government.

7. In the meantime a Division Bench of this Court has set aside the time limit specified by the learned Single Judge for implementing the directions contained in the common judgment, in W.A. No. 195 of 1989. However, the Division Bench did not disagree with the reasons which compelled the learned Single judge to issue the directions contained in the judgment in the O.Ps.

8. In response to the reference made to the P.S.C. the Commission suggested certain modifications in respect of the qualification prescribed for certain posts and approved the draft notification subject to the modifications. The Commission, however, disagreed with the Government regarding the date on which the K.P.S.S. Rules have to be brought into force and suggested that the K.P.S.S. Rules may be given only prospective effect. Government considered the views of the P.S.C. and accepted all their suggestions except the one regarding the date with reference to which the K.P.S.S. Rules are to be brought into force.

9. In the meantime Government enacted Kerala Panchayats (Amendment) Act, 1991 (Act 22 of 1991) to amend the provisions of the Panchayat Act. Section 3 of the amending Act amended Section 39 of the Principal Act by substituting the following clauses for Clauses (1) and (2) of the Principal Act.

Officers and servants of Panchayat.-(1) The officers and servants of the Panchayat, other than contingent employees, shall be Government servants.

(1A) The Panchayat shall pay the officers and servants such salary and allowances as may, from time to time, be fixed by the Government and shall also make such contributions towards their leave allowance, pension and provident fund as may be required by the conditions of their service under the Government, to be made by them or on their behalf.

2. The Government shall, by rules made under the Kerala Public Services Act, 1968 (19 of 1968), regulate the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the officers and the servants other than contingent employees, and such rules may provide for the constitution of any class of officers or servants of Panchayats, into a separate service either for the whole State or for each revenue district.

10. With reference to the further steps taken by the Government in the light of objection raised by the P.S.C., it has been stated in the counter affidavit that in the light of the views expressed by the P.S.C. regarding the date with reference to which the K.P.S.S. Rules have to be brought into force the issue was again discussed by the Minister, Local Administration with the representatives of the organisations of

Panchayat employees and Panchayat Department employees on 17th November 1992 in the presence of Minister (Fin.), Minister (Industries), Minister (Revenue) etc. As a result of the discussions the following decisions were taken in the matter.

1. The rules will be given effect from 1st January 1990.

2. When the rules are implemented necessary measures will be taken to avoid reversion of employees as far as possible.

3. Anomaly if exists while implementing the rules would be rectified.

4. If the implementation of the Special Rules affects any person adversely, the grievance will be examined at the appropriate time.

On the basis of the decision so taken the Government again informed the P.S.C. its decision to give effect to the K.P.S.S. Rules with effect from 1st January 1990 as per its letter dated 12th March 1993 seeking its concurrence in the matter giving detailed explanation for the stand taken by them in the matter. In reply to the above communication the P.S.C. has reiterated its stand as per its letter dated 16th June 1993. The commission also requested the Government to issue special rules as early as possible.

11. As regards the various steps taken thereafter by the Government for finalisation of the K.P.S.S. Rules the following allegations have been made in the counter affidavit filed in the O.P. After receiving, the final opinion from the P.S.C. in response to the second reference made by the Government the matter was again placed before the Council of Ministers for their decision. The Council in its meeting held on 20th October 1993 has decided to implement the special rules with effect from 1st January 1990 ordering further that the retrospective promotion will be notional without the benefit of arrears and steps should be taken to avoid reversion. Ext. P-11 draft special rules with the above decision taken by the Council of Ministers was sent to the Subject Committee of legislation for its consideration. The Subject Committee in its meetings held on 24th January 1994 and 28th February 1994 considered the rules in detail and in its sitting on 28th February 1994 the Committee approved the draft special rules finally and accepted the proposal of the Government to include specific provisions in the rules regarding the points decided by the Council of Ministers. On the basis of the decision taken by the Council of Ministers in their meeting held on 20th October 1993 as accepted by the Subject Committee it was made clear in Sub-rule (2) of Rule 3 of the K.P.S.C. Rules that promotions to be effected on the basis of the retrospective application of the K.P.S.S. Rules will only be made without the benefit of arrears. Persons promoted to any post during the period between 1st January 1990 and 20th October 1993 and holding that post as on 20th October 1993 shall not be reverted for giving offect to the K.P.S.S. Rules. Thus the K.P.S.S. Rules in effect protects all persons who got promotion to any post including the post of Executive Officers during the period from 1st January 1990 and 20th October 1995 from reversion and allows him/her to

continue in that post unaffected by the retrospective operation of the K.P.S.S. Rules. It is in the background of these facts and circumstances that the K.P.S.S. Rules were issued by the Government and as such it is in the above background that its validity, constitutional and otherwise, has to be examined.

12. A brief general reference to the structural pattern of the posts in the ministerial wing and the common service wing of the Panchayat Department on the date of introduction of the new special rules may be necessary and useful for appreciating the rival contentions of the parties. Posts in the ministerial wing (subordinate service) in the Panchayat Department consists of the posts of C.Cs., U.D.Cs., H.Gs. and Junior Superintendent/Panchayat Inspectors. Method of appointment in respect of the above posts were laid down in Executive Orders issued by the Government. According to the existing orders, the entry cadre is that of L.D.C. which are filled up by direct recruitment through P.S.C. All other higher posts are to be filled up by promotion from the immediate lower posts subject to possession of the prescribed test qualifications. Apart from the above subordinate posts, there were various grades of Panchayat Executive Officers functioning under the Department. Above the post of Executive Officer, there were the posts of Taluk Panchayat Officer, District Panchayat Officer, Deputy Director and Joint Director upto which a L.D. Clerk can aspire for promotion. As per the rules framed under the Travancore-Cochin Panchayat Act there were three grades of Executive Officers, namely, Special Grade Executive Officers, Executive Officers Gr. I and Executive Officers, Gr. II. Appointments to the post of Gr. II Executive Officers were to be filled up by the following method:

1. 50 percent by appointment from among Head Clerks Panchayat Assistants/Bill Collectors of Panchayats based on Selection by P.S.C.

2. 40 percent by selection by P.S.C. from open market.

3. 10 percent by appointment from L.D.C.s of Panchayat Department having a minimun of 5 years service.

Appointments to the category of First Grade Executive Officers are to be made by transfer from U.D.Cs. of the Panchayat Department and by promotion of Second Grade Executive Officers in the ratio of 1:1. The posts of Special Grade Panchayat Executive Officers are to he filled up by promotion from Panchayat Inspectors.

13. On the other hand in the Panchayait Common Service constituted under Rule 3 of the Panchayat Common Service Rules, 1977, the categories of posts relevant for the purpose of the O.Ps. are L.D.Cs. (formerly Bill Collectors and Panchayat Assistants Gr. II). U.D.Cs. (formerly Panchayat Assistants Grade I/Head Clerks Grade II), Head Clerks and Junior Superintendents. The method of appointment and qualifications in respect of these posts were governed by the provisions of the Kerala Panchayat Common Service Rules, 1977.

14. Turning to the other factual particulars and the contentions detailed in the O.P. the following aspects need alone be noted specifically: First Petitioner is the Kerala Panchayat Executive Officers Association, represented by its General Secretary. Second Petitioner is the Federation of Panchayat Departmental Associations, represented by its Treasurer. Third Petitioner is a Panchayat Inspector. Petitioners have claimed that they represent the aggrieved employees of the Department of Panchayats under the first Respondent. Petitioners have submitted that though they have made various representations pointing out their grievances against Ext. P-2 and other orders issued in the matter, no action has been taken to redress their grievances from the concerned Minister as contained in Ext. P-6 statement before the legislative assembly and Ext. P-7 minutes of the meeting held to discuss the issue. In an attempt to show that there are ever so many anomalies created while implementing the provisions contained in the Panchayat Common Service Rules whieh needs rectification, the Petitioners have produced Exts. P-8 and P-9 extracts from the 5th Kerala Pay Commission where the Commission has adverted to certain anomalies and hardship created as a result of granting the status of Government servants to all Panchayat employees. Ext. P-12 is a copy of the representation submitted by the second Petitioner before the Subject Committee requesting the committee to rectify the anomalies in the draft special rules. Ext- P-14 is the photocopy of the K.P.S.S. Rules itself.

