State of Kerala Vs M.K. Krishnan Nair and Others
K. Sukumaran Nair and Another Vs M.K. Krishnan Nair and Others

Civil Appeal No''s. 2047 of 1974

Court: Supreme Court of India

Date of Decision: Feb. 14, 1978

Acts Referred:
Constitution of India, 1950 â€" Article 14, 16, 234, 309#Criminal Procedure Code, 1973 (CrPC) â€" Section 10, 12, 13#Kerala Civil Judicial Service Rules, 1973 â€" Rule 18

Citation: AIR 1978 SC 747 : (1978) LabIC 723 : (1978) 1 SCC 552 : (1978) 2 SCR 864

Hon'ble Judges: M. Hameedullah Beg, C.J; V. R. Krishna Iyer, J; V. D. Tulzapurkar, J; S. Murtaza Fazal Ali, J; P. N. Shingal, J; P. N. Bhagwati, J; Jaswant Singh, J

Bench: Full Bench

Advocate: L.N. Sinha and K.M.K. Nair, in C.A. Nos. 2047/74 and T.S Krishna Moorthy Iyer, N. Sudhakaran and V. D. Khanna, in CA. 2048 of 197, for the Appellant; T.C. Raghavan and P. Keshava Pillai, for the Respondent

Judgement

Tulzapukar,J.

1. These two appeals by special leave--one by the State of Kerala (Original Respondent No. 1) and the other by M/s. K. Sukumaran Nair and O.

J. Antony (Original Respondents No. 3 and 4, being Judicial Officers on the Criminal Side) are directed against the judgment and order of the

Kerala High Court of February 8, 1974 in O.P. (Writ Petition) No. 3639 of 1973, whereby the High Court quashed two Government Orders

dated February 12, 1973 and September 18, 1973 (being Exhs. P 1 and P2) bifurcating the Judicial Service of the Kerala State into two Wings-

Civil and Criminal-and the two sets of Statutory Rules, the Kerala Civil Judicial Service; Rules 1973 and the Kerala Criminal Judicial Service "

Rules " 1973 (being Annexures III and IV to the additional counter-affidavit of the State dated November 26, 1973) framed for the two Wings of

the Judicial Service thus formed, as being violative of Articles 14 and 16 of the Constitution.

2. The challenge to the constitutional validity of the two Government Orders Exhs. P2 and the two sets of Rules Annexures III and IV mentioned

above arose at the instance of Shri M. K. Krishnan Nair (Original Petitioner, being a Judicial Officer on the Civil Side) in these circumstances : The

Original petitioner was appointed as Munsiff in the Kerala Judicial Service on June 10, 1958 and was confirmed in that post on July 1, 1961.

While serving as Munsiff, he was posted as Sub Divisional Magistrate, Alwaye, and was for. some time put in full additional charge of the post of

District Magistrate (Judicial), Ernakulam, from January 16, 1963 to January 31, 1963. He was then transferred and posted as Munsiff, Vaikom,

and oh October 3, 1968 was promoted as Sub Judge in which post he was subsequently confirmed. At the material time when the scheme of

bifurcation of the Kerala Judicial Service into two Wings-Civil Wing and Criminal Wing-was sought to be put into operation, he had been

transferred and was posted as Land Reforms Appellate Authority at Kozhikode. The petitioner''s case was that prior to February 12, 1973, as a

result of several Government Orders, Statutory Direction''s and Rules issued under Articles 234 and 237 of the Constitution from time to time, the

posts of District Magistrates, and Sub Divisional Magistrates on the Criminal Side has been integrated with those of Sub Judges and Munsiffs on

the Civil Side respectively and a complete integrated Kerala State Judicial Service had come into existence but on or about February 12, 1973, in

consultation with the Kerala High Court, the State of Kerala decided to have a scheme to bifurcate and constitute two separate Wings for the Civil

and Criminal Judiciary respectively in the State, the former consisting of Sub Judges and Munsiffs and the latter consisting of the District

Magistrates (Judicial), Sub Divisional Magistrates, Additional First Class Magistrates and Sub Magistrates, that the two services should be

designated as Kerala Civil Judicial Service and Kerala Criminal Judicial Service, and that Rules for the said two new services would be issued

separately. This decision of the State Government is to be found in Government Order MS 24/73/Home dated February 12, 1973, at Exh. PI; For

implementing the aforesaid scheme of bifurcating the Judiciary into two wings, the GO. at Exh. P 1 also contains certain directions in Para 3

thereof, namely-(a) that option will be allowed to all Civil judicial Officers originally borne on the Magistracy, irrespective " ''of whether or not,

they have been confirmed as full members " ''in " ''the Kerala State Judicial Service to go over to the Criminal Wing (para 3(i)); (b) that those who

opt-to the Criminal Wing and whose options would be accepted by the Government, will be given posting in the new Criminal Judicial Service only

to the posts they would held on the basis of their original rank in the Magistracy and not with reference to their present position in the State "

Judicial '' Service " (para 3(ii)); (c) that all the posts of Sub Divisional Magistrates will be. released for members of the new Criminal Judicial

Service and '' the present incumbents in the posts of Sub Divisional Magistrates will accordingly be posted back as Munsiffs, with the

implementation of the scheme (para 3(iii)); (d) that persons who have been appointed as District Magistrates on or before the date of

implementation of the scheme will be allowed to continue as such; retaining their membership in the Civil Judiciary, till -they are appointed to the ''

Higher Judicial Service or retire from service (para 3(iv)); (e) that if the number of Officers who opt to the Criminal Wing happens to be in excess

of the number of posts available for accommodating them in the Criminal Judicial Service, such officers found in excess will be retained in the Civil

Judiciary for eventual absorption in the Criminal Judiciary as and when vacancies arise, consistent with their original seniority in the Criminal Wing

(Para 3(v)); and (f) that the options once exercised shall be final (para 3(vi)). Two months period from the date of the Order was allowed for the

officers to exercise their option. ''According to the petitioner by way of implementing the aforesaid scheme 15 officers exercised their option to go

over to the Criminal Wing but the option of one Smt. P. Komalavally, not being unconditional, was not accepted while the options of all the

remaining 14 were accepted. In accordance with para 3(iii) of Ext. PI all the posts or Sub Divisional Magistrates were released '' for the ''

members '' of the Criminal Judiciary and in accordance with para 3(v) as the number of officers whose options were accepted was 14 and only 9

posts of Sub Divisional Magistrates were released and became available immediately, the seniormost five officers out of '' the 14 were '' retained in

their posts in the Civil Judiciary for their eventual absorption in the Criminal Judiciary as and when vacancies would arise consistent with their,

original seniority in the Criminal Wing. '' This partial implementation of the scheme has been recorded in the G.O. MS 157/73/Home dated

September 18, 1973 at Exh. P2. '' ''As was '' decided in '' G.O.. dated February 12, 1973 (Exh. P 1), the two new sets of Rules called the Kerala

Civil Judicial Service Rules, 1973 and the Kerala Criminal Judicial Service Rules, 1973 (being Annexures III & IV respectively to the counter-

affidavit of the State '' dated '' November '' 26, 1973) governing the constitution, recruitment, qualifications, probation, tests, posting and transfers

of the incumbents in each of the two services came; to be framed in due, course and these Rules were brought into force with effect from

September 18, 1973.

3. By a letter dated March 28, 1973 the petitioner was required ''to forward his option in terms of the aforesaid scheme, but since under para 3(i)

of Exh. P 1 he was not eligible to exercise the option, as he was not ""originally borne on the Magistracy?'', he sent a reply stating that ""the question

of option does not arise"" in his case. But according to him, several of his juniors in Judicial Service, who were originally recruited in the Magisterial

service, opted to the Criminal Wing, to their advantage of being posted as District Magistrate (Judicial) and he had been denied that opportunity

because the option contemplated by the scheme of bifurcation has been confined or restricted to only those Civil Judicial Officers ""originally borne

on the Magistracy"" and, therefore, the scheme of bifurcation with such restricted option suffers from the vice of hostile discrimination against

Judicial Officers like him who were initially recruited on the Civil Side. The petitioner raised a two-fold contention by way of challenging the

constitutional validity of the scheme of bifurcation as contained in Exh. P 1 the partial implementation thereof as recorded in Exh. P2 and the two

sets of Rules framed for the two Wings of the Judicial service formed pursuant to the scheme. In the first place, according to him, prior to the

introduction of the aforesaid scheme of bifurcation there had come into existence one integrated Judicial Service for the State of Kerala as a result

of several Government orders, Statutory Directions, and Rules issued under Articles 234 and 237 of the Constitution from time to time in which

posts of District Magistrates and Sub Divisional Magistrates had been integrated with those of Sub Judges and Munsiffs respectively and,

therefore, after such integration, to mark off all the Magisterial posts alone and constitute them into a separate category with a separate avenue of

promotion, leaving the officers and posts of Civil Judiciary to carve out a different channel of promotion was unjustified, discriminatory and

violative of Articles 14 and 16 of the Constitution : secondly, the scheme of bifurcation as contained in Exh. P1, in so far as it confined the option

only to Civil Judicial Officers ""originally borne on the Magistracy"", was unconstitutional and discriminatory as opportunity to exercise similar option

was denied to persons like him who were not ""originally borne cm the Magistracy"" but were recruited under the Travancore-Cochin Munsiffs

Recruitment Rules, 1953. It was contended that there was no rational justification for confining the option only to those who were ""originally borne

on the Magistracy"" and that the whole scheme of bifurcation had been geared to irrational classification and the impugned orders and the Rules

resulting in the disintegration of an integrated service deserved to be quashed.

4. On the other hand, on behalf of the State of Kerala and original respondents 3 and 4 (being officers borne on the Criminal side) it was disputed

that there was any complete integration of the posts of District Magistrates and Sub Divisional Magistrates with those of Sub Judges and Munsiffs

on the Civil Side or that an integrated Judicial Service for the State had come into existence as contended by the petitioner. It was pointed out by

the State of Kerala in its counter-affidavit dated November 17, 1973, that the former set of posts were not Civil Judicial posts coming within the

meaning of ""Judicial Service"" as defined in Article 236(b) of the Constitution and " further that though under G.O. Ms 368/Home dated April 28,

1959, issued by the Government of Kerala under Article 237 the provisions of Articles 234 and 235 of the Constitution had been made applicable

to all classes of Judicial Magistrates with" effect from May 1, 1955 meaning thereby that, all classes of Judicial Magistrates as regards their

recruitment, posting, promotion etc. had been brought under control of the High Court, no specific provisions had been made in the Rules fixing the

qualifications and method of appointment to the posts of District Magistrates and Sub Divisional Magistrates and further there was no provision,

which required that only a Sub Judge shall be posted as a District Magistrate and that under Rule 5 read with Rule 20 of the Kerala State Judicial

Service Rules (Special Rules), 1966, Sub Judges, as a matter of practice, used to be posted as District Magistrates and Munsiffs as Sub Divisional

Magistrates but such postings did not deprive them of their status as Sub Judges or Munsiff"s in the Judicial Service. In other words, it was

contended that in the absence of a complete integrated Judicial Service, there was no question, of disintegrating the service as a result of the

scheme contained in Exh. P I being put into operation. It was further contended that the decision to bifurcate the Kerala State Judicial Service into

two Wings;-Civil Wing and Criminal Wing as per Exh. P 1-was taken in consultation with the High Court of Kerala in deference to the considered

view of the High Court that experience showed that the erstwhile practice of posting sub Judges as District Magistrates and Munsiffs as Sub

Divisional Magistrates needed a revision, first on the ground that the persons working as Sub Magistrates and Additional First Class Magistrates

will make better Sub Divisional Magistrates and District Magistrates and, secondly, on the ground that the practice was bound to cause justifiable

heartburning and discontentment among the members of the- Magisterial Service, for, it meant that all but a very few Sub Divisional Magistrates

and Additional First Class Magistrates would have to retire as such, without any chances of promotion, and that with few chances of promotion,

direct recruitment from the Bar would be difficult and of poor quality. The classification into two Wings as contemplated by the scheme was thus a

reasonable classification based on an intelligible differentia and the same had reasonable nexus with the object sought to be achieved, namely, to

secure better administration of justice on the criminal side. It was further contended that the option specified in para 3(i) of Exh. P-1 was to

operate qua the existing incumbents in service and not in future as was clear from the fact that the two sets of Statutory Rules (Annexures III and

IV) did not and do not provide for any option whatsoever and as such these Rules were in any event free from any blemish.

5. After tracing the history of the Statutory Rules and Government Orders, issued from time to time, relating to the separation of judiciary from

executive and principally relying upon Instructions contained in G.O. Ms 851/PUB/(Integration) dated September 24, 1959, Rules made under

Article 234 as contained in G.O. MS 850 dated September 24, 1959 ad hoc " Rules "for " absorption of T.G. Criminal Judicial Officers under

Article 234 read with Article 309 dated February 2, 1966 and the Kerala State Judicial Service Rules (Special Rules) dated October 5, 1966, the

High Court came to the conclusion that there was an integration of the posts of District Magistrates and Sub Divisional Magistrates with those of

Sub Judges and Munsiffs and an absorption of the Magisterial posts info the Civil Judiciary and that, therefore, the singling out of certain posts from

the integrated service for a separate avenue of promotion would be discriminatory. The High Court held that the Government Orders at Exhs. P 1

and P2 by which two separate wings, namely, Civil and Criminal, were constituted in the Judiciary of the State were invalid on two grounds: (a)

that the separation into two wings and the carving out of separate promotional avenues in the Magisterial section of the Judiciary, which had been

integrated with and absorbed into the Civil Judicial posts, was discriminatory and irrational; and (b) that Exhs. P land P2 which restricted the

exercise of option to get into the Criminal Judiciary only to officers borne on the Magistracy were discriminatory and hit by Articles 14 and 16 of

the Constitution. In coming to this conclusion the High Court placed strong reliance on a decision of this Court in State of Mysore v. Krishna

Murthy & Ors. A.I.R. 1973 S.C. 1146. . Accordingly, by its judgment and order dated February 8, 1974, the High Court quashed and set aside

the Government Orders at Exhs. P1 and P2 as also the two sets of Statutory Rules, being Annexures III and IV governing the recruitment and

conditions of service of the said two wings. It is this judgment and order of the High Court that has been challenged by State of Kerala in Civil

Appeal No. 2047 of 1974 and by original respondents Nos. 3 and 4 (being Judicial Officers on the Criminal Side) in Civil Appeal No. 2048 of

1974.