15. The gist of the contentions raised in the O.Ps. grouped broadly into 3 heads for the sake convenience are thus: (1) No consultation with the P.S.C. was done prior to the issuance of Ext. P-14 Rules. As such the K.P.S.S. Rules as a whole are unconstitutional and void being one issued in violation of the provisions contained in Article 320 of the Constitution of India as well as Section 3(1) of the Kerala Public Service Commission (Additional Functions as Respects the Services under Local Authorities) Act, 1973 (for short "the Additional Functions Act"). On that sole ground the K.P.S.S. Rules are liable to be declared as unconstitutional, (2) Retrospective operation given to Ext. P-14 Rules with effect from 1st January 1990 is arbitrary, unjust and unconstitutional. Government have no power authority or jurisdiction to bring into force the K.P.S.S. Rules with effect from 1st January 1990 even before the date of commencement of the Panchayat Raj Act under which it is specifically issued, namely 23rd April 1994. The date 1st January 1990 has no rational nexus with the object sought to be achieved by the promulgiation of the K.P.S.S. Rules, namely integration of the two wings of Panchayat employees. Retrospectivity given to the K.P.S.S. Rules affects the accrued rights in the matter of seniority and promotion of Departmental employees. It violates the ''sit back'' theory and goes against the doctrine of legitimate expectation. It is against the principles laid down by the Supreme Court in various decisions including the latest decision reported in K. Narayanan and others Vs. State of Karnataka and others, (3) Rule 3 of the K.P.S.S. Rules as a whole and specifically the provisions contained in the Note added to category 1 under Group I and the proviso added to category 3 under Group I are

totally arbitrary, illegal and as such void.

16. In support of Contention No. 3 it was pointed out that the prescription of a ratio of 8:5 for promotion to the post of special Grade Executive Officer and 9:1 to the post of Executive Officer between the Panchayat employees and the Department employees even after fusion and integration of two categories of employees is discriminatory and cannot be sustained in law. The ratio for promotion fixed for various posts between the Panehayat Department employees and Panchayat Common Service employees is most arbitrary and unreasonable. It was submitted that the net result of fixing the ratio adopted with retrospective effect from 1st January 1990 is that the Panchayat Department employees as a whole will be permanently debarred from getting any promotions to higher post in the near future. It amounts to practically debarring a particular group of employees from getting promotion and seniority at least for a long period while another group of employees working in the same cadre or equated cadre and fused into one service are such promotions almost exclusively. Such unequal treatment even after integration will amount to discrimination and will be violative of the fundamental rights under Articles 14 and 16 of the Constitution of India.

17. As regards the adverse effect of integration on the Department employees and anomalies resulting from the implementation of Exts. P-2, P-3 and P-4 orders and the K.P.S.S. Rules, Petitioners in O.P. No. 8596 of 1994 have alleged that as a result of treating all the employees in the Panchayat Common Service as full scale Government servants and the redesignation of the posts, chances of promotion of the Panchayat employees as improved considerably. Correspondingly the chances of promotion of the Departmental employees have been reduced substantially unsettling even their vested rights. Petitioners have a further case that equation of the post of Junior Superintendent in the Panchayat Common Service with the corresponding post of Junior Superintendent in the Panchayat Department is totally arbitrary and illegal. The post of Junior Superintendent in the Common Service has been the promotion post of Head Clerk whereas the post of Junior Superintendent in the Panchayat Department has been the promotion post of Panchayat Executive Grade I. As such the equation of the two posts cannot be justified though the scale of pay for the two posts is at present the same. It was also pointed out that the Junior Superintendent in the Common Service is under the Supervisory control of the Executive Officer and the equation of the post of Junior Superintendent in the Common Service to the post of Junior Superintendent in the Panchayat Department and treating the same as a feeder category to the still higher post of Special Gride Executive Officer/Special Grade Secretary (Grama Panchayat) with effect from 1st January 1990 results in an anomalous situation where a Junior Superintendent who was working hitherto under an Executive Officer gets promoted to a post higher than the post held by his erstwhile superior officer and that superior officer is compelled to work under him. Certain other anomalies have also been pointed out in the other O.Ps. to which I may refer a little later. It was also pointed out that in the

K.P.S.S. Rules there is only one category of Executive Officer redesignated as Secretary, Grama Panchayat. Before the introduction of the K.P.S.S. Rules there were 3 different grades of Executive Officers, namely Special Grade Executive Officer, First Grade Executive Officer and Second Grade Executive Officer. No provision has been made in the K.P.S.S. Rules for merging the 3 posts of Executive Officers. Prescription and implementation of a ratio of 9:1 between Head Clerks of the Common Service and the Department to the single cadre of Executive Officers with retrospective effect from 1st January 1990 will result in many of the junior Head Clerks in the Commom Service stealing a march over their senior, in the department wing. This is unjust and illegal. Certain other alleged anomalies and hardships have also been highlighted in the various O.Ps.

18. As regards the allegation that serious anomalies will result if the K.P.S.S. Rules are implemented as such, I may point out here itself that the learned Advocate General has fairly submitted that anomalies, if any, arising in the implementation of the K.P.S.S Rules will certainly be considered and removed by the Government to the extent possible.

19. As regards the various contentions raised in the common counter affidavit filed by the State in all the O.Ps. and the counter affidavits filed by the contesting Respondents, I may refer to them in detail while dealing with the contentions raised by the Petitioners so that repetition can be avoided.

20. For the purpose of easy reference, I may refer the most important provisions of the K.P.S.S. Rules under challenge in this O.P.:

1. Short title and commencement.-(1) These rules maybe called the Kerala Panchayats Subordinate Service Rules, 1994.

(2) They shall be deemed to have come into force on the first day of January, 1990.

2. Constitution.-(1) The service shall consist of the following categories of Officers, namely: (Groups I to VII omitted).

(2) With effect from 1st January 1990 the employees belonging to the Panchayat Common Service, except contingent employees and those from the Panchayat Department including all the Categories of Executive Officers shall be constituted into one service, namely, the Kerala Panchayats Subordinate Service.

(3) With effect from 23rd April 1994 the Special Grade Executive Officer and Executive Officer shall be redesignated as Special Grade Secretary (Grama Panchayat) and Secretary (Grama Panchayat) respectively.

Note 1: All the categories in Group I, categories 1 and 2 in Group II, categories 1, 2 and 3 in Group III and categories 1 and 2 in Group V shall be constituted at the State level and Categories 3 and 4 in Group II, category 4 in Group III, all the categories in Group IV, category 3 in Group V and all the categories in Group VI and VII shall be

constituted at the District level.

Note 2: Those who are in service as on the 1st day of January 1990 in die Panchayat Department and in the Panchayat Common Service shall be treated as two units for the purpose of promotion in respect of identical posts in the Panchayat Department and in the Panchayat Offices and separate gradation lists in respect of such categories shall be prepared and kept by the Director of Panchayats or the District Panchayat Officer, as the case may be.

Note 3: There shall be no distinction between die employees of identical posts of separate units as stated in Note 2 who are recruited through the Public Service Commission or after 1st day of January 1990 the District Panchayat Officers/Director of Panchayats shall perpare integrated seniority list in respect of such employees in each category.

3. Appointment:-Appointment to various categories shall be made as follows:

Category	Method of appointment
Group I	

Note:-A ratio 8:5 shall be followed between the persons in the gradation list of Junior Superintendents of the panchayat offices and Panchayat Inspectors/Junior Superintendents of the Panchaayt Department for appointment as Special Grade Exective Officer/Special. Grade Secretary (Grama Panchayat). When one list is exhausted the persons in the other list will become exclusively eligible for appointment till the last Junior Superintendent of the Panchayat Offices or Panchayat Inspector/Junior Superintendent of the Panchayat Department as the case may be, is promoted and there after there will be no ratio and the post of Special Grade Executive Officer/Special Grade Secretary (Grama Panchayat) shall be filled up by promotion from the Panphayat Inspector/Junior Superintendent according to seniority.

Note.- This post is categories as Panchayat Inspector and when the Panchayat Inspector is posted for office work, he will be designated as Junior Superintendent. Both the posts of Panchayat Inspector and Junior Superintendent are inter-changeable.

2.
By
Direct
recruitment

The ratio between promotion and direct recruitment shall be 6:4.

Provided that the ratio 9:1 shall be followed between Head Clerks of the Panchayat Offices and Head Clerks of the Panchayat Department for promotion as Executive Officer/Secretary (Grama Panchayat), till the last Head Clerk in both the units as on the date of commencement of these rules is appointed as Executive Officer/Secretary (Grama Panchayat). Thereafter, there shall be no ratio for promotion and 60% of the posts of Executive Officer/Secretary (Grama Panchayat) Shall be filled up by promotion from among Head Clerks according to seniority.

I may straight away deal with the contentions as I have already grouped them above.

21. Point No. I - Invalidity on the ground of absence of consultation with the Kerala Public Service Commission.-Leading the arguments on behalf of the Petitioners in the O.Ps. learned senior Counsel Shri T.P.K. Nambiar appearing for the Petitioners in O.P. No. 8596 of 1994 has mainly argued the above point alone leaving the other points to be argued by the Counsel appearing in other connected O.Ps.

22. The two questions to be considered in this connection are: (1) Whether before issuing the K.P.S.S. Rules in question the Government had consulted the P.S.C. as required under Article 320(3) of the Constitution of India and/or u/s 3(1) of the Additional Functions Act? and (2) If not whether the K.P.S.S. Rules can be declared as unconstitutional and illegal on that ground?