6. In support of the appeals, counsel for the appellants contended that the power of the State Government to bifurcate its Judicial Services into two

wings-Civil and Criminal-and to frame separate Statutory Rules governing the recruitment and conditions of service of the incumbents of each wing

could never be disputed and as such the two sets of Rules being Annexures III and IV. especially when neither contains any provision for

exercising any option by any Judicial Officer, could not be questioned under Articles 14 and 16 of the Constitution. As regards the scheme of

bifurcation of Kerala Judicial Service into two wings, Civil and Criminal, containing an option given to the officers'' ''Originally borne on the

Magistracy'' as envisaged in Exhs. P1 and P2, a two-fold contention was urged before us. In the first place, it was contended, particularly by

counsel for the appellants in Civil Appeal No. 2048 of 1974-counsel for the State of Kerala being slightly lukewarm in that behalf that there had

been no integration of the posts of the Judicial Officers on the Criminal Side with those on the Civil Side in the State of Kerala at any time and that

the material on which the original petitioner as well as the High Court have relied, does not indicate that there was any such integration between

Officers belonging to the two Sides or that a complete integrated Judicial Service had come into existence in the State of Kerala prior to February

12, 1973, that Judicial Officers belonging to Civil Side as well as Criminal Side always constituted separate cadres of service, and that, therefore,

there having been no integration between the two there could be no complaint about any hostile or adverse treatment being meted out to one class

of Officers as against the others in breach of either Article 14 or Article 16 of the Constitution; in other words, neither Article 14 nor Article 16

was attracted to the facts of the case at all inasmuch as the Officers belonging to the two wings never were nor are similarly situated or identically

circumstances. Secondly, it was contended that even if it were assumed that a complete integrated Judicial Service had come into existence in the

State of Kerala prior to February 12, 1973, the classification of Judicial Officers belonging to such integrated service into two categories or wings,

namely, Civil Wing and Criminal Wing, was based on an intelligible differentia and the same had reasonable nexus with the object sought to be

achieved by the scheme of bifurcation and the Rules framed in furtherance of the scheme. It was pointed out that the justification for bifurcating the

Judicial Service into two wings as also for confining the option to those Officers who were originally borne on the Magistracy lay in the considered

view of the High Court, which had been accepted by the State Government, that persons who have worked as Sub Magistrates: and Additional

First Class Magistrates will make better Sub Divisional Magistrates and District Magistrates and that a contented, efficient Criminal Judiciary with

attractive promotional chances was desirable and as such the bifurcation or classification under Exhs. P1 and P2 was reasonable and not assailable

under Article 14 or Article 16. As regards the option contained in Exh. P1, Mr. Lal Narain Sinha, counsel for the State of Kerala, raised a further

alternative contention that if the words ""originally borne on the Magistracy"" occurring in para 3(i) of Exh. P1 were construed to mean that the

option was intended for the benefit of all those Officers who were borne on the Magistracy and worked as Magistrates at any time but before the

scheme was put into operation (the expression ''originally'' meaning ''before or prior to the scheme''), the hostile treatment as suggested would

disappear. On the other hand, counsel on behalf of the original petitioner, who has been respondent No. 1 in both the appeals, supported the view

taken by the High Court and pressed it for our acceptance.

7. It was not and cannot be disputed that it is open to the State Government to constitute as many cadres in any particular service as it may choose

according to the administrative convenience and expediency and, therefore, if in February 1973, the State of Kerala thought of bifurcating its

Judicial Service into two wings-Civil and Criminal -and further thought of framing separate Statutory Rules governing the recruitment and

conditions of service of the incumbents of each wing, no fault could be found with any decision taken by it in that behalf. However, the gravamen of

the original petitioner''s complaint has been that an already integrated Judicial Service that had come into existence in the State of Kerala prior to

February 12, 1973 as a result of several Government Orders. Statutory Directions and Rules issued under Articles 234 and 237 of the

Constitution from time to time, has been disintegrated by the State under the two Government Orders dated February 12, 1973 and September

18, 1973 and Exhs. PI and P2 respectively by putting all the Magisterial posts alone into one category for a separate avenue of promotion, leaving

the Officers and posts on Civil Judiciary to carve out a different channel of promotion, which bifurcation or classification would be irrational,

discriminatory and violative of Articles 14 and 16 of the Constitution. The main thrust of the petitioner''s arguments has been that the singling out of

certain posts (Magisterial posts) from such integrated service for a separate avenue of promotion is discriminatory. The argument of hostile or

unfavourable treatment to officers and posts on the Civil Side of the Judicial Service is based on the fact that the option to go over to the Criminal-

Wing as contained in para 3(i) of Exh. P1 is confined or restricted to only those officers who were ""originally borne on the Magistracy"". The basic

postulate made by the petitioner while advancing these criticisms against the Government Orders Exhs. P 1 and P 2 is that prior to February 12,

1973 a complete integrated Judicial Service had come into existence in the State of Kerala in which the posts of District Magistrates and Sub

Divisional Magistrates on the Criminal Side had been integrated with those of Sub Judges and Munsiffs on the Civil Side respectively which

postulate is strenuously disputed by the appellants before us. It is obvious that unless a complete integrated Judicial Service in the manner

suggested by the petitioner had come into existence in the State of Kerala there would be no question of invoking the concept of hostile

discrimination under Articles 14 and 16 of the Constitution, for, it is well settled that a question of denial of equal treatment or opportunity can arise

only as between members of the same class. In other words, Article 14 or Article 16 will not be attracted at all unless persons who are favourably

treated form part of the same class as those who receive unfavourable treatment. Therefore, in our view, the principal question that arises for our

determination in these appeals is whether, prior to the introduction of scheme of bifurcation as contained in Exhs. P 1 and P 2, as a result of several

Government Orders. Statutory Directions and Rules, issued under Article 234 and 237 of the Constitution from time to time, there had come into

existence one complete integrated Judicial Service in the State of Kerala or not? In other words, had there been an integration of the posts of

District Magistrates and Sub Divisional Magistrates with those of Sub Judges and Munsiffs as contended by the original petitioner ? The conclusion

of the High Court that, the posts of District Magistrates and Sub Divisional Magistrates had been integrated with those of the Sub Judges and

Munsiffs in Kerala is based on the following material : (a) Instruction contained in G.O. MS 851/ PUC/(Integration) dated September 24, 1959;

(b) Rules under Article 234 as contained in G.O. MS 850 dated September 24, 1959; (c) Ad hoc Rules for absorption of T. C. Criminal Judicial

Officers under Article 234 read with Article 309 dated February 2, 1966 and (d) Kerala State Judicial Service Rules (Special Rules) dated

October 5, 1966 and according to the High Court the cumulative effect of the said material was that a complete integrated Judicial Service for the

State could be said to have had come into existence. The High Court derived support for its said conclusion from a Full Bench Decision of that

very Court in P. S. Menon's case, where the Full Bench is said to have understood the 1959 Rules and the 1966 Rules as being meant to absorb

the personnel occupying the; posts of District Magistrates and Sub Divisional Magistrates into Civil Judiciary by inducting them into that service.

The question is whether on the aforesaid material an inference can be drawn that there had come into existence a real and complete integrated

Judicial Service in the State of Kerala in the sense that the posts of District Magistrates and Sub Divisional Magistrates on the Criminal Side had

got integrated with those of Sub Judges and Munsiffs on the Civil Side,

8. At the out set it may be stated that the State of Kerala comprising the Malabar area of the former Madras State and the former State of

Travancore-Cochin was formed under the States Reorganization Act, 1956 with effect from November 1, 1956. Prior to such formation of the

new State of Kerala steps for separating the Criminal Judiciary from the executive in defence to the directive principle of State Policy contained in

Art, 50 of the Constitution had already been taken in the State of Madras from April 1952 and in Travancore-Cochin from May 1955, but we are

not concerned in this case with the several steps so taken in that direction in the two States. It may also be stated that prior to the formation of the

new State of Kerala, as far as the Travancore-Cochin area was concerned, there were in operation the Travan core-Cochin Judicial Service

Recruitment of Munsiffs Rules 1953, which had been issued under Articles 234 and 238 of the Constitution, Rule 2 whereof specified the

qualifications for recruitment as Munsiffs, under which the original petitioner was recruited as a Munsiff in June, 1958; it is hot necessary to refer to

these Rules in detail but it will be enough to notice that these Rules did not specify Magistrates either as a feeder category or a category for

recruitment. " "As a result of the formation of the new State of Kerala steps in the direction of integration of Judicial personnel and posts obtaining

in the Malabar area of the former State of Madras and the State of Travancore-Cochin were required to be taken and several"" instructions, orders

and rules in the matter of equation of posts based on functional parity with reference to nature, power and responsibility of the post, inter se

seniority, promotion etc. were required to be issued from time to time, but these, it must be observed, will have to be viewed in proper perspective

and context of integration of services of the two integrating units and that these had very little to do with the type of integration with which we are

concerned in the case, namely, integration of all the Magisterial posts on the Criminal Side with those on the Civil Side. " With this background in

mind we will now deal with the. material on the basis of which the High Court has recorded its finding that prior to February 12, 1973 there was

complete integration of the Magisterial posts with those on the Civil Side in Kerala State. " We may observe at once that the first three items at (a),

"(b) "and (c) "above, really pertain to instructions of orders or rules issued by the Governor of Kerala in the context of integration of Judicial posts

and Judicial personnel drawn from the two integrated units, namely, Malabar Branch and Travancore-Cochin Branch. " The G.O. " MS 851

"dated September 24, 1959, (being item (a) as its heading indicates deals with revision or modification of previous orders issued by the Governor

of Kerala in the matter of integration of services and equation of posts-former Travaneore-Cochin personnel and those allotted from Madras

Judicial Department. After referring to the previous orders whereunder the posts of District Magistrates and Sub Divisional Magistrates " "grade I

and II of the Travaricore-Cochin Branch had been grouped with the posts of Additional District and Sessions Judges and Sub Judges and Munsiffs

respectively of the same branch and had been equated with the posts pi Sub Judges and District Munsiffs and Sub Divisional Magistrates

respectively of the Madras Branch for the-purposes of integration of the officers holding these posts on 1-11-1956 and after " referring to the High

Court"s view that it would not be proper to equate the " District Magistrates and the Sub-Divisional Magistrates grade I and II of Executive origin

belonging to the T. C. Branch with the Civil Judicial Officers and that the two should become separate until the Magisterial Officers are inducted

into the Civil Judiciary in the manner prescribed under Article 234 of the Constitution, the G.O. proceeds to state that the Government had

reviewed the matter and were pleased to accept the advice of the High Court. " The G.O. further proceeds to direct that the District Magistrates

and the Sub Divisional Magistrates I and II grades of the T.C. Branch will not be integrated with the Judicial Officers on 1-11-1956 or promoted

to posts in the Civil Judiciary and accordingly, the earlier G.O. dated May 27, 1958, regarding the equation of posts in the Judicial Department

shall stand modified to that extent. " "It appears that while modifying or revising the earlier equation of posts it became necessary to make a

provision in regard to the three posts of District Magistrates and eight posts of Sub Divisional Magistrates by constituting them as" a separate

service outside the Civil Judiciary enabling the then incumbents of those posts to continue "in these posts and, therefore, in paragraph 2 of the said

G.O. it was provided that these three posts of the District Magistrates and eight posts, of the Sub Divisional Magistrates will constitute a separate

service outside the Civil Judiciary and will taper off to eventual extinction and that the existing incumbents will vacate the posts either on retirement

or by promotion or otherwise by absorption in the Civil Judiciary. " "Paragraph 3 of this G.O. provided that such among the District Magistrates

and Sub Divisional Magistrates of the T.C. Branch " "as may be found by the High Court as suitable, will be taken to the Civil Judiciary as and

when opportunities occur and in order " "to enable the High Court to do this, the necessary rules under Article 234 of the Constitution were "

"being "issued " "separately. " "Simultaneously, with the issuance of the said G.O., another order being G.O. MS 850 dated September 24, "1959

"(being item "(b) "above) "was issued by way of a Notification which contained the Rules under Article 234 of the Constitution framed by the

Governor of Kerala after consultation with the Kerala Public Service Commission and the High Court of Kerala. " "These Rules again, as their

heading clearly suggests, deal with induction of Magisterial Officers of Executive origin of Travancore-Cochin branch into the Civil Judiciary. By

Rule 1 it was provided that the Salaried Magisterial Officers "of the former ""Travancore-Cochin State of two categories or District Magistrates

and " "Sub Divisional Magistrates grade I and II shall be eligible for appointment to the two categories of Civil Judicial posts i.e. to Sub Judges and

Munsiffs respectively, provided the said officers possessed a degree in Law of a University in India or were Barristers-at-Law. Rule 2 provided

for a probationary period while under Rule 3 these Rules became effective immediately. Placing reliance on paragraphs 2 and 3 of G.O. M.S. 851

dated September 24, 1959 and the Rules mentioned in GO. MS 850 dated September 24, 1959, the High Court has observed that induction of

District Magistrates and Sub Divisional Magistrates into Civil Judiciary was contemplated by the State Government as per paragraphs 2 and 3 of

G.O. MS 851 and the said Rules in G.O. MS 850 recognised the position that the District Magistrates and Sub Divisional Magistrates were

eligible for appointments in the Civil Judiciary. In our view paragraphs 2 and 3 of G.O. MS 851 and the Rules in G.O. MS 850 cannot be read as

leading to the inference that there was a general integration of all the, posts of District Magistrates and Sub Divisional Magistrates on the Criminal

Side with those of Sub Judges and Munsiffs on the Civil Side in the entire State of Kerala. In the first place, both these Government-Orders Nos.

851 and 850 must be understood in the context of the background in which they were issued, namely, in the context of integration of services and

equation of posts of Judicial Officers drawn from two integrating units; secondly, the equation of certain posts done under, earlier orders was

modified or revised and while so modifying or revising the earlier equation a provision was required to be made in regard to the three posts of the

District Magistrates and eight posts of Sub Divisional Magistrates which were constituted into a separate service outside Civil Judiciary with a view

to taper them off to eventual extinction and a provision to continue the then incumbents thereof in their posts till then was also, required to be made

and in those circumstances it was provided that those incumbents will continue in their posts until the posts were vacated by retirement or

promotion or"" absorption into Civil judiciary and a further provision was made that only such incumbents from among the District Magistrates and

the Sub Divisional Magistrates of the T.C. Branch as may be found to be suitable by the High Court may be taken into Civil Judiciary as and when

opportunities will occur and the Rules in G.O. MS 850 were made merely to enable the High Court to do so. In other words, the absorption of the

District Magistrates and Sub Divisional Magistrates of the T.C. Branch into Civil Judiciary was confined to only a limited number from amongst the

then incumbents, of the three posts of District Magistrates and eight posts of Sub Divisional Magistrates (who were constituted into a separate

service), who may be found suitable for that purpose by the High Court. It cannot, therefore, be said that there was a general integration of posts

on the Magisterial Side with those on the Civil Side in the entire State of Kerala as suggested by the petitioner. The next item relied upon by the

High Court is item (c), being the Ad hoc Rules dated February 11, 1966, framed by the Governor of Kerala after consultation with the Kerala

Public Service Commission and the High Court of Kerala, which is closely connected with the materials at items (a) and (b) which we have

discussed above. These Ad hoc Rules were expressly framed ""for the absorption of Criminal Judicial officers of the T.C. Branch belonging to the

separate service constituted under G.O. " "MS " "850/851/59 " "Public (Integration) Deptt. dated September, 24, 1959 and GO. MS 594/61/

Public (Integration) dated July 24, 1961, to the Kerala State Judicial Service""; in other words, whatever provision had been made in these Rules,

which had been styled as Ad hoc Rules, was merely for the purpose of absorption of such of the Criminal Judicial Officers of the T.C. Branch who

were constituted into a separate service outside Civil Judiciary under G.O. MS 850 and G.O. MS 851 both dated September 24, 1959 as would

be found to be suitable by the High Court for inducting into Civil Judiciary. It is thus clear that these Ad hoc Rules had a limited operation and

these cannot lead to the inference that there was a general integration of posts on the Magisterial Side with those on the Civil Side in the entire

State of Kerala any more than the two G.Os. MS 850 and 851 can do.