23. There is no dispute about the fact that the draft rules which was later finalised and issued as K.P.S.S. Rules were framed u/s 39(2) of the Panchayat Act read along with Section 2(1) of the Public Services Act, 1968 and those draft rules were fully approved by the P.S.C. as per their communication dated 16th June 1993 sent in reply to the second reference made by the Government. Thus not only the principles based upon which various provisions were made in the draft rules but also the entire provisons in the draft rules Were approved by the P.S.C. when the rules in question were referred to them on the second occasion. The only objection raised by the P.S.C. to the draft rules on the second reference was regarding the retrospectivity given to the rules. There cannot also be any dispute about the fact that the draft Rules as approved by the P.S.C. itself without any material change has now been brought into force as Ext. P-14 Rules. In fact in paragraph 33 of O.P. No. 8596 of 1994 the Petitioners themselves have stated that Ext. P-14 Special Rules is more or less a reproduction of Ext. P-11 draft Rules. As such it is evident that as a matter of fact P.S.C. was consulted twice while the rules were in draft form and the P.S.C. has approved the same in toto except the date of commencement of the K.P.S.S. Rules.

24. Another important aspect to be noted is this connection is that both the provisions one under Article 320(3) of the Constitution and the other u/s 3(1) of the Additional Functions Act require only consultation on the principles to be followed in the matter of making appointment, transfers etc. to the service and posts and not on the actual rules or other particulars thereof. The true position being thus, if it can be shown that there had been consultation on the principles based upon which K.P.S.S. Rules have been framed, it may not be possible to contend legally that there had not been consultation with the P.S.G. prior to the issuance of the K.P.S.S. Rules. Therefore, in the circumstances of this case, in my view, it is futile to contend that there had not been consultation with the P.S.C. on the principles based on which Ext. P14 Rules have been framed and issued as required by the relevant provisions of law. In fact but for the repeal of the Panchayat Act and enactment of the Panchayat Raj Act before the issuance of the K.P.S.S. Rules it may not have been possible to raise any such contention leave alone its acceptance.

25. In this factual background the further question to be considered is whether a fresh consultation was necessary before the K.P.S.S Rules were issued after the repeal of the Panchayat Act and the enactment of the Panchayat Raj Act. It was contended that the Rules inqusestion are Rules framed under the Panchayat Raj Act and in exercise of the powers conferred under that Act. As such the consultation admittedly made prior to the commencement of the Panchayat Raj Act may not be sufficient in law to satisfy the requirements of the provisions contained in Article 320(3) of the Constitution of India and/or u/s 3(1) of the Additional Functions Act. It was further contended that whatever may be the result of the violations of the provisions of Article 320(3) of the Constitution, the result of violation of the statutory requirement u/s 3(1) of the Additional Functions Act is fatal to the validity of the K.P.S.S. Rules.

26. As already indicated the requirement of both the provisions, one constitutional and the other statutory is only to have consultation on principles of appointment, transfers etc. and not on the Rules framed as such in all its aspects. There is nothing in both the provisions to hold that the consultation must be of the K.P.S.S. Rules as framed finally under a particular enactment or otherwise. As such, I am inclined to hold that even if the K.P.S.S. Rules are Rules framed under the Panchayat Raj Act it may not require a fresh consultation for its validity as contended by the learned Counsel, for the simple reason that there had already been consultation with the P.S.C. on the principles based upon which K.P.S.S. Rules have been admittedly framed and finalised.

27. Further it is difficult to accept the contention that it is in exercise of the powers conferred by the Panchayat Raj Act that the Rules in question have been issued. The contention of the learned senior Counsel Shri Nambiar was that where, as in this case, a provision in an. Act directs framing of Rules to regulate the service conditions of the employees u/s 2(1) of the Public Services Act, power so conferred

must be treated as power conferred under that particular Act itself and not under the Public Services Act. In other words, the contention is that only when a particular enactment is silent about the framing of Rules to regulate the service conditions of employees, question of exercising power u/s 2(1) of the Public Services Act. As an example the learned Counsel referred to Fire Force Act which does not contain any provision authorising the framing of Rules either under the Fire Force Act itself for under the Kerala Public Services Act. It is only in such cases according to the learned Counsel that the power u/s 2(1) of the Public Services Act could legally be exercised. Section 2(1) of the Public Services Act is a general provision contained in a general Act conferring power on the Government to frame Rules in the absence of any special power conferred under particular enactments. When a particular enactment itself confers power to frame rules under it or directs framing of the rules specifically under the Public Services Act, power conferred by the general provision will stand excluded. On the above principle it has to be held that in the light of the provisions contained in Sections 179(3) and 180(4) of the Panchayat Raj Act the Rules in question is liable to be held as Rules framed under the Panchayat Raj Act and not under the Public Services Act.

28. First of all the wording in the notification by which the K.P.S.S. Rules have been issued would clearly indicate that it is in exercise of the provisions u/s 2(1) of the Public Services Act that the K.P.S.S. Rules have been framed though the provisions in Sections 179(3) and 180(4) of the Panchayat Raj Act have also been referred to in the notification. Sections 179(3) and 180(4) are in the following terms:

179(3) Subject to the provisions of this Act the Government shall by rules made under the Kerala Public Service Act, 1968 (19 of 1968), regulate the classification, method of recruitment, conditions of service, pay and allowances, and discipline and conduct of the executive officers appointed under Sub-section (1), and such rules may provide for the constitution of the executive officers along with such other Government servants as are considered necessary by the Government into a separate service or cadre either for the whole State or for each district.

180(4) Two or more Panchayats of the same level may, subject to such rules as may be prescribed, and shall, if so required by any authority empowered in this behalf, by rules appoint the same officer or employees to exercise or discharge any powers or duties of a similar nature for both or all of them.

On the wording of the above provisions also, it is difficult to hold that those provisions are provisions conferring any independent power on the Government to frame any rules to regulate the conditions of service of the employees. A plain reading of the provisions would show that they only refer to the power to frame Rules already conferred on the Government generally u/s 2(1) of the Public Services Act. Such provisions in my view cannot be considered as special provisions conferring power to frame rules independently excluding the general power. They can only be considered as provisions added by way of abundant caution, and not for

conferment of independent power other than the power conferred by the Public Services Act. If that was the purpose there would not have been any necessity to refer to the power already vested u/s 2(1) of the Public Services Act and to direct framing of the Rules under that provision. As such it is difficult for me to accept the contention that Sections 179(4) and 180(3) of the Panchayat Raj Act are provisions conferring special power to frame Rules and that the Rules must be deemed to be Rules framed under the Panchayat Raj Act and not under and in exercise of the power conferred u/s 2(1) of the Public Services Act. The fact that in cases like the one under the Fire Force Act where there is no provision conferring power, the power to frame rules to regulate conditions of service may have necessarily to be traced to the general power conferred u/s 2(1) of the Public Services Act, is no reason to hold that when the statutory provision itself had only directed rules to be framed u/s 2(1) of the Public Services Act, it cannot be considered as framed Under the Public Services Act but must be deemed to have been framed under the particular statute.

29. Further, it has to be noted that the draft Rules were framed u/s 39(2) of the Panchayat Act read along with Section 2(1) of the Public Services Act and it was after the approval of the Rules by the P.S.C. that the Panchayat Raj Act was replaced and re-enacted as per Panchayat Raj Act. On the repeal and re-enactment of the Panchayat Act by the Panchayat Raj Act the draft Rules made under the Panchayat Act would continue as draft rules made in exercise of a valid statutory power and duly approved by the P.S.C. on consultation made by the Government in discharge of its legal obligation of consultation under Article 320(3) of the Constitution and or u/s 3(1) of the Additional Functions Act. There is nothing in the Panchayat Raj Act which is inconsistant with any of the provisions in the draft Rules and as such in the light of the provisions contained in Section 23 of the Interpretation and General Clauses Act 1125 there may not be any necessity of having a fresh consultation on the principles based on which the Rules in question are framed to satisfy the requirements of the provisions in Article 320(3) of the Constitution of India and or Section 3(1) of the Additional Functions Act. For all the above reasons I would hold that the Government had duly consulted the P.S.C. before the K.P.S.S. Rules were issued and there has not been any violation of the requirements of the provisions contained in Article 320(3) of the Constitution of India and Section 3(1) of the Additional Functions Act.

30. Even though in the light of the above conclusion reached by me it may not strictly be necessary to consider the question regarding the consequence of violation of the requirements of Article 320(3) and or Section 3(1) of the Additional Functions Act, I would briefly consider the above aspects also since the Counsel on both sides have elaborately argued the point at length. As regards the effects of a violation of the requirements of Article 320(3) of the constitution the decision reported in State of U.P. Vs. Manbodhan Lal Srivastava, has settled the legal position beyond any doubt. In the above decision the Supreme Court has categorically held that violation of the provisions in Article 320(3) of the Constitution or an irregularity

committed in the matter of consultation may not invalidate the act done in violation of the provisions. It has also been held that the violation of the provisions will not confer any cause of action to a party to approach the High Court or Supreme Court under Article 226 or 32 as the case may be and to get reliefs on the ground of such violation or irregularity committed in the matter. As such even if it is held that a fresh consultation was necessary after the commencement of the Panchayat Raj Act, still the absence of consultation may not invalidate the K.P.S.S. Rules and the Petitioners may not be entitled to get any relief on that ground in these original petitions.