9. The last item at "(d) "on which reliance has been placed is the Kerala State Judicial Service Rules (Special Rules) dated October 5, 1966. "

"These Special Rules have been framed by the Governor of Kerala in respect of the members of the Kerala Judicial Service in exercise of the

powers conferred under Articles 234 and 235 and the proviso to Article 309 of the Constitution and in supersession of " all existing rules and

regulations on the subject. " Rules 5, 6 and 20 are the material Rules having a bearing on the question at issue. " "Rule 5 which deals with the

Constitution of the service states that " "the service shall consist of officers belonging to two categories, namely, Category-I: Subordinate Judges

which term shall include Subordinate Judges posted as District Magistrates " (Judicial) "and " "Category-II: Munsiffs which term shall include

Munsiffs posted as Sub Divisional Magistrates. " Rule 6 deals with the method of appointments to be made to the aforesaid two categories and the

sources of recruitment for each. " As regards Subordinate Judges (Category-1) it provides that appointment to this category will be by promotion

from Munsiffs for which a select list shall be prepared from among the " eligible Munsiffs on the basis of merit and ability, seniority being

considered only where merit and ability are approximately equal. " As regards Munsiffs (Category-II), it provides that appointment shall be made

either (1) by direct recruitment from Bar (2/3rds) or " "(2) " "by transfer (l/3rd) from three named categories including " Additional First Class

Magistrates and Sub-Magistrates. " Rule 20 provides that postings and transfers of the members of the service shall be made by the High Court

and the Note below Rule 20 states that the appointment and posting of any member of Category-I or Category-II as District Magistrate or Sub

Divisional Magistrate, as the case may be, shall be made by Government under Sections 10, 12 and 13 of the Criminal Procedure Code. " Strong

reliance was placed on behalf of the original petitioner on the aspect that Rule 5 while setting out the two categories of the service, defines the

expression Subordinate Judges as including a Subordinate Judge, who has been posted as a District Magistrate" and Munsiffs as "including a

Munsiff posted as a " "Sub Divisional Magistrate" and on the further aspect that under Rule 6 Additional First Class Magistrates and Sub

Magistrates could " "be appointed as Munsiffs and according to the petitioner these two aspects that emerge from Rules 5 and 6 clearly show that

there was an integration of the posts of District Magistrates (Judicial) "and the " "Sub Divisional Magistrates with those of Sub Judges and Munsiffs

respectively. " " It is not possible to accept this contention, for, in our " view the manner in which the two categories of the service have been

described in Rule 5 and the manner in which the various sources " of recruitment to each of the categories of service have been provided for in

Rule 6 rather show that the original status of Subordinate Judges and Munsiffs as officers belonging to the Civil Side of the Judiciary has been

distinctly retained. " The very fact that " "the " expression ""Subordinate Judges"" is said to include a Subordinate Judge posted as District

Magistrate and that the expression ""Munsiff"s"" is said " "to include Munsiffs posted as Sub Divisional Magistrates, clearly shows that the Rule-

making authority intended that notwithstanding " that these officers may be posted as District Magistrates (Judicial) or Sub Divisional Magistrates,

they would be retaining their status as Judicial officers on the Civil Side. " As regards Rule 6, we may point out that if Additional First Class

Magistrates and Sub Magistrates were " the only sources of recruitment to the posts of Munsiffs while making appointments by transfer, there

would have been some force in the Contention urged on behalf of the petitioner but that is not so; the recruitment by transfer can be made from

three sources, namely, (1) Assistant Registrar, Superintendents and Librarian of the High Court and Sheristadars of District Courts; (2) Additional

First Class Magistrates, Sub Magistrates and Assistant Public Prosecutors Grade I and (3) Superintendents of the Law Department of the

Government Secretariat and Manager, Office of the Advocate General. '' In other words, Additional First Class Magistrates and Sub Magistrates

constitute one such source of recruitment. '' ''The Note below Rule 20 is merely an enabling provision which enables the Government to post any

member of Category-I as District Magistrate and any member of Category-II as Sub Divisional Magistrate under Sections 10, 12 and 13 of the

Criminal Procedure Code. '' '' ''In our view, therefore, the Kerala State '' Judicial Service Rules (Special Rules) dated October 5, 1966 do not at

all show that there was or has been any integration of the posts of District Magistrates and Sub Divisional Magistrates with those of Sub Judges

and Munsiffs respectively as suggested by the petitioner. '' ''An analysis of the 1959 Rules under G.O.M.S. 851 together with the 1966: ad hoc

Rules will show that at the highest a partial '' absorption of a limited number from out of the then incumbents of the eleven posts (three of the

District Magistrates and eight of the '' Sub '' Divisional Magistrates, who were constituted into a separate service outside Civil Judiciary) ''who

were to be found suitable by the High Court into Civil Judiciary, could be said to have occurred under the said Rules, while under the Kerala State

Judicial Service Special Rules dated October 5, 1966 a practice of posting senior-most Sub Judges and Munsiffs as District Magistrates and Sub

Divisional '' ''Magistrates '' ''respectively grew though these Judicial Officers continued to retain their character as Sub Judges and Munsiffs in the ''

Civil Judiciary; but '' ''experience showed that the practice needed a revision with a view to achieve better administration of Criminal justice and it

was in deference to the considered view of the High Court that the State Government ultimately took a decision to bifurcate and constitute two

Wings of the Judicial Service, namely, Civil Wing and Criminal Wing and passed the orders at Exhs. P 1 and P2 respectively and framed the

necessary Statutory Rules (Annexures III and IV), governing the recruitment and conditions of services of the said two Wings. In our view none of

the materials on which reliance has been placed by the High Court can lead to the inference that there had come into existence a real and complete

integrated Judicial Service in the entire State of Kerala in the sense that all the Magisterial posts on the Criminal Side (District Magistrates and Sub

Divisional Magistrates) had got integrated with those of Sub Judges and Munsiffs respectively on the Civil Side. It is thus not possible to accept the

High Court''s finding in this behalf.

10. It may be stated that by way of deriving support for its finding that there had come into existence a complete integrated Judicial Service in the

State of Kerala prior to February 12, 1973, the High Court has pointed out that in a Full Bench decision of that Court in P. S. Menon''s "" case,

(supra), the Full Bench has in connection with the 1959 (Rules in G.O. MS 851 dated September 24, 1959) observed that the said Rules had

been framed for the absorption of the personnel, who were occupying the posts of District Magistrates and Sub Divisional Magistrates into the

Civil Judiciary. The High Court has further pointed out that when P. S. Menorts case (supra) was carried to the Supreme Court in appeal, even

this Court in its judgment has referred to the ad hoc Rules framed on February 11, 1966 as being meant for absorption of the Criminal Side

Judicial Officers of the Travancore-Cochin Branch who were kept in the separate cadre into Civil Judiciary. The observations of the Kerala High

Court in the Full Bench decision in connection with the 1959 Rules in G.O. MS 851 and of this Court in connection with the 1966 ad hoc Rules

are obviously correct, but, as discussed earlier, both these Rules had a limited operation effecting a partial absorption of such of the incumbents of

the eleven posts which were kept in a separate cadre who were to be found suitable by the High Court into Civil Judiciary; but from this fact it is

impossible to draw the inference that there had come into existence a complete integrated Judicial Service in the entire State of Kerala in the sense

that all posts on the Magisterial Side had got integrated with those on the Civil Side. On the other hand the very fact that there have been in

operation three separate sets of Rules, namely, (1) the Kerala State Higher Judicial Service Rules 1961 (dealing only with District and Sessions

Judges) (2) the Kerala Subordinate Magisterial Judicial Service Rules 1962 and (3) the Kerala State Judicial Service Rules (Special Rules) of

October 5, 1966, shows that there was no integration of the Judicial Magisterial posts with Judicial Civil posts. If that be so, there will be no

question of singling out of certain posts from any integrated service for a separate avenue of promotion under Exhs. P 1 and P2 respectively as

contended for by the petitioner and the scheme of bifurcation as contained in Exhs. P 1 and P2 cannot be regarded as being violative of either

Article 14 or Article 16. In this view of the matter it is unnecessary for us to deal with the decision of this Court in State of Mysore v. Krishna

Murthy and Ors. (supra), on which reliance was placed by counsel for the original petitioner, for, the ratio of that decision would be inapplicable to

the instant case. In that case on an examination of the Mysore State Accounts Services'' Cadre"" and Recruitment Rules, 1959, the High Court had

come to the conclusion, which was accepted by this Court, that there was a clear and complete integration brought about between the P.W.D.

Accounts unit and the Local Fund Audit unit under the common administrative control of the Controller of State Accounts, the qualifications and

status of the officers of the formerly separate units being identical, their work being of the same nature, the recruiting authorities being the same and

the standards observed and tests prescribed for entry into the formerly separate units being identical and as such"" the impugned Notifications

which resulted in a striking disparity in the promotional opportunities between the officers of the two wings in the same category were struck down.

In the instant case before us, we are clearly of the view that prior to the introduction of the scheme of bifurcation as per Exhs. P 1 and P2 a

complete integrated Judicial Service in the State of Kerala in the sense that all Magisterial posts on the Criminal Side (all District Magistrates and

Sub Divisional Magistrates) had got integrated with the posts of Sub Judges and Munsiffs on the Civil Side, had not come into existence and,

therefore, in the absence of such a complete integrated Judicial Service having come into existence, it was open to the State Government to

bifurcate the service into two Wings-Civil and Criminal--in the manner done under Exhs. P 1 and P2 respectively and to provide for a particular

type of option specified therein and no violation of Articles 14 and 16 is involved.

11. Alternatively, proceeding on the assumption that a complete integrated Judicial Service had come into existence in the State of Kerala prior to

the introduction of the scheme of bifurcation under Exhs. P 1 and P2 as found by our learned brother Shri Justice Shinghal, the question that arises

for our determination is whether the scheme of bifurcation as contained in the said impugned orders with the option indicated therein and the two

sets of Rules framed for constituting the two wings violate Article 14 and 16 of the Constitution. As pointed out earlier, the Rules do not

themselves provide for the option and are free from any blemish of discrimination but the hostile discrimination complained of centers round the

option that is specified in the impugned order Exh. PI. The relevant provision of the impugned order is to be found in para 3(i) which runs thus :

3(i) -Option will be allowed to all Civil Judicial Officers originally borne on the Magistracy, irrespective of whether or not they have been

confirmed as full members of the Kerala State Judicial Service.

It is pointed out that the aforesaid provision classifies all Civil Judicial Officers of an integrated service into two groups, those who were ""originally

borne on the Magistracy"" and those who were not so borne and the option to go over to the Criminal Wing of the Judiciary with chances of

promotion upto District Magistrates is confined only to the Officers belonging to the former group and it has been urged that the scheme of

bifurcation containing such restricted option is discriminatory as opportunity to exercise similar option has been denied to the officers belonging to

the other group. '' ''On the other hand, it was contended by Mr. Lal Narain Sinha, counsel for the State of Kerala, that the question whether the

option specified in para 3(1) of Exh. P 1 was so confided as has been suggested by counsel for the original petitioner would depend upon the

proper construction of the words ""originally borne on the Magistracy"" occurring in the said provision. According to him the expression ''originally''

can be construed as meaning ""before or just prior to the scheme"" and so construed the phrase ""originally borne on the Magistracy"" would mean

that the option was intended "for the benefit of all these officers who were borne on the Magistracy and worked as "Magistrates at any time but

before the scheme was put into operation, with the result that the hostile treatment into as suggested by the counsel for the original petitioner would

disappear. He pointed out that having regard to the object for which the scheme of bifurcation had been recommended by the High Court, namely,

"to secure better administration of justice on the Criminal Side", the phrase ""originally borne on the Magistracy"" must have been used with the

intention of benefiting all Civil Judicial Officers who had experience on the Criminal Side at some time or the other prior to the introduction of the

scheme. In our view, the phrase ""originally borne on the Magistracy"" occurring in para 3(i) is capable of bearing two constructions-one suggested

on behalf of the. original petitioner and the other suggested by Mr. Sinha for the State and it is obvious that since the construction suggested by

counsel for the original petitioner would lead to unconstitutionality the other construction which renders the provision free of the vice of

discrimination under Article 14 and 16 will have to be preferred. There is ample authority of this Court for the proposition that where two

constructions are possible that one which leads to unconstitutionality must be avoided and the other which trends to make provision constitutional

should be adopted, even if straining of language is necessary. Moreover, the construction suggested by Mr. Sinha is in accord with the object with

which the scheme of bifurcation was recommended by the High Court. In the circumstances, we construe the phrase ""originally borne on the

Magistracy"" in para 3(i) of Exh. P 1 accordingly and hold that the option contained therein was and is intended for the benefit of all those officers

who were borne on the Magistracy and had worked as Magistrates at any time before or just prior to the scheme being put into operation and we

have no doubt that the State of Kerala will give the benefit of the option in the manner indicated. Having regard to the aforesaid construction which

we are placing on the phrase ""originally borne on the Magistracy"" occurring in para 3(i) of Exh. P 1 it is clear that the complaint of hostile treatment

is devoid of any substance and that Exhs. P 1 and P2, therefore, do not violate either Article 14 and 16 of the Constitution.

12. In the result the appeals are allowed and the judgment and order dated February 8, 1974 of the High Court in O.P. No. 3639 of 1973 are set

aside. In the circumstances there will be no order as to costs.

Shinghal, J.

13. These appeals by special leave are directed against the judgment of the Kerala High Court dated February 8, 1974. Appeal No. 2047 has

been filed by the State of Kerala, while appeal No. 2048 has been filed by S. Sukumaran Nair and O. J. Antony who were initially appointed as

Magistrates in the Service of the. Travancore-Cochin and Kerala States respectively. The appellants feel aggrieved because the High Court has

allowed the writ petition of M.K. Krishnan Nair (a Subordinate Judge) and ""struck down in their entirety"" the government orders Ex. P 1 (dated

February 12, 1973) and Ex. P2 (dated September 18, 1973), the Kerala Civil Judicial Service Rules, 1973, and the Kerala Criminal Judicial

Service Rules, 1973.

14. M.K. Krishnan Nair (the Writ Petitioner) was appointed as a Munsiff in the Kerala Judicial Service on June 10, 1958. He was confirmed with

effect from April 1, 1970 when he was serving as a Munsiff. He served as Sub-divisional Magistrate, Alwaye, and held additional charge as

District Magistrate for a few days. He was thereafter posted as a Munsiff. He was promoted as a Sub-Judge on October 3, 1968 and confirmed

on that post. He felt aggrieved because of the issue of the State Government''s order Ex. P.I. dated February 12, 1973 for the Constitution of

separate wings for the civil and criminal judiciary consisting of Sub-Judges and Munsiffs on the civil side, and District Magistrates (Judicial), Sub-

divisional Magistrates, Additional First Class Magistrates and ""Sub-Magistrates on the criminal side, which came to be know as the Kerala Civil

Judicial Service and the Kerala Criminal Judicial Service. The real grievance of the writ petitioner was that the"" State Government had allowed an

option to go. over to the criminal wing to those officers only who were originally borne on the magistracy and not to his as he did not fulfil that

qualification. It was his contention that several officers who were junior to him in the judicial service, but were originally recruited as Mragistrates,

were unduly benefited and were being posted as District Magistrates (Judicial). The writ petitioner therefore challenged the government order Ex.

P.I. and the other order Ex. P.2 dated September 18, 1973 accepting some of the options, as illegal, discriminatory, and unfair to those who, like

him, were borne on the civil judiciary. The respondent State, Sukumaran Nair respondent No. 3, and O.J. Antony respondent No. 4 traversed the

claim of the writ petitioner. As has been stated, the High Court has allowed the writ petition, and that has given rise to the two appeals.

15. The controversy in these appeals thus relates to the validity of the aforesaid orders and the Kerala Civil Judicial Service Rules 1973 and the

Kerala Criminal Judicial Service Rules 1973 which were made soon after. It will however be necessary to make a brief mention of the relevant

facts in a chronological order so that the controversy may be appreciated in its proper perspective.