31. The only other point remaining to be considered under this head is to see whether Section 3(1) of the Additional Functions Act has any application to the case and if it has whether the Government have complied with the requirements of that section also. If it has not complied with such requirements, a further question may arise as to what are the consequences of violation of Section 3(1) of the Additional Functions Act. The learned senior Counsel Shri Nambiar has contended as already indicated that a violation of the requirements of Section 3(1) of the Additional Functions Act would have the effect of invalidating the entire K.P.S.S. Rules.

32. As against the above submission the learned Advocate General and other Counsel have submitted that Section 3(1) of the Additional Functions Act may not have any application to the case as the appointment, transfer etc., relate to fullfledged Government employees and not to mere employees of the local authorities which term may comprehend Panchayats also. It was contended that on and after 3rd February 1987, the provisions of Section 3(1) of the Additional Functions Act may not have any application since the provisions of the said Act would apply only, to appointments, transfers, etc., regarding employees of local authorities other than full scale Government servants. From Ext. P-2 itself it is clear that on and after 3rd February 1987 recruitment of employees to Panchayats itself is as Government servant. It was also contended that Section 3(1) of the Additional Functions Act may have application only when an appointing authority wanted to exercise powers regarding the matters enumerated therein and not when the Government proposes to exercise powers to deal with such matters. It was submitted that the provisions in Section 3(2) of the Additional Functions Act make the position clear.

33. The effect of conferment of full status of ''Government servant'' on all the Panchayat employees by Ext. P-2 order is to constitute the service under the Panchayat as Public Service consisting of full scale Government servants and to bring it under the purview of the Public Services Act. In the light of the principles laid down by the Supreme Court in State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, and Bombay Oil Industries Pvt. Ltd. Vs. Union of India (UOI) and Others, as tests for deciding whether a service is a ''Public Service'', I have no hesitation to hold that at least on and after 3rd February 1987 service under the Panchayat is

liable to be treated as ''Public Service''. The purpose of the Additional Functions Act is only to bring certain services outside the ''Public Service'' also within the control of the P.S.C. by making it obligatory to consult them in matters enumerated therein. If that is the avowed object and purpose of the Additional Functions Act, it is clear that on and after 3rd February 1987 the provisions of the said Act may not have any application as far as service under the Panchayats is concerned. As such consultation under Article 320(3) of the Constitution alone is necessary and I have already found that Government have made such consultation in this case.

34. In this view, I am not considering the question whether Section 3(1) of the Additional Functions Act will have any application when the Government itself proposes to exercise power in respect of the matters enumerated in the said Section or not. So also I do not think that I need go into the question regarding the consequences of violation of the requirements of Section 3(1) of the Additional Functions Act except to observe that prima facie it is difficult accept that a statutory requirements stands on a stronger footing than an identically similar constitutional requirement.

35. Of course, the learned senior Counsel has in this connection referred to and relied upon the following passage in Durga Das Basu''s ''Shorter Constitution of India''.

But consultation would be mandatory when the word ''shall'' is used in a Rule or Regulation made by the Government, e.g., regulation 5(2) of the Indian Forests Service (Initial Recruitment) Regulations, 1966.

(page 1117)

The decision relied upon as authority for the proposition is the one reported in Union of India (UOI) Vs. H.P. Chothia and Others, . It is to be noted that Regulation 5 of Indian Forests Service (Initial Recruitment) Regulations, 1966, the scope of which was considered by the Supreme Court in the above decision was a provision prescribing the procedure to be followed in the matter of preparation of list of suitable officers for appointment to posts in senior and junior scales of service. Regulation 5(2) of the Regulations required the list prepared in accordance with Regulation 5(1) of the Regulations to be then referred to the advice by the Central Government along with the records of all officers who are included in the list and as regards those officers whose names are not included in the list, reasons for their non-inclusion in the list. I do not think that simply because the Supreme Court has in the above decision construed the requirements of regulation 5 of the Regulations as mandatory it can be treated as an authority for saying that consultation would always be mandatory when consultation is prescribed by a rule. As such I would reject that submission.

36. In the light of the above discussion, I would hold that there is no merit in the contention that the Rules in question are unconstitutional and invalid on account of

the absence of consultation either under Article 320(3) of the Constitution of India or u/s 3(1) of the Additional Functions Act.

37. Point No. 2 - Is the retrospective effects give to the K.P.S.S. Rules justifiable in the facts and circumstances? Under this head, I may first deal with the specific contention raised to the effect that Government have no power, authority or jurisdiction to give retrospective effect to the K.P.S.S. Rules with reference to a date anterior to the date of commencement of the Panchayat Raj Act, namely 23rd April 1994. It was contended that even conceding the power to frame rules with retrospective effect, the K.P.S.S. Rules could not have been given retrospective effect with reference to 1st January 1990 and as such Rule 1(2) of K.P.S.S. Rules is unconstitutional and unsustainable in law. The fundamental premise on which the argument proceeds is that the K.P.S.S. Rules are Rules framed exclusively under and in exercise of the powers conferred by the Panchayat Raj Act. I have already found against the above contention. The Rules in question are rules framed to integrate and regulate the service of employees who have been working in the two wings of the Panchayat Department, years prior to the enforcement of the Panchayat Raj Act and as such the date of commencement of the Panchayat Raj Act has no significance in the matter of enforcement of the K.P.S.S. Rules. As such I would reject the above contention as totally untenable.

38. The further question to be considered is whether the retrospectivity given to the Rules with effect from 1st January 1990 is justifiable in the circumstances of the case, conceding power in the Government to frame rules with retrospective effect. In this connection it was submitted that retrospectivity given to the K.P.S.S. Rules is totally arbitrary, unjust and unfair. It affects vested rights of the Petitioners in the matter of promotion and seniority. It unsettles settled positions regrading seniority and other connected matters and goes against the "sit back" theory. There is no justifiable reason to give retrospective effect to the Rules in question with effect from 1st January 1990. The date 1st January 1990 is an arbitrary date chosen without any rhyme or reason. It is an act done to favour a numerically strong group of employees sought to be integrated only on account of the illegal pressure which they could exert on the Government by means of strike and other illegal means and as such, mala fide and arbitrary. These are the main arguments advanced against the retrospectivity given to the K.P.S.S. Rules.

39. On behalf of the State and other contesting Respondents it was argued that there was a legitimate grievance for the Common Service employees that if the proposed rules adopting a suitable ratio were issued without undue delay, many of the Common Service employees could have got promotion to higher grades much earliear and they would have also got seniority in the promoted cadres with effect from 3rd February 1987 itself. As such a revision of seniority and promotion with effect from 3rd February 1987 was just and essential to balance the rights of rival group of employees. The Panchayat Common Service employees were accordingly

demanding enforcement of the K.P.S.S. Rules with effect from 3rd February 1987 whereas the department employees were objecting to the same and wanted the Rules to be given only prospective effect. It is after a careful consideration of the relative merits of both demands at various levels and ascertaining the views of expert bodies and taking into consideration all relevant facts and circumstances, a policy decision was taken by the Government to give effect to the K.P.S.S. Rules with effect from 1st January 1990 as a via media and to fix the ratio as indicated in the Rules in question. It is a bona fide action taken by the Government as part of the scheme for integration of the two wings of employees. It will be evident from Clause (2) of Rule 3 of the K.P.S.S. Rules that every attempt has been made to safeguard the rights accrued or vested in the employees till 20th October 1993 even though retrospective effect has been given to the Rules in question with effect from 1st January 1990. As such there is no merit in the contention that the Rules in question have been given retrospective effect arbitrarily, unjustly and without properly applying the mind to all relevant facts and circumstances in a mala fide manner yielding to the illegal pressure exerted by a numerically strong group of employees over the numerically weak group of employees to their great prejudice. It was submitted that no right of the Petitioners much less any vested right is affected by the retrospective effect of the Rules in question. Even if any vested right is affected by the retrospectivity of the Rules in question, that may not be a sufficient ground. to invalidate the retrospectivity of the Rules in question unless it is shown that any of the fundamental rights of the Petitioners are affected by the operation of the Rules in question. Neither the fact that the Rules in question affects the inter se seniority nor chances of promotion of the Petitioners are substantially reduced that can be a ground for declaring the retrospectivity of the Rules in question as invalid. As such the Petitioners have to entertainable grievance in this regard. The very limited retrospectivity given to the K.P.S.S. Rules is perfectly justifiable.

40. It is clear from Ext. P-2 order that the Government have taken a decision to treat all the employees of the Panchayat Department including the Panchayat Common Service employees as full scale Government servants and to remove the difference then existing between the two wings of employees and to create an integrated service. It is also clear from Ext. P-2 that the Government have taken a decision to frame necessary rules fixing a ratio for promotion with reference to the groups of employees working in the two wings treating them as separate units till all existing hands in the two wings are promoted and integrated on the basis of the new rules. It is also evident that though certain objections were raised against Ext. P-2, nobody has successfully challenged the same till the issuance of the impugned Rules. As such it is clear that on and alter 3rd February 1987 the Government was bound to frame necessary rules fixing a suitable ratio for promotion and to promote the employees in accordance with the ratio fixed and complete the integration as per the said Rules without any delay. Evidently no Rules were framed till this Court directed die Government to frame Rules. Even thereafter there was considerable

delay and the Rules were ultimately issued only as per Ext. P-14. A dispassionate analysis of the facts and circumstances forming the background in which the K.P.S.S. Rules were issued with retrospective effect to which reference has already been made will clearly indicate, in my view, the necessity of giving retrospective effect to the Rules in question. Government was bound to frame rules and should have given promotion after 3rd February 1987 to all employees in the two wings of the Department only in accordance with the suitable ratio fixed as per the Rules. There was considerable delay in framing the Rules and fixing the ratio. There was persistent demand for framing Rules and to effect future promotions and integration as per the Rules at an early date. The various steps taken by the Government to frame draft Rules and to finalise the same in consultation with the P.S.C. referred to in detail in the counter affidavit has not been disputed effectively by the Petitioners. In the circumstances, I have no hesitation in my mind to accept the contention of the Government that there was a legitimate need to give retrospective effect to the K.P.S.S. Rules with effect from 1st January 1990 and that the adoption of 1st January 1990 as the cut off date for giving effect to the Rules in question was a bona fide decision taken with a view to balance the rival claims of both wings only as a via media between the two rival claims of employees. As such I would reject the broad contentions raised to the effect that the retrospectivity given to the Rules in question is mala fide and that there was absolutely no need to give retrospective effect to the Rules in question. I would also reject the contention of the Petitioners that it is a decision taken by the Government without applying its mind and yielding to the illegal pressure exerted by a numerically strong group of employees quite unjustifiably and to the prejudice to the group of employees who are lesser in number to which group the Petitioners belong.

41. The only other question to be considered under this head is whether adoption of 1st January 1990 as the date for giving retrospective effect is in any way arbitrary or unjust and whether the K.P.S.S. Rules are liable to be declared as illegal on that ground. As regards the adoption of 1st January 1990 as the date for giving retrospective effect, what has been contended by the State is that it is a date adopted as a via media between two extreme claims put forward by the two wings of employees sought to be integrated one-group claiming retrospectivity with effect from 3rd February 1987 and the other for prospective operation alone. In the counter affidavit State has narrated the various steps taken by it before finally accepting 1st January 1990 as the date of commencement of the Rules in question. It has been specifically stated in paragraph 25 of the counter affidavit that "it is the decision of the Council of Ministers that the Rule shall be given effect from 1st January 1990 which was taken after considering all aspects relating to the issue". As already indicated, originally 7th October 1988 was the date proposed for giving retrospective effect for the K.P.S.S. Rules. It was on a reconsideration of the matter in the light of the objection taken by the P.S.C. that the date of refixed as 1st January 1990 in the meeting of the Council of Ministers held on 28th October 1993, along

with the decision to take necessary measures to avoid reversion of employees. The decision so arrived at was duly considered and adopted by the Subject Committee also. It is relevant to note in this connection that pursuant to the decision taken on 20th October 1992 Clause (2) of Rule 3 of the Rules in question was added making a provision to protect the promotions granted to all employees from 1st January 1990 till 20th October 1993 and to avoid reversion of employees on the implementation of the Rules in question with effect from 1st Jaunary 1990. The above provision in effect restricts the scope of retrospectivity to 20th October 1993 alone as far as promotion is concerned though inter se seniority is still liable to be refixed with effect from 1st January 1990. Taking note of the fact that it is for implementing Ext. P-2 decision dated 3rd February 1987 that the K.P.S.S. Rules have been brought into force on 16th February 1994 with effect from 1st January 1990, the contention that it is a bona fide decision taken as a via media between rival claims of the two groups of employees is only to be accepted.

42. Differences in the service prospects which gave rise to strong discontentment and resentment among the Common Service employees from 1977 onwards and more poignantly from 1987 onwards as discernible from the relevant Rules existing prior to K.P.S.S. Rules can be briefly indicated as follows: The main qualification prescribed for a L.D. Clerk in both wings is S.S.L.C. or equivalent. To become a U.D. Clerk in the Panchayat Common Service one has to pass panchayat test (4 papers) whereas L.D. Clerk in the Department need not pass it. Department wing employee need pass panchayat test only when he becomes First Grade Executive Officer.

43. Moreover, in the Panchayat Common Service a L.D. Clerk can get promotion only to the posts of U.D. Clerk, Head Clerk and Junior Superintendent. Thereafter in the majority of cases he may have to retire without any further promotion. But in the department wing a L.D. Clerk can aspire promotion to not less than 8 superior posts including the post of Joint Director with the same qualification subject to rules of promotion. Of course, appointment to the post of Executive Officers (Gr. II) is by selection through P.S.C. and by promotion. 10 percent of the vacancies are to be filled up by promotion from L.D. Clerks having 5 years of experience and 50 percent by selection from among Head Clerks and other lower grade officers who have put in 10 years service in panchayat and the remaining 40 percent from open market. Thus a L.D. Clerk of the Department Wing having 5 years'' service can become an Executive Officer (II Grade) and become the superior of all the employees in the Common Service Wing. Similarly promotion to Executive Officer (I Grade) is in the ratio of 1:1 from among Executive Officers (II Grade) and the U.D. Clerks and Head Clerks of the Department. On promotion to the post of Executive Officer (Grade I) an officer who was till then a U.D. Clerk becomes the superior officer of all officers including Junior Superintendent and all other senior officers in the Common Service Wing. Thus in the case of Common Service employees holding the posts of U.D. Clerks and Head Clerks, they were not having any chance of promotion to the post of I Grade Executive Officers though their counter parts in the Department Wing

had 50 percent of vacancies reserved in their favour.

44. Apart from the above differences, there was a further order issued allowiug I Grade Executive Officers to work in the posts of II Grade Executive Officer receiving full salary and benefits provided to I Grade Executive Officers. On the strength of the above G.O. I Grade Executive Officers used to be appointed to posts of II Grade Executive Officers to create vacancies in the posts of I Grade Executive Officers so that those vacancies can again be filled up by promotion from among II Grade Executive Officers and U.D. Clerks and Head Clerks of the Department totally avoiding filling up of vacancies to the posts of II Grade Executive Officers and blocking even the only channel of appointment to the post of Executive Officers available for Common Service employees. It has been specifically averred by the additional 7th Respondent that there was only one selection by the P.S.C. for filling up the vacancies of II Grade Executive Officers during a period of 7 years and that too for 35 vacancies. As a result practically the Common Service employees got promotion to the post of Executive Officers rarely as per the existing Rules. It was to overcome the above situation and balance the rights of employees who were substantially placed on the same footing that suitable ratio and equation of posts were provided for as per the Rules was the submission of the learned Advocate General and the Counsel for the contesting Respondents.

45. As such, apparently it is to grant the benefit of promotion and seniority to a proportionate number of employees in the Common Service Wing a limited retrospectivity and a ratio has been adopted in the K.P.S.S. Rules. Though alleged it has not been established that it is either a mala fide act or an act done for extraneous reasons. As such in my view the retrospectivity of the Rules in question is perfectly justifiable. In this, connection I find sufficient support from the decision reported in V.T. Khanzode and Others Vs. Reserve Bank of India and Another, where Chandrachud, C.J. speaking for the Bench has accepted a similar contention advanced in justification of the retrospectivity of a circular under consideration in that case. In that case though it was made out that as a result of the retrospective operation several officers in one group have lost their old seniority by several steps, the Supreme Court upheld the retrospectivity of the circular after observing so:

...No Scheme governing service matters can be fool proof and some section or the other employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these....

46. Finally I may also examine yet another contention raised against the validity of the retrospectivity granted to the K.P.S.S. Rules. It was strongly contended that as a result of the retrospective effect of the Rules the group of Department employees will suffer reversion and they will also be deprived of their vested rights in so far as they may not get any promotion hereafter. As such it was contended that the Rules

in question violate their fundamental rights under Articles 14 and 16 of the Constitution.

47. I do not find any merit in the above contention also. As regards the contention that on implementation of the Rules reversion will take place, the provision contained in Rule 3(2) of the Rules is a complete answer and deserves no further consideration on merits.

48. Regarding the contention that implementation of the Rules would affect the vested rights of the Petitioners and other department employees, what is pleaded is only that they will lose their chances of promotion in future and not that they will lose their right to be considered for promotion in accordance with the Rules or that they will lose any of the rights already accrued to them on the basis of the previous rules. The contention raised in some of the O.Ps. that the Petitioners will suffer reversion on the implementation of the Rules is only to be rejected in the light of Rule 3(2) of the Rules. As such the grievance of the Petitioners can only be that their chances of promotion and seniority to some extent will be affected substantially on the implementation of the Rules. The question is whether the Petitioners can successfully challenge the retrospectivity of the Rules on the ground of impairment of their chances of promotion in future or on the ground that they will lose their seniority to some extent.