16. Recruitment of Munsiffs in the erstwhile Travancore-Cochin State, which ultimately merged in the Kerala State, was governed by the

Travancore-Cochin Munsiffs Recruitment Rules, 1953. The Kerala State was formed on November 1, 1956 and it comprised the Travancore-

Cochin State (excluding the area which was transferred to the Madras State), the Malabar district (excluding a small portion thereof) and the

Kasaragod taluk of South Kanara district. " ''The Travancore-Cochin Rules were then replaced by the Kerala Judicial Service (Recruitment of

Munsiffs) "Rules, "1957, which were made by suitably amending those Rules. " "The problem of integrating the services of the judicial officers had

to be tackled, and the State Government issued G.O. No. 9585/SI. 5-57/P. D. dated May 27, 1958 for that purpose which, inter alia, provided

the basis for the equation of posts of the Travancore-Cochin and Madras States. " "The equation dealt with all -categories of posts, namely,

District Judges (Grades I and II), District Magistrates, Additional District and Sessions Judges, Sub-Judges, Sub-Divisional Magistrates Grade I,

Munsiffs and Sub-divisional " Magistrates Grade II, District Munsiffs and Sub-Magistrates. " "G.O. MS 850 -of September 24, 1959 partially

amended the Kerala Judicial Service " " "(Recruitment of Munsiffs) Rules so as to make those District Magistrates and Sub-divisional Magistrates

Grades I and II " eligible " for appointment as Sub-Judges and Munsiffs who possessed a degree in law of a University in India or were Barristers-

at-law. " "At the same time G.O. MS 851/Pub (Integration) of September 24, 1959 was issued, at the instance of the High Court, which partially

modified G.O. No. 9585 dated May,; 1958 in regard to the equation of posts and reserved 3(4) posts of District Magistrates and 8 posts of Sub-

-divisional Magistrates for constituting them into a separate service "outside the Civil Judiciary so that the incumbents might continue on those

posts. " It was however specifically provided that those posts (outside the Civil Judiciary) would cease to exist when those incumbents vacated

them by retirement or promotion or otherwise and suitable civil judicial posts were created in their place where necessary. It was also directed that

those District Magistrates and Sub-divisional Magistrates "(of the Travancore-Cochin) "Branch who " "were " found suitable by the High Court

would be taken in the Civil Judiciary as and when possible.

17. Special rules were also made for the Kerala State Higher Judicial Service by a notification dated July 11, 1961.

18. Notification No. " G.O. (M.S.) 718 dated December 16, 1961 was issued applying the provisions of Articles 234 and 235 of the

Constitution, with effect from November 1, 1956, to all classes of Judicial Magistrates of the State as they applied to persons appointed to the

Judicial Service of the State.

19. That was followed by the Kerala Subordinate Magistrate Service Rules, 1962. Those Rules provided for the Constitution of a separate service

consisting only of Additional First Class Magistrates and Sub-"Magistrates.

20. It was however still necessary to complete the process of integration of the services of the judicial officers in the Kerala State Judicial Service.

Notification No. 3870/c3/66 Home dated February 11, 1966 was therefore issued under Article 234 read with the proviso to Article 309 of the

Constitution, making ad hoc rules for the absorption of criminal judicial officers of the Travancore-Cochin Branch belonging to the separate service

constituted under the aforesaid G.O. MS 850/851/59 of the Public (Integration) Department dated September 24, 1959 and G.O. MS 594/61

Public (Integration) Department dated July 24, 1961 to the Kerala State Judicial Service. It was expressly provided by those rules that the

Magisterial Officers of the former Travancore-Cochin State holding posts of District Magistrate shall be eligible for appointment as Subordinate

Judges and those holding posts-of Sub-divisional Magistrate shall be eligible for appointment as Munsiffs in the Kerala State Judicial Service if they

were graduates-in-law of a University in India or were Barristers-at-law. It was provided in rule (iii) that the persons so appointed will thereupon

become members of the Kerala State Judicial Services and will on all matters including probation, discharge, full membership and promotion be

governed by (those) Rules."" Provision was also made for their appointment as District Judges or Subordinate Judges and for determining their

seniority in the integrated service.

21. Then came the notification G.O. (P) No. 368/66/Home dated October 5, 1966 by which special rules were made under Articles 234,, 235

and the proviso to Article 309 of the Constitution. Those Rules-were called the Kerala State Judicial Service Rules, 1966. They provided for two

categories of officers, namely,. Subordinate Judges (which term was to include Subordinate Judges posted as District Magistrates (Judicial) and

Munsiffs (which term was to include Munsiffs posted as Sub-divisional Magistrates). It was expressly provided that Additional First Class

Magistrates and Sub-Magistrates-would be eligible for appointment as Munsiffs by transfer.

22. It would thus appear that the above mentioned Rules and Orders, made full provision for the integration of all categories of Judicial officers in

the service or services of the Kerala State. The Kerala Judicial Service (Recruitment of Munsiffs) Rules, the Kerala State Higher Judicial Service

Rules and the Kerala Subordinate Magisterial Service Rules covered all categories of posts and officers. So even if it were assumed that the case

of any individual officer remained to be finalised for purposes of his appointment or the fixation of his seniority or pay etc. in the integrated set up,

that Could not possibly justify the argument that the process of integration remained incomplete. I have therefore no doubt that the finding of the

High Court that there was integration of the posts which are the subject matter of the present controversy, is correct,, and does not call for

interference. It was-in fact expressly conceded by Mr. Lal Narain Sinha on behalf of the State of Kerala that this was really so. Counsel for the

other side was not able to advance any satisfactory argument how, in face of the above mentioned government orders and Rules, it could be said

that the work of integration had not been completed.

23. The High Court has however struck down the-aforesaid orders. Exs. P 1 and P2 and the two sets of Rules of 1973 for two reasons,

(i) The formation of the civil and criminal wings out of the integrated service and carving out of. separate promotional avenues for the Magisterial

officers was discriminatory and irrational.

(ii) The restriction of the exercise of the option to get into the criminal judiciary only to officers borne (originally) on the Magistracy was also

discriminatory and irrational.

24. I shall therefore proceed to examine these reasons but before doing so it may as well be mentioned that the High Court has not really dealt with

the two points separately, or as one different from or independent of the other, but has examined them together, mainly with reference to the

validity of the order confining the option to those officers who were originally borne on the Magistracy. In reaching that conclusion the High Court

had drawn on the arguments which were advanced before it with reference to Articles 14 and 16 of the Constitution.

25. What G.O.M.S. 24/73 Home dated February 12, 1973 (Ex. P. 1) conveys is the fact that the question of constituting a separate wing for the

criminal judiciary"" and the ""civil judiciary"" for the ""better administration of justice"" had been engaging the attention of the government for some time

past, that the government had examined the matter in detail and had decided ""in consultation with, High Court"" to constitute two separate wings for

the civil and criminal Judiciary respectively consisting of Sub-Judges and Munsiffs on the civil side, and District Magistrates (Judicial), Sub-

divisional Magistrates, Additional First Class Magistrates & Sub-Magistrates on the criminal side. The rest of the order deals with the framing of

separate rules for the two services, the exercise of option to go over the criminal wing (which shall be examined separately), the posting of those

who opted for the new Criminal Judicial Services, the release of the posts of Sub-divisional Magistrates for members of that service and the

continuance of those who had been appointed as District Magistrates on or before the date of implementation of the ""Scheme"". There is thus

nothing in the order which could be said to impinge on the right to equality guaranteed by Article 14 of the Constitution in so far as the bifurcation

of the integrated judicial services into criminal and civil wings is concerned. So also, there is nothing to show that the creation of the two services

denied equality of opportunity in matters of public employment within the meaning of Article 16.