49. Law on the point is well settled that a reduction in chances of promotion or loss of seniority in some places does not affect any right and that there is no fundamental right to promotion but an employee has only a right to be considered for promotion when it arises in accordance with the relevant Rules in existence from time to time [See K.S. Vora and Others Vs. State of Gujarat and Others, and Director, Lift Irrigation Corporation Ltd. and Others Vs. Pravat Kiran Mohanty and Others, . It is also an equally settled law that the power to frame Rules to regulate the conditions of service carries with it the power to amend or alter the Rules with retrospective effect also [See T.R. Kapur and Others Vs. State of Haryana and Others, and Simson Luckose v. D.S.P., Kottayam 1990 (2) KLT 371]. Further it is again a settled law that so far as Government servants are concerned they acquire a status on appointment to a post and their conditions of service are governed by statute or statutory rules and not on consent and depend upon the rules in existence from time to time and such rules can be unilaterally altered by the rule making authority [See Roshan Lal Tandon Vs. Union of India (UOI), , State Bank of India v. S. Vijaya Kumar AIR 1991 S.C. 794 Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . Repeatedly the Supreme Court and this Court have held that policy decisions taken by the Government cannot be interfered with by the High Court under Article 226 of the Constitution unless the decision is so arbitrary, mala fide or bereft of any descernible principles justifying the decision [See Union of India and others Vs. S.L. Dutta and another, , Director, Lift Irrigation Corporation Ltd. and Others Vs. Pravat Kiran Mohanty and Others, , and Simon Luckose v. D.S.P. Kottayam

1990 (2) KLT 371. Keeping in mind the above relevant principles it is difficult to hold that retrospectivity given to the K.P.S.S. Rules with effect from 1st January 1990 is in any way arbitrary, unjust and violative of any of the vested rights of the Petitioners.

50. Before parting with the discussion under this head, I must consider two important decisions strongly relied upon by the Counsel for the Petitioners, namely K. Narayanan and others Vs. State of Karnataka and others, and Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, .

51. K. Narayanan and others Vs. State of Karnataka and others, is a case where the Supreme Court has considered the validity of a rule providing for appointment by transfer with retrospective effect in a different and higher grade from a lower grade without any selection list or criteria, solely on the ground that incumbants have acquired further qualification while in service in the lower grade. It was not a rule made as part of an integration scheme as in this case. What was in fact done in that case was to transfer and place the Diploma Engineers working in the cadre of Junior Engineers into the cadre of Assistant Engineers with effect from 1976 in 1986, with reference to the date on which the employees acquired the degree qualification subject to availability of post. The above methodology adopted in the Rules was specifically found to be violative of the basic norms of appointment and recruitment to the service. It was also found by the Supreme Court that there was absolutely no need to give retrospective operation to the rules with effect from 1976 for achieving the avowed objects far which the rules were framed, namely providing of better service conditions and opportunity to improve the qualifiations possessed by diploma holder Junior Engineers. As such it was further observed that retrospectivity of the rules is only a camouflage for appointment of Junior Engineers from back date. It is in the above circumstances that the Supreme Court has invalidated the retrospectivity given to the Rules as violative of Article 14 and 16 of the Constitution of India observing that "even where the statutes permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right so as to effect vested right". It was because the Supreme Court has found that the rule violates the constitutionally vested rights of the Petitioners therein that the Court has declared the retrospectivity as unconstitutional. The ratio of that decision cannot be justifiably applied to the facts of the case on hand.

52. Similarly Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, also is a case where the Supreme Court has declared the retrospective amendment of the rule as bad finding that when a person is deprived of an acquired right vested in him under a statute or under the constitution and he challenges the same in the Court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation. The rule challenged in that case was one brought into force specifically for the purpose of avoiding the legal effect of a judgment rendered by the Central Administrative Tribunal, Calcutta Bench

upholding the right of Mohanty and other general category of officers to be promoted prior to their juniors in service. The rule introduced a quota of reservation for Scheduled Castes and Scheduled Tribes in the matter of appointment by promotion with retrospective effect for the first time. As a direct result of the rule Mohanty and other general category of officers who are seniors to Respondents 2 to 9 in that case lost their right to be considered for promotion on the basis of seniority. It was this deprivation of a right to be considered for promotion before juniors in the service was found to be violative of the statutory and constitutional rights of Mohanty and other general category of officers. It is on that basis the Supreme Court has found the retrospectivity to be unreasonable, arbitrary and as such violative of Articles 14 and 16 of the Constitution of India. The rule in that case was also not one introduced as part of a scheme for integration. In my view, the ratio of that decision is also not applicable to the case on hand, since none of the vested rights of the Petitioners have been impaired substantially in an arbitrary and unreasonable manner so as to find the retrospectivity violative of any of the constitutional rights of the Petitioners. As such I would reject all the contentions raised against the retrospectivity of the K.P.S.S. Rules as unsustainable.

53. Point No. 3.- Are Rules 2 and 3 of the Rules in question as a whole or at least in part as challenged in the O.Ps. arbitrary and unreasonable and as such illegal and void? I have already quoted the relevant portions of Rules 2 and 3. Rules 2 and 3 respectively deal with the constitution of a new integrated service and the appointment to the service constituted as per Rule 2. In fact the above Rules contain the detailed machinery and the principles of integration by which the integration is to be effected or effectuated.

54. One of the main contentions raised is on the premise that there is already a fully integrated service constituted as per Rule 2(2) of the K.P.S.S. Rules. On the above premise it was contended that grouping of the integrated employees into two separate units as per Note 2 added to Clause 3 of Rule even after integration for the purpose of promotion applying a ratio with effect from 1st January 1990 is discriminatory. By prescribing and implementing the ratio for promotion, seniors now in service would suffer at the expense of their juniors. Juniors will steal a march over their erstwhile seniors and the seniors may have to stagnate for considerably long periods, some times till retirement. It will lead to frustration and would affect even the morale of the service. For example it was submitted that after 1st January 1990 about 150 persons were prompted as Special Grade Executive Officers and if the ratio of 8:5 is enforced with effect from 1st January 1990 about 250 future vacancies will have to be filled up exclusively from the Junior Superintendents of the Panchayat Office. Therefore persons who are at present holding the post of Special Grade Executive Officer will not only suffer reversion but Panchayat Inspectors/Junior Superintendents of the Panchayat Department will never get any promotion hereafter in there whole career. Similarly it was submitted that 300 persons were promoted as Executive Officers after 1st January 1990. Therefore in

order to maintain the ratio of 9:1 2700 Executive ''officers'' posts have to be filled up from among the Head Clerks of Panchayat Office. During the above period persons like the Petitioners and others in the Panchayat Department have absolutely no hope of getting any promotion. Again it was pointed out that all the Head Clerks in the Department were promoted as Executive Officers from 1st January 1990 onwards and therefore all promotions to the posts of Executive Officers now onwards will have to be completely from the Panchayat Common Service. Only after 594 Head Clerks working in the various Panchayat Offices are promoted as Executive Officers, a L.D. Clerk in the Department can now aspire to be promoted as Head Clerk. Therefore all the L.D. Clerks and U.D. Clerks in the Department have necessarily to retire either as L.D. Clerks or U.D. Clerks was the submission of the learned Counsel for the Petitioners. In this connection strong reliance was placed on the decisions of the Supreme Court in Roshan Lai v. Union of India AIR 1957 S.C. 1889. Raghunath Gopal Manjire and Another Vs. The Competent Authority and Others, and Rajan v. State of Kerala 1983 KLT 878. Some other injustices, hardships and anomalies which according to the Petitioners would result on implementation of the provisions contained in the K.P.S.S. Rules as highlighted in the O.Ps. in support of the point under consideration have already been adverted to by me in paragraphs 16 and 17 and I am not referring to them again.

55. Before dealing with the main contentions I may take up certain contentions which can be disposed of without much discussion. As already indicated the provisions in Rules 2 and 3 are provisions incorporated specifically for the purpose of achieving integration of the two wings of employees governed by different rules; with effect from 1st January 1990 as decided as early as on 3rd February 1987. It is as part of a scheme for integration that certain principles have been prescribed as per the above rules for integrating the employees of the two separate wings of the Department into one service. For the purpose of achieving the above objectives and as a follow up action pursuant to the declaration of status of Government servants on all the Panchayat Common Service employees Government have issued orders abolishing certain posts, creating certain new posts, equating and redesignating various posts with reference to posts existing in other services as per Exts. P-3, P-4 and P-5 in the year 1987 itself. All such orders have been fully implemented long back and as such the challenge raised in, some of the O.Ps. especially in O.P. Nos. 9254 and 12168 of 1994 against such creation of new posts and redesignation of posts cannot at all be sustained.

56. It is relevant to note even at the outset that the principle of integration adopted in Note 2 and the fixation of the ratio for promotion as per Rule 3 are in accordance with the policy decision taken as per Ext. P-2. In this connection it will be useful even at the risk of repetition to extract once again recommendation No. 5 of the Committee accepted by the Government as per Ext. P-2.

(v) Those who are already in service-(a) in the Panchayats Department and (b) in the Panchayats Common Service may be treated as two units for purposes of promotion and may be promoted on the basis of a suitable ratio fixed by the Government-since there are several practical difficulties in preparing an integrated seniority list of the two Categories.

As such the principle of integration incorporated cannot be treated as one incorporated for the first time in the K.P.S.S. Rules. The principle of treating the two wings of employees into two units for promotion in the process of integration applying suitable ratio is a device recommended by the Committee and accepted by the Government. It was a method recommended to tide over the difficulties in integrating the two wings straight away without following such a procedure. That is what exactly has been finally adopted as per the Rules. Further it is relevant to note that even after Ext. P-2 and finalisation of the Rules Government had considered the matter at various levels and had obtained view of various expert committees. It is after such deliberations the principle of integration including the fixation of ratio has been adopted finally. Various steps taken by the Government in the matter of finalisation of the principles of integration and the fixation of the ratio as narrated in the counter affidavit have not been specifically denied by any of the Petitioners by filing any reply affidavit. As such in my view it cannot be contended with justification that the above principles are principles incorporated without proper application of the mind or without any bona fides or with the mala fide intention of helping a numerically strong group of employees yielding to their illegal demands on the other hand it has to be held as provisions incorporated into the K.P.S.S. Rules on the basis of a policy decision taken after due deliberations and discussions with all concerned.

57. Turning to the main contention, to me it appears that the very premise on the basis of which the above contention has been raised is not correct it may not be correct to say that an integration has already taken place and an integrated service has come into existence with effect from 1st January 1990 on the promulgation of the K.P.S.S. Rules. The scheme of the Rules in question is to integrate and to constitute the two wings of employees of the Department of Panchayat on the basis of the principles incorporated in the Rules itself as a new integrated service. As such it may not be correct to proceed on the basis that the Rules, especially rules 2 and 3 are rules made in respect of an existing integrated service and for promotion from one cadre to another of such an existing integrated service. It is only after the implementation or working out of Rule 3 read along with the provisions contained in Rule 2 as far as the employees existing as on 1st January 1990 in both the erstwhile wings of the Department that the integration and the constitution of the integrated service can be considered as complete. Till integration is thus completed the scheme of integration is to treat the employees in the two wings as on 1st January 1990 as two separate units and to fuse them or integrate them applying the ratio into one single service. As such the separation of the employees of the two wings as on 1st

January 1990 into two separate units contemplated by the K.P.S.S. Rules cannot be considered as a classification of employees made after integration. As such rules 2 and 3 cannot be challenged on the ground that there is a discriminatory treatment between the employees of an already integrated service.

58. I may here itself refer to a contrary contention raised in O.P. No. 8697 of 1994 to the effect that proposed integration is against the recommendations of the Committee referred to Ext. P-2 order and the same is illegal and unconstitutional. The Petitioners in that O.P. have contended that the attempt to integrate the two wings into one service is really contrary to the recommendations of the Committee which was accepted as per Ext. P-2 order. A mere reading of the recommendations of the Committee will show that the Committee has in fact recommended integration of the two wings and has not stated or that the two wings cannot at all be integrated. They have only pointed out the difficulties involved in the process of integration and suggested a method of integration while recommending that the employees in service as on 1st January 1990 in both wings may be treated as separate unit for promotion on the basis.

59. Rules generally and especially Rules 2 and 3 of the K.P.S.S. Rules have also been challenged on various grounds such as: (1) Ratio for promotion adopted is arbitrary, unreasonable and unjust. (2) There has not been a proper equation of posts in the two wings sought to be integrated in accordance with the principles of functional similarity and co-equal responsibility. Such an equation of posts is a must before an intergration like the one on hand is ordered. But that has not been done in this case. Posts having similar designation in the Panchayat Department and Panchayat Common Service are functionally different. Level of responsibilities is also different. While equating posts Government have proceeded on a wrong assumption that similarity of designation and scale of pay automatically allows such posts to be equated. The equation of posts of Junior Superintendents in the Department wing and the Common Service wing as equal posts is cited as a telling example of such illegal equation of posts. (3) Substantial difference in the method of appointment, promotional avenues, functional disparties and such other differences which exist between the two wings of employees and makes them dissimilar or unequal have not been taken note of while effecting intergration. Intergration thus effected on the basis that employees of both wings are holding equal posts is bad in law. (4) K.P.S.S. Rules do not prescribe any relevant principles of intergration especially regarding the manner in which the seniority of the employees is to be fixed on integration. (5) While there were three separate grades of Executive Officers under the old system, in the new system there is only one category of Executive Officers redesignated as Secretary, Grama Panchayat. No provision is made for merging the different grades of Executive Officers. Abolition of different grades and treatment of employees working in different grades drawing different salary and discharging different functions as equations is totally discriminatory. (6) Implementation of the provisions in the Rules will lead to anomalous situations where employees

belonging to the Department wing and now holding superior posts is compelled to work under his erstwhile subordinate in the Common Service wing who gets promoted in accordance with the Rules to still higher posts on the basis of the ratio fixed. The case of Executive Officers Gr. I who were functioning as Controlling Officers for the unit under whom Junior Superintendents of Panchayat Common Service were working has been cited as an example for such an anomaly. It is asserted that Junior Superintendents now working under the Executive Officers Gr. I can now be promoted as Special Secretary, Grama Panchayat. It is a post superior to that of Executive Officers/Secretary, Grama Panchayat. A few more instances of such illegality, hardships and anomalies have been highlighted in the various O.Ps. in order to contend that the entire Rules are bad and are liable to be treated as illegal and void.

60. State and the contesting Respondents have contended that none of the above grounds, even admitting that such grounds exist, are sufficient in law to declare the Rules as invalid. As regards the ratio adopted what is contended in the counter affidavit is that the same was fixed on the basis of the numerical strength of staff holding different posts in the two wings and on the basis of the discussions held on 16th January 1990 by the Minister for Local Administration with the representatives of various service organisations of the Panchayat Department and Panchayat Common Service employees. Similarly, as regards the equation of posts also, the State has contended that all relevant aspects have been considered while issuing orders regarding equation of pasts in the two wings. Such orders for equation of posts were issued immediately after 3rd February 1987 itself and were also implemented long back. It is only in the case of few other posts equation has been ordered as part of the Rules. In paragraphs 41 to 43, I have briefly referred to the glaring disparities existing in the matter of promotional prospects of the two wings of the employees sought to be integrated and how it created a strong resentment and discontentment among the Common Service employees. It was submitted that posts equated need not necessarily be equal in all recects. The posts of Junior Superintendent in the Panchayat Department and Panchayat Common Service are functionally similar and they carry same scale of pay also. The fortuitous fact that Junior Superintendents in the Common Service wing were working under the Executive Officers Gr. I and that they may be promoted and posted hereafter to posts higher than that of Executive Officers redesignated as Secretary, Grama Panchayat is no reason to hold that the Rules are void. Even though Junior Superintendents were working under the Executive Officers, for a long time, they were receiving salary higher than their superior officer, namely Executive Officer Gr. I. It was submitted that prescription of a ratio for promotion between persons coming from two different services or wings of one and the same service and equation of posts, abolition of posts, etc. for the purpose of integration cannot be said to be arbitrary or discriminatory and falling within the mischief of Article 226 of the Constitution of India unless it is shown to be clearly discriminatory or arbitrary

and as such violative of the constitutionally guaranteed rights of any of the Petitioners. It was submitted that there is a large amount of discretion of legal authority vested in the Government in the matter of ordering abolition of posts, creation of new posts, equation of posts and redesignation of posts as part of a scheme for integration. Unless it is shown that any such action on the part of the Government is mala fide or motivated by extraneous reasons, the Rules cannot be invalidated even if equation of posts and the adoption of ratio etc. are not mathematically precise or legally perfect. It was also pointed out that even as per the Rules Ratio for promotion is applicable only till all the employees in service as on 1st January 1990 are promoted and integrated and thereafter the ratio will not be applicable. The integration sought to be made on a cadre to cadre basis fixing a ratio was in fact suggested by the Committee itself as per Ext. P-2 and the principle adopted for treating the two wings of employees into two separate units and applying a ratio for promotion cannot be challenged as if the principle has been introduced for the first time as per the K.P.S.S. Rules. In short it was contended that the grounds of challenge thus alleged against the validity of Rules 2 and 3 cannot be sustained as legal and sufficient to invalidate the impugned Rules.