26. The other order Ex. P. 2 is G.O.M.S. 157/73 Home dated September 18, 1973. It makes a reference to order Ex. P. 1 and conveys

government''s acceptance of the options exercised by the officers thereunder and the release of posts for them. As has been stated, I shall deal

with the question of option separately. It may also be mentioned that the question of release of posts has not figured in the arguments before us as it

has not been challenged as illegal. Ex. P. 2 is therefore an order implementing the earlier order Ex. P. 1 and cannot also be said to be violative of

Article 14 and 16.

27. It has to be appreciated that there is nothing in the Constitution or any other law to prevent a State from creating one or more States Services,

or to divide an existing Service into two or more Services, according to its requirement. In fact Article 309 of the Constitution contemplates the

making of Acts or Rules to regulate the recruitment, and conditions of service of persons appointed, to public Services and posts in connection

with the affairs of the State. And there is amply evidence in this case to show that even though it was thought, on the formation of the Kerala State

on November 1, 1956, that the integrated services mentioned above would meet the requirements of the judicial Services, the High; Court felt,

later on, that it was necessary to ""separate the civil and criminal wings of the Subordinate Judiciary."" Reference in this connection may be made to

High Court''s letters dated March 4, 1970 and May 12, 1970 which go to show that the scheme of bifurcation was brought about at the instance

of the High -Court ""to secure better administration of justice."" The High Court, for that purpose, not only sent its detailed proposals, but also its

proposals for the Rules to be made for the Constitution of the two Services.

28. As has been mentioned, those rules are the Kerala Civil Judicial Service Rules 1973, and the Kerala Criminal Judicial Rules 1973. Both the

Rules have been made in supersession of all the rules and regulations which were then in force on the subject-matter of the Rules. The Kerala Civil

Judicial Service Rules, 1973 provide, inter alia, for the Constitution of the service by Subordinate Judges and Munsiffs, the method of their

appointment, recruitment of members of the Scheduled Castes and Tribes, the training of officers selected for appointment as Munsiffs,, their

minimum qualifications and the period of production etc. The remaining Rule 18 deals with the matter of ""option"" of officers to the Kerala Criminal

Judicial Service, but that is a matter which will be examined separately. There is thus nothing in the Kerala Civil Judicial Service Rules 1973 which

could be said to be discriminatory or violative of Articles 14 and 16 of the Constitution for any reason.

29. Much the same is the position regarding the Kerala Criminal Judicial Service Rules 1973. They also deal with the matters covered by the

Kerala Civil Judicial Service except that the service consists of District Magistrates, Sub-divisional Magistrates, Additional First Class Magistrates

and Sub-Magistrates. Rule 18(ii) of the Rule deals with ""options"", but that again is a matter which will be examined separately There is otherwise

no reason to think that the Rules are invalid for any reason whatsoever.

30. On the question of the validity of the option given by order Ex. P. 1 (G.O. MS, 24/73/Home dated February 12, 1973) the controversy

before us relates to the following portion of paragraph 3(i),-

3(i) option will be allowed to all Civil Judicial Officers originally borne on the Magistracy, irrespective of whether or not they have been confirmed

as full members of the Kerala State Judicial Service.

It has been urged that when the Services had been integrated, it was discriminatory to treat members of that Service differently in the matter of

appointment to the Kerala Criminal Judicial Service. For the same reason, the validity of G.O. MS 157/73/Home (Ex. P 2) has been assailed as

under it the State Government has accepted the option of the 14 officers mentioned in it.

31. In so far as the Service Rules are concerned, Rule 18 of the Kerala Civil Judicial Service Rules 1973, provides as follows-

18. Transitory Provisions : Notwithstanding anything contained in these rules, the officers whose options to the Kerala Criminal Judicial Service

have been accepted by Government in G.O. MS 157/73/Home dated September 18, 1973 shall be allowed to continue in their present posts in

the Kerala Judicial Service till they are given postings in the Kerala Criminal Judicial Service.

The corresponding provision in the Kerala Criminal Judicial Service Rules 1973 to which objection has been taken is Rule 18(ii) which makes a

mention of the options of the officers accepted by the Government in G.O. MS No. 157/73/Home dated September 18, 1973 (Ex. P. 2) and their

continuance on their posts in the Kerala Civil Judicial Service till they were given suitable postings in the Kerala Criminal Judicial Service consistent

with their original seniority in the criminal wing.

32. The State Government has tried to justify the restriction of the option to go over to the Kerala Criminal Judicial Service on the basis of the past

history and the factual position prevailing at the relevant time. Mr. L. N. Sinha, counsel for" the State, has urged that the Rules clearly show that

promotion of a Subordinate Judge is to the rank of a District-Judge and that the fact that sometimes a Subordinate Judge was posted as District

Magistrate is not quite pertinent. He has also urged that no Subordinate Judge has any particular right to be posted as District Magistrate and that

merely the chance of such a posting is not a substantial benefit which could invalidate the Rules. Then it has been pointed out that the statutory

Rules do not themselves provide for the option and are free from any blemish of discrimination.

33. It is however well settled that while, in form, Article 14 appears to contain an absolute prohibition, it is not really absolute, for the doctrine of

classification has been incorporated in it by judicial decision : Makhan Lal Malhotra and others v. The Union of India [1961] 2 S.C.R. 120 So it is

now no longer in dispute that it is permissible to make a law making a classification if it is founded on an intelligible differentia having a rational

relation to the object sought to be achieved by it. It may also not be disputed that the classification may be based on the objects to be achieved or,

as in Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and others [1959] S.C.R. 279 at p. 297. , it may be founded on the difference

between persons or, in a given case, the law may itself provide a policy or principle for the guidance of the exercise of the discretion of the

Government in the matter of classification or selection for appointment. It, may also be that the differentiation may be upheld if it arises for historical

reasons e.g. because of the merger of States : Bhaiyalal Shukla v. State of Madhya Pradesh) [1962] Suppl. 2 S.C.R. 257. But the question is

whether the classification made by order Ex. P. 1 in confining the option to ""all Civil Judicial Officers originally borne on the Magistracy"" is a

classification which is based on an intelligible differentia which distinguishes those persons from the others who had been left out of the option and

the differentia has a rational relation to the object sought to be achieved by the order or the rules giving effect to it ?

34. It has been argued that the classification in favour of only these Civil Judicial Officers who were originally borne on the Magistracy, is an

intelligible classification based on an intelligible differentia and that it has the object of providing the criminal wing of the Judiciary, to be constituted

under the Kerala Criminal Judicial Service Rules, 1973, with only those officers who had some experience of criminal or magisterial work. But the

argument is not tenable for there could possibly be no reason, even for the purpose of achieving that object, why those Civil Judicial Officers who,

though not originally borne on the Magistracy, had acquired sufficient experience of the Magisterial work after their appointment as Magistrate as a

result of the integration of the Services after the formation of the Kerala State should have been left out. As is obvious, the classification made by

the impugned orders (Exs. P 1 and P. 2) between those Civil Judicial Officers who were ""originally borne on the Magistracy"" and those who came

over to the Magistracy thereafter, but before the Constitution of the so-called criminal wing of the Judiciary, is not a permissible classification and it

cannot be said to be correlated to, or to subserve, the object of providing an efficient service to man the posts belonging to the Kerala Criminal

Judicial Service.

35. This appears to be the reason why Mr. L. N, Sinha has been ram(sic) enough to suggest that the option may not be limited to the officers who

were originally appointed as Magistrates but may also be made available to all officers having previous experience as Magistrates. No useful

argument has been advanced for a contrary view and it appears that the suggestion of Mr. Sinha deserves to be accepted as it will have the effect

of making the provision as to the exercise of the option above challenge. As it is, the offending parts of the impugned orders and Rules which

restrict the option of officers originally borne on the Magistracy is severable from the rest of the provisions and the High ''Court clearly erred in

striking down the orders and the Rules ""in their entirety"".

36. It may be mentioned in this connection that once it is held that the bifurcation of the integration Service into Civil and Criminal Judicial Service

was valid, and there was justification for prescribing the requirement of previous magisterial experience for the Constitution of (sic)