61. In the counter affidavits filed by the contesting Respondents facts and figures justifying the adoption of the ratio based upon the numerical strength of the staff in the two wings and equation of posts have been dealt with in detail. However, I do not think that it is necessary for me to refer to all such details at length in this judgment in the light of the very limited scope of judicial serutiny possible in the matter as indicated in the relevant decisions of the Supreme Court to which I may refer immediately. I may also usefully point out in this connection the stand taken by the Government in the counter affidavit that individual grievances, hardships and anomalies which may result in the course of implementation of the Rules can always be considered and corrected to the extent possible as and when it is brought to the notice of the Government and need not be considered in these O.Ps. filed challenging the constitutionality and legality of the Rules as a whole. As such I would confine my enquiry into the limited extent of finding whether the Government have acted arbitrarily or irrationally or in a mala fide and unfair manner in the fixation of a ratio for promotion, equation of posts, etc. while framing the Rules so as to make the Rules as a whole or at least rules 2 and 3 bad in law on the ground that they violate Articles 14 and 16 of the Constitution.

62. Turning to the relevant legal principles to be applied while considering the points discussed above, I may usefully begin with the following observations of Chandrachud, J. (as he then was) in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, .

It is often impossible or at any rate inexpedient to reachand remedy all forms of evil, wherever present. Reform must begin somewhere if it has to begin at all and therefore, the administrator who has nice and complex problems to solve must be

allowed the freedom to proceed tentatively, step by step. Justice Holmes gave in a similar context a significant warning that: "We must remember that the machinery of Government would not work if it were not allowed a little play in its joints." Bain Peanut Co. v. Pinson (1930) 75 Law Ed. 482, 489.

In State of Maharashtra Vs. Kalu Shivram Jagtap and Others, Justice Krishna Iyer in his own inimitable style has made the following observations regarding the complexity of the administrative problem to be faced in the process of integration:

In Service Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the Executive, not to the Court. All life, including administrative life involves experiment, trial and error but within the leading strings of fundamental rights, and absents unconstitutional ''excesses'', judicial correction is not right....

In the same decision the learned Judge has further held that the quota rule is an administrative device to inject justice info the integrating process and the onus of showing that the ratio adopted is arbitrary or based on extraneous consideration is on the challenger if the rule is challenged in a Court of law. Equally relevant are the following observations of Bhagwati, J. (as he then was) in Reserve Bank of India Vs. N.C. Paliwal and Others, .

...Undoubtedly, it would cause heart burning amongst the Petitioners to find that Grade II Clerks, junior to them in the General Departments, have become Grade I Clerks in the integrated serviced while they still continue to be Grade II Clerks, but that is a necessary consequence of integration. Whenever services are integrated, some hardship is bound to result. Reasonable anticipations may be belied.

In R.S. Makashi and Others Vs. I.M. Menon and Others, Eradi, J. speaking for the Bench has held thus:

When personal drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected. The Courts will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair, and if no manifest unfairness or unreasonableness is made out, the Court will not sit in appeal and examine the propriety or wisdom of the principle of equation of posts adopted by the Government....

As regards the power of the employer to abolish, equate or redesignate posts under its service, the Supreme Court has observed thus in S.B. Mathur v. Chief Justice of Delhi High Court 1989 Supp. (1) S.C.C. 341.

...It must be borne in mind that it is an accepted principle that where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions of promotion or transfer of employees inter se will necessarily arise for the purpose of maintaining the efficiency of the organisation. There is, therefore, nothing inherently wrong in an employer treating certain posts as equated posts or equal status posts provided that, in doing so, he exercises his discretion reasonably and does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. It is also clear that for treating certain posts as equated posts or equal status posts, it is not necessary that the holdere of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same nor is it essential that qualifications for appointments to the posts must be identical. All that is reasonably required is that there must not be such difference in the pay scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike or, in other words, that posts having substantially higher pay scales or status in service or carrying substantially heavier responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay scale or substantially lower responsibilities and duties or enjoying much lower status in service.

In the same decision the Supreme Court has also held following its earlier decisions that "it is open to the State to lay down any rule which it thinks appropriate for determining seniority in the service and it is not competent to the Court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The only enquiry which the Court can make is to see whether the rule laid down by the State is arbitrary and. irrational so that it results in inequality of opportunity amongst employees belonging to the same class." In Indian Administrative Service (S.C.S.) Association, U.P. and Others Vs. Union of India (UOI) and Others, at 745 the Supreme Court has stated that "no one has a vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the rule. Of course it could be taken away only by operation of law. The operation of law may have the effect of postponing the future consideration of the claims or legitimate expectation of interest for promotion." The above principles in my view are the principles to be applied while deciding the sustainability of the contentions indicated above.

63. On an anxious consideration of the various contentions noted above, in the light of the legal principles applicable to the point under consideration, I am convinced that the impugned Rules are not liable to be declared as illegal and void on any of the grounds raised in the O.Ps. either wholly or in part. Neither the decision taken to integrate nor the principles adopted in the matter of integration can be characterised as arbitrary and irrational or as a decision taken in a mala fide manner

for extraneous considerations or reasons. The various facts and circumstances pleaded by the State and practically admitted or undisputed by the Petitioners would clearly show that the decision to integrate and the adoption of the principles of integration incorporated in the K.P.S.S. Rules were acts done with all bona fides after due deliberations with all parties concerned and expert bodies to be consulted in an attempt to reorganise the service into one single service removing some of the disparities in the service conditions which were existing between the employees working in the two wings of the Department of Panchayat discharging more or less similar or same functions, receiving same or substantially same salaries and having the same status at least from 1987 onwards and which were found to be totally unjustifiable in view of the changes brought into force from time to time in the service, conditions of the employees subsequent to the formation of the two wings about 3 decades back. The integration was in the circumstances a historical necessity and a decision to that effect was in fact taken as early as on 3rd February 1987. The principles on the basis of which the integration is sought to be effectuated by the K.P.S.S. Rules are also in my view by and large fair and reasonable. As repeatedly observed by the Supreme Court the hardships and anomalies pointed out as the likely results of implementation of the Rules can only be treated as some of the unavoidable results of integration bound to be suffered by a few in the larger interest of the service as a whole. Such hardships, losses and anomalies cannot be treated as entertainable grounds for invalidating such Rules as the one under challenge in this case, containing the principles of integration unless it is found to be the result of a decision taken arbitrarily, irrationally and/or mala fide for extraneous considerations so as to violate the rights of the Petitioners guaranteed under Articles 14 and 16 of the Constitution of India. In this case, I do not find any such violation in the matter of adoption of the ratio for promotion or in the matter of equation, abolition and re-designation of posts as part of the scheme of integration which are the matters mainly under challenge in these O.Ps. taking note of the fact that in such matters the administrative authorities have a large amount of discretion and the Court will not interfere in such matters unless it is found to be arbitrary, irrational and discriminatory. Accrued rights have been saved to a large extent as per Rule 3(2) of the K.P.S.S. Rules. Though as a result of the adoption of die ratio chances of promotion may get reduced considerably during the period when the ratio will be in operation, the right of promotion has not been totally taken away from any of the employees during that period also. Similarly in regard to seniority also Rules do not have the effect of changing or affecting the total length of seniority of any of the employees or any of the benefits already accrued to employees on the basis of the seniority already acquired by them. The only effect may be that some of the employees may find that their seniority is liable to be reduced to some places in the particular Category to which they belonged prior to 20th October 1993. Postponement or reduction of chances of promotion and loss of seniority in some places which may not amount to deprivation of vested rights in violation of the fundamental rights guaranteed under Articles 14 and 16 of the

Constitution cannot again be entertained as a ground for invalidating the Rules. The Petitioners if at all have lost only reasonable anticipations with reference to the existing Rules which were liable to be altered with retrospective effect. As such I do not find any ground to allow any of the relief prayed for in any of the O.PS.

64. However, I would make it clear that I have in this judgment considered only the legality and sustainability of the Rules as a whole and as such this judgment will not preclude any of the employees including the Petitioners and the party Respondents in the O.Ps. from agitating any of their individual grievances in appropriate forums including this Court in other appropriate proceedings.

65. Before parting with this case, I would like to quote the following observations of the Supreme Court with a fond hope that the parties to this litigation would take note of the same and strive their best to avoid further litigation and to check the loss of efficiency and serviceability of the service which is to man one of the most important units of local self Government at Village level in the Constitutional set up of this State:

Experience shows that legal battles are fought in Court between Government servants whether individual pitched against individual or group against group; this embitters relationship inter se and often results in a switch over the attention from public duty to personal cause. Frequent litigations against the State or higher authorities in the hierarchies of administration, wipe out reverance, loyalty and the sense of discipline and substitute those by anger, disrespect and cancour. In the process fellow feeling is lost, the sense of brotherhood vanishes. The net resultant of all is deprivation of the efficiency of the bureaucratic community to serve the society.... These are matters which must be taken into account without further loss of time and with fortitude so that the most effective wing of the administration does not further lose its serviceability.

[See Sonal v. State of Karnataka AIR 1987 S.C. 2359]

Subject to the above observations, I would dismiss all the Original Petitions while upholding the validity of the Rules, namely Kerala Panchayats Subordinate Service Rules, 1994. No costs.

*A reproduction from ILR (Kerala Series).